Australian Capital Territory

Legal Profession Act 2006

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About this republication

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Legal Profession Act 2006

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Australian Capital Territory

Legal Profession Act 2006

An Act about the legal profession and legal services

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Chapter 1 Introduction

Part 1.1 Preliminary—ch 1

1 Name of Act

This Act is the *Legal Profession Act 2006*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***conditional costs agreement***, for part 3.2 (Costs disclosure and review)—see section 261.' means that the term 'conditional costs agreement' is defined in that section for part 3.2.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Purposes of Act

The purposes of this Act are as follows:

(a) to provide for the regulation of legal practice in the ACT 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.

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Part 1.2 Important terms

7 Terms relating to lawyers

In this Act:

Australian lawyer means a person who is admitted to the legal profession under this Act or a corresponding law.

interstate lawyer means a person who is admitted to the legal profession under a corresponding law, but not under this Act.

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

8 Terms relating to legal practitioners

In this Act:

Australian legal practitioner means an Australian lawyer who holds a local practising certificate or interstate practising certificate.

interstate legal practitioner means an Australian lawyer who holds an interstate practising certificate, but not a local practising certificate.

local legal practitioner means an Australian lawyer who holds a local practising certificate.

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9 Terms relating to associates and principals of law practices

In this Act:

associate, of a law practice, means—

(a) an Australian legal practitioner who is—

(i) for a law practice constituted by a sole practitioner—the sole practitioner; or

(ii) for a law practice that is a law firm—a partner in the law practice; or

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

(iv) for a multidisciplinary partnership—a legal practitioner partner in the practice; or

(v) an employee of the law practice; or

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

(c) an employee of, or a person paid in connection with, 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 (other than an Australian legal practitioner) who is a partner in a business that includes the law practice; or

(f) a person (other than an Australian legal practitioner) who shares the receipts, revenue or other income arising from the legal practice; or

(g) an Australian-registered foreign lawyer who has a relationship with the law practice of a kind prescribed by regulation.

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lay associate, of a law practice or a local legal practitioner, means an associate of the practice or legal practitioner who is not an Australian legal practitioner.

legal practitioner associate, of a law practice, means an associate of the practice who is an Australian legal practitioner.

principal, of a law practice, means an Australian legal practitioner who is—

(a) for a law practice constituted by a sole practitioner—the sole practitioner; or

(b) for a law practice that is a law firm—a partner in the law practice; or

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

(d) for a multidisciplinary partnership—a legal practitioner partner in the practice.

10 What is the *home jurisdiction*?

(1) This section has effect for this Act.

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

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

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

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

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

(i) the jurisdiction in which the office is situated where the associate performs most of the associate's duties for the law practice; or

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

(iii) if a jurisdiction can be decided under neither subparagraph (i) nor subparagraph (ii)—the jurisdiction decided in accordance with criteria prescribed by regulation.

11 Suitability matters

(1) Each of the following is a ***suitability matter*** for an individual:

(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

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

Note 1 The admission rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed.

Note 2 Section 13 (References to *conviction* and *quashing* of conviction) provides that reference to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.

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

(i) when not admitted, or not holding a practising certificate, as required under this Act or a previous territory law that corresponds to this Act or under a corresponding law; or

(ii) if the person was admitted—in contravention of a condition of admission; or

(iii) if the person held 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 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 territory law that corresponds to this Act;

(ii) a corresponding law or corresponding foreign law;

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(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;

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

(k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;

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

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

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(2) A matter is a ***suitability matter*** even if it happened before the commencement of this section.

12 Information notices

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

(a) the decision; and

(b) the reasons for the decision; and

(c) the rights of appeal or review available to the person in relation to the decision and the period within which an appeal or review must be made or applied for.

13 References to *conviction* and *quashing* of conviction

(1) A reference in this Act to a ***conviction*** includes a reference to a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.

Note ***Found guilty*** is defined in the Legislation Act, dict.

(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 if—

(a) a finding of guilt in relation to the offence remains unaffected; or

(b) the acceptance of a guilty plea in relation to the offence remains unaffected.

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Chapter 2 General requirements for engaging in legal practice

Part 2.1 Preliminary—ch 2

14 Simplified outline—ch 2

(1) This chapter sets out general requirements for engaging in legal practice in the ACT.

(2) The following is a general outline of the contents of this chapter:

(a) part 2.2 provides for the reservation of legal work and legal titles to properly qualified entities;

(b) part 2.3 sets out the qualifications and procedure for admission to legal practice in the ACT;

(c) part 2.4 provides for the grant, renewal, amendment, suspension and cancellation of practising certificates in the ACT and sets out the entitlements of holders of interstate practising certificates to engage in legal practice in the ACT;

(d) part 2.5 provides a scheme for notification of and response to action taken by courts and other authorities in the ACT and other jurisdictions regarding admission to the legal profession and the right to engage in legal practice;

(e) part 2.6 regulates the provision of legal services in the ACT by corporations and by partnerships that provide legal services and nonlegal services;

(f) part 2.7 regulates the practice of the law of a foreign country in the ACT;

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(g) part 2.8 regulates the provision of legal services in the ACT by community legal centres.

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

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Part 2.2 Reservation of legal work and legal titles

15 Purposes—pt 2.2

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 people who are properly qualified to do so;

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

16 Prohibition on engaging in legal practice if not entitled

(1) A person commits an offence if—

(a) the person engages in legal practice in the ACT; and

(b) the person is not an Australian legal practitioner.

Maximum penalty: 100 penalty units.

Examples of engaging in legal practice

1 preparing a will or other testamentary instrument

2 preparing an instrument creating or regulating rights between people

3 preparing an instrument relating to property or a legal proceeding

4 acting as advocate for someone in a proceeding before a court or tribunal

5 preparing papers to be used in support of, or opposition to, an application for the grant of probate or letters of administration

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant did not engage in the legal practice for fee, gain or reward.

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

(a) legal practice engaged in under a territory law or a law of the Commonwealth;

(b) legal practice engaged in by an incorporated legal practice in accordance with part 2.6 (Incorporated legal practices and multidisciplinary partnerships);

(c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with part 2.7 (Legal practice—foreign lawyers);

(d) legal practice engaged in by a complying community legal centre;

Note For the meaning of ***complying community legal centre***, see s 208.

(e) legal practice prescribed by regulation.

(4) Subsection (1) also does not apply to—

(a) an employee providing legal services to his or her employer or a related entity if the employee—

(i) acts in the ordinary course of his or her employment; and

(ii) receives no fee, gain or reward for acting other than his or her ordinary remuneration as an employee; or

(b) an agent or salesperson under the *Agents Act 2003* inserting details mentioned in that Act, section 89B (1) (a) or (b) into a proposed contract to which that subsection applies; or

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(c) a public employee, a member of the Australian Public Service or a member of the defence force preparing an instrument, or carrying out any other activity, in the course of his or her duties; or

(d) an employee of a trustee company under the *Trustee Companies Act 1947* preparing a will, or carrying out any other activity, in the course of his or her duties; or

(e) a person declared exempt from subsection (1) under a regulation.

(5) Subsection (1) has effect subject to any territory law or law of the Commonwealth that authorises a person to engage in conduct that is engaging in legal practice.

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

(7) A person may recover from someone else, as a debt owing to the person, any amount the person paid to the other person in relation to anything the other person did in contravention of subsection (1).

(8) A regulation may make provision in relation to the application (with or without change) of provisions of this Act to people engaged in legal practice of a kind mentioned in subsection (3) (other than paragraphs (a) and (b)) or people mentioned in subsection (4).

(9) In this section:

fee, gain or reward means any form of, and any expectation of, a fee, gain or reward.

17 Prohibition on representing or advertising entitlement to engage in legal practice if not entitled

(1) A person commits an offence if—

(a) the person represents or advertises that the person is entitled to engage in legal practice; and

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(b) the person is not an Australian legal practitioner.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a director, officer, employee or agent of a corporation; and

(b) the person represents or advertises that the corporation is entitled to engage in legal practice; and

(c) the corporation is not an incorporated legal practice.

Maximum penalty: 50 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 mentioned in section 16 (3) (Prohibition on engaging in legal practice if not entitled).

(4) A reference in this section to—

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

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

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

18 Presumptions about taking or using certain names, titles or descriptions

(1) This section applies to the following names, titles and descriptions:

- lawyer
- legal practitioner
- barrister or counsel

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- solicitor or attorney
- Queen's Counsel, King's Counsel, Her Majesty's Counsel, His Majesty's Counsel or Senior Counsel.

(2) A regulation may prescribe the kind of people 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 section 17 (1) (Prohibition on representing or advertising entitlement to engage in legal practice if not entitled), the taking or using of a name, title or description to which this section applies by someone who is not entitled to take or use it, or in circumstances in which someone is not entitled to take or use it, gives rise to a rebuttable presumption that the person represented that the person is entitled to engage in legal practice.

19 Contravention of pt 2.2 by Australian lawyers who are not legal practitioners

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

(2) This part does not affect 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 against this part as well as being dealt with under chapter 4 in relation to the same matter.

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Part 2.3 Admission of local lawyers

Division 2.3.1 Preliminary—pt 2.3

20 Purposes—pt 2.3

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 people to be admitted are qualified for admission to the legal profession in the ACT;

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

Division 2.3.2 Eligibility and suitability for admission

21 Eligibility for admission

(1) A person is eligible for admission to the legal profession under this Act only if the person is an individual aged 18 years or over and—

(a) the person has attained—

(i) approved academic qualifications; or

(ii) corresponding academic qualifications; and

(b) the person has satisfactorily completed—

(i) approved practical legal training requirements; or

(ii) corresponding practical legal training requirements.

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(2) The admission rules must not require a person to satisfactorily complete before admission a period of supervised training that exceeds in length a period or periods equivalent to 1 full-time year (as decided in accordance with the admission rules).

(3) The Supreme Court may exempt a person from the requirements of subsection (1) (a) or (b) if satisfied that the person has, to an extent sufficient to be eligible for admission—

(a) academic qualifications; or

(b) relevant experience in legal practice or relevant service with a government agency.

(4) An exemption under subsection (3) may be made subject to a condition that the person is to obtain further qualifications or training.

(5) In this section:

approved academic qualifications means academic qualifications that are approved, under the admission rules, for admission to the legal profession in the ACT.

approved practical legal training requirements means legal training requirements that are approved, under the admission rules, for admission to the legal profession in the ACT.

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

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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 admissions board is satisfied that substantially the same minimum criteria apply for the approval of legal training requirements for admission in the other jurisdiction as apply in the ACT.

government agency means a government department (however described) of the ACT or any other jurisdiction or of the Commonwealth, and includes an entity prescribed by regulation.

22 Suitability for admission

(1) In deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, the Supreme Court or admissions board must consider each of the suitability matters in relation to the person to the extent a suitability matter is appropriate.

(2) Subsection (1) does not limit the relevant matters that the Supreme Court or admissions board may consider.

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

23 Early consideration of suitability for admission

(1) In this section:

applicant for admission means an applicant for admission to the legal profession under this Act.

prospective applicant for admission means a person who is undertaking, is eligible to undertake, or has completed, a course of legal studies but who is not an applicant for admission.

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relevant person means—

(a) an applicant for admission; or

(b) a prospective applicant for admission; or

(c) anyone else who has a sufficient interest in applying for a declaration under this section.

(2) A relevant person may apply to the admissions board for a declaration that a matter (for example, a suitability matter) disclosed either in—

(a) the application for the declaration; or

(b) an undecided application for admission to the legal profession under this Act;

will not, without more, adversely affect an assessment by the board about whether the person is a fit and proper person to be admitted.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The admissions board must consider each application under this section and, subject to section 24, make the declaration sought or refuse to make it.

(4) A declaration under subsection (3) is binding on the admissions board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration.

24 Referral of matters to Supreme Court

(1) The admissions board may refer to the Supreme Court an application under section 23 if, in the board's opinion, it would be appropriate for the court to consider the application having regard to the seriousness of matters disclosed by or found out about the applicant.

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(2) The Supreme Court has the same powers as the admissions board to deal with the application and its decision on the application is taken to be a decision of the board.

(3) On a referral under this section, the Supreme Court may make the order or declaration that it considers appropriate.

(4) An order or declaration under subsection (3) is binding on the admissions board unless the applicant failed to make a full and fair disclosure of all matters relevant to the order or declaration.

25 Appeal to Supreme Court on refusal of declaration

(1) If a declaration sought under section 23 (Early consideration of suitability for admission) is refused by the admissions board, the applicant may appeal to the Supreme Court against the refusal.

(2) An appeal under this section is by way of rehearing, and fresh evidence or evidence in addition to, or in substitution for, the evidence before the admissions board may be given on the appeal.

(3) On an appeal under this section, the Supreme Court may make the order or declaration that it considers appropriate.

(4) An order or declaration under subsection (3) is binding on the admissions board unless the applicant failed to make a full and fair disclosure of all matters relevant to the order or declaration.

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

Division 2.3.3 Admission to legal profession

26 Admission

(1) A person may apply to the Supreme Court to be admitted as a lawyer.

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(2) The Supreme Court may admit the person as a lawyer if satisfied that the person—

(a) is eligible for admission to the legal profession; and

(b) is a fit and proper person to be admitted to the legal profession.

(3) The Supreme Court may refuse—

(a) to consider the application if it is not made in accordance with the admission rules; or

(b) to admit the person if the person has not complied with the admission rules.

(4) In making a decision under this section in relation to the application, the Supreme Court must consider, and may rely on, the admissions board's advice in relation to the application.

(5) The advice of the admissions board may be contained in a compliance certificate.

27 Roll of people admitted to legal profession

(1) The Supreme Court must keep a roll of people admitted to the legal profession under this Act (the ***local roll***).

(2) When a person is admitted under this Act, the person's name must be entered on the local roll in accordance with the admission rules.

(3) A person admitted under this Act must sign the local roll.

(4) The admission of a person under this Act is effective from the time the person signs the local roll.

(5) The registrar must forward to the relevant council the name and date of admission of each person admitted under this Act as soon as practicable after the person has signed the local roll.

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28 Local lawyer is officer of Supreme Court

A person becomes an officer of the Supreme Court on being admitted as a lawyer under this Act.

Division 2.3.4 Functions and powers of admissions board

29 Admissions board to advise on application for admission

(1) The role of the admissions board is to advise the Supreme Court whether or not the admissions board considers—

(a) an applicant for admission to the legal profession is—

(i) eligible for admission; and

(ii) a fit and proper person to be admitted, including having regard to all suitability matters in relation to the applicant to the extent appropriate; and

(b) the application is in accordance with the admission rules.

(2) This section does not limit any other functions of the admissions board under a territory law.

30 Compliance certificates by admissions board

(1) Subsection (2) applies if, after considering an application for admission to the legal profession, the admissions board considers—

(a) the applicant is—

(i) eligible for admission; and

(ii) a fit and proper person to be admitted; and

(b) the application is in accordance with the admission rules; and

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(c) there are no grounds for refusing to give a certificate of the matters mentioned in paragraphs (a) and (b) (a ***compliance certificate***).

(2) The admissions board must, within the time required by the admission rules—

(a) tell the Supreme Court its decision by filing a compliance certificate; and

(b) give a copy of the compliance certificate to the bar council and law society council.

(3) If the admissions board refuses to give a compliance certificate to an applicant for admission to the legal profession, the board must—

(a) tell the Supreme Court its decision by filing a statement about the decision and the reasons for the decision; and

(b) give a copy of the statement to the bar council and law society council; and

(c) give an information notice to the applicant.

31 Consideration of applicant's eligibility and suitability for admission

(1) To help it consider whether or not an applicant is eligible for admission to the legal profession under this Act or is a fit and proper person to be admitted under this Act, the admissions board may, by written notice to the applicant, require the applicant—

(a) to give it stated documents or information; or

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

(2) An applicant's failure to comply with a notice under subsection (1) within the reasonable period, and in the reasonable way, (if any)

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required by the notice is a ground for refusing to give a compliance certificate for the applicant.

(3) The admissions board may refer a matter to the Supreme Court for directions.

Division 2.3.5 Miscellaneous—pt 2.3

32 Admissions board is respondent to applications under pt 2.3

The admissions board is taken to be a respondent to every application under this part not made by it.

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Part 2.4 Legal practice by Australian legal practitioners

Division 2.4.1 Preliminary—pt 2.4

33 Purposes and application—pt 2.4

(1) 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 the ACT and to provide for the certification of Australian lawyers whether or not admitted in the ACT;

(b) to provide a system for the grant and renewal of local practising certificates.

(2) A regulation may provide that a provision of this part applies with prescribed changes to—

(a) a government lawyer in relation to his or her official functions as a government lawyer; or

(b) an in-house lawyer in relation to the provision of in-house legal services for a corporation by which the lawyer is employed.

(3) In this section:

in-house lawyer means an Australian lawyer who—

(a) is employed by a corporation, that is not an incorporated legal practice; and

(b) provides only in-house legal services to the corporation.

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Division 2.4.2 Legal practice in ACT by Australian legal practitioners

34 Entitlement of holder of Australian practising certificate to practise in ACT

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

Division 2.4.3 Local practising certificates generally

35 Local practising certificates

(1) The following kinds of practising certificates may be granted by the licensing body under this part:

(a) unrestricted practising certificates;

(b) restricted practising certificates;

(c) barrister practising certificates.

Note A current practising certificate granted under this part is a ***local practising certificate*** (see dict).

(2) A regulation may prescribe—

(a) criteria for granting or renewing practising certificates; or

(b) procedures in relation to applications for 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 practising certificate, that is in force during the currency of the firstmentioned certificate.

(4) A contravention of subsection (3) can be unsatisfactory professional conduct or professional misconduct.

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36 Suitability to hold local practising certificate

(1) This section applies for section 44 (Grant or renewal of unrestricted or restricted practising certificate) and any other provision of this Act for which the question of whether a person is a fit and proper person to hold a local practising certificate is relevant.

(2) In considering whether or not a person is a fit and proper person to hold a local practising certificate, the relevant council may take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section:

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

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

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

(d) whether the person has contravened—

(i) an order of the disciplinary tribunal; or

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

(e) without limiting any other paragraph—

(i) whether the person has failed to pay a required contribution or levy to the fidelity fund; or

(ii) whether the person has contravened a requirement of this Act, or imposed by the council, about professional indemnity insurance; or

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

(f) other relevant matters the council considers appropriate.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Note 2 The ***relevant council*** includes the law society council when it is exercising its functions as the licensing body (see dict, def ***relevant council***).

(3) The relevant council may decide that a person is a fit and proper person to hold a local practising certificate despite anything mentioned in subsection (1) applying in relation to the person if the council considers that the circumstances justify that decision.

(4) If a matter was—

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

(b) a Supreme court, the admissions board or a corresponding authority decided that the matter was 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.

Note Section 44 (Grant or renewal of unrestricted or restricted practising certificate) provides that a local practising certificate must not be granted unless the licensing body is satisfied that the applicant is a fit and proper person to hold the certificate, and must not be renewed if it is satisfied that the applicant is not a fit and proper person to continue to hold the certificate.

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37 Duration of local practising certificate

(1) A local practising certificate granted under this Act is in force from the date stated in it until the end of the financial year in which it is granted, unless the certificate is sooner suspended or cancelled.

(2) A local practising certificate renewed under this Act is in force until the end of the financial year after its previous period of currency, unless the certificate is sooner suspended or cancelled.

(3) If an application for the renewal of a local practising certificate has not been decided by the following 1 July, the certificate—

(a) continues in force on and from that 1 July until the licensing body 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.

38 Professional indemnity insurance for local practising certificate etc

(1) This section applies to each of the following people who apply for the grant or renewal of a local practising certificate:

(a) an Australian lawyer who is a government legal officer 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 legal officer 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;

(c) an Australian lawyer other than an Australian lawyer mentioned in paragraph (a) or (b).

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(2) The licensing body must not grant or renew a local practising certificate unless the licensing body —

(a) for an application by an Australian lawyer mentioned in subsection (1) (a)—imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than as a government legal officer engaged in government work; or

(b) for an application by an Australian lawyer mentioned in subsection (1) (b)—imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than by providing in-house legal services for a corporation by which the lawyer is employed; or

(c) for an application for grant or renewal of an unrestricted practising certificate by an Australian lawyer mentioned in subsection (1) (c) who, as the holder of the certificate, would be required under this Act to be covered by an approved policy of indemnity insurance—is satisfied that the lawyer will, and imposes a condition on the certificate that the lawyer must, be covered by an approved policy of indemnity insurance during the currency of the practicing certificate; or

(d) for an application for grant or renewal of a barrister practising certificate by an Australian lawyer mentioned in subsection (1) (c) who, as the holder of the certificate, would be required under this Act to be covered by an approved policy of indemnity insurance—

(i) has received a report from the bar council stating that the bar council is satisfied that the lawyer will be covered by an approved policy of indemnity insurance during the currency of the practising certificate; and

(ii) imposes a condition on the certificate that the lawyer must be covered by an approved policy of indemnity insurance during the currency of the practising certificate.

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(3) In this section:

approved, for a policy of indemnity insurance—see section 312.

39 Continuing obligation for professional indemnity insurance for local practising certificate

(1) A person commits an offence if—

(a) the person is a local legal practitioner; and

(b) the person engages in legal practice in the ACT; and

(c) the person fails to comply with a condition imposed under section 38 (2) on the person's practising certificate.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person must, under a condition imposed under section 38 (2) on the person's practising certificate, have an approved policy of indemnity insurance; and

(b) the person becomes aware that the person will not be covered by an approved policy of indemnity insurance; and

(c) the person fails to tell the relevant council in writing of that fact as soon as possible, but no later than 7 days after the day the person becomes aware of that fact.

Maximum penalty: 50 penalty units.

Note If a form is approved by the relevant council under s 587 for this provision, the form must be used.

(3) An offence against this section is a strict liability offence.

(4) A contravention of this section can be unsatisfactory professional conduct or professional misconduct.

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(5) In this section:

approved, for a policy of indemnity insurance—see section 312.

40 Local legal practitioner is officer of Supreme Court

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

Division 2.4.4 Grant or renewal of local practising certificates

41 Application for grant or renewal of local practising certificate

(1) An Australian lawyer may apply to the licensing body for the grant or renewal of a local practising certificate if the lawyer is eligible to apply for the grant or renewal.

Note 1 If a form is approved under s 83 for this provision, the form must be used.

Note 2 A fee may be determined under s 84 for this provision.

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

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

(i) the lawyer reasonably expects to be engaged in legal practice principally in the ACT during the currency of the certificate applied for; or

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(ii) if it is not reasonably practicable to establish whether subparagraph (i) applies—the lawyer's place of residence in Australia is in the ACT or the lawyer does not have a place of residence in Australia; or

(b) if the lawyer is an Australian legal practitioner at the time of making the application—

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

(ii) the lawyer holds a 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 principally in the ACT during the currency of the certificate applied for; or

(iv) the lawyer's place of residence in Australia is the ACT; or

(v) if it is not reasonably practicable to establish whether subparagraph (i), (ii) or (iii) applies—the lawyer's place of residence in Australia is in the ACT or the lawyer does not have a place of residence in Australia; or

(c) if the lawyer is an Australian legal practitioner prescribed by regulation for this paragraph.

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

(a) the application is made; or

(b) for a late application—the application should have been made.

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(4) Without limiting subsection (2), an Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in relation to a financial year if the lawyer would also be the holder of another Australian practising certificate for the year.

(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 engages in legal practice principally in the ACT during a financial year and reasonably expects to engage in legal practice in the next financial year must apply for the grant or renewal of a local practising certificate in relation to the next financial year.

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

Example

An Australia lawyer who engages or expects to engage in legal practice principally in a foreign country may be eligible to apply for grant or renewal of a local practising certificate if other requirements for eligibility are met.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(8) A regulation under subsection (2) (c) may limit the kind of practising certificate for which a lawyer prescribed for that paragraph may apply for grant or renewal.

42 Approved form for grant or renewal application for practising certificates

(1) An application for grant or renewal of a practising certificate must be in a form (an ***approved form***) approved under section 587 by—

(a) for a barrister practising certificate—the bar council; or

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(b) for an unrestricted practising certificate or restricted practising certificate—the law society council.

(2) To remove any doubt, an 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 or proper person to hold a local practising certificate.

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

(4) Subsections (2) and (3) have effect despite the Legislation Act, section 255 (6).

43 Timing of application for renewal of local practising certificate

(1) An application for the renewal of a local practising certificate must be made within the period prescribed by regulation.

(2) That period must be within the currency of the local practising certificate being sought to be renewed.

44 Grant or renewal of unrestricted or restricted practising certificate

(1) The licensing body must consider an application that has been made for the grant or renewal of an unrestricted practising certificate or restricted practising certificate, and may—

(a) grant or renew the practising certificate; or

(b) refuse to grant or renew the practising certificate.

Note When granting or renewing a local practising certificate, the licensing body may impose conditions on the certificate under s 47.

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(2) However, the licensing body —

(a) need not consider an application for grant or renewal of an unrestricted practising certificate or restricted practising certificate if—

(i) the application has not been made in accordance with this Act; or

(ii) the required fees have not been paid; and

(b) may refuse to grant or renew the practising certificate if the applicant has not complied with the criteria prescribed by regulation and the legal profession rules for the grant or renewal.

Note ***This Act*** is defined in the dictionary.

(3) The licensing body must not grant an unrestricted practising certificate or restricted practising certificate unless 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.

(4) The licensing body must not renew an unrestricted practising certificate or restricted practising certificate if 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 licensing body must not grant or renew an unrestricted practising certificate or restricted practising certificate if—

(a) it considers the applicant's circumstances have changed since the application was made; and

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(b) the applicant would (having regard to information that has come to the licensing body's attention) not have been eligible to make the application when the application is being considered.

(6) This section does not affect any other provision of this Act that provides for the refusal to grant or renew an unrestricted practising certificate or restricted practising certificate.

Note Section 38 (2) (c) provides for the refusal to grant or renew an unrestricted practising certificate or restricted practising certificate unless the licensing body is satisfied that the applicant will be covered by an approved policy of indemnity insurance. See also s 62 (Refusal to grant or renew unrestricted or restricted practising certificate—failure to show cause etc).

(7) If the licensing body grants or renews an unrestricted practising certificate or restricted practising certificate, the licensing body must give the applicant—

(a) for the grant of a certificate—the practising certificate granted; or

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

(8) If the licensing body refuses to grant or renew an unrestricted practising certificate or restricted practising certificate, the licensing body must give the applicant an information notice.

45 Grant or renewal of barrister practising certificate

(1) The licensing body must consider an application that has been made for the grant or renewal of a barrister practising certificate, and may—

(a) grant or renew the practising certificate; or

(b) refuse to grant or renew the practising certificate.

Note When granting or renewing a local practising certificate, the licensing body may impose conditions on the certificate under s 47.

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(2) However, the licensing body—

(a) must not consider an application for grant or renewal of a barrister practising certificate unless it has received a report from the bar council stating that—

(i) the application has been made in accordance with this Act; and

(ii) the required fees have been paid; and

(b) must refuse to grant or renew the practising certificate unless it has received a report from the bar council stating that the applicant has complied with the criteria prescribed by regulation and the legal profession rules for the grant or renewal.

(3) The licensing body must not grant a barrister practising certificate unless it has received a report from the bar council stating that the bar council 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.

(4) The licensing body must not renew a barrister practising certificate if it has received a report from the bar council stating that the bar council 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.

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(5) The licensing body must not grant or renew a barrister practising certificate if it has received a report from the bar council stating that—

(a) the bar council considers the applicant's circumstances have changed since the application was made; and

(b) the applicant would (having regard to information that has come to the bar council's attention) not have been eligible to make the application when the application is being considered.

(6) This section does not affect any other provision of this Act that provides for the refusal to grant or renew a barrister practising certificate.

Note Section 38 (2) (d) provides for the refusal to grant or renew a barrister practising certificate unless the bar council provided a report to the licensing body stating that the bar council is satisfied that the applicant will be covered by an approved policy of indemnity insurance. See also s 63 (Refusal to grant or renew barrister practising certificate—failure to show cause etc).

(7) If the licensing body grants or renews a barrister practising certificate, the licensing body must give the applicant—

(a) for the grant of a certificate—the practising certificate granted; or

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

(8) If the licensing body refuses to grant or renew a barrister practising certificate, the licensing body must give the applicant an information notice.

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Division 2.4.5 Conditions on local practising certificates

46 Conditions on local practising certificates generally

(1) A local practising certificate is subject to—

(a) any conditions imposed by the licensing body; and

(b) any statutory conditions imposed under this Act or any other Act; and

Note ***This Act*** is defined in the dictionary.

(c) any conditions imposed or amended by the disciplinary tribunal under section 69 (Imposition of conditions on local practising certificate pending criminal proceedings etc); and

(d) 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, amended or revoked under this Act (other than a statutory condition) during the currency of the local practising certificate concerned, the certificate must be amended by the licensing body, or a new certificate must be issued by the licensing body, to reflect on its face the imposition, amendment or revocation.

47 Conditions imposed on local practising certificate by licensing body or relevant council

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

(2) The licensing body may impose a condition on a local practising certificate—

(a) on the application of the applicant for grant or renewal of the practising certificate; or

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(b) for a barrister practising certificate—on the recommendation of the bar council; or

(c) for an unrestricted practising certificate or restricted practising certificate—on its own initiative.

(3) However, the licensing body must not impose a condition on a barrister practising certificate unless the bar council has agreed to or recommended the condition.

(4) The relevant council may impose conditions on a local practising certificate during its currency.

(5) The relevant council may impose conditions on a local practising certificate under subsection (4)—

(a) on the application of the holder of the practising certificate; or

(b) on its own initiative.

(6) A regulation may make provision in relation to an application for the imposition of a condition on a practising certificate.

(7) A condition imposed under this section must be reasonable and relevant.

(8) A condition imposed under this section may be about any of the following:

(a) requiring the holder of the practising certificate to undertake and complete—

(i) continuing legal education; or

(ii) an academic or training course; 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;

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

(e) a matter agreed to by the holder.

(9) Subsection (8) does not limit the matters about which a condition may be imposed under this section.

(10) The relevant council must not impose a condition, or recommend that a condition be imposed, that requires the holder to undertake and complete an academic or training course unless—

(a) the council is satisfied, having regard to the holder's previous academic studies, legal training, experience or conduct, that the holder 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; 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 1 A class of holders might comprise newly qualified lawyers, or lawyers returning to legal practice after suspension or an extended break.

Note 2 The ***relevant council*** includes the law society council when it is exercising its functions as the licensing body (see dict, def ***relevant council***).

(11) The relevant council may amend or revoke a condition of imposed by it on a local practising certificate under subsection (1) or (4).

(12) If the relevant council imposes a condition on, or amends or revokes a condition of, a local practising certificate (the ***action***)—

(a) the council must give the applicant for, or holder of, the certificate an information notice about the action, unless the action was taken on the application of the applicant or holder; and

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(b) if the action was taken during the currency of the certificate—the action takes effect when the holder is given an information notice or other written notice by the council about the action or, if the notice states a later time of effect, at that time.

(13) This section has effect subject to section 56 (Amending, suspending or cancelling local practising certificate) in relation to the imposition of a condition on a local practising certificate during its currency.

48 Statutory condition about 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 amendments of the condition made from time) and that is still in force.

49 Barristers—restrictions on engaging in legal practice etc

(1) A regulation or legal profession rule may make provision for or in relation to prohibiting the holder of a barrister practising certificate from any or all of the following:

(a) engaging in legal practice—

(i) otherwise than as a sole practitioner; or

(ii) in partnership with anyone; or

(iii) as the employee of anyone;

(b) holding office as a legal practitioner director of an incorporated legal practice.

(2) Conditions may be imposed on a barrister practising certificate granted to a legal practitioner that the practitioner must not—

(a) engage in legal practice—

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(i) otherwise than as a sole practitioner; or

(ii) in partnership with anyone; or

(iii) as the employee of anyone; or

(b) hold office as a legal practitioner director of an incorporated legal practice.

50 Statutory condition about practice as a solicitor

(1) It is a statutory condition of a local practising certificate that the holder must not engage in unsupervised legal practice as a solicitor, until the holder has completed a period of supervised legal practice prescribed by regulation.

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

51 Statutory condition on local practising certificate about notification of offence

(1) It is a statutory condition of a local practising certificate that the holder of the certificate—

(a) must notify the relevant council 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 not later than 7 days after the event happens and by a written notice.

Note If a form is approved by the relevant council under s 587 for this provision, the form must be used.

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(2) This section does not apply to an offence to which division 2.4.7 (Special powers in relation to local practising certificates—show-cause events) applies.

52 Conditions imposed by legal profession rules

The legal profession rules may—

(a) impose conditions on local practising certificates; or

(b) authorise conditions to be imposed on local practising certificates.

53 Compliance with conditions of local practising certificate

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

(2) A contravention of this section can be unsatisfactory professional conduct or professional misconduct.

Division 2.4.6 Amendment, suspension or cancellation of local practising certificates

54 Application—div 2.4.6

This division does not apply in relation to matters mentioned in division 2.4.7 (Special powers in relation to local practising certificates—show-cause events).

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55 Grounds for amending, suspending or cancelling local practising certificate

(1) 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, an approved policy of indemnity insurance;

(c) if a condition of the certificate is that the holder is limited to legal practice stated in the certificate—the holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

(2) A regulation may prescribe additional grounds for amending, suspending or cancelling a local practising certificate.

56 Amending, suspending or cancelling local practising certificate

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

(a) states the proposed action, and—

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

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

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

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

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(d) invites the holder to make written representations to the council, not later than the end of a stated period of not less than 7 days and not more than 28 days after the day the holder is given the notice, about why the proposed action should not be taken.

(2) If, after considering all written representations made not later than the end of the stated period and, in its discretion, written representations made after the end of the stated period, the relevant council still believes a ground exists to take the proposed action, the council may—

(a) if the show-cause notice stated the proposed action was to amend the practising certificate—amend the certificate in the way stated or in a less onerous way the council considers appropriate because of the representations; or

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

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

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

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

(i) cancel the certificate; or

(ii) suspend the certificate for a stated period.

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

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(4) If the relevant council decides not to amend, suspend or cancel the practising certificate, the council must, by written notice, tell the holder about the decision.

57 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 56.

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

(a) the day written notice of the decision is given to the holder;

(b) the day stated in the notice.

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

(a) the Supreme Court may, on the holder's application, order that the operation of the amendment, suspension or cancellation of the practising certificate be stayed until—

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

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

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

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

(a) the amendment or suspension ceases to have effect when the conviction is quashed; or

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

58 Other ways of amending or cancelling local practising certificate

(1) This section applies if—

(a) the holder of a local practising certificate asks the relevant council to amend or cancel the certificate and the council proposes to give effect to the request; or

(b) the council proposes to amend a local practising certificate only—

(i) for a formal or clerical reason; or

(ii) in another way that does not adversely affect the holder's interests; or

(c) the council considers cancellation of a local practising certificate is appropriate because the holder's name has been removed from the local roll.

(2) The relevant council may amend or cancel the local practising certificate by written notice given to the holder.

(3) To remove any doubt, section 56 (Amending, suspending or cancelling local practising certificate) does not apply to the amendment or cancellation of a local practising certificate under this section.

59 Relationship of div 2.4.6 with ch 4

This division does not prevent the relevant council from making a complaint under chapter 4 (Complaints and discipline) about a matter to which this division relates.

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Division 2.4.7 Special powers in relation to local practising certificates—show-cause events

60 Applicant for local practising certificate—show-cause event

(1) This section applies if—

(a) a person is applying for the grant or renewal of a local practising certificate; and

(b) a show-cause event in relation to the person happened after the person was first admitted to the legal profession in the ACT or another jurisdiction, however the admission was expressed at the time of the admission.

(2) As part of the application, the person must give the relevant council 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 hold a local practising certificate.

(3) However, the person need not give a statement under subsection (2) if the person (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously given to the relevant council a statement under this section, or a notice and statement under section 61, 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.

(4) A contravention of subsection (2) can be unsatisfactory professional conduct or professional misconduct.

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(5) This section applies to a show-cause event whether the event happened before or after the commencement of this section.

61 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 give to the relevant council both of the following:

(a) not later than 7 days after the day the event happens, written notice that the event happened;

Note If a form is approved by the relevant council under s 587 for this provision, the form must be used.

(b) not later than 28 days after the day the event happens, 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 given to the relevant council after the end of the 28-day period, the council may accept the statement and take it into consideration.

62 Refusal to grant or renew unrestricted or restricted practising certificate—failure to show cause etc

(1) The licensing body may refuse to grant or renew an unrestricted practising certificate or restricted practising certificate if the applicant—

(a) is required by section 60 (Applicant for local practising certificate—show-cause event) to give the law society council, as the relevant council for the applicant, a written statement or notice relating to a matter and has failed to give a written statement or notice in accordance with that requirement; or

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(b) has given a written statement in accordance with section 60 but the licensing body does not consider that the applicant has shown in the statement that, despite the show-cause event concerned, the applicant is a fit and proper person to hold a local practising certificate.

(2) The licensing body must give the applicant or holder an information notice about the decision to refuse to grant or renew the certificate.

(3) However, if the licensing body considers that the applicant or holder has shown in the statement mentioned in subsection (1) (b) that, despite the show-cause event concerned, the applicant is a fit and proper person to hold a local practising certificate, the licensing body must, by written notice, tell the applicant or holder about its decision.

63 Refusal to grant or renew barrister practising certificate—failure to show cause etc

(1) The licensing body may refuse to grant or renew a barrister practising certificate if—

(a) the applicant is required by section 60 (Applicant for local practising certificate—show-cause event) to give the bar council, as the relevant council for the applicant, a written statement or notice relating to a matter and has failed to give a written statement or notice in accordance with that requirement; or

(b) the applicant has given a written statement in accordance with section 60, but the licensing body has received a report from the bar council stating that the council does not consider that the applicant has shown in the statement that, despite the show-cause event concerned, the applicant is a fit and proper person to hold a local practising certificate.

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(2) The licensing body must give the applicant or holder an information notice about the decision to refuse to grant or renew the certificate.

(3) However, if the licensing body has received a report from the bar council stating that the bar council considers that the applicant or holder has shown in the statement mentioned in subsection (1) (b) that, despite the show-cause event concerned, the applicant is a fit and proper person to hold a local practising certificate, the licensing body must, by written notice, tell the applicant or holder about the bar council's decision.

64 Amendment, suspension or cancellation of local practising certificate—failure to show cause etc

(1) The relevant council may amend, suspend or cancel a local practising certificate if the holder—

(a) is required by section 61 (Holder of local practising certificate—show-cause event) to give the council a written statement or notice relating to a matter and has failed to give a written statement or notice in accordance with that requirement; or

(b) has given a written statement in accordance or section 61 but the council does not consider that the holder has shown in the statement that, despite the show-cause event concerned, the holder is a fit and proper person to hold a local practising certificate.

(2) For this section only, a written statement accepted by the relevant council under section 61 (3) is taken to have been given in accordance with section 61.

(3) The relevant council must give the holder an information notice about the decision to amend, suspend or cancel the certificate.

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(4) However, if the relevant council considers that the holder has shown in the statement mentioned in subsection (1) (b) that, despite the show-cause event concerned, the holder is a fit and proper person to hold a local practising certificate, the council must, by written notice, tell the holder about its decision.

65 Restriction on further applications for local practising certificate after refusal to grant or renew

(1) This section applies if the licensing body decides under section 62 (Refusal to grant or renew unrestricted or restricted practising certificate—failure to show cause etc) or section 63 (Refusal to grant or renew barrister practising certificate—failure to show cause etc) to refuse to grant or renew a local practising certificate to a person.

(2) The licensing body may also decide that the person is not entitled to apply for the grant of a local practising certificate for a stated period of not longer than 5 years.

(3) In making a decision under subsection (2) in relation to a person refused the grant or renewal of a barrister practising certificate, the licensing body must act on the recommendation of the bar council.

(4) If the licensing body makes a decision under subsection (2), the licensing body must include the decision in the information notice required under section 62 (2) or section 63 (2).

(5) A person in relation to whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for the grant of a local practising certificate during the period stated in the decision.

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66 Restriction on further applications for local practising certificate after cancellation

(1) This section applies if the relevant council decides under section 64 (Amendment, suspension or cancellation of local practising certificate—failure to show cause etc) to cancel a person's local practising certificate.

(2) The relevant council may also decide that the person is not entitled to apply for the grant of a local practising certificate for a stated period of not longer than 5 years.

(3) If the relevant council makes a decision under subsection (2), the council must include the decision in the information notice required under section 64 (3).

(4) A person in relation to whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for the grant of a local practising certificate during the period stated in the decision.

67 Relationship of div 2.4.7 with pt 4.4 and ch 6

(1) The relevant council has and may exercise powers under part 4.4 (Investigation of complaints) and chapter 6 (Investigations), in relation to a matter under this division, as if the matter were the subject of a complaint under chapter 4.

(2) Accordingly, the provisions of part 4.4 and chapter 6 apply in relation to a matter under this division with any necessary changes.

(3) This division does not prevent the relevant council from making a complaint under chapter 4 about a matter to which this division relates.

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Division 2.4.8 Further provisions about local practising certificates

68 Immediate suspension of local practising certificate

(1) This section applies, despite division 2.4.6 (Amendment, suspension or cancellation of local practising certificates) and division 2.4.7 (Special powers in relation to local practising certificates—show-cause events), if the relevant council 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 2.4.6; or

(b) the ground of the happening of a show-cause event in relation to the holder; or

(c) any other ground that the council considers justifies immediate suspension of the certificate in the public interest;

whether or not any action has been taken or started under division 2.4.6 or division 2.4.7 in relation to the holder.

(2) The relevant council may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following:

(a) the council gives the holder an information notice under section 56 (3) (Amending, suspending or cancelling local practising certificate);

(b) the council gives the holder written notice under section 56 (4);

(c) the council gives the holder an information notice under section 64 (3) (Amendment, suspension or cancellation of local practising certificate—failure to show cause etc);

(d) the council gives the holder written notice under section 64 (4);

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(e) the period of 56 days after the day the notice is given to the holder under this section ends.

(3) The notice under this section must—

(a) include an information notice about the suspension; and

(b) state that the practitioner may make written representations to the relevant council about the suspension.

(4) The holder may make written representations to the relevant council about the suspension, and the council must consider the representations.

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

69 Imposition of conditions on local practising certificate pending criminal proceedings etc

(1) If a local legal practitioner has been charged with a serious offence but the charge has not been decided, the relevant council may, if it considers it appropriate having regard to the seriousness of the offence and to the public interest, by written notice given to the practitioner—

(a) amend the conditions of the practitioner's local practising certificate; or

(b) impose further conditions on the practitioner's local practising certificate.

(2) The amendment or imposition of a condition under subsection (1) has effect until the earlier of the following:

(a) the end of the period stated by the relevant council in the notice;

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(b) if the local legal practitioner is convicted of the offence—28 days after the day of the conviction;

(c) if the charge is dismissed—the day of the dismissal.

(3) The notice under this section must—

(a) include an information notice about the amendment or imposition of the condition; and

(b) state that the local legal practitioner may make written representations to the relevant council about the amendment or imposition of the condition.

(4) The local legal practitioner may make written representations to the relevant council about the amendment or imposition of the condition, and the council must consider the representations.

(5) The relevant council may at any time revoke a decision to amend or impose a condition, whether or not in response to any written representations made to it by the local legal practitioner.

70 Surrender and cancellation of local practising certificate

(1) The holder of a local practising certificate may surrender the certificate to the relevant council.

(2) The relevant council may cancel the certificate.

71 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 relevant council or because of an order of the disciplinary tribunal under section 430 (Decisions of disciplinary tribunal); or

(b) is replaced by another certificate.

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(2) The relevant council may give the practitioner a written notice requiring the practitioner to return the certificate to the council in the way stated in the notice within a stated period of not less than 7 days after the day the practitioner is given the notice.

(3) The practitioner must comply with the notice.

Maximum penalty: 50 penalty units.

(4) The relevant council must return the practising certificate to the practitioner—

(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 2.4.9 Interstate legal practitioners

72 Professional indemnity insurance—interstate legal practitioners

(1) An interstate legal practitioner commits an offence if the practitioner—

(a) either—

(i) engages in legal practice in the ACT for fee, gain or reward; or

(ii) represents or advertises that the practitioner is entitled to engage in legal practice in the ACT; and

(b) is not covered by professional indemnity insurance that—

(i) covers legal practice in the ACT; and

(ii) is for at least the relevant amount inclusive of any legal costs arising from claims under the insurance; and

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(iii) has been approved under, or complies with, any requirement of a corresponding law for the interstate practising certificate held by the practitioner.

Maximum penalty: 100 penalty units.

(2) This section does not apply to an interstate legal practitioner who is employed by a corporation, other than an incorporated legal practice, and who provides only in-house legal services to the corporation.

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

(a) is a government employee; and

(b) is engaged in legal practice in the ACT only to the extent that the practitioner is exercising official functions as a government employee; and

(c) has indemnity or immunity that is provided by law and applies to the legal practice.

(4) In this section:

fee, gain or reward means any form of, and any expectation of, a fee, gain or reward.

government agency means a government department (however described) of the ACT or any other jurisdiction or of the Commonwealth, and includes an entity prescribed by regulation.

government employee means a person employed in a government agency.

relevant amount means—

(a) if an amount is prescribed by regulation—that amount; or

(b) if an amount is not prescribed by regulation—$1.5 million.

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73 Extent of entitlement of interstate legal practitioner to practise in ACT

(1) This part does not authorise an interstate legal practitioner to engage in legal practice in the ACT 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 the ACT—

(a) is subject to any conditions imposed by the relevant council under section 74; 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 the practitioner's admission to the legal profession in the ACT or another jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2) (a) and conditions mentioned in subsection (2) (b), the conditions that are, in the relevant council's opinion, more onerous prevail to the extent of the inconsistency.

(4) An interstate lawyer must not engage in legal practice in the ACT in a way not authorised by this Act or in contravention of any condition mentioned in this section.

74 Additional conditions on practice of interstate legal practitioners

(1) The relevant council may, by written notice to an interstate legal practitioner engaged in legal practice in the ACT, impose any

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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 the ACT is subject to any condition imposed under the legal profession rules.

(3) Conditions imposed under or mentioned 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.

75 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in ACT

An interstate legal practitioner must not engage in unsupervised legal practice as a solicitor in the ACT unless—

(a) if the 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 the ACT or another jurisdiction—the practitioner has undertaken a period or periods equivalent to 18 months supervised legal practice, worked out under the regulations, after the day the practitioner's first practising certificate was granted; or

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

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76 Interstate legal practitioner is officer of Supreme Court

An interstate legal practitioner engaged in legal practice in the ACT 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 relation to those duties and obligations.

Division 2.4.10 Miscellaneous—pt 2.4

77 Protocols with regulatory authorities

(1) The councils may, separately or jointly, enter into arrangements (***protocols***) with regulatory authorities of other jurisdictions about deciding—

(a) the jurisdiction from which an Australian lawyer engages in legal practice principally or can reasonably expect to engage in legal practice principally; or

(b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction—

(i) can be regarded as being of a temporary nature; or

(ii) stops being 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 this Act, and to the extent that the protocols are relevant, a matter mentioned in subsection (1) (a), (b) or (c) is to be decided in accordance with the protocols.

(3) A protocol is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

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78 Investigation of practising certificate applicants or holders etc

(1) To help it consider whether or not to grant, renew, amend, suspend or cancel a local practising certificate, or impose conditions on a local practising certificate, the relevant council may, by written notice to the applicant or holder, require the applicant or holder—

(a) to give it stated documents or information; or

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

Note The ***relevant council*** includes the law society council when it is exercising its functions as the licensing body (see dict, def ***relevant council***).

(2) A person's failure to comply with a notice under subsection (1) within the reasonable period, and in the reasonable way, (if any) required by the notice is a ground for making an adverse decision in relation to the person in relation to the action being considered by the relevant council.

79 Register of local practising certificates

(1) The licensing body must keep a register of the names of Australian lawyers to whom it grants local practising certificates.

(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 regulation.

(3) The register may be kept in the way the licensing body decides.

(4) The register must be available for inspection, without charge, at the licensing body's office during normal business hours.

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80 Supreme Court orders about conditions under pt 2.4

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

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

81 Appeals against decisions of licensing body or relevant council

(1) A person may appeal to the Supreme Court against—

(a) a decision of the licensing body to refuse to grant or renew a local practising certificate; or

(b) a decision by the bar council to give or not to give the licensing body a report for section 45 (Grant or renewal of barrister practising certificate) in relation to an application for the grant or renewal of a barrister practising certificate; or

(c) a decision of the relevant council to amend, suspend or cancel a local practising certificate; or

(d) a decision of the licensing body under section 47 (1) (Conditions imposed on local practising certificate by licensing body or relevant council) to impose a condition on local practising certificate on its own initiative; or

(e) a decision of the bar council under section 47 (3) to recommend or agree to the imposition by the licensing body of a condition on barrister practising certificate; or

(f) a decision of the relevant council under section 47 (4) to impose a condition on a local practising certificate; or

(g) a decision of the relevant council under section 47 (11) to amend or revoke a condition of a local practising certificate; or

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(h) a decision of the licensing body under section 65 (2) (Restriction on making further applications for practising certificate after refusal to grant or renew) or 66 (2) (Restriction on further applications for local practising certificate after cancellation) that the person is not entitled to apply for the grant of a local practising certificate for a stated period; or

(i) a decision by the bar council to make a recommendation for section 65 (3) (Restriction on further applications for local practising certificate after refusal to grant or renew) in relation to the licensing body's refusal to grant or renew a barrister practising certificate; or

(j) a decision of the relevant council to impose a condition on a local practising certificate under section 69 (Imposition of conditions on local practising certificate pending criminal proceedings etc); or

(k) a decision of the licensing body under section 74 (Additional conditions on practice of interstate legal practitioners) to impose a condition on the interstate legal practitioner's practice.

(2) The relevant council may appear as a party to the appeal.

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

82 Government lawyers generally

(1) A government lawyer is not subject to—

(a) any prohibition under this Act about—

(i) engaging in legal practice in the ACT; or

(ii) making representations about engaging in legal practice in the ACT; or

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(b) any provision of this Act about professional indemnity insurance;

in relation to the exercise of his or her official functions as a government lawyer.

(2) Contributions and levies are not payable to the fidelity fund by or in relation to a government lawyer in his or her capacity as a government employee.

(3) A regulation may provide that a government lawyer is not subject to—

(a) any provision of this Act about professional discipline; or

(b) any provision of this Act (other than section 38 (2) (a)) about conditions imposed on a local practising certificate; or

(c) any requirements of the legal profession rules;

in relation to the exercise of his or her official functions as a government lawyer.

(4) This section does not prevent a government lawyer from being granted or holding a local practising certificate.

(5) In this section:

jurisdiction means a State, a Territory or the Commonwealth.

government agency means a government department (however described) of the ACT or another jurisdiction, and includes an entity prescribed by regulation.

government lawyer means an Australian lawyer, or a person eligible to be admitted as an Australian lawyer, employed by the Territory, another jurisdiction or a government agency.

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83 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 the ACT; or

(ii) making representations about engaging in legal practice in the ACT; or

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

(c) requirements of legal profession rules; or

(d) professional discipline;

in relation to the exercise of his or her official functions as a government lawyer of the other jurisdiction to the extent that the government employee is exempt from the matters mentioned in paragraph (a) to (d) as a government lawyer of the other jurisdiction.

(2) Contributions and levies are not payable to the fidelity fund by or in relation to a government lawyer of another jurisdiction in his or her capacity as a government employee.

(3) Without limiting subsection (1), that subsection extends to a prohibition relating to professional indemnity insurance for interstate legal practitioners.

(4) Without affecting subsections (1), (2) and (3), this section does not prevent a government lawyer of another jurisdiction from being granted or holding a local practising certificate.

(5) In this section:

jurisdiction means a State or Territory or the Commonwealth.

government agency means a government department (however described).

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government lawyer means an Australian lawyer, or a person eligible to be admitted as an Australian lawyer, employed by a government agency.

84 Determination of fees by law society council and bar council

(1) The law society council may determine fees for this Act in relation to—

(a) applications for the grant or renewal of unrestricted practising certificates and restricted practising certificates; and

(b) the services that it provides as the licensing body in relation to an application for the grant or renewal of barrister practising certificates; and

(c) the other services that it provides under this Act, whether as the licensing body or otherwise.

(2) The bar council may determine fees for this Act in relation to—

(a) applications for the grant or renewal of barrister practising certificates; and

(b) the services that it provides in relation to an application for the grant or renewal of barrister practising certificates; and

(c) the other services that it provides under this Act.

(3) A fee determined in relation to an application for the grant or renewal of a practising certificate may include an amount required for the purpose of recovering costs in relation to the grant or renewal of a practising certificate.

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(4) A determination under this section is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

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Part 2.5 Inter-jurisdictional provisions about admission and practising certificates

Division 2.5.1 Preliminary—pt 2.5

85 Purpose—pt 2.5

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 people to the legal profession and their right to engage in legal practice in Australia.

86 Powers under ch 4 not affected by pt 2.5

This part does not affect any powers or duties under chapter 4 (Complaints and discipline).

Division 2.5.2 Notices to be given by local authorities to interstate authorities

87 Official notice 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 admissions board 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 started in relation to the application;

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(c) the refusal of the Supreme Court to admit the applicant to the legal profession under this Act.

(3) The notice must state the applicant's name and address as last-known to the admissions board.

(4) The notice may contain other relevant information.

88 Official notice to other jurisdictions of removals from local roll

(1) This section applies if a local lawyer's name is removed from the local roll, except if the removal happens under section 94 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).

(2) The registrar must 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.

(3) The notice must state—

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

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

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

(4) The notice may contain other relevant information.

89 Licensing body to give notice to other jurisdictions of certain matters

(1) This section applies if—

(a) the licensing body refuses to grant or renew an Australian lawyer a local practising certificate; or

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

(2) The licensing body must give the corresponding bodies 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 licensing body; and

(b) particulars of—

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

(ii) the result of the appeal.

(4) The notice may contain other relevant information.

(5) The licensing body may give corresponding authorities written notice of a condition imposed by it on an Australian lawyer's local practising certificate.

90 Relevant council to give notice to other jurisdictions of certain matters

(1) This section applies if—

(a) the relevant council suspends or cancels an Australian lawyer's local practising certificate; or

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

(2) The relevant council must give the corresponding bodies 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 relevant council; and

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(b) particulars of—

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

(ii) the result of the appeal.

(4) The notice may contain other relevant information.

(5) The relevant council may give corresponding authorities written notice of a condition imposed by it on an Australian lawyer's local practising certificate.

Division 2.5.3 Notices to be given by lawyers to local authorities

91 Lawyer to give notice of removal in another jurisdiction or foreign country

(1) A person commits an offence if—

(a) the person is a local lawyer (other than a local legal practitioner); and

(b) the person's name is removed from an interstate roll or foreign roll; and

(c) the person fails to give the registrar written notice of the removal in accordance with section 93 (1) (Provisions applying to notices under s 91) not later than 7 days after the day the person receives notice of the removal.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a local legal practitioner; and

(b) the person's name is removed from an interstate roll or foreign roll; and

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(c) the person fails to give the registrar or the relevant council written notice of the removal in accordance with section 93 (1) not later than 7 days after the day the person receives notice of the removal.

Maximum penalty: 50 penalty units.

(3) This section does not apply if the name has been removed from an interstate roll under a provision that corresponds to section 94 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).

(4) Strict liability applies to subsection (1) (a) and subsection (2) (a).

92 Lawyer to give notice of interstate orders

(1) A person commits an offence if—

(a) the person is a local lawyer (other than a local legal practitioner); and

(b) an order is made under a corresponding law recommending that the person's name be removed from the local roll; and

(c) the person fails to give the registrar written notice of the order in accordance with section 93 (2) not later than 7 days after the day the person receives notice of the order.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a local legal practitioner; and

(b) an order or decision is made under a corresponding law that—

(i) the person's local practising certificate be suspended or cancelled; or

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(ii) a local practising certificate not be granted to the person for a stated period; or

(iii) that conditions be imposed on the person's local practising certificate; and

(c) the person fails to give the registrar or the relevant council written notice of the order or decision in accordance with section 93 (2) not later than 7 days after the day the person receives notice of the order.

Maximum penalty: 50 penalty units.

(3) Strict liability applies to subsection (1) (a) and subsection (2) (a).

93 Provisions applying to notices under s 91

(1) A notice to be given under section 91 by a person must—

(a) state the person's name and address; and

(b) identify the roll from which the person's name has been removed; and

(c) state the date of the removal; and

(d) be accompanied by a copy of any official notification given to the person in relation to the removal.

(2) A notice to be given under section 92 by a person must—

(a) state the person's name and address; and

(b) state the terms of the order or decision made under the corresponding law; and

(c) be accompanied by a copy of any official notification given to the person in relation to the order or decision.

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Division 2.5.4 Taking of action by local authorities in response to notices received

94 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 mentioned in section 96 (1) (a) (Order for non-removal of name or non-cancellation of local practising certificate) is, at the time of the removal, in force in relation to it.

(2) The registrar must remove the lawyer's name from the local roll.

(3) The registrar may give the lawyer notice of the date the registrar proposes to remove the name from the local roll.

(4) The registrar must 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.

(6) This section does not prevent the former local lawyer from afterwards applying for admission under part 2.3 (Admission of local lawyers).

95 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; and

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

(c) no order mentioned in section 96 (1) (b) is, at the time of the removal, in force in relation to it.

(2) The relevant council must cancel the local practising certificate after receiving written notice of the removal.

(3) The relevant council may give the person notice of the date the council proposes to cancel the local practising certificate.

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

(5) This section does not prevent the former local lawyer from later applying for a local practising certificate.

96 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, the lawyer may apply to the Supreme Court for either or both of the following orders:

(a) an order that his or her name not be removed from the local roll under section 94 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction);

(b) an order that his or her local practising certificate not be cancelled under section 95 (Peremptory cancellation of local practising certificate following removal of name from interstate roll).

(2) The Supreme Court may make an order if satisfied that—

(a) the lawyer's name is likely to be removed from the interstate roll; and

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(b) the reason for its removal from the interstate roll will not involve disciplinary action or the possibility of disciplinary action.

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

(4) The Supreme Court may revoke an order made under this section, and either or both of section 94 and section 95 (as relevant) then apply as if the lawyer's name were removed from the interstate roll when the revocation takes effect.

(5) This section does not affect action being taken in relation to the lawyer under other provisions of this Act.

97 Show-cause procedure for removal of lawyer's name from local roll following removal in foreign country

(1) This section applies if a local lawyer's name has been removed from a foreign roll and the name has not been restored.

(2) The relevant council may serve on the lawyer a written notice stating that the council 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 council why his or her name should not be removed.

(3) If the lawyer does not satisfy the relevant council that his or her name should not be removed from the local roll, the council may apply to the Supreme Court for an order that the lawyer's name be removed from the local roll.

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

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

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

(7) In this section:

relevant council means—

(a) if the lawyer holds a local practising certificate that is a barrister practising certificate—the bar council; or

(b) if the lawyer holds a local practising certificate that is an unrestricted practising certificate or restricted practising certificate—the law society council; or

(c) if the lawyer holds an interstate practising certificate—the bar council or law society council; or

(d) if the lawyer does not hold a local practising certificate—the law society council.

98 Local authority may give information to other local authorities

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

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Part 2.6 Incorporated legal practices and multidisciplinary partnerships

Division 2.6.1 Preliminary—pt 2.6

99 Definitions—pt 2.6

(1) In this Act:

legal practitioner director, of an incorporated legal practice, means a director of the legal practice who is an Australian legal practitioner holding an unrestricted practising certificate.

legal practitioner partner, of a multidisciplinary partnership, means a partner of the partnership who is an Australian legal practitioner holding an unrestricted practising certificate.

(2) In this part:

corporation means—

(a) a company within the meaning of the Corporations Act; or

(b) any other corporation prescribed by regulation.

director—

(a) of a company within the meaning of the Corporations Act—means a director as defined in that Act, section 9; or

(b) of any other corporation prescribed by regulation—means a person prescribed by regulation.

disqualified person means any of the following people whether the thing that has happened to the person happened before or after the commencement of this part:

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(a) a person whose name has (whether or not at the person's own request) been removed from an Australian roll and who has not subsequently been admitted or readmitted 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 Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom the 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 Act prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the provision of legal services;

(f) a person who is the subject of an order under section 123 (Disqualification from managing incorporated legal practice) or section 148 (Prohibition on multidisciplinary partnerships with certain partners who are not Australian legal practitioners) or under provisions of a corresponding law that correspond to section 123 or section 148.

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officer—

(a) of a company within the meaning of the Corporations Act—means an officer as defined in that Act, section 9; or

(b) of any other corporation prescribed by regulation—means a person prescribed by regulation.

professional obligations, of an Australian legal practitioner, include—

(a) duties to the Supreme Court; and

(b) obligations in relation to 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) for a company within the meaning of the Corporations Act—a related body corporate within the meaning of that Act, section 50; or

(b) for any other corporation prescribed by regulation—a person prescribed by regulation.

100 Purposes—pt 2.6

The purposes of this part are—

(a) to regulate the provision of legal services by corporations in the ACT; and

(b) to regulate the provision of legal services in the ACT in conjunction with the provision of other services (whether by a corporation or people acting in partnership with each other).

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Division 2.6.2 Incorporated legal practices

101 Nature of incorporated legal practice

(1) An ***incorporated legal practice*** is a corporation that engages in legal practice in the ACT, 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 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 in relation to 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) the corporation is a trustee company under the *Trustee Companies Act 1947*; or

(e) the corporation is the public trustee; or

(f) this part or a regulation provides that the corporation is not an incorporated legal practice.

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(3) A regulation may make provision in relation to the application (with or without prescribed changes) of provisions of this Act to corporations that are not incorporated legal practices because of the operation of subsection (2).

(4) This part does not affect or apply to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions.

(5) In this section:

fee, gain or reward means any form of, and any expectation of, a fee, gain or reward.

102 Nonlegal 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) A regulation may prohibit an incorporated legal practice (or a related body corporate) from providing a prescribed service or conducting a prescribed business.

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

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

104 Notice of intention of corporation to start providing legal services

(1) Before a corporation starts to engage in legal practice in the ACT, the corporation must give the law society council written notice of its intention to engage in legal practice in the ACT.

Note If a form is approved by the law society council under s 587 for this provision, the form must be used.

(2) A corporation commits an offence if—

(a) it engages in legal practice in the ACT; and

(b) it is in default of this section under subsection (3).

Maximum penalty: 50 penalty units.

(3) A corporation that fails to comply with subsection (1) is in default of this section until it gives the law society council written notice of the failure to comply with that subsection and the fact that it has started to engage in legal practice.

Note If a form is approved by the law society council under s 587 for this provision, the form must be used.

(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).

(6) A person may recover from a corporation, as a debt owing 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).

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(7) An offence against subsection (2) is a strict liability offence.

(8) This section does not apply to a corporation that is not an incorporated legal practice because of section 101 (2) (a), (b) or (d) (Nature of incorporated legal practice).

105 Prohibition on representations that corporation is incorporated legal practice etc

(1) A corporation commits an offence if—

(a) the corporation represents or advertises that the corporation is an incorporated legal practice in the ACT; and

(b) the corporation has not given notice under section 104 (1) (Notice of intention of corporation to start providing legal services).

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

(3) A person commits an offence if—

(a) the person is a director, officer, employee or agent of a corporation; and

(b) the person represents or advertises that the corporation is an incorporated legal practice in the ACT; and

(c) the corporation has not given notice under section 104 (1).

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

(5) A reference in this section to—

(a) a corporation representing or advertising that the corporation is an incorporated legal practice; or

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(b) a person representing or advertising that a corporation is an incorporated legal practice;

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

106 Notice of corporation ceasing to engage in legal practice etc

(1) A corporation commits an offence if—

(a) the corporation ceases to engage in legal practice in the ACT as an incorporated legal practice; and

(b) the corporation fails to give the law society council written notice of that fact within the period prescribed by regulation after the day it ceases to engage in legal practice in the ACT as an incorporated legal practice.

Maximum penalty: 50 penalty units.

Note If a form is approved by the law society council under s 587 for this provision, the form must be used.

(2) An offence against this section is a strict liability offence.

(3) A regulation may make provision in relation to deciding whether and when a corporation ceases to engage in legal practice in the ACT as an incorporated legal practice.

107 Incorporated legal practice must have legal practitioner director etc

(1) An incorporated legal practice must have at least 1 legal practitioner director.

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(2) Each legal practitioner director of an incorporated legal practice is, for this Act only, responsible for the management of the legal services provided in the ACT 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 under this Act; and

Note ***This Act*** is defined in the dictionary.

(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 under this Act, the director must take all reasonable action available to the director to ensure that—

(a) the breaches do not happen; and

(b) appropriate remedial action is taken in relation to breaches that do happen.

(5) A contravention of subsection (3) or (4) by a legal practitioner director can be unsatisfactory professional conduct or professional misconduct.

(6) This part does not affect the obligations or liability of a director of an incorporated legal practice under any other law.

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

108 Obligations of legal practitioner director relating to misconduct—incorporated legal practices

(1) Each of the following can be 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 (other than 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 (other than an Australian legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.

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

109 Incorporated legal practice without legal practitioner director

(1) An incorporated legal practice commits an offence if—

(a) it ceases to have any legal practitioner directors; and

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(b) it fails to tell the law society council as soon as possible, but no later than 7 days after the day it ceases to have any legal practitioner directors.

Maximum penalty: 50 penalty units.

(2) An incorporated legal practice commits an offence if it does not have any legal practitioner directors for a period of longer than 7 days.

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply to an incorporated legal practice during any period during which a person holds an appointment under this section in relation to the practice.

(4) An incorporated legal practice commits an offence if it provides legal services in the ACT during any period when, under subsection (5), it is in default of the director requirements under this section.

Maximum penalty: 50 penalty units.

(5) An incorporated legal practice that does not have any legal practitioner directors for a period of longer than 7 days is taken to be in default of director requirements under this section for the period from the end of the 7-day period until—

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

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

(6) The law society council may appoint an Australian legal practitioner who is an employee of the incorporated legal practice or someone else chosen by the council, in the absence of a legal practitioner director, to exercise the functions of a legal practitioner director under this part.

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

(8) The appointment under this section of a person to exercise functions of a legal practitioner director does not, for any other purpose, give the person any of the other functions of a director of the incorporated legal 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 term ***legal practitioner director*** in other provisions of this Act.

110 Obligations and privileges of practitioners who are officers or employees of incorporated legal practices

(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 complying 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 subsection (1) only, the professional obligations and professional privileges of a practitioner apply—

(a) if there are 2 or more legal practitioner directors of an incorporated legal practice—as if the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; or

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(b) if there is only 1 legal practitioner director of an incorporated legal practice—as if the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.

(3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.

(4) The directors of an incorporated legal practice do not breach their duties as directors only because legal services are provided pro bono by an Australian legal practitioner employed by the practice.

111 Professional indemnity insurance—incorporated legal practices

(1) An incorporated legal practice, and each insurable solicitor who is a legal practitioner director or an officer or employee of the practice, must comply with the obligations of an insurable solicitor under part 3.3 (Professional indemnity insurance) in relation to insurance policies and payments to or on account of an approved indemnity fund.

(2) A solicitor who is an interstate legal practitioner and a legal practitioner director or an officer or employee of an incorporated legal practice, and who would be an insurable solicitor if the solicitor were a local practitioner, must be covered by professional indemnity insurance that—

(a) covers legal practice in the ACT; and

(b) is for at least the relevant amount inclusive of any legal costs arising from claims under the insurance; and

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(c) has been approved under, or complies with, any requirement of a corresponding law for the interstate practising certificate held by the practitioner.

(3) If subsection (1) or (2) is not complied with, the law society council may—

(a) for a legal practitioner director who holds a local practising certificate—suspend the director's practising certificate while the failure continues; or

(b) for a legal practitioner director who is an interstate legal practitioner—

(i) suspend the director's entitlement under part 2.4 (Legal practice by Australian legal practitioners) to practise in the ACT while the failure to comply continues; and

(ii) ask the corresponding authority in the practitioner's home jurisdiction to suspend the director's interstate practising certificate until the law society council tells the corresponding authority that this section has been complied with.

(4) The insurance premiums or other amounts payable under part 3.3 (Professional indemnity insurance) by an incorporated legal practice may be decided by reference to the total number of solicitors employed by the practice and any other relevant matter.

(5) The law society council may, with the Attorney-General's approval, decide that an amount is payable from an approved indemnity fund for the liability of an incorporated legal practice, and of the solicitors who are officers and employees of the practice, in relation to the provision of legal services.

(6) The law society council may exempt an incorporated legal practice from this section on the grounds the council considers sufficient.

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(7) In this section:

approved indemnity fund means an indemnity fund approved by the law society council under section 315 (Approval of indemnity fund) in relation to an Australian legal practitioner who is a solicitor.

insurable solicitor—see section 308.

relevant amount means—

(a) if an amount is prescribed by regulation for section 72 (Professional indemnity insurance—interstate legal practitioners)—that amount; or

(b) if an amount is not prescribed by regulation—$1.5 million.

112 Conflicts of interest—incorporated legal practices

(1) For the application of this Act or any other territory law 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 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) The legal profession rules may make provision in relation to additional duties and obligations in relation to conflicts of interest arising out of the conduct of an incorporated legal practice.

Note Under s 110 (Obligations and privileges of practitioners who are officers or employees of incorporated legal practices), 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.

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113 Disclosure obligations—incorporated legal practices

(1) A person (the ***legal practitioner***) commits an offence if—

(a) someone else (the ***client***) engages an incorporated legal practice to provide services (the ***required services***) that the client might reasonably assume to be legal services; and

(b) the practice provides services other than legal services in the ACT; and

(c) the legal practitioner is—

(i) a legal practitioner director of the practice; or

(ii) an employee of the practice who is an Australian legal practitioner and provides the required services on behalf of the practice; and

(d) the legal practitioner fails to ensure that a disclosure, complying with the requirements of this section, is made to the client in relation to the provision of the required services.

Maximum penalty: 50 penalty units.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The disclosure must be made by giving the client a written notice—

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

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

(c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner—identifying those services and indicating the status or qualifications of the people who will provide the services; and

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

(3) A regulation may make provision in relation to the following matters:

(a) how a disclosure must be made;

(b) additional matters required to be disclosed in relation to the provision of legal services or nonlegal services by an incorporated legal practice.

(4) Without limiting subsection (3), the additional matters may include the kind of services provided by the incorporated legal practice and whether the services are or are not covered by the insurance or other provisions of this Act.

(5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services once, more than once or on an ongoing basis.

114 Effect of nondisclosure on provision of certain services by incorporated legal practice

(1) This section applies if—

(a) section 113 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 relation to the service is the standard that would apply if the service had been provided by an Australian legal practitioner.

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115 Application of legal profession rules to incorporated legal practices

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

116 Advertising requirements—incorporated legal practices

(1) Any restriction imposed under this Act or any other Act in relation to advertising by Australian legal practitioners applies, with necessary changes, to advertising by an incorporated legal practice in relation to the provision of legal services.

Note ***This Act*** is defined in the dictionary.

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

(3) Any advertisement of the kind mentioned 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.

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117 Extension of vicarious liability relating to failure to account and dishonesty to incorporated legal practices etc

(1) This section applies to a civil proceeding based on the vicarious liability of an incorporated legal practice if—

(a) the proceeding relates to a failure to account for, pay or deliver money or property that was—

(i) 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; and

(ii) under the direct or indirect control of the practice; or

(b) the proceeding is for any other debt owed, or damages payable, to a client because of a dishonest act or omission by an Australian legal practitioner who is an employee of the practice in relation to the provision of legal services to the client.

(2) If the incorporated legal practice would not (apart from this section) be vicariously liable for any acts or omissions of its officers and employees in the proceeding, but would be liable for the acts or omissions if the practice and the officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for the acts or omissions.

118 Sharing of receipts—incorporated legal practices

(1) This Act does not prevent an Australian legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services by the practitioner.

Note ***This Act*** is defined in the dictionary.

(2) This section does not extend to the sharing of receipts in contravention of section 119, and has effect subject to section 49 (Barristers—restrictions on engaging in legal practice etc).

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119 Disqualified people—incorporated legal practices

(1) An incorporated legal practice commits an offence if 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 of the provision of legal services by the incorporated legal practice; or

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

Maximum penalty: 50 penalty units.

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

120 Audit of incorporated legal practices

(1) The law society council 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) a regulation or the legal profession rules, so far as they relate specifically to incorporated legal practices; and

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

Note Section 107 (3) (Incorporated legal practice must have legal practitioner director etc) requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

(2) The law society council may appoint a suitably qualified person to conduct the audit.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(3) The appointment may be made generally or for the audit of a law practice stated in the appointment.

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

(5) A report of an audit of the incorporated legal practice—

(a) must be given to the practice; and

(b) may be given by the law society council to a corresponding authority; and

(c) may be taken into account in relation to any disciplinary proceeding taken against a legal practitioner director or someone else or in relation to the grant, amendment, suspension or cancellation of Australian practising certificates.

121 Application of ch 6 to div 2.6.2 audits

Chapter 6 (Investigations) applies to an audit under this division.

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122 Banning of incorporated legal practices

(1) On the application of the law society council, the Supreme Court may make an order disqualifying a corporation from providing legal services in the ACT 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 in relation to a corporation may be made—

(a) subject to conditions about the conduct of the corporation; or

(b) subject to conditions about when or in what circumstances the order is to take effect; or

(c) together with orders to safeguard the interests of clients or employees of the corporation.

(3) Action may be taken against an incorporated legal practice on any of the following grounds:

(a) that a legal practitioner director or an Australian legal practitioner who is an officer or employee of the practice has been found guilty of professional misconduct under an ACT law or a law of another jurisdiction;

(b) that the law society council is satisfied, after conducting an audit of the practice, that the practice has failed to implement satisfactory management and supervision of its provision of legal services;

(c) that the practice (or a related body corporate) has contravened section 102 (Nonlegal services and businesses of incorporated legal practices);

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(d) that the practice has contravened section 119 (Disqualified people—incorporated legal practices);

(e) that a person who is an officer of the practice, and who is the subject of an order under any of the following provisions, is acting in the management of the practice:

(i) section 123 (Disqualification from managing incorporated legal practice) or a provision of a corresponding law that corresponds to that section;

(ii) section 148 (Prohibition on multidisciplinary partnerships with certain partners who are not Australian legal practitioners) or a provision of a corresponding law that corresponds to that section.

(4) If a corporation is disqualified under this section, the law society council that applied for the order must tell the regulator of every other jurisdiction.

(5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the law society council may decide that the corporation is taken to be disqualified from providing legal services in the ACT for the same period.

(6) However, subsection (5) does not prevent the law society council from instead applying for an order under this section.

(7) A corporation commits an offence if it provides legal services in contravention of an order under this section.

Maximum penalty: 50 penalty units.

(8) A corporation that is disqualified under this section stops being an incorporated legal practice.

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(9) 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 can be unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the corporation is disqualified under this section.

(10) A regulation may make provision in relation to the publication and notification of orders made under this section, including notification of appropriate authorities of other jurisdictions.

(11) In this section:

regulator, of another jurisdiction, means the entity that is the regulator of the jurisdiction under the corresponding law of the jurisdiction or, if there is no regulator under that law, the entity corresponding to the law society council under the corresponding law.

123 Disqualification from managing incorporated legal practice

(1) The Supreme Court may, on the application of the law society council, 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 a relevant Corporations Act provision from managing corporations; and

(b) the disqualification is justified.

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(2) In subsection (1):

relevant Corporations Act provision means any of the following provisions of the Corporations Act:

- section 206C (Court power of disqualification—contravention of civil penalty provision)
- section 206D (Court power of disqualification—insolvency and non-payment of debts)
- section 206E (Court power of disqualification—repeated contraventions of Act)
- section 206F (ASIC's power of disqualification).

(3) On the application of a person subject to a disqualification order under this section, the Supreme Court may revoke the order.

(4) A disqualification order made under this section has effect for this Act only and does not affect the application or operation of the Corporations Act.

(5) A regulation may make provision in relation to the publication and notification of orders made under this section.

(6) 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.

124 Disclosure of information to Australian Securities and Investments Commission

(1) This section applies if the law society council, in exercising functions under this Act, acquired information about a corporation that is or was an incorporated legal practice.

Note ***This Act*** is defined in the dictionary.

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(2) The law society council may disclose to the Australian Securities and Investments Commission any information about the corporation that is relevant to the commission's functions.

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

125 External administration proceedings under Corporations Act

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

(a) relating to a corporation that is an externally-administered body corporate under that Act and is or was an incorporated legal practice; or

(b) relating to a corporation that is or was an incorporated legal practice becoming an externally-administered body corporate under that Act.

(2) The law society council is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the corporation.

(3) In exercising its jurisdiction in the proceeding, the court may have regard to the interests of the clients of the corporation who have been or are to be provided with legal services by the corporation.

(4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of the Corporations Act.

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(5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws) in relation to the provisions of that Act, chapter 5.

Note Subsection (5) ensures that that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which s (2) and (3) would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

126 External administration proceedings under other legislation

(1) This section applies to a proceeding for the external administration (however expressed) of a corporation that is or was an incorporated legal practice, but does not apply to a proceeding to which section 125 (External administration proceedings under Corporations Act) applies.

(2) The law society council is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the corporation.

(3) In exercising its jurisdiction in the proceedings, the court may have regard to the interests of the clients of the corporation who have been or are to be provided with legal services by the corporation.

(4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applying to the corporation.

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127 Incorporated legal practice subject to receivership under this Act and external administration under Corporations Act

(1) This section applies if a corporation that is or was 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 tell the Corporations Act administrator of the appointment of the chapter 5 receiver, whether the appointment precedes, follows or happens at the same time as 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 relation to the dual appointments and their respective powers, except if proceedings mentioned in section 125 (External administration proceedings under Corporations Act) have been started.

(4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the chapter 5 receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator honestly for the purpose of carrying out or acting in accordance with the orders.

(5) The law society council is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the corporation.

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(6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws) in relation to the provisions of that Act, chapter 5.

Note Subsection (6) ensures that that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which s (3) and (4) would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

(7) In this section:

chapter 5 receiver means a receiver appointed under chapter 5.

Corporations Act administrator means—

(a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or

(b) a person who is appointed to exercise powers under that Act and who is prescribed by regulation for this definition.

128 Incorporated legal practice subject to receivership under this Act and external administration under other legislation

(1) This section applies if a corporation that is or was 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 tell the external administrator of the appointment of the chapter 5 receiver, whether the appointment precedes, follows or happens at the same time as the appointment of the external administrator.

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(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 relation to the dual appointments and their respective powers.

(4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the chapter 5 receiver or the external administrator for any act or omission done by the receiver or administrator in honestly for the purpose of carrying out or acting in accordance with the orders.

(5) The law society council is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the corporation.

(6) In this section:

chapter 5 receiver means a receiver appointed under chapter 5.

external administrator means a person who is appointed to exercise powers under other legislation (whether or not ACT legislation) and who is prescribed by regulation for this definition.

129 Cooperation between courts—powers under pt 2.6

An ACT court may make arrangements for communicating and cooperating with other courts or tribunals in relation to the exercise of powers under this part.

130 Relationship of Act to constitution of incorporated legal practices

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

Note ***This Act*** is defined in the dictionary.

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131 Relationship of Act to legislation establishing incorporated legal practices

(1) This section applies to a corporation that is established under a law (whether or not ACT legislation) and is or was an incorporated legal practice, but is not a company within the meaning of the Corporations Act.

(2) The provisions of this Act that apply to a corporation that is or was an incorporated legal practice prevail, to the extent of any inconsistency, over provisions of the legislation under which the corporation is established or regulated that are prescribed by regulation.

Note ***This Act*** is defined in the dictionary.

132 Relationship of Act to Corporations legislation

(1) A regulation may declare any provision of this Act that relates to a corporation that is or was an incorporated legal practice to be a Corporations legislation displacement provision for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws).

Note 1 The declaration of a provision ensures that that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which the provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Note 2 ***This Act*** is defined in the dictionary.

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

(a) all of the Corporations legislation; or

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

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

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

(3) In this section:

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

133 Undue influence—incorporated legal practices

(1) A person commits an offence if—

(a) the person causes or induces someone else to contravene this Act or the person's professional obligations as an Australian legal practitioner; and

(b) the other person is—

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

(ii) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice.

Maximum penalty: 50 penalty units.

Note ***This Act*** is defined in the dictionary.

(2) This section applies to the person whether or not the person is an officer or employee of the incorporated legal practice.

Division 2.6.3 Multidisciplinary partnerships

134 Nature of multidisciplinary partnership

(1) A ***multidisciplinary partnership*** is a partnership between 1 or more Australian legal practitioners and 1 or more other people who are not Australian legal practitioners, if the business of the partnership includes the provision of legal services in the ACT as well as other services.

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

(3) This part does not affect or apply to the provision by a multidisciplinary partnership of legal services in 1 or more other jurisdictions.

135 Conduct of multidisciplinary partnerships

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

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

Note Contravention of a regulation is a ground for making a prohibition order under section 148 (Prohibition on multidisciplinary partnerships with certain partners who are not Australian legal practitioners).

136 Notice of starting practice in multidisciplinary partnership

(1) A person commits an offence if—

(a) the person is a legal practitioner partner of a multidisciplinary partnership; and

(b) the person starts to provide legal services in the ACT as a member of the partnership; and

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(c) the person has not given written notice to the law society council of the person's intention to start providing the legal services.

Maximum penalty: 50 penalty units.

Note If a form is approved by the law society council under s 587 for this provision, the form must be used.

(2) An offence against this section is a strict liability offence.

137 General obligations of legal practitioner partners—multidisciplinary partnerships

(1) Each legal practitioner partner of a multidisciplinary partnership is, for this Act only, responsible for the management of the legal services provided in the ACT 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 multidisciplinary partnership—

(a) in accordance with the professional obligations of Australian legal practitioners and the other obligations imposed by this Act; and

Note ***This Act*** is defined in the dictionary.

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

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138 Obligations of legal practitioner partner relating to misconduct—multidisciplinary partnerships

(1) Each of the following can be unsatisfactory professional conduct or professional misconduct by a legal practitioner partner of a multidisciplinary partnership:

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

(b) conduct of any other partner (other than an Australian legal practitioner) of the partnership that adversely affects the provision of legal services by the partnership;

(c) the unsuitability of any other partner (other than an Australian legal practitioner) of the partnership to be a member of a partnership that provides legal services.

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

139 Actions of partner of multidisciplinary partnership who is not Australian legal practitioner

(1) Unless a provision of this Act expressly applies to a partner of a multidisciplinary partnership who is not an Australian legal practitioner, the partner does not contravene the provision only because of any of the following:

(a) the partner is a member of a partnership, if 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;

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(c) the partner holds out, advertises or represents himself or herself as a member of a partnership, if 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.

Note ***This Act*** is defined in the dictionary.

(2) In this section:

fee, gain or reward means any form of, and any expectation of, a fee, gain or reward.

140 Obligations and privileges of practitioners who are partners or employees of multidisciplinary partnership

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

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

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

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

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141 Conflicts of interest—multidisciplinary partnerships

(1) For the application of this Act or any other territory law relating to conflicts of interest to the conduct of an Australian legal practitioner who is—

(a) a legal practitioner partner of a multidisciplinary partnership; or

(b) an employee of a multidisciplinary partnership;

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

Note ***This Act*** is defined in the dictionary.

(2) The legal profession rules may make provision in relation to additional duties and obligations in relation to conflicts of interest arising out of the conduct of a multidisciplinary partnership.

Note Under s 140 (Obligations and privileges of practitioners who are partners or employees of multidisciplinary partnerships), an Australian legal practitioner who is a partner or employee of a multidisciplinary partnership must comply with the same professional obligations as other practitioners.

142 Disclosure obligations—multidisciplinary partnerships

(1) A person (the ***legal practitioner***) commits an offence if—

(a) someone else (the ***client***) engages a multidisciplinary partnership to provide services (the ***required services***) that the client might reasonably assume to be legal services; and

(b) the legal practitioner is—

(i) a legal practitioner partner of the partnership; or

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(ii) an employee of the partnership who is an Australian legal practitioner and provides the required services on behalf of the partnership; and

(c) the legal practitioner fails to ensure that a disclosure, complying with the requirements of this section, is made to the client in relation to the provision of the required services.

Maximum penalty: 50 penalty units.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The disclosure must be made by giving the client a written notice—

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

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

(c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner—identifying those services and indicating the status or qualifications of the people who will provide the services; and

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

Note ***This Act*** is defined in the dictionary.

(3) A regulation may make provision in relation to the following matters:

(a) how a disclosure must be made;

(b) additional matters required to be disclosed in relation to the provision of legal services or nonlegal services by a multidisciplinary partnership.

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(4) Without limiting subsection (3), the additional matters may include the kind of services provided by the multidisciplinary partnership and whether or not the services are covered by the insurance or other provisions of this Act.

(5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services once, more than once or on an ongoing basis.

143 Effect of nondisclosure on provision of certain services by multidisciplinary partnership

(1) This section applies if—

(a) section 142 applies in relation to a service that is provided to a person who has engaged a multidisciplinary 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 multidisciplinary partnership in relation to the service is the standard that would apply if the service had been provided by an Australian legal practitioner.

144 Application of legal profession rules to multidisciplinary partnerships

The legal profession rules, so far as they apply to Australian legal practitioners, also apply, with necessary changes, to Australian legal practitioners who are legal practitioner partners or employees of a multidisciplinary partnership, unless the rules otherwise provide.

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145 Advertising requirements—multidisciplinary partnerships

(1) Any restriction imposed under this Act or any other Act in relation to advertising by Australian legal practitioners applies, with necessary changes, to advertising by a multidisciplinary partnership in relation to the provision of legal services.

Note ***This Act*** is defined in the dictionary.

(2) If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or for people who practise in a particular style of legal practice, the restriction applies only to the extent that the multidisciplinary partnership carries on the business of the relevant class of Australian legal practitioners.

(3) An advertisement of the kind mentioned 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 multidisciplinary partnership.

(4) This section does not apply if the provision by which the restriction is imposed expressly excludes its applications to multidisciplinary partnerships.

146 Sharing of receipts—multidisciplinary partnerships

(1) This Act does not prevent a legal practitioner partner, or an Australian legal practitioner who is an employee, of a multidisciplinary partnership from sharing receipts arising from the provision of legal services by the partner or practitioner with a partner or partners who are not Australian legal practitioners.

Note ***This Act*** is defined in the dictionary.

(2) This section does not extend to the sharing of receipts in contravention of section 147, and has effect subject to section 49 (Barristers—restrictions on engaging in legal practice etc).

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147 Disqualified people—multidisciplinary partnerships

A legal practitioner partner of a multidisciplinary partnership commits an offence if—

(a) a disqualified person is a partner in the partnership; or

(b) the partner shares with a disqualified person the receipts of the provision of legal services by the partnership; or

(c) the partner employs or pays a disqualified person in relation to the provision of legal services by the partnership.

Maximum penalty: 100 penalty units.

Note ***Disqualified person*** is defined in s 99.

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

(1) This section applies to a person who—

(a) is not an Australian legal practitioner; and

(b) is or was a partner of an Australian legal practitioner.

(2) On application by the law society council, 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 stated person to whom this section applies if the court is satisfied that—

(a) the person is not a fit and proper person to be a partner; or

(b) the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have been unsatisfactory professional conduct or professional misconduct; or

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(c) for a corporation—the corporation has been disqualified from providing legal services in the ACT or there are grounds for disqualifying the corporation from providing legal services in the ACT.

(3) An order made under this section may be revoked by the Supreme Court on application by the law society council or the person against whom the order was made.

(4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.

(5) A regulation may make provision in relation to the publication and notification of orders made under this section.

149 Undue influence—multidisciplinary partnerships

(1) A person commits an offence if—

(a) the person causes or induces someone else to contravene this Act or the person's obligations as an Australian legal practitioner; and

(b) the other person is—

(i) a legal practitioner partner of a multidisciplinary partnership; or

(ii) another Australian legal practitioner who is an employee of a multidisciplinary partnership and provides legal services.

Maximum penalty: 50 penalty units.

Note ***This Act*** is defined in the dictionary.

(2) This section applies to the person whether or not the person is a partner or employee of the multidisciplinary partnership.

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Division 2.6.4 Miscellaneous—pt 2.6

150 Obligations of individual practitioners not affected by pt 2.6

Except as provided by this part, this part does not affect any obligation imposed under this Act or any other Act on—

(a) a legal practitioner director of an incorporated legal practice, or an Australian legal practitioner who is an employee of an incorporated legal practice, in the person's capacity as an Australian legal practitioner; or

(b) a legal practitioner partner of a multidisciplinary partnership, or an Australian legal practitioner who is an employee of a multidisciplinary partnership, in the person's capacity as an Australian legal practitioner.

Note ***This Act*** is defined in the dictionary.

151 Regulations—pt 2.6

(1) A regulation may make provision in relation to the following matters:

(a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multidisciplinary partnerships;

(b) other services provided by incorporated legal practices or legal practitioner partners or employees of multidisciplinary 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.

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(3) A regulation may provide that a breach of a regulation can be unsatisfactory professional conduct or professional misconduct—

(a) for an incorporated legal practice—by a legal practitioner director of the practice, an Australian legal practitioner responsible for the breach, or both; or

(b) for a multidisciplinary partnership—by a legal practitioner partner of the partnership, an Australian legal practitioner responsible for the breach, or both.

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Part 2.7 Legal practice—foreign lawyers

Division 2.7.1 Preliminary—pt 2.7

152 Definitions—pt 2.7

In this part:

Australia includes the external territories.

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

commercial legal presence means an interest in a law practice practising foreign law.

foreign law means law of a foreign country.

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

foreign licensing body means an entity in a foreign country having the function, given by the law of the foreign country, of registering people to engage in legal practice in the foreign country.

licensing body means the law society council.

local registration certificate means a registration certificate given under this part.

overseas-registered foreign lawyer means an individual who is properly registered to engage in legal practice in a foreign country by the foreign licensing body for the country.

practise foreign law means doing work, or transacting business, in the ACT concerning foreign law, being work or business of a kind that, if it concerned a territory law, would ordinarily be done or transacted by an Australian legal practitioner.

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registered, if used in relation to a foreign country, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required under legislation for engaging in legal practice in the country.

153 Purpose—pt 2.7

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 the ACT by foreign lawyers as a recognised aspect of legal practice in the ACT.

154 Pt 2.7 does not apply to Australian legal practitioners or foreign lawyers engaged by government

(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, this part does not require or allow 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 to practise foreign law in the ACT.

(3) This part does not apply to an overseas-registered foreign lawyer who practices foreign law in the ACT as a public employee, a member of the Australian Public Service or a member of the defence force.

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Division 2.7.2 Practice of foreign law

155 Requirement for registration to practice foreign law

(1) A person commits an offence if—

(a) the person practises foreign law in the ACT; and

(b) the person is not—

(i) an Australian-registered foreign lawyer; or

(ii) an Australian legal practitioner.

Maximum penalty: 50 penalty units.

(2) This section does not apply to an overseas-registered foreign lawyer who—

(a) practises foreign law in the ACT for 1 or more continuous periods that do not, in the aggregate, exceed 12 months in any 3-year period; or

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

156 Entitlement of Australian-registered foreign lawyer to practise in ACT

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

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157 Scope of practice of Australian-registered foreign lawyer

(1) An Australian-registered foreign lawyer may provide only the following legal services in the ACT:

(a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered by the foreign licensing body for the country;

(b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed by regulation;

(c) legal services (including appearances) in relation to proceedings before a body (other than a court) in which the body is not required to apply the rules of evidence and in which knowledge of the foreign law of a country mentioned in paragraph (a) is essential;

(d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed by regulation.

(2) This Act does not authorise an Australian-registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practise Australian law in the ACT.

(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.

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158 Form of practice of foreign law

(1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law—

(a) on the foreign lawyer's own account; or

(b) in partnership with 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under an ACT law; or

(c) as a director or employee of an incorporated legal practice or a partner or employee of a multidisciplinary partnership that is permitted by an ACT law; 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 an ACT law; or

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

(2) An affiliation mentioned in subsection (1) (b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in the ACT.

159 Application of Australian professional ethical and practice standards to practice of foreign law

(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 the ACT, be professional misconduct or unsatisfactory professional conduct.

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(2) Chapter 4 (Complaints and discipline) applies—

(a) to a person who—

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

(ii) was an Australian-registered foreign lawyer when the relevant conduct allegedly happened, but is no longer an Australian-registered foreign lawyer (in which case chapter 4 applies as if the person were an Australian-registered foreign lawyer); and

(b) as if references in chapter 4 to an Australian legal practitioner were references to a person of that kind.

(3) A regulation may make provision in relation to the application (with or without change) of the provisions of chapter 4 for this section.

(4) Without limiting the matters that may be taken into account in deciding whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account:

(a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;

(b) whether the person contravened the subsection intentionally or without reasonable excuse.

(5) Without limiting any other provision of this section or the orders that may be made under chapter 4 as applied by this section, the following orders may be made under that 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.

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160 Designation of Australian-registered foreign lawyers

(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 licensing body;

(c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);

(d) if the lawyer is a principal of any law practice in Australia whose principals include both 1 or more Australian-registered foreign lawyers and 1 or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, 'Solicitors and locally-registered foreign lawyers' or 'Australian solicitors and US attorneys').

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in relation to practising foreign law in the ACT only if—

(a) the lawyer indicates, on the lawyer's letterhead or any other document used in the ACT to identify the lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in the ACT; and

(b) the lawyer has given the licensing body acceptable evidence that the lawyer is a principal of the foreign law practice.

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(3) An Australian-registered foreign lawyer who is a principal of foreign law practice may use the name of the practice in accordance with 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 an ACT law about 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 the ACT.

161 Letterhead and other identifying documents of Australian-registered foreign lawyers

(1) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in relation to 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 either or both of the following on any public document:

(a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;

(b) a description of the lawyer, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in section 160.

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(4) In this section:

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

162 Advertising by Australian-registered foreign lawyers

(1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the licensing body or by law on the practice of law by an Australian legal practitioner that are relevant to the practice of law in the ACT.

(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 the ACT to identify the lawyer as a lawyer) in any way that—

(a) might reasonably be regarded as—

(i) false, misleading or deceptive; or

(ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner; or

(b) contravenes a regulation.

163 Foreign lawyer employing Australian legal practitioner

(1) An Australian-registered foreign lawyer may employ 1 or more Australian legal practitioners.

(2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in the ACT.

(3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.

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(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 the ACT in the course of the employment.

(5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least 1 other partner is an Australian legal practitioner.

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

164 Trust money and trust accounts—Australian-registered foreign lawyers

(1) The provisions of part 3.1 (Trust money and trust accounts), and any other provisions of this Act 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 Australian legal practitioners.

(2) A regulation may make provision in relation to the application (with or without change) of the provisions of this Act relating to trust money and trust accounts for this section.

(3) In this section, a reference to money is not limited to a reference to money in the ACT.

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165 Professional indemnity insurance—Australian-registered foreign lawyers

(1) An Australian-registered foreign lawyer who practises foreign law in the ACT commits an offence if the foreign lawyer fails to comply with subsection (2), (3) or (4).

Maximum penalty: 50 penalty units.

(2) The foreign lawyer must be covered by professional indemnity insurance that—

(a) covers the practice of foreign law in the ACT; and

(b) is for at least the relevant amount inclusive of any legal costs arising from claims under the insurance; and

(c) has been approved under, or complies with, the requirements this Act or a corresponding law for a practising certificate held by an Australian legal practitioner in any jurisdiction.

(3) The foreign lawyer must be covered by professional indemnity insurance from a foreign country that—

(a) covers the practice of foreign law in the ACT; and

(b) complies with the relevant requirements of a law of the foreign country or a registration authority of the foreign country; and

(c) if the insurance is for less than the relevant amount inclusive of any legal costs arising from claims under the insurance—provides a disclosure statement to each client stating the level of cover.

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(4) If the foreign lawyer does not comply with subsection (2) or (3), the lawyer must—

(a) if the lawyer is covered by professional indemnity insurance—give a disclosure statement to each client stating that the lawyer has professional indemnity insurance but that it does not comply with this Act; or

(b) if the lawyer is not covered by professional indemnity insurance—give a disclosure statement to each client stating that the lawyer is not covered by professional indemnity insurance.

(5) A regulation may make provision in relation to the way a disclosure statement must be given and the contents of the statement.

(6) In this section:

relevant amount means—

(a) if an amount is prescribed by regulation for section 72 (Professional indemnity insurance—interstate legal practitioners)—that amount; or

(b) if an amount is not prescribed by regulation—$1.5 million.

166 Fidelity cover—Australian-registered foreign lawyers

A regulation may provide that provisions of part 3.4 (Fidelity cover) apply to Australian-registered foreign lawyers (with or without change).

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Division 2.7.3 Local registration of foreign lawyers generally

167 Local registration of foreign lawyers

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

168 Duration of registration—foreign lawyers

(1) Registration as a foreign lawyer granted under this Act is in force from the day stated in the local registration certificate until the end of the financial year in which it is granted, unless the registration is sooner suspended or cancelled.

(2) Registration as a foreign lawyer renewed under this Act is in force until the end of the financial year after its previous period of currency, unless the registration is sooner suspended or cancelled.

(3) If an application for the renewal of registration as a foreign lawyer has not been decided by the following 1 July, the registration—

(a) continues in force on and from that 1 July until the licensing body 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.

169 Locally-registered foreign lawyer not officer of Supreme Court

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

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Division 2.7.4 Applications for grant or renewal of local registration as foreign lawyer

170 Application for grant or renewal of registration as foreign lawyer

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

Note 1 If a form is approved under s 587 for this provision, the form must be used.

Note 2 A fee may be determined under s 206 for this provision.

171 Approved form for grant or renewal application—foreign lawyers

(1) An application for the grant or renewal of registration as a foreign lawyer under this Act must be in the form approved by the licensing body under section 587 (an ***approved form***).

(2) To remove any doubt, an approved form may require the applicant to disclose—

(a) matters that may be relevant to or affect the grant or renewal of registration; and

(b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.

(3) An approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.

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

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(5) Subsections (2) to (4) have effect despite the Legislation Act, section 255 (6).

172 Requirements for applications for grant or renewal of registration—foreign lawyers

(1) An application for grant of registration as a foreign lawyer must state the applicant's educational and professional qualifications.

(2) An application for grant or renewal of registration as a foreign lawyer must—

(a) state that the applicant is registered to engage in legal practice by 1 or more stated foreign registration authorities in 1 or more stated foreign countries; and

(b) state that the applicant is not an Australian legal practitioner; and

(c) state that the applicant is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the applicant's capacity as—

(i) an overseas-registered foreign lawyer; or

(ii) an Australian-registered foreign lawyer; or

(iii) an Australian lawyer; and

(d) state that the applicant is not a party in any pending criminal or civil proceeding in Australia or a foreign country that is likely to result in disciplinary action being taken against the applicant; and

(e) state that the applicant's registration is not cancelled or currently suspended in any place because of any disciplinary action in Australia or a foreign country; and

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(f) state that the applicant is—

(i) not otherwise personally prohibited from carrying on the practice of law in any place or bound by any undertaking not to carry out the practice of law in any place; and

(ii) not subject to any special conditions in carrying on any practice of law in any place;

because of any criminal, civil or disciplinary proceeding in Australia or a foreign country; and

(g) state any special conditions imposed in Australia or a foreign country as a restriction on the practice of law 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 licensing body considers appropriate about the applicant's activities in engaging in legal practice in the places concerned or otherwise about matters relevant to the application; and

(i) state whether section 165 (2), (3) or (4) (Professional indemnity insurance—Australian-registered foreign lawyers) applies to the applicant; and

(j) provide the information or be accompanied by the other information or documents (or both) that is stated in the application form or in material accompanying the application form as provided by the licensing body.

(3) The application must (if the licensing body requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign licensing body stated in the application that—

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(a) verifies the applicant's educational and professional qualifications; and

(b) verifies the applicant's registration by the foreign licensing body to practise law in the foreign country concerned, and the date of registration; and

(c) describes anything done by the applicant in engaging in legal practice in the foreign country of which the foreign licensing body is aware and that, in the body's opinion, 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 licensing body requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.

(5) The licensing body may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the licensing body.

(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 licensing body.

(7) This section does not limit the Legislation Act, section 255 (Forms).

Division 2.7.5 Grant or renewal of registration as foreign lawyer

173 Grant or renewal of registration as foreign lawyer

(1) The licensing body 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

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(b) renew or refuse to renew the registration.

Note When granting or renewing registration as a foreign lawyer, the licensing body may impose conditions on the registration under s 192 (2).

(2) If the licensing body grants or renews registration, the licensing body must give the applicant a registration certificate or a notice of renewal.

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

(4) If the licensing body refuses to grant or renew registration, the licensing body must give the applicant an information notice.

(5) The licensing body is taken to have refused to grant or renew registration if registration has not been granted at the end of 28 days after the day the application for grant or renewal is made.

174 Requirement to grant or renew registration as foreign lawyer if criteria satisfied

(1) The licensing body must grant an application for registration as a foreign lawyer if the licensing body—

(a) is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and

(b) considers an effective system exists for regulating the practice of law in 1 or more of the foreign countries; and

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(c) considers the applicant is not, because of any criminal, civil or disciplinary proceeding in any of the foreign countries, subject to—

(i) any special conditions in carrying on the practice of law in any of the foreign countries that would make it inappropriate to register the person; or

(ii) any undertakings about the practice of law in any of the foreign countries that would make it inappropriate to register the person; and

(d) is satisfied the applicant demonstrates an intention—

(i) to practise foreign law in the ACT; and

(ii) to establish an office or a commercial legal presence in the ACT within a reasonable period after grant of registration for practice;

unless the licensing body refuses the application under this part.

(2) The licensing body must grant an application for renewal of a person's registration, unless the licensing body refuses renewal under this part.

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

175 Refusal to grant or renew registration as foreign lawyer

(1) The licensing body may refuse to consider an application for registration as a foreign lawyer if it is not made in accordance with this Act.

Note ***This Act*** is defined in the dictionary.

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(2) The licensing body may refuse to grant or renew registration as a foreign lawyer if—

(a) the application is not accompanied by, or does not contain, the information required by this part or a regulation; or

(b) the applicant has contravened this Act or a corresponding law; or

(c) the applicant has contravened an order of the disciplinary tribunal or a corresponding disciplinary body, including (for example) an order to pay any fine or costs; or

(d) the applicant has contravened an order of a regulatory authority of any jurisdiction to pay any fine or costs; or

(e) the applicant has failed to comply with a requirement under this Act to pay a contribution to, or levy for, the fidelity fund; or

(f) the applicant has contravened a requirement of or made under this Act about professional indemnity insurance; or

(g) the applicant has failed to pay any expenses of receivership payable under this Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The licensing body 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.

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(4) The licensing body may refuse to grant registration if satisfied that the applicant is not a fit and proper person to be registered after considering—

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section; and

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

(c) the person's age when the offence was committed.

(5) The licensing body may refuse to renew registration if satisfied that the applicant is not a fit and proper person to continue to be registered after considering—

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section, other than an offence disclosed in a previous application to the licensing body; and

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

(c) the person's age when the offence was committed.

(6) The licensing body may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.

(7) If the licensing body refuses to grant or renew registration, the licensing body must, as soon as practicable, give the applicant an information notice.

(8) This section does not affect the operation of division 2.7.7 (Special powers in relation to local registration—show-cause events).

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Division 2.7.6 Amendment, suspension or cancellation of local registration of foreign lawyer

176 Application—div 2.7.6

This division does not apply to matters mentioned in division 2.7.7 (Special powers in relation to local registration—show-cause events).

177 Grounds for amending, suspending or cancelling registration of foreign lawyer

(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 otherwise contravened any of the requirements mentioned in section 172 (Requirements for applications for grant or renewal of registration—foreign lawyers);

(c) the disciplinary tribunal or a corresponding disciplinary body has ordered the amendment, suspension or cancellation of the person's registration;

(d) a foreign licensing body has suspended or cancelled the person's registration in a foreign country because of criminal, civil or disciplinary proceedings against the person;

(e) the person's registration in a foreign country has lapsed;

(f) the person has not established an office to practise foreign law or a commercial legal presence in the ACT within the period prescribed by regulation after being granted registration;

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(g) the person, having ceased to have an office or commercial legal presence in the ACT after being granted registration, has not had an office or a commercial legal presence in the ACT for a period prescribed by regulation;

(h) the person has become an insolvent under administration;

(i) another ground the licensing body considers sufficient.

178 Amending, suspending or cancelling registration of foreign lawyer

(1) If the licensing body believes a ground exists to amend, suspend or cancel a person's registration by it as a foreign lawyer (the ***proposed action***), the licensing body must give the person a notice (the ***show-cause notice***) that—

(a) states the action proposed and—

(i) if the proposed action is to amend the registration—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 proposed action; and

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

(d) invites the person to make written representations to the licensing body, not later than the end of a stated period of not less than 7 days and not more than 28 days after the day the holder is given the notice, about why the proposed action should not be taken.

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(2) If, after considering all written representations made not later than the end of the stated period and, in its discretion, written representations made after the end of the stated period, the licensing body still believes a ground exists to take the proposed action, the licensing body may—

(a) if the show-cause notice stated the proposed action was to amend the registration—amend the registration in the way stated or in a less onerous way the licensing body considers appropriate because of the representations; or

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

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

(ii) amend the registration in a less onerous way the licensing body considers appropriate because of the representations; or

(c) if the show-cause notice stated the proposed action was to cancel the registration—

(i) cancel the registration; or

(ii) suspend the registration for a period.

(3) If the licensing body decides to amend, suspend or cancel the person's registration, the licensing body must give the person an information notice about the decision.

(4) If the licensing body decides not to amend, suspend or cancel the person's registration, the licensing body must tell the person in writing about the decision.

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179 Operation of amendment, suspension or cancellation of registration of foreign lawyer

(1) This section applies if the licensing body decides to amend, suspend or cancel a person's registration under section 178.

(2) The amendment, suspension or cancellation of the registration takes effect on the later of the following:

(a) the day written notice of the decision is given to the person;

(b) the day stated in the notice.

(3) However, if the licensing body amends, suspends or cancels the registration because the person has been convicted of an offence—

(a) the Supreme Court may, on the person's application, 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 relation to which the stay is in force.

(4) Also, 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 only been suspended.

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180 Other ways of amending or cancelling registration of foreign lawyer

(1) This section applies if—

(a) a locally-registered foreign lawyer asks the licensing body to amend or cancel the registration and the licensing body proposes to give effect to the request; or

(b) the licensing body 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 licensing body may amend or cancel the registration by written notice given to the lawyer.

(3) To remove any doubt, section 178 (Amending, suspending or cancelling registration of foreign lawyer) does not apply to amendment or cancellation of registration as a foreign lawyer under this section.

181 Relationship of div 2.7.6 with ch 4

This division does not prevent the licensing body from making a complaint under chapter 4 (Complaints and discipline) about a matter to which this division relates.

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Division 2.7.7 Special powers in relation to local registration of foreign lawyer—show-cause events

182 Applicant for local registration as foreign lawyer—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 after the person first became an overseas-registered foreign lawyer.

(2) As part of the application, the person must give the licensing body 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 give the licensing body a statement under subsection (2) if the person has previously given to the licensing body a statement under this section, or a notice and statement under section 183, 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.

(4) This section applies to a show-cause event whether the event happened before or happens after the commencement of this section.

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183 Locally-registered foreign lawyer—show-cause event

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

(2) The locally-registered foreign lawyer must give the licensing body both of the following:

(a) not later than 7 days after the day the event happened, a written notice that the event happened;

Note If a form is approved by the licensing body under s 587 for this provision, the form must be used.

(b) not later than 28 days after the day the event happened, 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 given to the licensing body after the end of the 28-day period, the licensing body may accept the statement and take it into consideration.

184 Refusal, amendment, suspension or cancellation of local registration as foreign lawyer—failure to show cause etc

(1) The licensing body 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 182 (Applicant for local registration of foreign lawyer—show-cause event) or section 183 (Locally-registered foreign lawyer—show-cause event) to give the licensing body a written statement or notice relating to a matter and has failed to provide a written statement or notice in accordance with the requirement; or

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(b) has given a written statement in accordance with section 182 or section 183 but the licensing body does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show-cause event concerned, the applicant or foreign lawyer is a fit and proper person to be a locally-registered foreign lawyer.

(2) For this section only, a written statement accepted by the licensing body under section 182 (3) is taken to have been given in accordance with section 182.

(3) The licensing body 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) However, if the licensing body considers that the applicant or foreign lawyer has shown in the statement mentioned in subsection (1) (b) that, despite the show-cause event concerned, the applicant or foreign lawyer is a fit and proper person to be a locally-registered foreign lawyer, the licensing body must, by written notice, tell the applicant or foreign lawyer about its decision.

185 Restriction on making further applications for registration as foreign lawyer

(1) This section applies if the licensing body decides under section 184 to refuse to grant or renew, or cancel, local registration.

(2) The licensing body may also decide that the applicant for registration or the locally-registered foreign lawyer is not entitled to apply for registration under this part for a stated period of not longer than 5 years.

(3) If the licensing body makes a decision under subsection (2), the licensing body must include the decision in the information notice required under section 184 (3).

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(4) A person in relation to whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this part during the period stated in the decision.

186 Relationship of div 2.7.7 with pt 4.4 and ch 6

(1) The licensing body has and may exercise powers under part 4.4 (Investigation of complaints), and chapter 6 (Investigations), in relation to a matter under this division as if the matter were the subject of a complaint under chapter 4.

(2) Accordingly, the provisions of part 4.4, and chapter 6, apply, with necessary changes, in relation to a matter under this division.

(3) This division does not prevent a complaint being made under chapter 6 about a matter to which this division relates.

Division 2.7.8 Further provisions about local registration of foreign lawyers

187 Immediate suspension of registration as foreign lawyer

(1) This section applies, despite division 2.7.6 (Amendment, suspension or cancellation of local registration of foreign lawyer) and division 2.7.7 (Special powers in relation to local registration of foreign layer—show-cause events), if the licensing body considers it necessary in the public interest to immediately suspend a person's local registration as a foreign lawyer on—

(a) any of the grounds on which the registration could be suspended or cancelled under division 2.7.6; or

(b) the ground of the happening of a show-cause event in relation to the person; or

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(c) any other ground the licensing body considers justifies immediate suspension of the registration in the public interest;

whether or not any action has been taken or started under division 2.7.6 or division 2.7.7 in relation to the person.

(2) The licensing body may, by written notice given to the person, immediately suspend the registration until the earlier of the following:

(a) the licensing body gives the person an information notice under section 178 (3) (Amending, suspending or cancelling registration of foreign lawyer);

(b) the licensing body gives the person written notice under section 178 (4);

(c) the licensing body gives the person an information notice under section 184 (3) (Refusal, amendment, suspension or cancellation of local registration as foreign lawyer—failure to show cause etc);

(d) the licensing body gives the person written notice under section 184 (4);

(e) the period of 56 days after the day the notice is given to the person under this section ends.

(3) The notice must—

(a) include an information notice about the suspension; and

(b) state that the person may make written representations to the licensing body about the suspension.

(4) The person may make written representations to the licensing body about the suspension, and the licensing body must consider the representations.

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

188 Surrender of local registration certificate and cancellation of registration as foreign lawyer

(1) A person registered as a foreign lawyer under this part may surrender the local registration certificate to the licensing body.

(2) The licensing body may cancel the registration.

189 Automatic cancellation of registration of foreign lawyer 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.

190 Suspension or cancellation of registration of foreign lawyer not to affect disciplinary processes

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

191 Return of local registration certificate

(1) This section applies if a person's registration under this part as a foreign lawyer is amended, suspended or cancelled.

(2) The licensing body may give the person a written notice requiring the person to return the person's local registration certificate to the licensing body in the way (if any) stated in the notice within a stated period of not less than 14 days after the day the person is given the notice.

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(3) The person must comply with the notice.

Maximum penalty: 50 penalty units.

(4) An offence against this section is a strict liability offence.

(5) The licensing body must return the person's local registration certificate to the person—

(a) if the certificate is amended—after amending it; or

(b) if the registration is suspended and is still current at the end of the suspension period—at the end of the suspension period.

Division 2.7.9 Conditions on registration of foreign lawyers

192 Conditions on local registration generally

(1) Registration as a foreign lawyer under this Act is subject to—

(a) any conditions imposed by the licensing body; and

(b) any statutory conditions imposed by this Act or any other Act; and

Note ***This Act*** is defined in the dictionary.

(c) any conditions imposed or amended by the disciplinary tribunal under section 194 (Imposition and amendment of conditions on local registration pending criminal proceedings); and

(d) 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, amended or revoked under this Act (other than a statutory condition) during the currency of a person's registration as a foreign lawyer, the registration certificate must be

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amended by the licensing body, or a new registration certificate must be issued by the licensing body, to reflect on its face the imposition, amendment or revocation.

193 Conditions imposed on local registration by licensing body

(1) The licensing body may impose conditions on registration as a foreign lawyer—

(a) when it is granted or renewed; or

(b) during its currency.

(2) The licensing body may impose conditions on registration as a foreign lawyer—

(a) on the application of the applicant for registration or renewal of registration as a foreign lawyer; or

(b) on its own initiative.

(3) A regulation may make provision in relation to an application for the imposition of a condition of registration.

(4) A condition imposed under this section must be reasonable and relevant.

(5) A condition imposed under this section may be about any of the following:

(a) any matter in relation to which a condition could be imposed on a local practising certificate;

(b) a matter agreed to by the foreign lawyer.

(6) The licensing body must not impose a condition under subsection (5) (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.

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(7) The licensing body may amend or revoke conditions imposed under this section.

(8) If the licensing body imposes a condition on, or amends or revokes a condition of, registration as a foreign lawyer (the ***action***)—

(a) the licensing body must give the applicant for the registration, or the foreign lawyer, an information notice about the action, unless the action was taken on the application of the applicant or foreign lawyer; and

(b) if the action was taken during the currency of the registration—the action takes effect when the foreign lawyer is given an information notice or other written notice by the licensing body about the action or, if the notice states a later time of effect, at that time.

(9) This section has effect subject to section 178 (Amending, suspending or cancelling registration of foreign lawyer) in relation to the imposition of a condition on a registration as a foreign lawyer during its currency.

194 Imposition and amendment of conditions on local registration pending criminal proceedings

(1) If a locally-registered foreign lawyer has been charged with an offence but the charge has not been decided, the licensing body may apply to the disciplinary tribunal for an order under this section.

(2) On an application under subsection (1), the disciplinary tribunal may, if it considers it appropriate having regard to the seriousness of the offence and to the public interest, make either or both of the following orders:

(a) an order amending the conditions of the foreign lawyer's local registration;

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(b) an order imposing further conditions on the foreign lawyer's local registration.

(3) An order under this section has effect until the sooner of—

(a) the end of the period stated by the disciplinary tribunal; 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.

(4) The disciplinary tribunal may, on application by any party, amend or revoke an order under this section at any time.

195 Statutory condition on local registration about notification of offence

(1) It is a statutory condition of registration as a foreign lawyer that the lawyer—

(a) must notify the licensing body 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 in writing not later than 7 days after the day the event happens.

Note If a form is approved by the licensing body under s 587 for this provision, the form must be used.

(2) This section does not apply to an offence to which division 2.7.7 (Special powers in relation to local registration of foreign lawyer—show-cause events) applies.

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196 Conditions imposed by legal profession rules on local registration

The legal profession rules may—

(a) impose conditions on the registration of foreign lawyers; or

(b) authorise conditions to be imposed on the registration of foreign lawyers.

197 Compliance with conditions of local registration

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

Maximum penalty: 50 penalty units.

Division 2.7.10 Interstate-registered foreign lawyers

198 Extent of entitlement of interstate-registered foreign lawyer to practise in ACT

(1) This part does not authorise an interstate-registered foreign lawyer to practise foreign law in the ACT 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 the ACT—

(a) is subject to—

(i) any conditions imposed by the licensing body under section 199; and

(ii) any conditions imposed under the legal profession rules made under that section; and

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

(i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and

(ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2) (a) and conditions mentioned in subsection (2) (b), the conditions that are, in the licensing body's opinion, more onerous prevail to the extent of the inconsistency.

(4) An interstate-registered foreign lawyer must not practise foreign law in the ACT in a way not authorised by this Act or in contravention of any condition mentioned in this section.

199 Additional conditions on practice of interstate-registered foreign lawyers

(1) The licensing body may, by written notice given to an interstate-registered foreign lawyer practising foreign law in the ACT, 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 the ACT is subject to any condition imposed under the legal profession rules.

(3) Conditions imposed under or mentioned in this section must not be more onerous than conditions applying to locally-registered foreign lawyers in the same or similar circumstances.

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(4) A notice under this section must include an information notice about the decision to impose a condition.

Division 2.7.11 Miscellaneous—pt 2.7

200 Investigation of applicants and locally-registered foreign lawyers etc

(1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this part, or to impose conditions on a foreign lawyer's registration under this part, the licensing body may, by written notice to the applicant or foreign lawyer, require the applicant or lawyer—

(a) to give it stated documents or information; or

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

(2) A person's failure to comply with a notice under subsection (1) within the reasonable period, and in the reasonable way, (if any) required by the notice is a ground for refusing to grant or renew registration or to amend, suspend, cancel or impose conditions on registration under this part.

(3) The licensing body may refer a matter to the Supreme Court for directions.

201 Register of locally-registered foreign lawyers

(1) The licensing body 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

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(b) include other particulars prescribed by regulation.

(3) The register may be kept in the way the licensing body decides.

(4) The register must be available for inspection, without charge, at the licensing body's office during normal business hours.

202 Publication of information about locally-registered foreign lawyers

The licensing body may publish, in circumstances that it considers appropriate, the names of people registered by it as foreign lawyers under this part and any relevant particulars about them.

203 Supreme Court orders about conditions—Australian-registered foreign lawyers

(1) The licensing body 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.

204 Exemption of Australian-registered foreign lawyers by licensing body

(1) The licensing body may exempt an Australian-registered foreign lawyer from complying with a stated provision of this Act that would otherwise apply to the foreign lawyer.

Note ***This Act*** is defined in the dictionary.

(2) An exemption may be given unconditionally or subject to conditions stated in writing.

(3) The licensing body may amend or revoke any conditions imposed under this section or impose new conditions.

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205 Membership of professional association by Australian-registered foreign lawyers

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

206 Determination of fees by licensing body

(1) The licensing body may determine fees for this Act in relation to applications for grant or renewal of registration as a foreign lawyer.

(2) The fees determined for the grant or renewal of registration as a foreign lawyer must not be greater than the maximum fees for the grant or renewal of an unrestricted practising certificate.

(3) The licensing body may also require the applicant to pay any reasonable costs and expenses incurred by the body 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.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) The fees and costs must not include any component for compulsory membership of any professional association.

(5) A determination under this section is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

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207 Appeals or reviews

(1) A person may appeal to the Supreme Court against—

(a) a decision of the licensing body to refuse to grant or renew registration of an overseas-registered foreign lawyer as a foreign lawyer under this Act; or

(b) a decision of the licensing body to amend, suspend or cancel a person's registration as a foreign lawyer under this Act; or

(c) a decision of the licensing body under section 192 (Conditions on local registration generally) to impose a condition on, or amend or revoke a condition on registration as a foreign lawyer under this Act; or

(d) a decision of the licensing body under section 199 (Additional conditions on practice of interstate-registered foreign lawyers) to impose a condition on the interstate-registered foreign lawyer's practice.

(2) The licensing body may appear as a party to the appeal.

(3) In an appeal under this section, the parties to the appeal bear their own costs unless the Supreme Court otherwise orders.

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

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Part 2.8 Community legal centres

208 What is a *complying community legal centre*?

(1) For this Act, an entity is a ***complying community legal centre*** if—

(a) it is held out, or holds itself out, as being a community legal centre (however described); and

(b) it provides legal services—

(i) that are directed generally to people or entities 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 people or entities 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 entity and the income (if any) from which cannot or will not be distributed to any member or employee of the entity 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 entities or other entities; and

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(c) at least 1 of the people employed or otherwise used by the entity and who is generally responsible for provision of the legal services by the entity is an Australian legal practitioner who—

(i) holds an unrestricted practising certificate; or

(ii) is authorised by the licensing body for this section.

209 Provision of legal services etc by complying community centre

(1) A complying community legal centre does not contravene this Act only 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 the legal services are provided or receives any fee, gain or reward for providing the legal services; or

(c) it shares with an Australian legal practitioner employed or otherwise used by it to provide the legal services receipts, revenue or other income arising from the business of the centre of a kind usually conducted by an Australian legal practitioner; or

(d) it adopts or uses the word ‘legal’ or a name, title or description to which section 18 (Presumptions about taking or using certain names, titles or descriptions) applies (or a related term) in its name or any registered business name under which it provides legal services to members of the public.

(2) Subsection (1) has effect despite anything to the contrary in this Act.

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(3) A regulation may make provision in relation to—

(a) the application (with any prescribed changes) of a provision of this Act to a complying community legal centre; and

(b) the legal services provided by a complying community legal centre.

(4) A regulation may provide that a breach of a regulation in relation to a complying community legal centre can be unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner responsible for the breach.

(5) A provision of the legal profession rules that applies to an Australian legal practitioner also applies to an Australian legal practitioner who is an officer or employee of, or whose services are used by, a complying community legal centre, unless the rules otherwise provide.

(6) In this section:

fee, gain or reward means any form of, and any expectation of, a fee, gain or reward.

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Chapter 3 Conduct of legal practice

Part 3.1 Trust money and trust accounts

Division 3.1.1 Preliminary—pt 3.1

210 Definitions—pt 3.1

(1) In this Act:

controlled money means trust money received by a law practice with 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 s 224 (6) (Controlled money), which prevents pooling of controlled money.

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.

Note ***Trust money*** is defined in the dictionary.

(2) In this part:

approved ADI means an ADI approved under section 250 (Approval of ADIs for pt 3.1) by the licensing body.

controlled money account means an account kept by a law practice with an approved ADI for the holding of controlled money received by the practice.

external examination means an external examination under subdivision 3.1.3.2 of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under subdivision 3.1.3.2.

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

investigation means an investigation under subdivision 3.1.3.1 of the affairs of a law practice.

investigator means a person holding an appointment as an investigator under subdivision 3.1.3.1.

law practice—see section 218 (2).

permanent form, in relation to a trust record, means printed (or, on request, capable of being printed) in English on paper or other material.

trust account means an account kept by a law practice with an approved ADI to hold trust money.

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) duplicate deposit slips;

(e) trust account ADI statements;

(f) trust account receipts and payments cash books;

(g) trust ledger accounts;

(h) records of monthly trial balances;

(i) records of monthly reconciliations;

(j) trust transfer journals;

(k) statements of account as required to be provided under a regulation;

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(l) registers required to be kept under a regulation;

(m) monthly statements required to be kept under a regulation;

(n) files relating to trust transactions or bills of costs, or both;

(o) written directions, authorities or other documents required to be kept under this Act;

(p) supporting information required to be kept under a regulation in relation to powers to deal with trust money.

Note 1 ***This Act*** is defined in the dictionary.

Note 2 ***Trust records*** includes a reference to the affairs of a law practice that may be examined under s 245 (Examination of affairs in relation to examination of trust records etc)—see s 245 (3).

(3) 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.

211 Purposes—pt 3.1

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 people for or on whose behalf money is held, both inside and outside the ACT;

(b) to minimise compliance requirements for law practices that provide legal services within and outside the ACT;

(c) to ensure the licensing body can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

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212 Money involved in financial services or investments

(1) Money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held for or in relation to—

(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 the 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 someone else who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(2) Without limiting subsection (1), money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held in relation to—

(a) a managed investment scheme undertaken by the practice; or

(b) mortgage financing undertaken by the practice.

(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 this Act, 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 relation to 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—see the Corporations Act, section 761A.

authorised representative—see the Corporations Act, section 761A.

financial service—see the Corporations Act, section 761A.

financial services business—see the Corporations Act, section 761A.

213 Determinations about status of money

(1) This section applies to money received by a law practice if the licensing body considers that there is doubt or a dispute as to whether the money is trust money.

(2) The licensing body may determine, in writing, that the money is or is not trust money.

Note A provision of a law that gives an entity power to make a statutory instrument also gives the entity the power to amend or repeal the instrument (see Legislation Act, s 46).

(3) While a determination under this section is in force that money is trust money, the money is taken to be trust money for this Act.

(4) 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 this Act.

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(5) This section has effect subject to a decision of a court or administrative review body made in relation to the money concerned.

214 Application of pt 3.1 to law practices and trust money

(1) This part applies to the following law practices in relation to trust money received by them in the ACT:

(a) a law practice that has an office in the ACT, 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.

(2) To remove any doubt, it is intended that a law practice that receives trust money in the ACT, that does not have an office in the ACT, but that has an office in another jurisdiction, must deal with the money in accordance with the corresponding law of the other jurisdiction.

(3) This part applies to the following law practices in relation to trust money received by them in another jurisdiction:

(a) a law practice that has an office in the ACT and in no other jurisdiction;

(b) a law practice that has an office in the ACT and in 1 or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with in accordance with the corresponding law of another jurisdiction.

(4) However, this part does not apply to law practices, or kinds of trust money, prescribed by regulation for this subsection.

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(5) 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 164 (Trust money and trust accounts—Australian-registered foreign lawyers) applies this part to Australian-registered foreign lawyers.

215 Protocols for deciding where trust money is received

(1) The licensing body may enter into arrangements (the ***protocols***) with corresponding authorities about any or all of the following:

(a) deciding the jurisdiction where a law practice receives trust money;

(b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.

(2) For this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be decided in accordance with the protocols.

(3) A protocol is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

216 When money is received by law practice

(1) For this Act, a law practice receives money when—

(a) the practice obtains possession or control of it directly; or

(b) the practice obtains possession or control of it indirectly because of its delivery to an associate; or

(c) the practice is given a power enabling the practice to deal with it, whether alone or with an associate; or

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(d) an associate is given a power enabling the associate to deal with it, on behalf of the practice, whether alone or with another associate.

(2) For this Act, a law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

217 Discharge by legal practitioner associate of obligations of law practice

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

(a) the establishment of a trust account;

(b) the keeping of a trust account;

(c) the payment of trust money into and out of a trust account and other dealings with trust money;

(d) the keeping of trust records;

(e) engaging an external examiner to examine trust records;

(f) the payment of an amount into an ADI account in accordance with section 253 (Statutory deposits);

(g) an action of a kind prescribed by regulation.

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(2) If the legal practitioner associate keeps a trust account in relation to trust money received by the law practice, this part applies to the associate in the same way as it applies to a law practice.

Note A reference to an Act (or provision) includes a reference to the statutory instruments made or in force under the Act (or provision), including any regulation (see Legislation Act, s 104).

(3) Subsection (1) does not apply to the extent that the associate is prevented by a regulation from taking any action mentioned in that subsection.

218 Liability of principals of law practices under pt 3.1

(1) A provision of this part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

Note A reference to an Act (or provision) includes a reference to the statutory instruments made or in force under the Act (or provision), including any regulation (see Legislation Act, s 104).

(2) A reference in this part to a ***law practice*** includes a reference to the principals of the law practice.

219 Application of pt 3.1 to 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 happening while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, but with any necessary changes.

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220 Barristers not to receive trust money

A barrister commits an offence if—

(a) the barrister receives money on behalf of someone else; and

(b) the money is received in the course of the barrister's practice as a barrister.

Maximum penalty: 50 penalty units.

Division 3.1.2 Trust money and trust accounts

221 Keeping of general trust account

(1) A law practice that receives trust money to which this part applies must keep a general trust account in the ACT.

(2) A law practice that is required to keep a general trust account in the ACT must establish and keep the account as required by regulation.

(3) Subsection (1) does not apply to a law practice in relation to any period during which the practice receives only controlled money or transit money (or both), except if it is received in the form of cash.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

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(6) An offence against subsection (4) or (5) is a strict liability offence.

(7) Subject to any regulation, a requirement of this section for a law practice to keep, or establish and keep, a general trust account in the ACT does not prevent the practice from keeping, or establishing and keeping, more than 1 general trust account in the ACT, whether during the same period or during different periods.

(8) Without limiting this section, a regulation may provide that a law practice must not close a general trust account except as permitted by regulation.

222 Certain trust money to be deposited in general trust account

(1) As soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice.

(2) Subsection (1) does not apply if—

(a) the practice has a written direction by an appropriate person to deal with the money 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 to be dealt with under a power to receive or disburse money for or on behalf of someone else exercisable jointly and severally with the other person or a nominee of the other person.

(3) A law practice that has received money that is the subject of a written direction mentioned in subsection (2) (a) must deal with the money in accordance with the direction—

(a) within the period (if any) stated in the direction; or

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(b) subject to paragraph (a), as soon as practicable after it is received.

(4) The law practice must keep a written direction mentioned in subsection (2) (a) for the period prescribed by regulation.

(5) Subsection (2) (a) to (d) do not apply to cash.

(6) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (3) or (4), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(7) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (3) or (4), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(8) An offence against subsection (6) or (7) is a strict liability offence.

(9) For this section, a person is an ***appropriate person*** in relation to trust money received by a law practice if the person is legally entitled to give the practice directions about dealings with the money.

223 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

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(b) disburse the trust money only in accordance with a direction given by the person.

(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 regulation.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (3), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (3), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(6) An offence against subsection (4) or (5) is a strict liability offence.

224 Controlled money

(1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account stated in the written direction relating to the money.

(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.

(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—

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(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.

(4) The law practice must keep the controlled money account, and account for the controlled money, as required by regulation.

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

(6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person mentioned in subsection (2), and not for the deposit of controlled money received on behalf of anyone else, except to the extent that a regulation otherwise allows.

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

(8) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (2), (3), (4), (5) or (6), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(9) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (2), (3), (4), (5) or (6), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(10) An offence against subsection (8) or (9) is a strict liability offence.

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225 Transit money

(1) A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—

(a) within the period (if any) stated in the instructions; or

(b) subject to paragraph (a), as soon as practicable after it is received.

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

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(5) An offence against subsection (3) or (4) is a strict liability offence.

226 Trust money subject to specific powers

(1) A law practice that exercises a power to deal with trust money must deal with the money only in accordance with the power relating to the money.

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

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(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(5) An offence against subsection (3) or (4) is a strict liability offence.

227 Protection of trust money

(1) Money standing to the credit of a trust account kept by a law practice is not available for the payment of debts of the practice or any of its associates.

(2) Money standing to the credit of a trust account kept by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the practice or any of its associates.

(3) This section does not apply to money to which a law practice or associate is entitled.

228 Intermixing money

(1) A law practice must not mix trust money with other money.

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(2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(3) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(4) This section does not apply in relation to the mixing of trust money with other money if—

(a) the licensing body has authorised the mixing of the trust money with other money to the extent to which it is mixed; and

(b) the law practice has complied with any conditions put on the authorisation by the licensing body.

(5) An offence against subsection (2) or (3) is a strict liability offence.

229 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 owing by the person to the practitioner;

(b) withdraw money for payment to the practice's account for legal costs owing to the practice if the procedure prescribed by regulation is complied with;

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(c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under section 259 (Unclaimed trust money).

(2) Subsection (1) applies despite any other provision of this part but has effect subject to part 3.2 (Costs disclosure and review).

230 Deficiency in trust account

(1) An Australian legal practitioner commits an offence if the practitioner causes—

(a) a deficiency in any trust account or trust ledger account; or

(b) a failure to pay or deliver any trust money.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply if the Australian legal practitioner has a reasonable excuse.

(3) In this section:

account, in relation to an Australian legal practitioner, includes an account of the practitioner or of the law practice of which the practitioner is an associate.

cause a deficiency or failure—a person's conduct ***causes*** a deficiency or failure if it is responsible for the deficiency or failure.

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

231 Reporting certain irregularities etc

(1) A legal practitioner commits an offence if—

(a) the practitioner is an associate of a law practice; and

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(b) the practitioner becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts; and

(c) the practitioner fails, as soon as practicable after becoming aware of the irregularity, to give written notice of the irregularity to—

(i) the licensing body; and

(ii) if a corresponding authority is responsible for the regulation of the accounts—the corresponding authority.

Maximum penalty: 50 penalty units.

(2) An Australian legal practitioner commits an offence if—

(a) the practitioner believes, on reasonable grounds, that there is an irregularity in relation to the receipt, recording or disbursement of any trust money received by a law practice; and

(b) the practitioner is not an associate of the practice; and

(c) the practitioner fails, as soon as practicable after forming the belief, to give written notice of it to—

(i) the licensing body; and

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

Maximum penalty: 50 penalty units.

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(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.

Note Section 597 (Professional privilege or duty of confidence does not affect validity of certain requirements etc) contains a similar provision in relation to client legal privilege and duties of confidence.

(4) An Australian legal practitioner is not liable for any loss or damage suffered by someone else because of the practitioner's compliance with subsection (1) or (2).

232 Keeping trust records

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

(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 prescribed by regulation.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

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(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(5) An offence against subsection (3) or (4) is a strict liability offence.

233 False names in trust records etc

(1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.

(2) If a person on whose behalf trust money is received by a law practice is commonly known by 2 or more names, the practice must ensure that the practice's trust records record all names by which the person is known.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

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Division 3.1.3 Investigations and external examinations

Subdivision 3.1.3.1 Investigations

234 Appointment of investigators

(1) The licensing body may appoint a suitably qualified person to investigate the affairs or stated affairs of a law practice.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(2) The appointment may be made generally or for the law practice stated in the instrument of, or evidencing the, appointment.

235 Investigations

(1) The instrument of, or evidencing the, appointment may authorise the investigator to conduct either or both of the following in relation to a law practice:

(a) routine investigations on a regular or other basis;

(b) investigations in relation to particular allegations or suspicions in relation to trust money, trust property trust accounts or any other aspect of the affairs of the law practice.

(2) The main purposes of an investigation are to find out whether the law practice has complied with or is complying with the requirements of this part and to detect and prevent fraud or defalcation, but this subsection does not limit the scope of the investigation or the powers of the investigator.

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236 Application of ch 6 to investigations

Chapter 6 (Investigations) applies to an investigation under this subdivision.

237 Investigator's report

As soon as practicable after completing an investigation, the investigator must give a written report of the investigation to the licensing body.

238 Confidentiality by investigator etc

(1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means anyone who is, or has been—

(a) an investigator; or

(b) acting under the direction or authority of an investigator; or

(c) providing advice, expertise or assistance to an investigator.

produce includes allow access to.

protected information means information about a law practice or another person that is disclosed to, or obtained by, a person to whom this section applies (the ***relevant person***) because of the exercise of a function under this Act by the relevant person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about a law practice or another person; and

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(ii) is reckless about whether the information is protected information about a law practice or another person; or

(b) the person—

(i) does something that divulges protected information about a law practice or another person; and

(ii) is reckless about whether—

(A) the information is protected information about a law practice or another person; and

(B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

(4) Subsection (2) does not apply to the divulging of protected information about a law practice or another person—

(a) to the practice or person; or

(b) if relevant, to an associate of the practice; or

(c) with the consent of the practice or person; or

(d) if divulging the information is necessary for properly conducting an investigation and making the report of the investigation; or

(e) as provided in section 557 (Permitted disclosure of confidential information—ch 6).

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(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

239 Costs of investigation

(1) The costs of an investigation are payable out of the fidelity fund.

(2) However, the licensing body may decide that all or part of the costs of the investigation is payable to the licensing body, and decide the amount payable, if—

(a) the investigator states in his or her report that there is evidence a breach of this Act has been committed or that fraud or defalcation has been detected; and

(b) the licensing body is satisfied the breach is intentional or of a substantial nature.

Note ***This Act*** is defined in the dictionary.

(3) An amount decided by the licensing body under subsection (2) is a debt owing to the licensing body by the law practice whose affairs were investigated.

(4) Before seeking to recover the amount payable, the licensing body must give the law practice an information notice about the licensing body's decision (including the amount decided by it as being payable).

(5) A person may appeal to the Supreme Court against a decision of the licensing body under subsection (2).

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

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Subdivision 3.1.3.2 External examinations

240 Designation of external examiners

(1) The licensing body may, in writing, designate a person (a ***designated person***) as being eligible to be appointed as external examiners.

(2) Only designated people may be appointed as external examiners.

(3) An employee or agent of the licensing body may be a designated person.

241 Appointment of external examiners by law practices

(1) If a regulation requires a law practice to appoint an external examiner to examine the practice's trust accounts, the practice must make the appointment as required by the regulation.

(2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(3) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(4) An offence against subsection (2) or (3) is a strict liability offence.

242 Appointment of external examiners by licensing body

(1) The licensing body must ensure each law practice's trust records are externally examined as required by regulation.

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(2) If the licensing body is satisfied a law practice has not had the practice's trust records externally examined as required by regulation, the licensing body may appoint an external examiner to examine the practice's trust records.

(3) If a law practice is not required by regulation to have trust records externally examined, the licensing body may appoint an external examiner to examine the practice's trust records at least annually.

243 Designation and appointment of associates as external examiners

(1) The licensing body may designate an associate of a law practice under this subdivision only if the licensing body is satisfied that it is appropriate to designate the associate.

(2) However, an associate of a law practice cannot be appointed as an external examiner under this subdivision to examine the practice's trust records.

244 Final examination of trust records

(1) This section applies if a law practice—

(a) stops being authorised to receive trust money; or

(b) stops engaging in legal practice in the ACT.

(2) The law practice must appoint an external examiner to examine the practice's trust records—

(a) for the period since an external examination was last conducted; and

(b) for each period after that, consisting of a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

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(3) The law practice must give the licensing body—

(a) a report of each examination under subsection (2) not later than 60 days after the end of the period to which the examination relates; and

(b) a written notice not later than 60 days after the day it stops holding trust money.

Note If a form is approved by the licensing body under s 587 for this provision, the form must be used.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (2) or (3), the practitioner or practice commits an offence.

Maximum penalty: 100 penalty units.

(5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (2) or (3), each principal of the practice commits an offence.

Maximum penalty: 100 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(6) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.

(7) This section does not affect any other requirements under this part.

245 Examination of affairs in relation to examination of trust records etc

(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 relation to an examination of the trust records.

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(2) If the law practice is an incorporated legal practice or multidisciplinary partnership, the reference in subsection (1) to the affairs of the practice includes the affairs of the legal practice or partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.

(3) A reference in this subdivision and chapter 6 (Investigations) to ***trust records*** includes a reference to the affairs of a law practice that may be examined under this section in an examination of the practice's trust records.

246 Carrying out examinations

(1) Chapter 6 (Investigations) applies to an external examination under this subdivision.

(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), a regulation 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.

247 External examiner's report

As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the licensing body.

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248 Confidentiality by external examiner

(1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means anyone who is, or has been—

(a) an external examiner; or

(b) acting under the direction or authority of an external examiner; or

(c) providing advice, expertise or assistance to an external examiner.

produce includes allow access to.

protected information means information about a law practice or another person that is disclosed to, or obtained by, a person to whom this section applies (the ***relevant person***) because of the exercise of a function under this Act by the relevant person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about a law practice or another person; and

(ii) is reckless about whether the information is protected information about a law practice or another person; or

(b) the person—

(i) does something that divulges protected information about a law practice or another person; and

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(ii) is reckless about whether—

(A) the information is protected information about a law practice or another person; and

(B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

(4) Subsection (2) does not apply to the divulging of protected information about a law practice or another person—

(a) to the practice or person; or

(b) if relevant, to an associate of the practice; or

(c) with the consent of the practice or person; or

(d) if divulging the information is necessary for properly conducting an examination and making the report of an examination; or

(e) to an investigator or a supervisor, manager or receiver appointed under this Act; or

(f) as provided in section 557 (Permitted disclosure of confidential information—ch 6).

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(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

249 Costs of examination

(1) The costs of an examination are payable out of the fidelity fund.

(2) However, the licensing body may decide that all or part of the costs of the examination is payable to the licensing body, and decide the amount payable, if the licensing body appointed the external examiner to carry out the examination.

Note ***This Act*** is defined in the dictionary.

(3) An amount decided by the licensing body under subsection (2) is a debt owing to the licensing body by the law practice whose affairs were examined.

(4) Before seeking to recover the amount payable, the licensing body must give the law practice an information notice about the licensing body's decision (including the amount decided by it as being payable).

(5) A person may appeal to the Supreme Court against a decision of the licensing body under subsection (2).

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

Division 3.1.4 Provisions relating to ADIs and statutory deposits

250 Approval of ADIs for pt 3.1

(1) The licensing body may approve ADIs at which trust accounts to hold trust money may be kept.

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(2) The licensing body may impose conditions, of the kinds prescribed by regulation, 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 licensing body may revoke an approval given under this section.

251 ADI not subject to certain obligations and liabilities

(1) An ADI at which a trust account is kept by a law practice—

(a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of amounts disbursed from the account; and

(b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right (whether by way of set-off counterclaim, charge or otherwise) against amounts in the account.

(2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

252 Reports, records and information by ADIs

(1) An ADI commits an offence if—

(a) a trust account is kept with the ADI; and

(b) the ADI becomes aware of a deficiency in the account; and

(c) the ADI fails to report the deficiency to the licensing body as soon as practicable after becoming aware of the deficiency.

Maximum penalty: 50 penalty units.

(2) An ADI commits an offence if—

(a) a trust account is kept with the ADI; and

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(b) the ADI has reason to believe that an offence has been committed in relation to the account; and

(c) the ADI fails to report the belief to the licensing body as soon as practicable after forming it.

Maximum penalty: 50 penalty units.

(3) An ADI commits an offence if it fails to give the licensing body a report required by regulation about a trust account as required by the regulation.

Maximum penalty: 50 penalty units.

(4) An ADI commits an offence if—

(a) a trust account is kept with the ADI by a law practice; and

(b) an investigator or external examiner produces to the ADI evidence of the appointment of the investigator or external examiner in relation to the practice; or

(c) the investigator or external examiner requires the ADI—

(i) to produce for inspection or copying by the investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; or

(ii) to give the investigator or external examiner details of any transactions relating to the trust account or trust money; and

(d) the ADI fails to comply with the requirement.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (3) or (4) is a strict liability offence.

(6) Subsections (1) to (4) apply despite any duty of confidence to the contrary.

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(7) An ADI or an officer or employee of an ADI is not liable for any loss or damage suffered by someone else because of—

(a) the reporting of a deficiency under subsection (1); or

(b) the making or giving of a report under subsection (2) or (3); or

(c) the producing of records, or the giving of details, under subsection (4).

253 Statutory deposits

(1) A regulation may require a law practice to pay amounts out of a general trust account of the practice into an ADI account kept by the law society (a ***statutory interest account***).

(2) A regulation may make provision in relation to the following:

(a) the type of account to be kept by the law society;

(b) payments to be made to the account;

(c) the use of money in the account;

(d) the person entitled to interest on the money in the account.

(3) For subsection (2) (d), a regulation may require the ADI to pay interest to the law society.

(4) Subject to any regulation made under subsection (2) (c) or (d), the law society may, with the Attorney-General's written consent given either generally or in a particular case, use money in a statutory interest account—

(a) to supplement from time to time the fidelity fund; and

(b) to assist in the conduct of a scheme for the provision of legal aid and to provide funds to the legal aid commission; and

(c) to pay or reimburse the amount of any costs and disbursements incurred by the law society council or bar council in relation to—

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(i) an investigation or proceeding under chapter 4 (including deciding whether an investigation should be made or a proceeding should be started); or

(ii) any other proceeding taken in the Supreme Court in relation to a legal practitioner or an unqualified person practising as a legal practitioner (including deciding whether such a proceeding should be started); and

(d) to pay or reimburse the amount of any costs and disbursements incurred by the law society council or bar council in relation to—

(i) making an objection to an application for admission (including deciding whether an objection should be made); or

(ii) assisting the Supreme Court in relation to an application for admission; and

(e) to assist the law society council or bar council to facilitate a mediation under part 4.3; and

(f) to assist in the conduct and maintenance of a course of training for the practice of law; and

(g) to pay the amount of any costs incurred by the law society in administering amounts deposited with the law society under this part; and

(h) to meet the costs of administering the account.

(5) Subject to any regulation made under subsection (2) (c) or (d), the law society must, in accordance with the Attorney-General's written request, pay an amount from the account to the disciplinary tribunal trust account.

(6) This section applies despite any other provision of this part.

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Division 3.1.5 Miscellaneous—pt 3.1

254 Restrictions on receipt of trust money

(1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.

(2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(3) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

(4) An incorporated legal practice commits an offence if—

(a) the practice receives trust money; and

(b) none of the following subparagraphs applies:

(i) at least 1 legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money;

(ii) a person is holding an appointment under section 109 (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;

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(iii) the money is received during a period during which the practice—

(A) does not have a legal practitioner director; and

(B) is not in default of director requirements under section 109;

but there was, immediately before the start of the period, at least 1 legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (2), (3) or (4) is a strict liability offence.

255 Application of pt 3.1 to incorporated legal practices and multidisciplinary partnerships

(1) A regulation may provide that prescribed provisions of this part, and any other provisions of this Act relating to trust money and trust accounts, do not apply to incorporated legal practices or multidisciplinary partnerships or apply to them with prescribed changes.

Note ***This Act*** is defined in the dictionary.

(2) For the application of a provision of this part, or any other provision of this Act relating to trust money and trust accounts, to an incorporated legal practice or multidisciplinary partnership—

(a) the obligations and rights of a law practice under the provision extend to an incorporated legal practice or multidisciplinary partnership, but only in relation to legal services provided by the practice or partnership; and

(b) money received by a law practice on behalf of someone else includes money received by any officer or employee of the

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incorporated legal practice or multidisciplinary partnership on behalf of someone else in the course of providing legal services.

256 Application of pt 3.1 to community legal centres

(1) A regulation may provide that a provision of this part, or any other provision of this Act relating to trust money and trust accounts, does not apply to a complying community legal centre or applies with prescribed changes.

(2) For the application of a provision of this part, or any other provision of this Act relating to trust money and trust accounts, to a complying community legal centre—

(a) the obligations and rights of an Australian legal practitioner under the provision extends to a complying community legal centre that is a corporation, but only in relation to legal services provided by the centre; and

(b) money received by an Australian legal practitioner on behalf of someone else in the course of practising as an Australian legal practitioner includes money received by anyone who is an officer or employee of, or whose services are used by, a complying community legal centre on behalf of someone else in the course of providing legal services.

257 Disclosure—money not received as trust money

(1) If money entrusted to a law practice by a person is not trust money because it is money to which section 212 (Money involved in financial services or investments) applies or because of a determination under section 213 (Determinations about status of money), the law practice must give the person notice in accordance with subsection (2) that—

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(a) the money is not trust money for this Act and is not subject to any supervision, investigation or audit requirements of this Act; and

(b) a claim against the fidelity fund under this Act cannot be made in relation to the money.

Maximum penalty: 50 penalty units.

(2) Notice under subsection (1) must be given—

(a) when the money is entrusted to the law practice; or

(b) if a determination under section 213 that the money is not trust money is made after the money is entrusted to the law practice—not later than 7 days after the day the determination is made.

(3) The legal profession rules may make provision in relation to the way notice must be given and the contents of the notice.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

(6) An offence against subsection (4) or (5) is a strict liability offence.

258 Disclosure of accounts used to hold money entrusted to legal practitioners

(1) If a law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate, the law practice must give the licensing body

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the details required by regulation for each account of the law practice kept at an ADI in which the money is held.

Maximum penalty: 50 penalty units.

(2) This section applies whether or not the money is trust money and whether or not section 212 (Money involved in financial services or investments) applies or a determination under section 213 (Determinations about status of money) has been made in relation to the money.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (3) or (4) is a strict liability offence.

259 Unclaimed trust money

(1) If an amount of trust money held by a law practice becomes an unclaimed amount, the practice must pay the amount to the Territory, by paying it to the public trustee, not later than 1 month after the day the amount becomes an unclaimed amount.

(2) An amount of trust money held by a law practice becomes an ***unclaimed amount*** if—

(a) the amount has been held by the practice for a period of 6 years during which the practice has had no knowledge of the existence or address of the person on whose behalf the amount is held; or

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(b) the person on whose behalf the amount is held failed to accept payment of the amount when tendered.

(3) A person who claims to be entitled to an unclaimed amount that has been paid to the public trustee may apply to a court for an order declaring that the person is entitled to the amount.

(4) The public trustee must pay a person an amount that was paid to the public trustee under subsection (1) if—

(a) the public trustee is satisfied that the person is entitled to the amount; or

(b) a court has declared that the person is entitled to the amount.

260 Regulations—pt 3.1

A regulation may make provision for or in relation to—

(a) requiring legal practitioners to tell the licensing body about trust account details, including details about trust account balances; or

(b) providing exemptions, or the giving of exemptions, from all or any requirements of this part in relation to trust money that is regulated by a corresponding law; or

(c) the creation and exercise of liens over trust money.

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Part 3.2 Costs disclosure and review

Division 3.2.1 Preliminary—pt 3.2

261 Definitions—pt 3.2

In this part:

client means a person to or for whom legal services are provided, and includes a prospective client.

conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate, as mentioned in section 283, but does not include a costs agreement to the extent to which section 285 (1) (Contingency fees prohibited) applies.

costs agreement means an agreement about the payment of legal costs.

costs review means a review of legal costs under division 3.2.7.

disbursements includes outlays.

itemised bill means a bill that states in detail how the legal costs are made up in a way that would allow them to be reviewed under division 3.2.7.

litigious matter means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal, and includes a matter at any time after—

(a) proceedings have been started in a court or tribunal; or

(b) if proceedings have not been started in a court or tribunal—proceedings in a court or tribunal have become likely.

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lump sum bill means a bill that describes the legal services to which it relates and states the total amount of the legal costs.

scale of costs means the scale of costs prescribed by rules made under the *Court Procedures Act 2004*.

uplift fee means a premium payable on the legal costs (excluding disbursements) otherwise payable under a costs agreement on the successful outcome of the matter to which those costs relate, as mentioned in section 284 (Conditional costs agreements involving uplift fees).

262 Purposes—pt 3.2

The purposes of this part are as follows:

(a) to provide for law practices to make disclosures to clients about legal costs;

(b) to regulate the making of costs agreements in relation to legal services, including conditional costs agreements;

(c) to regulate the billing of costs for legal services;

(d) to provide a mechanism for the review of legal costs and the setting aside of certain costs agreements.

Division 3.2.2 Application—pt 3.2

263 Application of pt 3.2—first instructions rule

This part applies to a matter if the client first instructs the law practice in relation to the matter in the ACT.

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264 Pt 3.2 also applies by agreement or at client's election

(1) This part applies to a matter if—

(a) either—

(i) this part does not currently apply to the matter; or

(ii) it is not possible to decide the jurisdiction in which the client first instructs the law practice in relation to the matter; and

(b) either—

(i) the legal services are or will be provided completely or primarily in the ACT; or

(ii) the matter has a substantial connection with the ACT;

or both; and

(c) either—

(i) the client signs an agreement under subsection (2) (a) in relation to the matter; or

(ii) the client gives a notification under subsection (2) (b) in relation to the matter.

(2) For subsection (1) (c), the client may—

(a) sign a written 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.

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(3) A notification has no effect for subsection (2) (b) if it is given after the period of 28 days after the day 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 mentioned in subsection (2) (a) from coming into effect at any time.

265 Displacement of pt 3.2

(1) This section applies if this part applies to a matter because of section 263 (Application of pt 3.2—first instructions rule) or section 264 (Pt 3.2 also applies by agreement or at client's election).

(2) This part ceases to apply to the matter if—

(a) either—

(i) the legal services are or will be provided completely or primarily in another jurisdiction; or

(ii) the matter has a substantial connection with another jurisdiction;

or both; and

(b) either—

(i) the client signs under the corresponding law of the other jurisdiction a written agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

(ii) the client notifies under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

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(3) This section does not prevent the application of this part to the matter by means of a later agreement or notification under section 264.

266 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 client first provides instructions to the law practice in relation to the matter at an office of the law practice in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

267 When does a matter have a substantial connection with the ACT?

A regulation may prescribe the circumstances in which, or the rules to be used to decide whether, a matter has or does not have a substantial connection with the ACT for this part.

268 What happens when different laws apply to a matter?

(1) This section applies if this part applies to a matter for a period and a corresponding law applies for another period.

(2) If this part applied to a matter for a period and a corresponding law applies to the matter afterwards, this part continues to apply in relation to legal costs (if any) incurred while this part applied to the matter.

(3) If a corresponding law applied to a matter for a period and this part applies to the matter afterwards, this part does not apply in relation to legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in relation to the costs.

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(4) However—

(a) the client may sign a written agreement with the law practice that the cost review provisions of this part are to apply in relation to all legal costs incurred in relation to the matter, and division 3.2.7 (Costs review) accordingly applies in relation to the costs; or

(b) the client may sign a written agreement with the law practice that the cost review provisions of a corresponding law are to apply in relation to all legal costs incurred in relation to the matter, and division 3.2.7 accordingly does not apply in relation to the costs.

(5) This section has effect despite any other provisions of this part.

Division 3.2.3 Costs disclosure

269 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 worked out, including whether a scale of costs applies to any of the legal costs; and

(b) the client's right to—

(i) negotiate a costs agreement with the law practice; and

(ii) receive a bill from the law practice; and

(iii) request an itemised bill not later than 30 days after the day the client receives a lump sum bill; and

(iv) be notified under section 276 (Ongoing obligation to disclose etc) of any substantial change to the matters disclosed under this section; and

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(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 working out of the 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; and

(f) if the matter is a litigious matter, an estimate of—

(i) the range of costs that may be recovered if the client is successful in the litigation; and

(ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and

(g) the client's right to progress reports in accordance with section 278 (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 if there is a dispute in relation to legal costs:

(i) costs review under division 3.2.7;

(ii) the setting aside of a costs agreement under section 288 (Setting aside costs agreements); and

(j) any time limits that apply to the taking of any action mentioned in paragraph (i); and

(k) that ACT law applies to legal costs in relation to the matter; and

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(l) information about the client's right—

(i) to sign under a corresponding law a written 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 sign an agreement or give a notification as mentioned in par (l) will be under provisions of the law of the other jurisdiction that correspond to s 264 (Pt 3.2 also applies by agreement or at client's election).

(2) For 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 all of the client's legal costs; and

(b) if applicable, a statement that disbursements may be payable by the client even if the client enters a conditional costs agreement.

270 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 mentioned in section 269 (1) (a), (c), and (d) (Disclosure of costs to clients) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 269.

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(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 269, but must disclose to the other law practice the information necessary for the other law practice to comply with subsection (1).

Example

A barrister is retained by a law firm 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 the details to the client. However, the barrister is not required to make a disclosure directly to the client.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(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.

271 How and when must disclosure be made?

(1) Disclosure under section 269 (Disclosure of costs to clients) must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.

(2) Disclosure under section 270 (1) (Disclosure if another law practice is to be retained) must be made in writing before the other law practice is retained except in urgent circumstances.

(3) If the disclosure under section 270 (1) is to be made orally in urgent circumstances, it must be made before the law practice is retained and confirmed in writing as soon as practicable afterwards.

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272 Exceptions to requirement for disclosure

(1) Disclosure under section 269 (Disclosure of costs to clients) or section 270 (1) (Disclosure if another law practice is to be retained) 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 or, if a higher amount is prescribed by regulation, the higher amount;

(b) if—

(i) the client has received 1 or more disclosures under section 269 or section 270 (1) from the law practice in the previous 12 months; and

(ii) the client has agreed in writing to waive the right to disclosure; and

(iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not justified;

(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 foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning of the Corporations Act); or

(iii) a financial services licensee (within the meaning of the Corporations Act); or

(iv) a Minister of a jurisdiction or the Commonwealth acting in the Minister's official capacity, or a government department or public authority of a jurisdiction or the Commonwealth;

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(d) if the legal costs or the basis on which they will be worked out has been agreed following a tender process;

(e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

(f) in any circumstances prescribed by regulation.

Example for par (e)

a law practice acting in a matter on a pro bono basis

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Despite subsection (1) (a), if a law practice becomes aware that the total legal costs are likely to exceed $1 500 or, if a higher amount is prescribed by regulation, the higher amount, the law practice must disclose the matters in section 269 or section 270 (1) 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 in a matter is not justified as mentioned in subsection (1) (b) is made and kept with the files relating to the matter.

(4) The reaching of a decision mentioned in subsection (3) otherwise than on reasonable grounds can be unsatisfactory professional conduct or professional misconduct on the part of the principal.

(5) This section does not affect or take away from a client's right—

(a) to progress reports in accordance with section 278 or section 270 (1); or

(b) to obtain reasonable information from the law practice in relation to any of the matters mentioned in section 269 or section 270 (1); or

(c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

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273 Additional disclosure—settlement of litigious matters

(1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the 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 the 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.

274 Additional disclosure—uplift fees

If a costs agreement involves an uplift fee, the law practice must disclose to the client in writing, before entering the agreement, the practice's usual fees, the uplift fee (expressed as a percentage of the usual fees) and reasons why the uplift fee is justified.

275 Form of disclosure

(1) Written disclosures 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 cannot read, the practice must arrange for the information required to be given to a client under this division to be given orally to the client in addition to giving the written disclosure.

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276 Ongoing obligation to disclose etc

(1) A law practice must tell the client in writing of any substantial change to anything included in a disclosure under this division as soon as is reasonably practicable after the practice becomes aware of the change.

(2) The legal profession rules may require a law practice to make other disclosures to a client.

277 Effect of failure to disclose

(1) If a law practice does not disclose to a client anything required by this division to be disclosed, the client need not pay the legal costs unless they have been reviewed under division 3.2.7.

Note Under s 302 (Costs of costs review), the costs of a review in these circumstances are generally payable by the law practice.

(2) In addition, if the client has entered a costs agreement with the law practice, the client may apply under section 288 for the costs agreement to be set aside.

(3) A law practice that does not disclose to a client anything required by this division to be disclosed may not bring a proceeding for the recovery of legal costs unless the costs have been reviewed under division 3.2.7.

(4) Failure by a law practice to comply with this division can be unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner or Australian-registered foreign lawyer involved in the failure.

278 Progress reports

(1) A law practice must give a client, on reasonable request—

(a) a written report of the progress of the matter in which the law practice is retained; and

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(b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.

(2) A law practice may charge a client a reasonable amount for a report under subsection (1) (a) but must not charge a client for a report under subsection (1) (b).

(3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.

(4) Subsection (3) does not apply if the other law practice stops acting for the client in the matter when the law practice is retained.

Division 3.2.4 Legal costs generally

279 On what basis are legal costs recoverable?

Subject to division 3.2.2 (Application—pt 3.2), legal costs are recoverable—

(a) under a costs agreement made in accordance with division 3.2.5 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.

Note See s 300 (2) for the criteria that are to be applied on a costs review to decide whether legal costs are fair and reasonable.

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280 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 to act or stop acting for a client who does not provide reasonable security.

281 Interest on unpaid legal costs

(1) A law practice may charge interest on unpaid legal costs if the costs are unpaid for 30 days or longer after the day the practice gave 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 on unpaid legal costs under subsection (1) or (2) unless the bill for the costs states—

(a) that interest is payable on unpaid costs; and

(b) the rate of interest; and

(c) for interest payable in accordance with a costs agreement—that the interest is payable under the agreement.

(4) Interest charged under subsection (1) or (2) must not exceed—

(a) if a rate is prescribed by regulation—that rate; or

(b) if a rate is not prescribed by regulation—the rate prescribed by rules under the *Court Procedures Act 2004* for interest on judgments.

Division 3.2.5 Costs agreements

282 Making costs agreements

(1) A costs agreement may be made—

(a) between a client and a law practice retained by the client; or

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(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.

(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 s 283 (3) (c) (i)).

(4) The offer must clearly state—

(a) that it is an offer to enter a costs agreement; and

(b) that the client may accept it in writing or by other conduct; and

(c) the kind of conduct that will be acceptance.

Example for par (c)

continuing to instruct the law practice in the matter after receiving the offer

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) A costs agreement cannot provide that the legal costs to which it relates are not subject to costs review under division 3.2.7.

Note If it attempts to do so, the costs agreement will be void (see s 287 (1)).

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283 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 the costs relate.

Note 1 This is a ***conditional costs agreement*** (see s 261, def ***conditional costs agreement***).

Note 2 The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) and pt 14.2 (Costs in damages claims if no reasonable prospects of success) contain limitations on legal costs.

(2) A conditional costs agreement may relate to any matter, except a matter that involves a criminal proceeding or a proceeding under the *Family Law Act 1975* (Cwlth).

(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 told 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 business days during which the client may, by written notice, terminate the agreement.

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(4) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement made under section 282 (1) (c) (which are costs agreements between law practices).

(5) If a client terminates an agreement within the period mentioned in subsection (3) (e), the law practice may recover only the legal costs in relation to legal services performed for the client before the termination that were reasonably necessary to preserve the client's rights.

284 Conditional costs agreements involving uplift fees

(1) A conditional costs agreement may provide for the payment of a reasonable premium on the legal costs (excluding disbursements) otherwise payable under the agreement on the successful outcome of the matter to which those costs relate.

Note 1 Section 274 requires a law practice to make certain disclosures to a client before entering a costs agreement that provides for an uplift fee.

Note 2 The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) and pt 14.2 (Costs in damages claims if no reasonable prospects of success) contain limitations on legal costs.

(2) The premium must be a stated percentage of the legal costs (excluding disbursements) otherwise payable and must be separately identified in the agreement.

(3) If a conditional costs agreement relates to a litigious matter, the premium must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.

(4) A law practice must not enter a conditional costs agreement that provides for the payment of a premium on the legal costs otherwise payable unless the law practice has a reasonable belief that there is a significant risk that the matter will not have a successful outcome.

(5) A law practice must not enter into a costs agreement in contravention of this section.

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(6) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (5), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(7) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (5), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 307 (Liability of principals of law practices under pt 3.2)).

285 Contingency fees prohibited

(1) A law practice must not enter into a costs agreement under which the amount payable to the practice, or any part of that amount, is worked out by reference to—

(a) the value of any property or of any transaction involved in the matter to which the agreement relates; or

(b) the amount of any award or settlement or the value of any property that may be recovered in any proceeding to which the agreement relates.

(2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

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(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a ***law practice*** includes the principals of the law practice (see s 307 (Liability of principals of law practices under pt 3.2)).

286 Effect of costs agreement

(1) Subject to this division and division 3.2.7 (Costs review), a costs agreement may be enforced in the same way as any other contract.

(2) Mediation may be used to resolve a dispute over an amount claimed to be payable to a law practice under a costs agreement unless the law practice has started a proceeding for recovery of the disputed amount.

287 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 3.2.7 (Costs review), legal costs under a void costs agreement are recoverable as set out in section 279 (b) or (c) (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 practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.

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(4) A law practice that has entered into a costs agreement in contravention of section 284 (Conditional costs agreements involving uplift fees) is not entitled to recover the uplift fee or any part of it and must repay any amount received in relation to the uplift fee to the person from whom it was received.

(5) A law practice that has entered into a costs agreement in contravention of section 285 (Contingency fees prohibited) is not entitled to recover any amount in relation to the provision of legal services in the matter to which the costs agreement related and must repay any amount received in relation to the services to the person from whom it was received.

Note An amount that is required to be repaid under s (3), (4) or (5) may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

288 Setting aside costs agreements

(1) On application by a client who is a party to a costs agreement with a law practice, the Supreme Court may order that the agreement be set aside if satisfied that the agreement is not fair, just or reasonable.

(2) In deciding whether or not a costs agreement is fair, just or reasonable, the Supreme Court may have regard to any or all of the following matters:

(a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the 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 3.2.3 (Costs disclosure);

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(d) when the agreement was made.

(3) The Supreme Court may adjourn the hearing of an application under this section pending the completion of any investigation or the deciding of any charge in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.

(4) If the Supreme Court orders that a costs agreement be set aside, it may make an order in relation to the payment of legal costs the subject of the agreement.

(5) In making an order under subsection (4)—

(a) the Supreme Court must apply the applicable scale of costs (if any); or

(b) if there is no applicable scale of costs—the Supreme Court may decide the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account—

(i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and

(ii) whether or not it was reasonable to carry out the work; and

(iii) whether or not the work was carried out in a reasonable way.

(6) In making an order under subsection (4), the Supreme Court must 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.

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(7) For subsection (5) (b), the Supreme Court may have regard to any or all of the following matters:

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;

Note ***This Act*** is defined in the dictionary.

(b) any disclosures made by the law practice under division 3.2.3 (Costs disclosure), or the failure to make any disclosures required under that division;

(c) any relevant advertisement about—

(i) the law practice's costs; or

(ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;

(d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(e) the retainer and whether the work done was within the scope of the retainer;

(f) the complexity, novelty or difficulty of the matter;

(g) the quality of the work done;

(h) the place where, and circumstances in which, the work was done;

(i) the time within which the work was required to be done;

(j) any other relevant matter.

(8) The Supreme Court may decide whether or not a costs agreement exists.

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(9) The Supreme Court may order the payment of the costs of and incidental to a hearing under this section.

Division 3.2.6 Billing

289 Legal costs cannot be recovered unless bill has been given

(1) A law practice must not start a legal proceeding to recover legal costs from a person until at least 30 days after the day the practice has given a bill to the person in accordance with section 290 (Bills) and section 291 (Notification of client's rights).

(2) A court of competent jurisdiction may make an order authorising a law practice to start a legal proceeding against a person sooner if satisfied that—

(a) the practice has given a bill to the person in accordance with section 290 and section 291; and

(b) the person is about to leave the ACT.

(3) A court or tribunal before which any proceeding is brought in contravention of subsection (1) must stay the proceeding on the application of a party, or on its own initiative.

(4) This section applies whether or not the legal costs are the subject of a costs agreement.

290 Bills

(1) A bill may be in the form of a lump sum bill or 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.

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(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 attached to it or is signed by a legal practitioner director of the practice or an officer or employee of the practice who is an Australian legal practitioner.

(5) A bill is to be given to a person—

(a) by giving it personally to the person or to an agent of the person; or

(b) by sending it by prepaid post to the person or agent at—

(i) the usual or last-known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent; or

(c) by leaving it for the person or agent at—

(i) the usual or last-known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent;

with a person at the premises who is apparently at least 16 years old and apparently employed or living there.

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(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).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(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.

291 Notification of client's rights

A bill must include or be accompanied by a written statement setting out—

(a) the following avenues that are open to the client if there is a dispute in relation to legal costs:

(i) costs review under division 3.2.7;

(ii) the setting aside of a costs agreement under section 288 (Setting aside costs agreements); and

(b) any time limits that apply to the taking of any action mentioned in paragraph (a).

Note These matters will already have been disclosed under s 269 (1) (Disclosure of costs to clients).

292 Person may ask for itemised bill

(1) Not later than 30 days after the day a person receives a lump sum bill, the person may ask the law practice for an itemised bill.

(2) If a person makes a request under subsection (1), the law practice must not start any proceeding to recover the costs until at least 30 days after the day the person is given an itemised bill.

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(3) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.

(4) Section 290 (2) and (5) apply to the giving of an itemised bill under this section.

293 Interim bills

(1) A law practice may give a person an interim bill covering part only of the legal services the practice was retained to provide.

(2) Legal costs that are the subject of an interim bill may be reviewed under division 3.2.7, 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 paid.

Division 3.2.7 Costs review

294 Application by client for costs review

(1) A client may apply to the Supreme Court for a review of all or any part of legal costs.

(2) An application for a costs review may be made even if the legal costs have been completely or partly paid.

(3) If any legal costs have been paid without a bill, the client may nevertheless apply for a costs review and, for that purpose, the request for payment is taken to be a bill.

(4) An application under this section must be made not later than 60 days after the day the bill was given or the request was made or after the costs were paid (whichever is earlier or earliest).

(5) However, the Supreme Court must deal with an application made out of time, unless the court considers that the law practice has established that to deal with the application out of time would, in all the circumstances, cause unfair prejudice to the law practice.

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(6) In this section:

client includes the following:

(a) a person who has been given a bill by a law practice (other than a person who is acting only in the capacity of agent or a similar capacity, for example, a courier);

(b) a person who has paid legal costs;

(c) a person (other than a person who was given a bill) who is liable to pay legal costs;

(d) an executor, administrator or assignee of a person mentioned in paragraph (a), (b) or (c);

(e) a trustee of the estate of a person mentioned in paragraph (a), (b) or (c);

(f) a person interested in any property out of which a trustee, executor or administrator who is liable to pay legal costs has paid, or is entitled to pay, the costs.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

295 Application for costs review by law practice retaining another law practice

(1) A law practice that retains another law practice to act on behalf of a client may apply to the Supreme Court for a review of all or any part of the legal costs to which a bill given by the other law practice in accordance with division 3.2.6 (Billing) applies.

(2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs review and, for that purpose, the request for payment is taken to be a bill.

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(3) An application under this section must be made not later than 60 days after the day the bill was given or the request for payment was made, and may be made even if the legal costs have been completely or partly paid.

(4) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

296 Application for costs review by law practice giving bill

(1) A law practice that has given a bill in accordance with division 3.2.6 (Billing) may apply to the Supreme Court for a review of all 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 review and, for that purpose, the request for payment is taken to be a bill.

(3) An application must not be made unless at least 30 days have passed since the day the bill was given or the request for payment was made or since an application has been made under this division by someone else in relation to the legal costs.

297 Form of application for costs review

An application for a costs review must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

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298 Consequences of application for costs review

If an application for a costs review is made in accordance with this division—

(a) the costs review must take place without any money being paid into court on account of the legal costs the subject of the application; and

(b) the law practice must not start a proceeding to recover the legal costs until the costs review has been completed.

299 Procedure on costs review

If, after proper notice that a costs review will take place, a party to the review does not attend, the Supreme Court may proceed with the review in the absence of that party.

300 Criteria for costs review

(1) In conducting a review of legal costs, the Supreme Court must consider—

(a) whether or not it was reasonable to carry out the work to which the legal costs relate; and

(b) whether or not the work was carried out in a reasonable way; and

(c) the fairness and reasonableness of the amount of legal costs in relation to the work.

Note The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) contains limitations on legal costs.

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(2) In considering what is a fair and reasonable amount of legal costs, the Supreme Court may have regard to any or all of the following matters:

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;

Note ***This Act*** is defined in the dictionary.

(b) any disclosures made by the law practice under division 3.2.3 (Costs disclosure), or the failure to make any disclosures required under that division;

(c) any relevant advertisement about—

(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) any relevant costs agreement;

(e) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(f) the retainer and whether the work done was within the scope of the retainer;

(g) the complexity, novelty or difficulty of the matter;

(h) the quality of the work done;

(i) the place where, and circumstances in which, the legal services were provided;

(j) the time within which the work was required to be done;

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(k) any other relevant matter.

Example for par (k)

any applicable scale of costs

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

301 Law practice may be bound by lump sum bill

(1) This section applies if a law practice gives a bill in the form of a lump sum bill for legal services and later gives an itemised bill for the legal services.

(2) The Supreme Court may decide that the law practice is not entitled to costs exceeding the amount of the lump sum bill.

302 Costs of costs review

Unless the Supreme Court otherwise orders—

(a) the law practice to which the costs are payable or were paid must pay the costs of the costs review if—

(i) on the review the legal costs are reduced by 15% or more; or

(ii) the court is satisfied that the law practice failed to comply with division 3.2.3 (Costs disclosure); or

(b) if not, the other party must pay them.

303 Referral for disciplinary action

(1) If, on a costs review, the Supreme Court considers that the legal costs charged by a law practice are grossly excessive, the court must refer the matter to the disciplinary tribunal to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved.

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(2) If the Supreme Court considers that a costs review raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the court may refer the matter to the disciplinary tribunal to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

304 Legal costs subject to consumer dispute not reviewable

(1) Despite anything to the contrary in this part, legal costs that are or have been the subject of a consumer dispute under chapter 4 (Complaints and discipline) must not be the subject of a costs review under this division.

(2) This section is subject to section 409 (Referral of matters for cost review—complaint investigation).

Division 3.2.8 Miscellaneous—pt 3.2

305 Application of pt 3.2 to incorporated legal practices and multidisciplinary partnerships

A regulation may provide that prescribed provisions of this part do not apply to incorporated legal practices or multidisciplinary partnerships or apply to them with prescribed changes.

306 Imputed acts, omission or knowledge for pt 3.2

For this part—

(a) anything done or omitted by, to or in relation to—

(i) an Australian legal practitioner; or

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(ii) an Australian-registered foreign lawyer (except for section 284 (4) (Conditional costs agreements involving uplift fees) or for any provision of this part prescribed by regulation for 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 practice; and

(b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief about, any matter if—

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for section 284 (4) or for any provision of this part prescribed by regulation for this section);

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the practice.

307 Liability of principals of law practice under pt 3.2

(1) A provision of this part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

Note A reference to an Act (or provision) includes a reference to the statutory instruments made or in force under the Act (or provision), including any regulation (see Legislation Act, s 104).

(2) Accordingly, a reference in this part to a law practice includes a reference to the principals of the practice.

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Part 3.3 Professional indemnity insurance

Division 3.3.1 Preliminary—pt 3.3

308 Definitions—pt 3.3

In this part:

approved, for a policy of indemnity insurance—see section 312.

insurable barrister means a local legal practitioner who is a barrister, other than a practitioner who is exempted by the relevant council from the requirement to be insured under this Act.

insurable legal practitioner means an insurable barrister or insurable solicitor.

insurable solicitor means a solicitor who holds an unrestricted practising certificate, other than a solicitor—

(a) who has given a written undertaking to the relevant council that the solicitor will not practise during the period to which the practising certificate relates otherwise than in the course of the solicitor's employment by an entity (other than an incorporated legal practice) stated in the undertaking; or

(b) who is exempted by the relevant council from the requirement to be insured under this Act.

309 Purpose—pt 3.3

The purpose of this part is to provide for a scheme for professional indemnity insurance to protect clients of law practices from professional negligence.

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310 Exemptions from pt 3.3

The relevant council may exempt an Australian legal practitioner from the requirement to be insured under this Act on the grounds the council considers sufficient.

311 Professional indemnity insurance for insurable legal practitioners

(1) The licensing body must not grant or renew a practising certificate for an insurable legal practitioner unless satisfied that there is, or will be, in force in relation to the practitioner an approved indemnity insurance policy.

(2) For this section, the licensing body is entitled to accept any of the following as evidence that there is, or will be, an approved indemnity insurance policy in force in relation to an insurable legal practitioner:

(a) written advice from an insurer or insurance broker that an insurer has agreed to issue the policy;

(b) evidence that that premium for the policy has been received and accepted by the insurer for the issue of the policy;

(c) evidence prescribed by regulation for this section.

312 Approval of indemnity insurance policy

(1) For this Act, a policy of indemnity insurance is ***approved*** if—

(a) the policy is not to expire before the expiration of the practitioner's practising certificate; and

(b) the policy is approved—

(i) in writing by the relevant council; or

(ii) under a regulation or the legal profession rules; and

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(c) the conditions (if any) of the approval have been complied with.

(2) If an indemnity fund has been approved under section 315 (Approval of indemnity fund) and the rules or conditions applying to the contributors to the fund require a contributor to hold a policy of professional indemnity insurance, the policy is taken to be ***approved*** for this Act.

313 Agreements for insurance for solicitors

(1) The law society may negotiate with insurers or anyone else for the provision of indemnity insurance to a person who is, or has been, an insurable solicitor in relation to civil liability that may arise in relation to—

(a) the practice or any former practice of the solicitor; or

(b) the administration of any trust or deceased estate of which the solicitor or former solicitor is, or was, a trustee or executor.

(2) The law society may make—

(a) agreements for the provision of insurance mentioned in subsection (1); and

(b) arrangements for establishing and keeping an account into which any amount received by the law society as a premium for the insurance is to be paid.

(3) The law society may make an agreement for the provision of indemnity insurance for insurable solicitors only if the agreement provides for professional indemnity insurance to be provided to each person who—

(a) would, subject to compliance with any requirement about indemnity insurance, be entitled to have an unrestricted practising certificate granted to the person; and

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(b) applies under the agreement to be granted indemnity insurance that is—

(i) available under the agreement; and

(ii) in relation to a period for which insurance is available under the agreement.

(4) An amount paid into an account kept under subsection (2) may, before its application for the provision of insurance under this section, be invested by the law society in any way trust funds may be invested under the *Trustee Act 1925*.

(5) In this section:

agreement includes arrangement.

314 Giving information to council for insurance

(1) The relevant council for a person who is, or has been, an insurable barrister or insurable solicitor may ask the person, in writing, to give the relevant council stated information, within a stated reasonable time, about—

(a) the number of people employed, or formerly employed, in the person's practice, or any former practice; or

(b) the duties performed by anyone mentioned in paragraph (a); or

(c) the gross income received by the person from fees in a stated period; or

(d) any claims made against the person in relation to any alleged civil liability arising from—

(i) the practice or any former practice of the person; or

(ii) the administration of any trust or deceased estate of which the solicitor or former solicitor is, or was, a trustee or executor; or

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(e) anything else prescribed by regulation or the legal profession rules.

(2) A person commits an offence if the person fails to comply with a request under subsection (1).

Maximum penalty 100 penalty units.

(3) Subsection (3) does not apply if the person has a reasonable excuse.

315 Approval of indemnity fund

(1) The relevant council for an Australian legal practitioner may, in writing, approve an indemnity fund to be a fund to which the practitioner may make contributions.

(2) Without limiting subsection (1), an approval may be given in relation to a fund established under a corresponding law.

(3) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(4) In this section:

indemnity fund means a fund established to assist in meeting claims against Australian legal practitioners in relation to the conduct of the practitioner's practice other than claims involving a dishonest act or omission.

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Part 3.4 Fidelity cover

Division 3.4.1 Preliminary—pt 3.4

316 Definitions—pt 3.4

In this part:

capping and sufficiency provisions means:

(a) for the ACT—section 348 (Caps on payments from fidelity fund) and section 349 (Sufficiency of fidelity fund); or

(b) for another jurisdiction—the provisions of the corresponding law of that jurisdiction that correspond to those sections.

claim means a claim under this part.

claimant means a person who makes a claim under this part.

concerted interstate default means a default of a law practice that arises from an act or omission—

(a) that was committed jointly by 2 or more associates of the practice; or

(b) parts of which were committed by different associates of the practice or different combinations of associates of the practice;

if the ACT is the relevant jurisdiction of at least 1 of the associates and another jurisdiction is the relevant jurisdiction of at least 1 of the associates.

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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 or an associate of the practice in the course of legal practice by the practice or an associate, if the failure arises from an act or omission of an associate that involves dishonesty; or

(b) a fraudulent dealing with trust property that was received by the practice or an associate of the practice in the course of legal practice by the practice or an associate, if the fraudulent dealing is constituted by or arises from an act or omission of an associate that involves dishonesty.

dishonesty includes fraud.

pecuniary loss, in relation to a default, means—

(a) the amount of trust money, or the value of trust property, that is not paid or delivered; or

(b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, because of a fraudulent dealing.

relevant jurisdiction—see section 327.

317 Time of default—pt 3.4

(1) This section applies for the purpose of deciding which jurisdiction's law applies in relation to a default.

(2) The default is taken to have happened when the act or omission giving rise to or constituting the default happened.

(3) An omission is taken to have happened on the day on or by which the act not performed ought reasonably to have been performed or on another day decided in accordance with the regulations.

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318 Purpose—pt 3.4

The purpose of this part is to establish and maintain a fund to provide a source of compensation for defaults by law practices arising from acts or omissions of associates.

319 Application—pt 3.4

This part does not apply to a default of the law practice of a barrister.

Division 3.4.2 Fidelity fund

320 Establishment etc of fidelity fund

(1) The Solicitors' Fidelity Fund of the Australian Capital Territory (the ***fidelity fund***) is established.

Note The Legislation Act, dict, pt 1, defines ***establish*** as including continue in existence.

(2) The fidelity fund consists of—

(a) contributions and levies paid under this part; and

(b) income from the investment of money of the fund; and

(c) amounts paid into the fund from a statutory interest account; and

(d) amounts recovered by the law society under this part; and

(e) any other amounts that may lawfully be paid into the fund.

(3) The law society must pay all moneys of the fidelity fund into a separate account for the fund kept at an ADI.

(4) The assets of the fidelity fund, and the accounts in relation to it, must be kept separate from other assets and accounts of the law society.

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(5) The costs of exercising the functions of the law society under this part and the costs of enforcing a right given to the law society or the law society council under this part must be paid out of the fidelity fund.

(6) In this section:

statutory interest account—see section 253 (Statutory deposits).

321 Investment of fidelity fund

The money of the fidelity fund must, as far as practicable, be invested by the law society in any way trust funds may be invested under the *Trustee Act 1925*.

322 Audit of fidelity fund

(1) The law society must have the accounts of the fidelity fund audited annually by a registered company auditor within the meaning of the Corporations Act.

(2) The law society must give a copy of the report of each audit to the Attorney-General.

323 Contributions to fidelity fund

(1) A solicitor must, not later than each 30 June, pay to the law society the contribution to the fidelity fund decided by the law society council for the period of 12 months beginning on the following 1 July.

(2) However, if a solicitor applies for a practising certificate for a period of less than 12 months, the solicitor must, in relation to the period, pay to the law society a contribution that bears to the contribution decided under subsection (1) the same proportion as the period bears to a year.

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324 Levy to supplement fidelity fund

(1) If, at any time, the law society council considers that the fidelity fund is not sufficient to satisfy the law society's liabilities in relation to the fund, the council may impose a levy of the amount that it considers appropriate for payment into the fund.

(2) The levy is payable to the law society, on the day fixed by the law society council, by each local legal practitioner who holds a current unrestricted practising certificate on that day.

(3) However, the law society council may extend the time for payment of a levy by a local legal practitioner.

325 Insurance of fidelity fund

(1) The law society may arrange with an insurer for the insurance of the fidelity fund.

(2) Without limiting subsection (1), the law society may arrange for the insurance of the fidelity fund against particular claims.

(3) The proceeds paid under a policy of insurance against particular claims are to be paid into the fidelity fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.

(4) No liability (including liability in defamation) is incurred by a protected person in relation to anything done or omitted to be done honestly for the purpose of arranging for the insurance of the fidelity fund.

(5) In this section:

protected person means—

(a) the law society; or

(b) a member of the law society council; or

(c) any member of the staff of the law society; or

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(d) anyone acting at the direction of the law society or the law society council.

326 Borrowing for fidelity fund

The law society cannot borrow money for the purposes of the fidelity fund.

Division 3.4.3 Defaults to which pt 3.4 applies

327 Meaning of *relevant jurisdiction*—pt 3.4

(1) The ***relevant jurisdiction*** of an associate of a law practice whose act or omission (whether alone or with 1 or more other associates of the practice) gives rise to a default of the practice is decided under this section.

Note The concept of an associate's ***relevant jurisdiction*** is used to decide the jurisdiction whose fidelity fund is liable for a default of a law practice arising from an act or omission committed by the associate. The relevant jurisdiction for an associate is in some cases the associate's home jurisdiction.

(2) For a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the ***relevant jurisdiction*** of the associate is—

(a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a cosignatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was kept; or

(b) in any other case—the associate's home jurisdiction.

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(3) For a default involving trust money received outside Australia and paid into an Australian trust account, the ***relevant jurisdiction*** of the associate is—

(a) if the associate (whether alone or with a cosignatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was kept; or

(b) in any other case—the associate's home jurisdiction.

(4) For a default involving trust property received in Australia, or received outside Australia and brought to Australia, the ***relevant jurisdiction*** of the associate is the associate's home jurisdiction.

Note Section 353 (Defaults involving interstate elements if committed by 1 associate only) provides that the law society council may treat the default as consisting of 2 or more defaults for the purpose of deciding the liability of the fidelity fund.

328 Defaults to which pt 3.4 applies

(1) This part applies to a default of a law practice arising from an act or omission of 1 or more associates of the practice, if the ACT is the relevant jurisdiction of the only associate or 1 or more of associates involved.

(2) It is immaterial where the default happens.

(3) It is immaterial that the act or omission giving rise to a default is not an offence against a territory law or the law of another jurisdiction or the Commonwealth or that a proceeding has not been started or finished in relation to an offence of that kind.

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329 Defaults relating to financial services or investments

(1) This part does not apply to a default of a law practice to the extent that the default happens in relation to money or property that is entrusted to or held by the practice for or in relation to—

(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 the 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 happens in relation to money or property that is entrusted to or held by the practice for or in relation to—

(a) a managed investment scheme undertaken by the practice; or

(b) mortgage financing 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 happens 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 an agent, unless—

(a) the money or property was entrusted to or held by the practice—

(i) in the ordinary course of legal practice; and

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(ii) primarily in relation to 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—see the Corporations Act, section 761A.

authorised representative—see the Corporations Act, section 761A.

financial service—see the Corporations Act, section 761A.

financial services business—see the Corporations Act, section 761A.

Division 3.4.4 Claims about defaults

330 Claims about defaults

(1) A person who suffers pecuniary loss because of a default to which this part applies may make a claim against the fidelity fund to the law society about the default.

Note If a form is approved under s 331 for this provision, the form must be used.

(2) The law society council 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;

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(b) to verify the claim, or any further information, by statutory declaration.

331 Approved form for claims

(1) The law society council may approve forms for claims against the fidelity fund.

Note For other provisions about forms, see the Legislation Act, s 255.

(2) If the law society council approves a form for claims against the fidelity fund, the form must be used.

(3) A form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

332 Time limit for making claims against fidelity fund

(1) Subject to section 334 (Time limit for making claims against fidelity fund following advertisement), a claim must not be made against the fidelity fund in relation to a default unless the prospective claimant tells the law society in writing of the default—

(a) not later than 6 months after the day the prospective claimant becomes aware of the default; or

(b) within a further period allowed by the law society council; or

(c) if the Supreme Court allows further time after the law society council refuses to allow a further period—within a period allowed by the Supreme Court.

(2) The Supreme Court or law society council may allow a further period mentioned in subsection (1) if satisfied that—

(a) it would be reasonable to allow the further period after taking into account all ascertained and contingent liabilities of the fidelity fund; and

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(b) it would be appropriate to allow the further period in the particular case having regard to matters the Supreme Court or law society council considers relevant.

333 Advertisements about defaults by law practices

(1) If the law society council considers that there has been, or may have been, a default by a law practice, it may publish either or both of the following:

(a) a notice that seeks information about the default;

(b) a notice that invites claims about the default and fixes a final date after which claims relating to the default cannot be made.

(2) The final date fixed by the 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 the first or only publication of the notice.

(3) The notice must be published—

(a) in a newspaper circulating generally throughout Australia; and

(b) in a newspaper circulating generally in each jurisdiction where the law practice—

(i) has an office; or

(ii) at any relevant time had an office;

if known to the law society council; and

(c) on the internet site (if any) of the law society.

(4) The law society council may provide information to anyone making inquiries in response to the notice.

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(5) Apart from extending the period during which claims may be made under this part (if relevant), publication of the notice does not give any entitlements in relation to any claim or the default to which it relates or provide any grounds affecting the deciding of any claim.

(6) Neither the publication honestly of a notice under this section, nor the provision of information honestly under this section, subjects a protected person to any liability (including liability in defamation).

(7) In this section:

protected person means—

(a) the law society; or

(b) a member of the law society council; or

(c) the proprietor, editor or publisher of the newspaper; or

(d) an internet service provider or internet content host; or

(e) a member of the staff of any entity mentioned in this definition; or

(f) a person acting at the direction of any entity mentioned in this definition.

334 Time limit for making claims against fidelity fund following advertisement

(1) This section applies if the law society council publishes a notice under section 333 (Advertisements about defaults by law practices) 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 law society council; or

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(c) if the Supreme Court allows further time after the law society council refuses to allow a further period—within a period allowed by the Supreme Court;

even though it would have been barred under section 332 (Time limit for making claims against fidelity fund) had the notice not been published.

(3) The Supreme Court or law society council may allow a further period mentioned in subsection (2) if satisfied that—

(a) it would be reasonable to allow the further period after taking into account all ascertained and contingent liabilities of the fidelity fund; and

(b) it would be appropriate to allow the further period in the particular case having regard to matters the Supreme Court or law society council considers relevant.

335 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 act or omission from which the default arose happened.

(2) A claim that has been made is not affected by a later change in the status of the practice or associate.

(3) For this section, a change in status includes—

(a) for a law practice that is or was a partnership—a change in its membership or staffing or its dissolution; and

(b) for a law practice that is or was an incorporated legal practice—a change in its directorship or staffing or its winding up or dissolution); and

(c) for an associate of a law practice who is or was an Australian legal practitioner—the fact that the associate has ceased to practise or to hold an Australian practising certificate; and

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(d) for an associate of a law practice—the associate's death.

336 Investigation of claims

The law society council may investigate a claim made to it, including the default to which it relates, in any way it considers appropriate.

337 Advance payments for claims

(1) The law society council may, at its absolute discretion, make payments to a claimant in advance of deciding a claim if satisfied that—

(a) the claim is likely to be allowed; and

(b) payment is justified to alleviate hardship.

(2) Any payments made in advance are to be taken into account when the claim is decided.

(3) Payments under this section are to be made from the fidelity fund.

(4) If the claim is disallowed, the amounts paid under this section are recoverable by the law society as a debt owing to the fidelity fund.

(5) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the law society as a debt owing to the fidelity fund.

Division 3.4.5 Deciding claims

338 Deciding claims generally

(1) The law society council may decide a claim by completely or partly allowing or disallowing it.

(2) The law society council must decide a claim by the end of 12 months after the day the claim is made.

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(3) The law society council may disallow a claim to the extent that the claim does not relate to a default for which the fidelity fund is liable.

(4) The law society council may completely 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 the 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, in relation to the investigation of the claim, unreasonably refused to disclose information or documents to, or cooperate with—

(i) the law society council; or

(ii) any other authority (including, for example, an investigative or prosecuting authority).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) Subsections (2) and (3) do not limit the law society council's power to disallow a claim on any other ground.

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(6) Without limiting subsection (2) or (3), the law society council may reduce the amount otherwise payable on a claim to the extent the council considers appropriate if satisfied—

(a) that the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or

(c) that the claimant has unreasonably hindered the investigation of the claim.

(7) The law society council must, in allowing a claim, decide the amount payable.

339 Maximum amount allowable for claim

(1) The amount payable in relation to a default must not exceed the pecuniary loss resulting from the default.

(2) This section does not apply to costs payable under section 340 (Costs in relation to claims) or to interest payable under section 341 (Interest in relation to claims).

340 Costs in relation to claims

(1) If the law society council completely or partly allows a claim, the council must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the council considers that special circumstances exist justifying a reduction in the amount of costs or justifying a decision that no amount should be paid for costs.

(2) If the law society council completely disallows a claim, the council may order payment of all or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, if the council considers it is appropriate to make the order.

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(3) The costs are payable from the fidelity fund.

341 Interest in relation to claims

(1) In deciding the amount of pecuniary loss resulting from a default, the law society council must add interest on the amount payable (excluding interest), unless the council considers that special circumstances exist justifying a reduction in the amount of interest or justifying a decision that no amount of interest should be paid.

(2) The interest must be worked out from the day when the claim was made to the day the law society council tells the claimant that the claim has been allowed.

(3) The interest must be worked out—

(a) at the rate prescribed by regulation; or

(b) if no rate is prescribed—at the rate of 5%.

(4) The interest is payable from the fidelity fund.

342 Reduction of claim because of other benefits

(1) A person is not entitled to recover from the fidelity fund any amount equal to amounts or to the value of other benefits—

(a) that have already been paid to or received by the person; or

(b) that have already been decided and are payable to or receivable by the person; or

(c) that (in the opinion of the law society council) are likely to be paid to or received by the person; or

(d) that (in the opinion of the law society council) might, but for the person's neglect or failure, have been paid or payable to or received or receivable by the person;

from other sources in relation to the pecuniary loss to which a claim relates.

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(2) The law society council may, at its absolute discretion, pay to a person all or part of an amount mentioned in subsection (1) (c) if satisfied that payment is justified to alleviate hardship.

(3) Subsection (2) does not affect section 344 (Repayment of certain amounts paid from fidelity fund).

343 Subrogation on payment of claim

(1) On payment of a claim from the fidelity fund, the law society council is subrogated to the rights and remedies of the claimant against anyone in relation to the default to which the claim relates.

(2) Without limiting subsection (1), that subsection extends to a right or remedy against—

(a) the associate in relation to whom the claim is made; or

(b) the person authorised to administer the estate of the associate in relation to whom the claim is made and who is dead or an insolvent under administration.

(3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in relation to the default, the claim would not be disallowable on any of the grounds set out in section 338 (3) (Deciding claims generally).

(4) The law society council may exercise its rights and remedies under this section in its own name or in the name of the claimant.

(5) If the law society council brings a proceeding under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceeding.

(6) The law society council may exercise its rights and remedies under this section even though any limitation periods under this part have ended.

(7) The law society council must pay into the fidelity fund any amount recovered in exercising its rights and remedies under this section.

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344 Repayment of certain amounts paid from fidelity fund

(1) If—

(a) a claimant receives a payment from the fidelity fund in relation to 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 owing by the claimant to the fund.

(2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the fidelity fund in relation to the claim.

345 Notification of delay in making decision on claim

(1) If the law society council considers that a claim is not likely to be decided within 12 months after the day the claim was made, the council must tell the claimant in writing that the claim is not likely to be decided within that period.

(2) The notification must contain a brief statement of reasons for the delay.

346 Evidence in court proceedings under s 343 and certain proceedings for review etc

(1) This section applies to the following proceedings:

(a) a proceeding brought in a court under section 343 (Subrogation on payment of claim);

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(b) a proceeding for review of any of the following:

(i) a decision under section 338 (Deciding claims generally) completely or partly disallowing a claim;

(ii) a decision under section 338 (6) reducing the amount payable on a claim;

(iii) failing to have made a decision on a claim under division 3.4.4 (Claims about defaults) by the end of 12 months after the day the claim is made.

(2) Evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or anyone else in relation to an act or omission giving rise to a claim is admissible to prove the act or omission even though the practitioner or other person is not a defendant in, or a party to, the proceeding.

(3) Any defence that would have been available to the Australian legal practitioner or other person is available to the law society council.

Division 3.4.6 Payments from fidelity fund for defaults

347 Payments for defaults

(1) The fidelity fund must be applied by the law society council for the purpose of compensating claimants in relation to claims allowed under this part in relation to defaults to which this part applies.

(2) An amount payable from the fidelity fund in relation to a claim is payable to the claimant or to someone else at the claimant's direction.

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348 Caps on payments from fidelity fund

(1) A regulation may fix either or both of the following:

(a) the maximum amounts, or the method of working out maximum amounts, that may be paid from the fidelity fund in relation to claims;

(b) the maximum total amount, or the method of working out the maximum total amount, that may be paid from the fidelity fund in relation to all claims made in relation to law practices.

(2) Amounts must not be paid from the fidelity fund that exceed the amounts fixed, or worked out by a method fixed, under subsection (1).

(3) Payments from the fidelity 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 law society council may authorise payment of a larger amount if satisfied that it would be reasonable to authorise payment of the amount after taking into account the position of the fidelity fund and the circumstances of the particular case.

(5) A proceeding cannot be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the law society council to consider payment of a larger amount.

349 Sufficiency of fidelity fund

(1) If the law society council is of the opinion that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the council may do any or all of the following:

(a) postpone all payments relating to all or any class of claims out of the fund;

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(b) impose a levy under section 324 (Levy to supplement fidelity fund);

(c) make partial payments of the amounts of 1 or more allowed claims out of the fund with payment of the balance being a charge on the fund;

(d) make partial payments of the amounts of 2 or more allowed claims out of the fund on a proportionate basis, with payment of the balance ceasing to be a liability of the fund.

(2) In deciding whether to do any or all of the things mentioned in subsection (1), the law society council—

(a) must have regard to hardship, if relevant information is known to the council; and

(b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.

(3) If the law society council declares that a decision is made under subsection (1) (d)—

(a) the balance stated in the declaration stops being a liability of the fidelity fund; and

(b) the council may (but need not) at any time revoke the declaration in relation to either all or a stated part of the balance, and the balance or that part of the balance again becomes a liability of the fund.

(4) A decision of the law society council made under this section is final and is not subject to appeal or review.

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Division 3.4.7 Claims by law practices or associates

350 Claims by law practices or associates about defaults

(1) This section applies to a default of a law practice arising from an act or omission of an associate of the practice.

(2) A claim may be made under section 330 (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 330 by the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

351 Claims by law practices or associates about notional defaults

(1) This section applies if a default of a law practice arising from an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by 1 or more other associates.

(2) For this section, the default, to the extent that it was avoided, remedied or reduced, is a ***notional default***.

(3) This part applies, with necessary changes, to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

Note A regulation may fix a maximum amount that may be paid in relation to a claim (see s 348).

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Division 3.4.8 Defaults involving interstate elements

352 Concerted interstate defaults

(1) The law society council may treat a concerted interstate default as if the default consisted of 2 or more separate defaults—

(a) 1 of which is a default to which this part applies, if the ACT is the relevant jurisdiction of 1 or more of the associates involved; and

(b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions of 1 or more of the associates involved.

(2) The law society council may treat a claim about a concerted interstate default as if the claim consisted of—

(a) 1 or more claims made under this part; and

(b) 1 or more claims made under a corresponding law or laws.

(3) A claim about a concerted interstate default must be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—

(a) in equal shares in relation to the default, irrespective of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the law society council and the corresponding authority or authorities involved.

(4) Subsection (3) does not affect the application of the capping and sufficiency requirements of the ACT in relation to the amount payable from the fidelity fund after the claim has been assessed.

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353 Defaults involving interstate elements if committed by 1 associate only

(1) This section applies to a default of a law practice that arises from an act or omission that was committed by only 1 associate of the practice, if the default involves more than 1 of the cases mentioned in section 327 (2) to (4) (Meaning of *relevant jurisdiction* for pt 3.4).

(2) The law society council may treat the default as if the default consisted of 2 or more separate defaults—

(a) 1 of which is a default to which this part applies, if the ACT is the relevant jurisdiction; and

(b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions.

(3) The law society council may treat a claim about the default as if the claim consisted of—

(a) 1 or more claims made under this part; and

(b) 1 or more claims made under a corresponding law or laws.

(4) A claim about a default to which this section applies must be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—

(a) in equal shares in relation to the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the law society council and the corresponding authority or authorities involved.

(5) Subsection (4) does not affect the application of the capping and sufficiency requirements of the ACT in relation to the amount payable from the fidelity fund after the claim has been assessed.

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Division 3.4.9 Inter-jurisdictional provisions—pt 3.4

354 Protocols—pt 3.4

(1) The law society council may enter into arrangements (the ***protocols***) with corresponding authorities in relation to matters to which this part relates.

(2) Without limiting subsection (1), a regulation may authorise the making of a protocol that provides that the law society council is taken to have—

(a) requested a corresponding authority to act as agent of the council in stated cases; or

(b) agreed to act as agent of a corresponding authority in stated cases.

(3) A protocol is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

355 Forwarding of claims

(1) If a claim is made to the law society council about a default that appears to be a default to which a corresponding law applies, the council must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.

(2) If a claim is made to a corresponding authority about a default that appears to be a default to which this part applies and the claim or a copy of it is forwarded under a corresponding law to the law society council by the corresponding authority, the claim is taken—

(a) to have been made under this part; and

(b) to have been made under this part when the claim was received by the corresponding authority.

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356 Investigation of defaults to which pt 3.4 applies

(1) This section applies if a default appears to be a default to which this part applies and to have—

(a) happened solely in another jurisdiction; or

(b) happened in more than 1 jurisdiction; or

(c) happened in circumstances in which it cannot be decided precisely in which jurisdiction the default happened.

(2) The law society council may request a corresponding authority or corresponding authorities to act as agent or agents for the council for the purpose of processing or investigating a claim about the default or aspects of the claim.

357 Investigation of defaults to which corresponding law applies

(1) This section applies if a default appears to be a default to which a corresponding law applies and to have—

(a) happened solely in the ACT; or

(b) happened in more than 1 jurisdiction (including the ACT); or

(c) happened in circumstances in which it cannot be decided precisely in which jurisdiction the default happened.

(2) The law society council 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 law society council agrees to act as agent of a corresponding authority under subsection (2), the council may exercise any of its functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this part.

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358 Investigation of concerted interstate defaults and other defaults involving interstate elements

(1) This section applies if—

(a) a concerted interstate default appears to have happened; or

(b) a default to which section 353 (Defaults involving interstate elements if committed by 1 associate only) appears to have happened.

(2) The law society council may request a corresponding authority or corresponding authorities to act as agent or agents for the council for the purpose of processing or investigating a claim about the default or aspects of the claim.

(3) The law society council 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 law society council agrees to act as agent of a corresponding authority under subsection (3), the council may exercise any of its functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made entirely under this part.

359 Recommendations by law society council to corresponding authorities

If the law society council is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the council may make recommendations about the decision the corresponding authority might make about the claim.

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360 Recommendations to law society council by corresponding authorities etc

(1) If a corresponding authority makes recommendations about the decision the law society council might make about a claim in relation to which the corresponding authority was acting as agent of the council, the council may—

(a) make its decision about the claim in accordance 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 law society council, make a decision about the claim under division 3.4.5 (Deciding claims).

361 Request to another jurisdiction to investigate aspects of claim

(1) The law society council may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the council 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) an entity authorised by the corresponding authority to conduct the investigation;

may be used and taken into consideration by the law society council in the course of dealing with the claim under this part.

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362 Request from another jurisdiction to investigate aspects of claim

(1) This section applies in relation to a request received by the law society council from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.

(2) The law society council may conduct the investigation.

(3) The provisions of this part relating to the investigation of a claim apply, with necessary changes, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.

(4) The law society council must provide a report on the result of the investigation to the corresponding authority.

363 Cooperation with other authorities for pt 3.4

(1) In dealing with a claim under this part involving a law practice or an Australian legal practitioner, the law society council may consult and cooperate with another entity that has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.

(2) For subsection (1), the law society council and the other entity may exchange information about the claim.

Division 3.4.10 Miscellaneous—pt 3.4

364 Interstate legal practitioner becoming authorised to withdraw from local trust account

(1) This section applies to an interstate legal practitioner who (whether alone or with a cosignatory) becomes authorised to withdraw money from a local trust account.

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(2) A regulation may do either or both of the following:

(a) require the practitioner to tell the law society council of the authorisation in accordance with the regulation;

(b) require the practitioner to make contributions to the fidelity fund in accordance with the regulation.

(3) Without limiting subsection (2), a regulation may decide or provide for the deciding of any or all of the following:

(a) how the notification must be made and the information or material that must be included in or to accompany the notification;

(b) the amount of the contributions, their frequency and how they must be made.

(4) The interstate legal practitioner must comply with the applicable requirements of a regulation under this section.

365 Application of pt 3.4 to incorporated legal practices

(1) A regulation may provide that a provision of this part, or any other provision of this Act relating to the fidelity fund, does not apply to incorporated legal practices or applies to them with prescribed changes.

Note ***This Act*** is defined in the dictionary.

(2) For the application of a provision of this part, or any other provision of this Act relating to the fidelity fund, to an incorporated legal practice, a reference in the provision to a default of a law practice extends to a default of an incorporated legal practice, but only if it happens in relation to the provision of legal services.

(3) This section does not affect 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 part or any other provision of this Act relating to the fidelity fund.

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(4) An incorporated legal practice is required to make payments to or on account of the fidelity fund under this Act as if it were an Australian lawyer applying for or holding a local practising certificate.

(5) The incorporated legal practice must not engage in legal practice in the ACT if any payment is not made by the due date and while the practice remains in default of subsection (4).

(6) The law society council may suspend the local practising certificate of a legal practitioner director of the practice if any payment is not made by the due date.

(7) The amounts payable to the fidelity fund by an incorporated legal practice may be decided by reference to the total number of Australian legal practitioners employed by the practice and other relevant matters.

366 Application of pt 3.4 to multidisciplinary partnerships

(1) A regulation may provide that a provision of this part, or any other provision of this Act relating to the fidelity fund, does not apply to multidisciplinary partnerships or applies to them with prescribed changes.

Note ***This Act*** is defined in the dictionary.

(2) For the application of a provision of this part, or any other provision of this Act relating to the fidelity fund, to a multidisciplinary partnership, a reference in the provision to a default of a law practice extends to a default of a multidisciplinary partnership or a partner or employee of a multidisciplinary partnership, whether or not anyone involved is an Australian legal practitioner, but only if it happens in relation to the provision of legal services.

(3) This section does not affect any obligation of an Australian legal practitioner who is a partner or employee of a multidisciplinary partnership to comply with the provisions of this part or any other provision of this Act relating to the fidelity fund.

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(4) The amounts payable to the fidelity fund by the legal practitioner partners of a multidisciplinary partnership may be decided by reference to the total number of Australian legal practitioners employed by the partnership and other relevant matters.

367 Application of pt 3.4 to Australian lawyers whose practising certificates have lapsed

(1) This section applies if an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed, but does not apply if—

(a) the certificate has been suspended or cancelled under this Act or a corresponding law; or

(b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted.

(2) For the other provisions of this part, the practising certificate is taken not to have lapsed, and accordingly the lawyer is taken to continue to be an Australian legal practitioner.

(3) Subsection (2) ceases to apply to the lawyer when whichever of the following happens first:

(a) the period of 6 months after the day the practising certificate actually lapsed ends;

(b) the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.

368 Availability of law society property for claims

The fidelity fund is the only property of the law society available for payment in relation to a successful claim.

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Part 3.5 Mortgage practices and managed investment schemes

Division 3.5.1 Preliminary—pt 3.5

369 Definitions—pt 3.5

In this part:

approved policy of fidelity insurance—see section 373 (2) (Solicitor to have fidelity cover for regulated mortgages).

ASIC exemption means an exemption from the Corporations Act given by the Australian Securities and Investments Commission under that Act.

associate, of a solicitor, means—

(a) a partner of the solicitor, whether or not the partner is a solicitor; or

(b) an employee or agent of the solicitor; or

(c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the solicitor or a person mentioned in paragraph (a) or (b) has a beneficial interest; or

(d) a co-trustee with the solicitor; or

(e) a person who is in a prescribed relationship to the solicitor or to a person mentioned in paragraph (a), (b), (c) or (d).

borrower means a person who borrows from a lender or contributor money that is secured by a mortgage.

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client, of a solicitor, means a person who—

(a) receives the solicitor's advice about investment in a regulated mortgage or managed investment scheme; or

(b) gives the solicitor instructions to use money for a regulated mortgage or managed investment scheme.

contributor means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a solicitor.

contributory mortgage means a mortgage to secure money lent by 2 or more contributors as tenants in common or joint tenants, whether or not the mortgagee is someone who holds the mortgage in trust for the contributors.

financial institution means—

(a) an ADI; or

(b) a friendly society under the *Life Insurance Act 1995* (Cwlth); or

(c) a trustee company under the *Trustee Companies Act 1947*; or

(d) a property trust or other corporation established by or in relation to a church that may invest money in accordance with an Act; or

(e) an entity prescribed by regulation for this definition.

lender means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

member, of a managed investment scheme—see the Corporations Act, section 9 (Dictionary).

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prescribed relationship—a person is in a ***prescribed relationship*** to another person if the relationship is that of—

(a) a domestic partner; or

(b) a child, grandchild, brother, sister, parent or grandparent (whether derived through a domestic partner or otherwise); or

(c) a kind prescribed by regulation for this subsection.

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169.

regulated mortgage means a mortgage (including a contributory mortgage) other than—

(a) a mortgage under which the lender is a financial institution; or

(b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the solicitor who acts for the lender or contributors or by—

(i) an associate of the solicitor; or

(ii) an agent of the solicitor; or

(iii) a person engaged by the solicitor to introduce the borrower to the lender or contributors; or

(c) a mortgage prescribed by regulation as exempt from this definition.

responsible entity—see the Corporations Act, section 9 (Dictionary).

run-out mortgage means a regulated mortgage entered into before 10 September 2002 that is not—

(a) a territory regulated mortgage; or

(b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the

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Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

territory regulated mortgage—a regulated mortgage is a ***territory regulated mortgage*** in relation to a solicitor if—

(a) the solicitor's practice is a territory regulated mortgage practice; and

(b) the regulated mortgage does not form part of a managed investment scheme or, if it does form part of a managed investment scheme, the managed investment scheme is not required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or a regulation under that Act).

territory regulated mortgage practice means a solicitor's practice for which a nomination under section 371 (Nomination of practice as territory regulated mortgage practice) is in force.

Division 3.5.2 Mortgage practices

370 Conduct of mortgage practices

(1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage unless—

(a) the mortgage is a territory regulated mortgage; or

(b) the mortgage is a run-out mortgage; or

(c) the mortgage forms part of a managed investment scheme that is operated by a responsible entity.

(2) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage except in accordance with—

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(a) the Corporations Act, or that Act as modified by any ASIC exemption or the regulations under that Act; and

(b) this Act.

Note ***This Act*** is defined in the dictionary.

(3) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage that forms part of a managed investment scheme unless the solicitor complies with any ASIC exemption that applies to managed investment schemes that—

(a) have more than 20 members; and

(b) are operated under the supervision of the law society in accordance with that exemption.

(4) Subsection (3) applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.

(5) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.

(6) A solicitor who knows that an associate has contravened subsection (1), (2) or (3) must give written notice to the law society council of that fact not later than 21 days after the day the solicitor becomes aware of the contravention.

(7) A contravention of this section can be professional misconduct.

371 Nomination of practice as territory regulated mortgage practice

(1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage, or who proposes to do so, may, by written notice given to the law society council, nominate the solicitor's practice as a territory regulated mortgage practice.

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(2) A nomination may, if the law society council approves, be made for a solicitor by another solicitor.

Example

A nomination could be made by a solicitor on behalf of members of a firm of solicitors.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) A nomination of a solicitor's practice as a territory regulated mortgage practice takes effect on the day written notice of the nomination is given to the law society council.

(4) A nomination ceases to be in force in relation to a solicitor if—

(a) the solicitor revokes the nomination by written notice given to the law society council; or

(b) the solicitor's practising certificate ceases to be in force; or

(c) the law society council, by written notice given to the solicitor, rejects the nomination of the solicitor's practice.

(5) A nomination must include the information (if any) required by regulation and the legal profession rules.

372 Law society council to be notified of territory regulated mortgages

(1) A solicitor commits an offence if the solicitor—

(a) in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a territory regulated mortgage; and

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(b) fails to give the law society council written notice of that fact in accordance with the regulations or the legal profession rules.

Maximum penalty: 20 penalty units.

(2) A contravention of this section can be professional misconduct.

373 Solicitor to have fidelity cover for regulated mortgages

(1) If a solicitor, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage, the solicitor must ensure that an approved policy of fidelity insurance is in force in relation to the solicitor for the purpose of compensating people who suffer financial loss because of any dishonest failure to pay money payable under the mortgage.

(2) A policy of fidelity insurance is an ***approved policy of fidelity insurance*** if:

(a) the insurer and the terms of the policy have been approved for this division by the Attorney-General by written order given to the law society council; and

(b) any conditions imposed by the order are complied with.

(3) A solicitor commits an offence if—

(a) the solicitor, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage; and

(b) an approved policy of fidelity insurance is not in force in relation to the solicitor in accordance with this section.

Maximum penalty: 20 penalty units.

(4) A contravention of subsection (3) can be professional misconduct.

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(5) This section does not apply in relation to a regulated mortgage that forms part of a managed investment scheme operated by a responsible entity.

374 Bar on claims against fidelity fund relating to regulated mortgages

(1) A lender or contributor under a regulated mortgage is not entitled to claim against the fidelity fund to obtain compensation for a financial loss if the claim relates to a regulated mortgage for which a solicitor is required to have fidelity insurance under section 373 (Solicitor to have fidelity cover for regulated mortgages).

(2) Subsection (1) does not apply if the solicitor who acts for the lender or contributor contravenes section 373 in relation to the mortgage.

(3) However, any claim on the fidelity fund by a lender or contributor to whom subsection (2) relates—

(a) is to be dealt with as if the solicitor had complied with section 373; and

(b) in particular, is subject to the same restrictions (including the amount of any compensation payable) as would have applied to a claim under an approved policy of fidelity insurance had such a policy been in force in relation to the solicitor in accordance with that section.

375 Notification of insurance arrangements for regulated mortgages

(1) If a client entrusts money to a solicitor and the money, or part of the money, is proposed to be advanced to a borrower for a regulated mortgage, the solicitor must, not later than 7 days after the day the money is entrusted to the solicitor, give the client written notice that—

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(a) tells the client about the effect of section 374 (Bar on claims against fidelity fund relating to regulated mortgages); and

(b) includes details of the solicitor's approved policy of fidelity insurance.

(2) The solicitor must not advance any of the money to a borrower for a regulated mortgage unless—

(a) the solicitor has given the client notice under subsection (1); and

(b) after having been given the notice, the client has given the solicitor written authority to advance money for the mortgage.

(3) A contravention of this section can be professional misconduct.

(4) A contravention of this section does not limit the operation of section 374.

(5) This section does not apply in relation to a regulated mortgage that forms part of a managed investment scheme operated by a responsible entity.

376 Failure to obtain fidelity insurance for regulated mortgage

(1) The licensing body must not grant or renew a practising certificate for an applicant who is or will be required to comply with section 373 (Solicitor to have fidelity cover for regulated mortgages) unless it is satisfied that—

(a) an approved policy of fidelity insurance is, or will be, in force in relation to the applicant; and

(b) the policy is, or will be, in force in relation to the applicant while the applicant's practising certificate is in force.

(2) The law society council must suspend the practising certificate of a solicitor who is required to comply with section 373 unless it is satisfied that—

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(a) an approved policy of fidelity insurance is in force in relation to the solicitor; and

(b) the policy will remain in force in relation to the solicitor while the solicitor's practising certificate is in force.

(3) The law society council must end the suspension of a solicitor's practising certificate under subsection (2) when it is satisfied of the matters mentioned in subsection (2) (a) and (b) in relation to the solicitor.

(4) The law society council must suspend the entitlement under part 2.4 (Legal practice by Australian legal practitioners) to practise in the ACT of a solicitor who is required to comply with section 373 unless it is satisfied that—

(a) an approved policy of fidelity insurance is, or will be, in force in relation to the solicitor; and

(b) the policy will not expire before the end of the solicitor's entitlement under part 2.4 to practise in the ACT.

(5) The law society council must end the suspension of a solicitor's entitlement to practise under subsection (4) when it is satisfied of the matters mentioned in subsection (4) (a) and (b) in relation to the solicitor.

Division 3.5.3 Managed investment schemes

377 Involvement of solicitors in managed investment schemes

(1) This part does not prevent a solicitor from carrying out any legal services in relation to a managed investment scheme operated by a responsible entity, or from having an interest in such a managed investment scheme or in the responsible entity for such a managed investment scheme.

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(2) However, if a client entrusts, or proposes to entrust, money to a solicitor to be invested in a managed investment scheme operated by a responsible entity, and the solicitor has a relevant interest in the managed investment scheme, the solicitor must give the client written notice telling the client that—

(a) the solicitor has an interest in the managed investment scheme; and

(b) the operation of the managed investment scheme does not form part of the solicitor's practice; and

(c) there is no right to claim against the fidelity fund for a financial loss arising from an investment in the managed investment scheme.

(3) The notice must include any other information required by a regulation or the legal profession rules.

(4) The solicitor must not advance the money entrusted to the solicitor to the responsible entity for the managed investment scheme or to anyone else unless the client has been given the notice.

(5) A solicitor who knows that an associate has contravened subsection (2), (3) or (4) must give written notice to the law society council of that fact not later than 21 days after the day the solicitor becomes aware of the contravention.

(6) A contravention of this section can be professional misconduct.

(7) In this section:

relevant interest—a solicitor has a ***relevant interest*** in a managed investment scheme if the solicitor, or an associate of the solicitor—

(a) is a director of, or concerned in, the management of the responsible entity for the managed investment scheme; or

(b) is a shareholder in the responsible entity; or

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(c) is taken to be an agent of the responsible entity under the Corporations Act, chapter 5C; or

(d) receives any financial benefit from the managed investment scheme or the responsible entity if a client of the solicitor invests in the managed investment scheme; or

(e) has an interest prescribed by regulation or the legal profession rules in the managed investment scheme or the responsible entity.

378 Claims against fidelity fund relating to managed investment schemes connected with solicitors

(1) This section applies to a person who entrusts money to a solicitor to be invested in a managed investment scheme operated by a responsible entity if the solicitor has a relevant interest in the scheme.

(2) The person is not entitled to make a claim against the fidelity fund to obtain compensation for any financial loss arising from that investment if the solicitor gave notice to the person in accordance with section 377 (2) and (3) (Involvement of solicitors in managed investment schemes).

(3) In this section:

relevant interest—see section 377 (7).

379 Transfer of mortgages to responsible entity

(1) If a solicitor, in the solicitor's capacity as solicitor for a lender or contributor, is responsible for the administration of a regulated mortgage, the solicitor must not transfer the mortgage to a responsible entity for a managed investment scheme unless the lender or contributor has given the solicitor written authority to transfer the mortgage to the responsible entity.

(2) A contravention of this section can be professional misconduct.

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(3) In this section:

scheme property—see the Corporations Act, section 9 (Dictionary).

transfer a regulated mortgage to a responsible entity—a solicitor ***transfers*** a regulated mortgage to a responsible entity if the solicitor does anything that results in—

(a) a responsible entity for a managed investment scheme becoming the holder or custodian of the regulated mortgage; or

(b) any money advanced in relation to the mortgage, or the property that is charged or encumbered by the mortgage, becoming scheme property of a managed investment scheme.

Division 3.5.4 Miscellaneous—pt 3.5

380 Law society council may require information about mortgage practices

(1) The law society council may, by written notice, require a solicitor to provide information to the law society council about any of the following:

(a) whether the solicitor, an associate of the solicitor or a person engaged by the solicitor negotiates the making of or acts in relation to regulated mortgages or has done so in the past;

(b) details of regulated mortgages that continue to have effect;

(c) whether the solicitor intends—

(i) to nominate the solicitor's practice as a territory regulated mortgage practice; or

(ii) to transfer responsibility for any regulated mortgage; or

(iii) to take no further action in relation to any regulated mortgage;

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(d) any other information, relating to regulated mortgages, prescribed by regulation or legal profession rules.

(2) A solicitor who contravenes a notice under this section commits professional misconduct.

381 Effect of pt 3.5 on indemnity insurance

This part does not affect the terms of any policy of professional indemnity insurance approved under part 3.3 (Professional indemnity insurance).

382 Regulations and rules—pt 3.5

(1) A regulation or the legal profession rules may make provision in relation to—

(a) regulated mortgages, including run-out mortgages; and

(b) the involvement of solicitors in managed investment schemes.

(2) In particular, a regulation or the legal profession rules may make provision in relation to the following:

(a) the making of and acting in relation to regulated mortgages by solicitors;

(b) how the law society council is to be given any notice or other information under this part;

(c) how notices are to be given under this part;

(d) ensuring that the operation of a managed investment scheme by a responsible entity is kept separate from a solicitor's practice;

(e) ensuring that clients of a solicitor are aware that the operation of a managed investment scheme does not form part of the solicitor's practice.

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Chapter 4 Complaints and discipline

Part 4.1 Preliminary and application—ch 4

Division 4.1.1 Preliminary—pt 4.1

383 Definitions—ch 4

(1) In this Act:

professional misconduct—see section 387.

unsatisfactory employment conduct—see section 388.

unsatisfactory professional conduct—see section 386.

(2) In this chapter:

complaint means a complaint under this chapter.

conduct means conduct whether consisting of an act or omission.

official complaint means a complaint made by a council.

384 Purposes—ch 4

The purposes of this chapter are as follows:

(a) to provide a nationally consistent scheme for the discipline of the legal profession in the ACT, 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;

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(d) to enable people who are not lawyers to participate in complaints and disciplinary processes involving lawyers.

385 Application of ch 4 to lawyers, former lawyers and former practitioners etc

(1) This chapter applies, with necessary changes, to an Australian lawyer or former Australian lawyer in relation to conduct happening while the lawyer or former lawyer was an Australian lawyer, but not an Australian legal practitioner, in the same way as it applies to an Australian legal practitioner or former Australian legal practitioner.

(2) This chapter applies, with necessary changes, to a former Australian legal practitioner in relation to conduct happening while the former practitioner was an Australian legal practitioner in the same way as it applies to an Australian legal practitioner.

(3) This chapter applies, with necessary changes, to a former employee of a solicitor in relation to conduct happening while the former employee was an employee of the solicitor in the same way as it applies to an employee of a solicitor.

Division 4.1.2 Key concepts—ch 4

386 What is *unsatisfactory professional conduct*?

In this Act:

unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Note See also s 389 (Conduct capable of being unsatisfactory professional conduct or professional misconduct).

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387 What is *professional misconduct*?

(1) In this Act:

professional misconduct includes—

(a) unsatisfactory professional conduct of an Australian legal practitioner, if 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 happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

(2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

Note See also s 389.

388 What is *unsatisfactory employment conduct*?

In this Act:

unsatisfactory employment conduct, of an employee of a solicitor, means conduct in relation to the solicitor's practice (whether or not with the knowledge or agreement of the solicitor) that is conduct in relation to which a complaint under part 4.2 (Complaints about Australian legal practitioners and solicitor employees) has been, or could be, made against the solicitor.

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389 Conduct capable of being unsatisfactory professional conduct or professional misconduct

Without limiting section 386 or section 387, the following conduct can be unsatisfactory professional conduct or professional misconduct:

(a) conduct consisting of a contravention of this Act;

Note ***This Act*** is defined in the dictionary.

(b) charging of excessive legal costs in connection with the practice of law;

(c) conduct in relation to which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;

(e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.

Note Various provisions of this Act identify particular conduct as conduct that can be unsatisfactory professional conduct or professional misconduct (see eg s 107 (5) (Incorporated legal practice must have legal practitioner director etc) and s 138 (1) (Obligations of legal practitioner partner relating to misconduct—multidisciplinary partnerships)).

Division 4.1.3 Application of ch 4

390 Practitioners to whom ch 4 applies

(1) This chapter applies to an Australian legal practitioner in relation to conduct to which this chapter applies.

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(2) This chapter applies—

(a) whether or not the Australian legal 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 lives or has an office in the ACT; and

(e) whether or not the person making a complaint about the conduct lives, works or has an office in the ACT.

(3) However, this chapter does not apply to the following people:

(a) a judicial officer;

(b) a justice of the High Court;

(c) a judge of a court created by a Commonwealth Act;

(d) a judge of a court, or a judicial member of a tribunal, of a State or another Territory.

(4) A provision of this Act or any other Act that protects a person from any action, liability, claim or demand in relation to any act or omission of the person does not affect the application of this chapter to the person in relation to the act or omission.

(5) For this chapter, conduct of an Australian legal practitioner in the exercise of a function as an arbitrator is conduct happening in connection with the practice of law.

(6) However, conduct in relation to any justiciable aspect of decision-making by an arbitrator is not conduct happening in connection with the practice of law for this chapter.

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(7) For this chapter, conduct of an Australian legal practitioner is not conduct happening in connection with the practice of law to the extent that it is conduct engaged in the exercise of an executive or administrative function under an Act as—

(a) a government employee or statutory office-holder; or

(b) a council or a member, officer or employee of a council.

(8) In this section:

government agency means a government department (however described) of the ACT or any other jurisdiction or of the Commonwealth, and includes an entity prescribed by regulation.

government employee means a person employed in a government agency.

judicial officer—see the *Judicial Commissions Act 1994*, section 3.

391 Conduct to which ch 4 applies—generally

(1) Subject to subsection (3), this part applies to conduct happening in the ACT.

(2) This part also applies to conduct happening outside the ACT, but only—

(a) if it is part of a course of conduct that has happened partly in the ACT and partly in another jurisdiction, and either—

(i) the corresponding authority of each other jurisdiction where the conduct has happened consents to its being dealt with under this Act; or

(ii) the complainant and the person about whom the complaint is made consent to its being dealt with under this Act; or

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(b) if it happens in Australia but completely outside the ACT and the person about whom the complaint is made is a local lawyer or a local legal practitioner, and either—

(i) the corresponding authority of each jurisdiction where the conduct has happened 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 happens completely or partly outside Australia; and

(ii) the person about whom the complaint is made is a local lawyer or a local legal practitioner.

(3) This part does not apply to conduct happening in the ACT if—

(a) the relevant council consents to its being dealt with under a corresponding law; or

(b) the complainant and the person about whom the complaint is made consent to its being dealt with under a corresponding law.

(4) Subsection (3) does not apply if the conduct cannot be dealt with under the corresponding law.

(5) The relevant council may give consent for subsection (3) (a), and may do so conditionally or unconditionally.

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392 Conduct to which ch 4 applies—insolvency, serious offences and tax offences

(1) This chapter applies to the following conduct of a local legal practitioner whether happening in Australia or elsewhere:

(a) conduct of the practitioner in relation to which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(b) conduct of the practitioner as or in becoming an insolvent under administration;

(c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.

(2) This section has effect despite anything in section 391.

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Part 4.2 Complaints about Australian legal practitioners and solicitor employees

393 Complaints generally

(1) A complaint may be made under this chapter about conduct to which this chapter applies.

(2) A complaint may be made under this chapter about conduct happening outside the ACT, but the complaint must not be dealt with under this chapter unless this chapter applies to it.

(3) A complaint that is properly made must be dealt with in accordance with this chapter.

394 Making of complaints

(1) A complaint may be made about conduct to which this chapter applies by anyone, including a council.

(2) A complaint must be made to the relevant council.

(3) A complaint must be in writing.

(4) A complaint must—

(a) identify the complainant; and

(b) if possible, identify the person about whom the complaint is made; and

(c) describe the alleged conduct the subject of the complaint.

(5) A council may refer a complaint to the other council, unless it deals with the complaint itself.

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395 Complaints made more than 3 years after conduct

(1) A complaint may be made about conduct to which this chapter applies irrespective of when the conduct is alleged to have happened.

(2) However, the complaint cannot be dealt with (otherwise than to dismiss it or refer it to mediation) if the complaint is made more than 3 years after the conduct is alleged to have happened, unless the relevant council for the person about whom the complaint is made decides that—

(a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or

(b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

396 Further information and verification—complaints

The relevant council for a person about whom a complaint is made, may by written notice given to the complainant, require the complainant to do either or both of the following within the reasonable period stated in the notice:

(a) to give further information about the complaint;

(b) to verify the complaint, or any further information, by statutory declaration.

397 Person to be told about complaint

(1) The relevant council for a person about whom a complaint is made must give written notice to the person of the making of a complaint about the person.

(2) The person must be given the notice not later than 14 days after the day the complaint is made.

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(3) The notice must also tell the person about—

(a) the nature of the complaint; and

(b) the identity of the complainant; and

(c) any action already taken by the relevant council in relation to the complaint; and

(d) the person's right to make submissions to the council within the reasonable period stated in the notice, unless the council has told the person that the council has dismissed or intends to dismiss the complaint.

(4) Subsection (1) does not apply if the relevant council considers 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 anything related to the complaint; or

(c) place the complainant or anyone else at risk of intimidation or harassment; or

(d) prejudice a pending court proceeding.

(5) In circumstances mentioned in subsection (4), the relevant council may—

(a) postpone giving the person the notice until it considers it is appropriate to give the notice; or

(b) at its discretion—

(i) give written notice to the person of the general nature of the complaint; and

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(ii) if the relevant council considers that the person has sufficient information to make submissions—tell the person about the person's right to make submissions within the reasonable period stated in the notice.

398 Submissions by person about whom complaint made

(1) The person about whom a complaint is made may, within the period stated in the notice given to the person under section 397 (the ***permitted period***), make submissions to the relevant council about the complaint, its subject matter or both.

(2) The relevant council may at its discretion extend the permitted period.

(3) The relevant council must consider the submissions made within the permitted period before deciding what action is to be taken in relation to the complaint.

399 Summary dismissal of complaints

(1) The relevant council for a person about whom a complaint is made may dismiss a complaint about the person if—

(a) further information is not given, or the complaint or further information is not verified, as required by the council under section 396 (Further information and verification—complaints); or

(b) the complaint is vexatious, misconceived, frivolous or lacking in substance; or

(c) the complaint was made more than 3 years after the conduct complained of is alleged to have happened, unless a decision is made under section 395 (2) (Complaints made more than 3 years after conduct) in relation to the complaint; or

(d) the conduct complained about has been the subject of a previous complaint that has been dismissed; or

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(e) the conduct complained about is the subject of another complaint; or

(f) for a person who was an Australian legal practitioner—it is not in the public interest to deal with the complaint having regard to the fact that the name of the person has already been removed from each Australian roll in which the person was enrolled as a legal practitioner; or

(g) the complaint is not a complaint that the council has power to deal with.

(2) The relevant council may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the council forms the view that the complaint requires no further investigation.

400 Withdrawal of complaints

(1) A complaint under this chapter may, subject to this section, be withdrawn by the complainant.

(2) Withdrawal of a complaint may be made by oral or written communication to the relevant council.

(3) If a complaint is withdrawn orally and the complaint was made by a person other than a council, the relevant council 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 last address of the complainant known to the council.

(4) Subsection (3) does not apply if the complainant has previously given the relevant council written confirmation of the withdrawal.

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(5) A complaint may be withdrawn even though the relevant council has started or finished an investigation of the complaint, but cannot be withdrawn if a proceeding in relation to the complaint has been started in the disciplinary tribunal.

(6) If a complaint is made by a person other than a council, a further complaint about the matter that is the subject of the withdrawn complaint cannot be made unless the relevant council is satisfied that it is appropriate to make a further complaint in the circumstances.

(7) If a complaint is properly withdrawn, no further action may be taken under this part in relation to the complaint, unless the relevant council is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances.

(8) Withdrawal of a complaint does not prevent—

(a) a council 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 mentioned in subsection (7)); or

(b) action being taken on any other complaint properly made in relation to the matter.

(9) This section extends to the withdrawal of a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

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Part 4.3 Mediation

401 Mediation of complaints

(1) If the relevant council for a person about whom a complaint is made considers that the complaint could be resolved by mediation, the council may suggest to the complainant and the person that they enter into a process of mediation.

Note The complaint may be withdrawn under s 400 if the matter is resolved by mediation.

(2) This section does not apply to a complaint about an Australian legal practitioner if the relevant council considers that the practitioner would be likely to be found guilty of professional misconduct if a proceeding were started in the disciplinary tribunal in relation to the complaint.

(3) This section extends to a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

(4) This section does not require the relevant council to suggest a mediation.

402 Facilitation of mediation

(1) If the complainant to a complaint about a person and the person agree to enter into a process of mediation in relation to the complaint, the relevant council may facilitate the mediation to the extent it considers appropriate.

(2) This section does not require the relevant council to facilitate a mediation.

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403 Nature of mediation

Mediation is not limited to formal mediation procedures and extends to preliminary assistance in dispute resolution.

Examples

1 giving informal advice to ensure the parties are aware of their rights and obligations

2 facilitating open communication between the parties about the complaint

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

404 Admissibility of evidence and documents—mediation

(1) The following are not admissible in any proceedings in a court or before an entity authorised to hear and receive evidence:

(a) evidence of anything said or admitted during a mediation or attempted mediation under this part of all or a part of the matter that is subject of a complaint;

(b) a document prepared for the mediation or attempted mediation.

(2) This section does not apply to an agreement reached during mediation.

405 Protection of mediator from liability

A mediator is not civilly liable for anything done or omitted to be done honestly for the purpose of a mediation under this part.

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Part 4.4 Investigation of complaints

406 Complaints to be investigated

(1) A council must investigate each complaint properly made to it.

(2) This section does not apply to—

(a) a complaint taken over or referred to the other council; or

(b) a complaint that is dismissed or withdrawn under this chapter; or

(c) a complaint to the extent that it is the subject of mediation under this chapter.

407 Appointment of investigator for complaint

The relevant council for a person may appoint a suitably qualified person to investigate a complaint about the person.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 An appointment may be made generally to apply for all complaints or for all complaints of a stated class or for a stated complaint (see Legislation Act, s 48).

408 Application of ch 6 to complaint investigations

Chapter 6 (Investigations) applies to an investigation under this part.

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409 Referral of matters for cost review—complaint investigation

(1) For investigating a complaint, the relevant council for an Australian legal practitioner may refer a matter to the Supreme Court for review of costs charged or claimed by the practitioner.

(2) The referral may be made outside the 60-day period mentioned in section 294 (4) (Application by client for costs review).

(3) In deciding whether to refer a matter for review of costs, the relevant council must consider whether the client was aware of the client's right to apply for a review within the 60-day period and, if the client was aware, whether the referral may cause significant injustice to the legal practitioner.

(4) Subject to this section, division 3.2.7 (Costs review) applies to the review of costs as if the relevant council were a client of the practitioner.

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Part 4.5 Decision of council

410 Decision of council after investigation

(1) After finishing an investigation of a complaint against a person, the relevant council must—

(a) dismiss the complaint under section 412; or

(b) take action under section 413 (Summary conclusion of complaint procedure by fine etc); or

(c) start a proceeding in the disciplinary tribunal under part 4.7.

(2) This section does not affect section 400 (Withdrawal of complaints).

411 Decision of council without investigation

(1) This section applies to a complaint against an Australian legal practitioner if the relevant council is satisfied that, having regard to the nature of the subject matter of the complaint and the reasonable likelihood that the practitioner will be found guilty by the disciplinary tribunal of either unsatisfactory professional conduct or professional misconduct, action should be taken under this section.

(2) This section also applies to a complaint against an employee of a solicitor if the relevant council is satisfied that, having regard to the nature of the subject matter of the complaint and the reasonable likelihood that the employee will be found guilty by the disciplinary tribunal of unsatisfactory employee conduct, action should be taken under this section.

(3) If this section applies to a complaint, the relevant council may start a proceeding in the disciplinary tribunal under part 4.7 in relation to the complaint without starting or finishing an investigation of the complaint.

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412 Dismissal of complaint

(1) After finishing an investigation of a complaint against an Australian legal practitioner, the relevant council may dismiss the complaint if satisfied that—

(a) there is no reasonable likelihood that the practitioner will be found guilty by the disciplinary tribunal of either unsatisfactory professional conduct or professional misconduct; or

(b) it is in the public interest to dismiss the complaint.

(2) After finishing an investigation of a complaint against an employee of a solicitor, the relevant council may dismiss the complaint if satisfied that there is no reasonable likelihood that the employee will be found guilty by the disciplinary tribunal of unsatisfactory employment conduct.

413 Summary conclusion of complaint procedure by fine etc

(1) This section applies if the relevant council for an Australian legal practitioner—

(a) completes an investigation of a complaint against the practitioner; and

(b) is satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the disciplinary tribunal of unsatisfactory professional conduct (but not professional misconduct); and

(c) is satisfied that the practitioner is generally competent and diligent and that no other material complaints have been made against the practitioner.

(2) The relevant council may do all or any of the following:

(a) caution the Australian legal practitioner;

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(b) publicly reprimand the Australian legal practitioner or, if there are special circumstances, privately reprimand the practitioner;

(c) make a compensation order under part 4.8 if the complainant requested a compensation order in relation to the complaint;

(d) direct the practitioner to do all or any of the following:

(i) stop accepting, for a stated time, instructions in relation to stated work;

(ii) stop employing a stated person in the practitioner's practice;

(iii) undertake stated further legal education;

(iv) seek advice in relation to the management of the practitioner's practice from a stated person;

(e) impose a fine on the practitioner of a stated amount.

(3) The maximum amount that can be imposed by way of fine is $1 500.

(4) A fine is payable to the relevant council in the way and within the reasonable period required by the relevant council.

(5) If an amount is received by a council as complete or partial payment of a fine imposed under this section, the council must pay the amount into a statutory interest account.

(6) The Australian legal practitioner must not fail to pay a fine imposed under this section in accordance with the requirements of the relevant council.

(7) If action is taken under subsection (2), further action must not be taken under this chapter in relation to the complaint.

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414 Record of decision of council about complaint

(1) A council must make and keep a record of its decision in relation to each complaint dealt with by it under this chapter.

(2) The record must include its reasons for the decision.

415 Council to give reasons to complainant and practitioner

If a complaint is made about a person, the complainant and the person about whom the complaint is made are entitled to receive a statement of reasons from the relevant council if any of the following decisions are made by it:

(a) a decision to dismiss the complaint;

(b) a decision to start a proceeding in the disciplinary tribunal in relation to the complaint;

(c) a decision to refer a matter to the Supreme Court under section 409 (Referral of matters for cost review—complaint investigation) in relation to the complaint;

(d) a decision to take action under section 413 (Summary conclusion of complaint procedure by fine etc);

(e) a decision to omit, from the allegations particularised in an application made by it to the disciplinary tribunal in relation to the complaint, matter that was originally part of the complaint.

416 Appeals to disciplinary tribunal against decisions of relevant council

(1) A complainant may appeal to the disciplinary tribunal against—

(a) a decision of the relevant council to dismiss the complaint under section 412; or

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(b) a decision of the relevant council to omit, from the allegations particularised in an application made by it to the disciplinary tribunal in relation to the complaint, matter that was originally part of the complaint.

(2) A person about whom a complaint is made may appeal to the disciplinary tribunal against a decision of the relevant council to take action under section 413 (Summary conclusion of complaint procedure by fine etc).

(3) The relevant council may appear as a party to the appeal.

(4) The disciplinary tribunal may make any order it considers appropriate on the appeal.

(5) Without limiting subsection (4), the disciplinary tribunal may make 1 or more of the orders mentioned in section 430 (4) to (7).

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Part 4.6 General procedural matters about complaints

417 Rules of procedural fairness and efficient dealing with complaints

(1) The rules of procedural fairness, to the extent that they are not inconsistent with this Act, apply in relation to the investigation of complaints and the procedures of the councils under this chapter.

Note ***This Act*** is defined in the dictionary.

(2) A council must deal with complaints as efficiently and quickly as practicable.

418 Complainant and person complained about to be told about action taken

(1) If a complaint is made about a person, the relevant council must—

(a) tell the complainant in writing that is has received the complaint; and

(b) tell the complainant and the person in writing about the action it has taken in relation to the complaint.

(2) Without limiting subsection (1), the relevant council must tell the complainant and the person about whom the complaint is made, in writing, about any of the following decisions made by it:

(a) a decision to dismiss the complaint;

(b) a decision to start a proceeding in the disciplinary tribunal in relation to the complaint;

(c) a decision to refer a matter to the Supreme Court under section 409 (Referral of matters for cost review—complaint investigation) in relation to the complaint;

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(d) a decision to take action under section 413 (Summary conclusion of complaint procedure by fine etc);

(e) a decision to omit, from the allegations particularised in an application made by it to the disciplinary tribunal in relation to the complaint, matter that was originally part of the complaint.

(3) For a decision by the relevant council to dismiss a complaint, the right of the complainant to apply to the council for a review of the decision must be included in the notice to the complainant.

(4) This section does not apply in relation to an official complaint.

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Part 4.7 Proceedings in disciplinary tribunal

419 Application to disciplinary tribunal

(1) The relevant council for an Australian legal practitioner may apply to the disciplinary tribunal in relation to a complaint against the practitioner.

(2) The relevant council for an employee of a solicitor may apply to the disciplinary tribunal in relation to a complaint against the employee.

(3) The application must include the charges of unsatisfactory professional conduct, professional misconduct or unsatisfactory employee conduct that the relevant council considers arise out of the complaint.

420 Hearings of disciplinary tribunal

(1) The disciplinary tribunal must conduct a hearing into each allegation particularised in an application made to the tribunal in relation to a complaint.

(2) The relevant council for the person about whom the complaint is made must tell the complainant in writing about the date set by the disciplinary tribunal to start hearing the application (the ***hearing date***).

(3) The relevant council must tell the complainant about the hearing date not later than 14 days before the hearing date.

(4) Subsections (2) and (3) do not apply in relation to an official complaint.

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421 Joinder of complaint applications

The disciplinary tribunal may, subject to its rules and the rules of procedural fairness, order the joinder of more than 1 application against the same or different people.

422 Amendment of complaint application

(1) The disciplinary tribunal may, on application by the relevant council or on its own initiative, amend an application to omit allegations or to include additional allegations, if satisfied that it is reasonable to make the amendment having regard to all the circumstances.

(2) Without limiting subsection (1), in considering whether or not it is reasonable to amend an application, the disciplinary tribunal must have regard to whether amending the application will affect the fairness of the proceeding.

(3) The disciplinary tribunal may amend an application to include an additional allegation even though the alleged conduct—

(a) happened more than 3 years before the amendment is made; or

(b) has not been the subject of a complaint or investigation under this chapter.

423 Nature of allegations in complaint applications

(1) An application to the disciplinary tribunal in relation to a complaint cannot be challenged on the ground that the allegations contained in the application do not deal with all of the matters raised in the complaint or deal differently with matters raised in the complaint or deal with additional matters.

(2) This section applies whether the allegations were included in the application as made or were included by amendment of the application.

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424 Application of rules of evidence to disciplinary tribunal

The disciplinary tribunal is bound by the rules of evidence in conducting a hearing under this part.

425 Parties before disciplinary tribunal

(1) The parties to a proceeding in the disciplinary tribunal in relation to a complaint about an Australian legal practitioner are—

(a) the practitioner; and

(b) the relevant council.

(2) The parties to a proceeding in the disciplinary tribunal in relation to a complaint about an employee of a solicitor are—

(a) the employee; and

(b) the relevant council.

(3) The parties are entitled to appear at the hearing in relation to the complaint.

(4) The complainant is entitled to appear at the hearing in relation to—

(a) the aspects of the hearing that relate to a request by the complainant for a compensation order under this chapter; and

(b) other aspects of the hearing for which the disciplinary tribunal gives leave to the complainant to appear.

(5) The disciplinary tribunal may give leave to anyone else to appear at the hearing if satisfied that it is appropriate for the person to appear at the hearing.

(6) A person who is entitled to appear at the hearing or who is given leave to appear at the hearing may appear personally or be represented by an Australian legal practitioner or (with the disciplinary tribunal's leave) by anyone else.

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426 Hearings of disciplinary tribunal open to public

(1) A hearing under this part is to be open to the public, unless the disciplinary tribunal directs that the hearing or a part of the hearing is closed to the public.

(2) The disciplinary tribunal must not direct that a hearing or a part of a hearing is closed to the public unless satisfied that it is desirable to make the direction in the public interest for reasons connected with—

(a) the subject matter of the hearing; or

(b) the nature of the evidence to be given.

(3) The disciplinary tribunal may adjourn a proceeding for any reason the tribunal considers appropriate.

427 Disciplinary tribunal power to disregard procedural lapses

(1) The disciplinary tribunal may order that a failure by the relevant council to observe a procedural requirement in relation to a complaint is to be disregarded if satisfied that the parties to the hearing have not been prejudiced by the failure.

(2) This section applies to a failure that happened before the proceeding was started in the disciplinary tribunal in relation to the complaint as well as to a failure happening afterwards.

428 Powers of disciplinary tribunal in relation to witnesses

(1) The disciplinary tribunal may, by written notice given to a person, require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:

(a) to give evidence;

(b) to produce a stated document or other thing relevant to the hearing.

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(2) A judicial member of the tribunal may require a witness appearing before the tribunal at a hearing to give evidence to do 1 or more of the following:

(a) to take an oath;

(b) to answer a question relevant to the hearing;

(c) to produce a stated document or other thing relevant to the hearing.

Note 1 ***Oath*** includes affirmation and ***take*** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

429 Member of tribunal unavailable to continue hearing

(1) This section applies if, before the disciplinary tribunal constituted by 3 members has finished a hearing, 1 of the members constituting the tribunal stops being a member of the tribunal or stops being available for the hearing.

(2) If the member is a non-judicial member, the hearing may continue before the disciplinary tribunal constituted by the 2 remaining members if the parties to the proceeding agree.

(3) If the member is the judicial member, or the parties do not agree to the continuation of the hearing, the proceeding must be reheard by a reconstituted disciplinary tribunal.

(4) If the proceeding is reheard, the disciplinary tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including a record of any evidence taken.

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430 Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct

(1) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an Australian legal practitioner, the tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the tribunal may make any order it considers appropriate.

(2) Without limiting subsection (1), the disciplinary tribunal may make 1 or more of the orders mentioned in subsections (4) to (7).

(3) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an Australian legal practitioner, the tribunal is not satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the tribunal must dismiss the complaint.

(4) The disciplinary tribunal may make the following orders in relation to the Australian legal practitioner:

(a) an order recommending that the name of the practitioner be removed from the local roll;

(b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;

(c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;

(d) an order that—

(i) stated conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and

(ii) the conditions be imposed for a stated period; and

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(iii) states the time (if any) after which the practitioner may apply to the tribunal for the conditions to be amended or removed;

(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

(5) The disciplinary tribunal may make the following orders in relation to the Australian legal practitioner:

(a) an order recommending that the name of the practitioner be removed from an interstate roll;

(b) an order that the practitioner's interstate practising certificate be suspended for a stated period or cancelled;

(c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a stated period;

(d) an order recommending that—

(i) stated conditions be imposed on the practitioner's interstate practising certificate; and

(ii) the conditions be imposed for a stated period; and

(iii) the time (if any) after which the practitioner may apply to the tribunal for the conditions to be amended or removed.

(6) The disciplinary tribunal may make the following orders in relation to the Australian legal practitioner:

(a) an order that the practitioner pay a fine of a stated amount of not more than the amount mentioned in subsection (9);

(b) an order that the practitioner undertake and complete a stated course of further legal education;

(c) an order that the practitioner undertake a stated period of practice under stated supervision;

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(d) an order that the practitioner do or not do something in relation to the practice of law;

(e) an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;

(f) an order that the practitioner's practice be managed for a stated period in a stated way or subject to stated conditions;

(g) an order that the practitioner's practice be subject to periodic inspection by a stated person for a stated period;

(h) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a stated person;

(i) an order that the practitioner not apply for a local practising certificate before the end of a stated period.

(7) The disciplinary tribunal may make ancillary or other orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (5), as assessed or reviewed in or in accordance with the order or as agreed.

(8) The disciplinary tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.

(9) The maximum amount that can be imposed by way of fine is—

(a) for a finding of unsatisfactory professional conduct that does not amount to professional misconduct—$10 000; and

(b) for a finding of professional misconduct—$75,000; and

(c) for a finding of professional misconduct and unsatisfactory professional conduct not amounting to professional misconduct—$75,000.

(10) A fine is payable to the relevant council in the way and within the reasonable period required by the relevant council.

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(11) If an amount is received by a council as complete or partial payment of a fine imposed under this section, the council must pay the amount into a statutory interest account.

431 Decisions of disciplinary tribunal—unsatisfactory employment conduct

(1) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an employee of a solicitor, the tribunal is satisfied that the employee is guilty of unsatisfactory employment conduct, the tribunal may make 1 or more of the following orders:

(a) an order that, after a stated date, no solicitor employ or otherwise remunerate the employee in relation to the solicitor's practice as a solicitor except with the approval of the law society council;

(b) an order under section 442 (Compensation orders) against the solicitor who employed the employee;

(c) an order publicly reprimanding the solicitor who employed the employee or, if there are special circumstances, privately reprimanding the solicitor.

(2) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an employee of a solicitor, the tribunal is not satisfied that the practitioner is guilty of unsatisfactory employment conduct, the tribunal must dismiss the complaint.

432 Interlocutory and interim orders of disciplinary tribunal

(1) The disciplinary tribunal may make interlocutory or interim orders that it considers appropriate before making its final decision about a complaint.

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(2) Without limiting subsection (1), orders of the kinds mentioned in section 430 (Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct) may be made as interlocutory or interim orders.

433 Compliance with decisions and orders of disciplinary tribunal

(1) Entities with relevant functions under this Act must—

(a) give effect to the following orders:

(i) any order of the disciplinary tribunal made under section 430 (4) (Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct);

Note Section 430 (4) is about orders requiring official implementation in the ACT.

(ii) any interlocutory or interim order of the disciplinary tribunal made under section 432 (Interlocutory and interim orders of disciplinary tribunal) so far as it is an order of the kind mentioned in section 430 (4) or otherwise needs to be, or can be, given effect to in the ACT; and

(b) enforce the following orders (to the extent that they relate to an Australian legal practitioner's practice of law in the ACT):

(i) any order of the disciplinary tribunal made under section 430 (6);

Note Section 430 (6) is about orders requiring compliance by practitioners.

(ii) any interlocutory or interim order of the disciplinary tribunal made under section 432 so far as it is an order of the kind mentioned in section 430 (6) or otherwise needs to be, or can be, enforced in the ACT; and

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(c) enforce any order (to the extent that it relates to a solicitor's practice as a solicitor in the ACT) of the disciplinary tribunal made under section 431 (1) (a) or (b) (Decisions of disciplinary tribunal—unsatisfactory employment conduct).

Note Section 460 (Compliance with disciplinary recommendations or orders made under corresponding laws) contains provisions relating to compliance in the ACT with orders made under corresponding laws.

(2) The relevant council for an Australian legal practitioner must ensure that entities with relevant functions under a corresponding law of another jurisdiction are told about the making and contents of—

(a) the following orders in relation to the practitioner:

(i) an order of the disciplinary tribunal made under section 430 (5) in relation to the corresponding law;

Note Section 430 (5) is about orders requiring official implementation in another jurisdiction.

(ii) any interlocutory or interim order of the disciplinary tribunal made under section 431 so far as it is an order of the kind mentioned in section 430 (5) or otherwise needs to be, or can be, given effect to in the other jurisdiction; 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 disciplinary tribunal made under section 430 (6);

Note Section 430 (6) is about orders requiring compliance by practitioners.

(ii) any interlocutory or interim order of the disciplinary tribunal made under section 431 so far as it is an order of the kind mentioned in section 430 (6) or otherwise needs to be, or can be, enforced in the other jurisdiction.

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(3) If the disciplinary tribunal makes an order recommending that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll, the Supreme Court may order the removal of the name from the roll.

(4) If the disciplinary tribunal 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 the court.

434 Costs orders by disciplinary tribunal

(1) If the disciplinary tribunal finds an Australian legal practitioner guilty of unsatisfactory professional conduct or professional misconduct, the tribunal must order the practitioner to pay costs (including costs of the relevant council and the complainant), unless the disciplinary tribunal is satisfied that exceptional circumstances exist.

(2) Even though the disciplinary tribunal does not find an Australian legal practitioner guilty of unsatisfactory professional conduct or professional misconduct, the tribunal may order the practitioner to pay costs (including costs of the relevant council and the complainant), if satisfied that—

(a) the only or main reason why the proceeding was started in the disciplinary tribunal was a failure of the practitioner to cooperate with a council; or

(b) there is some other reason justifying the making of an order in the particular circumstances.

(3) The disciplinary tribunal may make orders requiring the relevant council for an Australian legal practitioner to pay costs, but may do so only if satisfied that the practitioner is not guilty of unsatisfactory professional conduct or professional misconduct and the tribunal considers that special circumstances justify the making of the orders.

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(4) The disciplinary tribunal may make orders requiring an Australian legal practitioner in relation to whom a proceeding is pending before the tribunal to pay costs on a interlocutory or interim basis.

Note Alternatively, the tribunal could order that costs be payable from a particular fund (eg a public purpose fund) in these circumstances.

(5) An order for costs—

(a) may be for a stated amount; or

(b) may be for an unstated amount but must state the basis on which the amount is to be decided.

(6) An order for costs may state the terms on which costs must be paid.

435 Notification of result of proceeding before disciplinary tribunal

(1) The applicant in a disciplinary proceeding before the disciplinary tribunal must tell the complainant in writing about the disciplinary tribunal's decision.

(2) This section does not apply in relation to an official complaint.

436 Referral of questions of law to Supreme Court

(1) The disciplinary tribunal may refer a question of law arising in a proceeding before the disciplinary tribunal to the Supreme Court.

(2) The disciplinary tribunal may act under subsection (1) on application by a party to the proceeding or on its own initiative.

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437 Appeals from disciplinary tribunal to Supreme Court

A party to a proceeding before the disciplinary tribunal may appeal to the Supreme Court against a decision of the disciplinary tribunal in the proceeding.

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

438 Contempt of disciplinary tribunal

A person commits an offence if the person does something in the face, or within the hearing, of the disciplinary tribunal that would be contempt of court if the disciplinary tribunal were a court of record.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

439 Application of Criminal Code, ch 7

A proceeding before the disciplinary tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to disciplinary tribunal proceedings.

440 Pt 4.7 does not affect other remedies of complainant

This part does not affect any other remedy available to a complainant.

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Part 4.8 Compensation

441 Meaning of *compensation order* for pt 4.8

In this part:

compensation order means an order mentioned in section 442.

442 Compensation orders

(1) A compensation order is an order, made in relation to a complaint, for an Australian legal practitioner to compensate the complainant for loss suffered because of conduct that is the subject of the complaint.

Note An order may be made against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory employment conduct)).

(2) A compensation order against an Australian legal practitioner consists of 1 or more of the following:

(a) an order that the practitioner cannot recover or must repay all or a stated part of the amount charged to the complainant by the practitioner in relation to stated legal services;

(b) an order discharging a lien of the practitioner in relation to a stated document;

(c) an order that the practitioner pay a stated amount to the complainant by way of financial compensation for the loss.

(3) A compensation order under subsection (2) (a) preventing recovery of an amount is effective even if a proceeding to recover the amount (or any part of it) has been started by or on behalf of the Australian legal practitioner.

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(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 a proceeding brought by or on behalf of the Australian legal practitioner.

(5) A compensation order under subsection (2) (c) requiring payment of more than $10 000 by way of financial compensation must not be made unless the complainant and the practitioner both consent to the order.

443 When compensation order can be made

(1) Unless the complainant to a complaint and the Australian legal practitioner against whom a compensation order is made in relation to the complaint agree, a compensation order must not be made unless the entity making the order is satisfied that—

(a) the complainant has suffered loss because of the conduct the subject of the complaint; and

(b) it is in the interests of justice that the order be made.

Note A compensation order may be made against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory employment conduct)).

(2) A compensation order must not be made in relation to 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 a fidelity fund of any jurisdiction, if a relevant claim for payment from the fund has been made or decided.

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444 Making of compensation orders

(1) The disciplinary tribunal may make a compensation order if it has found a person guilty of unsatisfactory professional conduct, professional misconduct or unsatisfactory employment conduct in relation to the complaint.

(2) A person against whom a compensation order is made must comply with the order.

445 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.

446 Other remedies not affected by compensation order

The recovery of compensation ordered under this part does not affect any other remedy available to a complainant, but any compensation ordered under this part must be taken into account in any other proceeding by or on behalf of the complainant in relation to the same loss.

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Part 4.9 Publicising disciplinary action

447 Definitions—pt 4.9

In this part:

disciplinary action means—

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

(b) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner:

(i) removal of the name of the practitioner from an Australian roll;

(ii) the suspension or cancellation of the Australian practising certificate of the practitioner;

(iii) the refusal to grant 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; or

(c) the making of an order by a court or tribunal for or following a finding of unsatisfactory employment conduct by an employee of a solicitor under this Act.

register of disciplinary action—see section 448.

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448 Register of disciplinary action

(1) There is to be a register (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 enrolled or practising in the ACT when the conduct that is the subject of the disciplinary action happened; and

(c) disciplinary action taken under this Act against the employee of a solicitor.

Note Action may be taken against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory employment conduct)).

(2) The register must 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 regulation.

(3) For disciplinary action taken against an Australian legal practitioner, the register may also include the date and jurisdiction of the person's first and any later admission to the legal profession.

(4) The register may be kept in a form decided by the licensing body and may form part of other registers.

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(5) The register must be available for public inspection on—

(a) the internet site of the licensing body; or

(b) an internet site identified on the internet site of the licensing body.

(6) Information in the register may be provided to members of the public in any other way approved by the licensing body.

(7) The licensing body may correct an error or omission in the register.

(8) The requirement to keep the register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the register.

449 Other ways of publicising disciplinary action

(1) The relevant council for an Australian legal practitioner or an employee of a solicitor may publicise disciplinary action taken against the practitioner or employee in any way the council considers appropriate.

(2) This section does not affect the provisions of this part about the register of disciplinary action.

450 Quashing of disciplinary action

(1) If disciplinary action against a person is quashed (however described) on appeal or review, any reference to the disciplinary action must be removed from the register of disciplinary action.

(2) If disciplinary action against a person is quashed (however described) on appeal or review after the action was publicised by the relevant council under section 449, the result of the appeal or review must be publicised with equal prominence by the council.

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451 Protection against liability for publicising disciplinary action

(1) A protected person is not civilly liable for anything done or omitted to be done honestly and without recklessness—

(a) for the purpose of publicising disciplinary action taken against a person; or

(b) for the purpose of keeping, publishing or enabling access to the register of disciplinary action; or

(c) in the exercise of a function of the licensing body or relevant council under this part; or

(d) in the reasonable belief that the act or omission was in the exercise of a function of the licensing body or relevant council under this part.

(2) Without limiting subsection (1), a person is not civilly liable for publishing honestly and without recklessness—

(a) information about disciplinary action—

(i) recorded in the register of disciplinary action; or

(ii) otherwise publicised by the relevant council under this part; or

(b) matter purporting to contain information mentioned in paragraph (a); or

(c) a fair report of information mentioned in paragraph (a) or matter mentioned in paragraph (b).

(3) In this section:

protected person means—

(a) the Territory; or

(b) a council; or

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(c) a person responsible for keeping the register of disciplinary action or any part of it; or

(d) an internet service provider or internet content host; or

(e) a public employee or statutory office-holder or a member of the staff of an entity mentioned in this definition; or

(f) a person acting at the direction of an entity mentioned in this definition.

452 Disciplinary action taken because of infirmity, injury or illness

(1) Disciplinary action taken against a person because of infirmity, injury or mental or physical illness must not be recorded in the register of disciplinary action or otherwise publicised under this part.

(2) Subsection (1) does not apply if the disciplinary action involves—

(a) the suspension or cancellation of the person's Australian practising certificate; or

(b) a refusal to grant an Australian practising certificate to the person or to renew the person's Australian practising certificate; or

(c) a restriction or prohibition on the person's right to engage in legal practice.

(3) However, if subsection (2) applies to the disciplinary action, the reason for the disciplinary action, and any other information about the infirmity, injury or mental or physical illness, must not be recorded in the register of disciplinary action or otherwise publicised under this part without the person's consent.

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453 Pt 4.9 subject to certain confidentiality provisions

This part is subject to the following provisions:

- section 248 (Confidentiality by external examiners)
- section 519 (Confidentiality by external interveners)
- section 557 (Permitted disclosure of confidential information—ch 6)
- section 596 (Confidentiality of personal information).

Note Section 596 provides that that section does not apply to the disclosure of information under this part.

454 Pt 4.9 subject to court and tribunal orders

(1) This part is subject to any order made by—

(a) the disciplinary tribunal in relation to disciplinary action taken under this chapter; or

(b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this chapter; or

(c) a court or tribunal of the ACT or another jurisdiction;

so far as the order prohibits or restricts the disclosure of information.

(2) However, 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 of disciplinary action in accordance with the requirements of this part and may be otherwise publicised under this part.

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Part 4.10 Inter-jurisdictional provisions—ch 4

455 Protocols for ch 4

(1) The councils may, separately or jointly, enter into arrangements (the ***protocols***) with corresponding authorities in relation to investigating and dealing with conduct that appears to have happened in more than 1 jurisdiction.

(2) In particular, the protocols may make provision in relation to—

(a) providing principles to assist in deciding where conduct happens; and

(b) giving and receiving consent for conduct happening 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 is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

456 Request to another jurisdiction to investigate complaint

(1) A council may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the council 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) an entity authorised by the corresponding authority to conduct the investigation;

may be used and taken into consideration by a council and the disciplinary tribunal in dealing with the complaint under this chapter.

457 Request from another jurisdiction to investigate complaint

(1) This section applies in relation to a request received by a council from a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with under a corresponding law.

(2) The council may conduct the investigation or authorise another entity to conduct it.

(3) The provisions of this part relating to the investigation of a complaint apply, with necessary changes, in relation to the investigation of the relevant aspect of the complaint that is the subject of the request.

(4) The council or other entity must provide a report on the result of the investigation to the corresponding authority.

458 Sharing of information with corresponding authorities

A council may enter into arrangements with a corresponding authority for providing information to the corresponding authority about—

(a) complaints made under this chapter; and

(b) any action taken in relation to any complaints made under this chapter, including decisions of the disciplinary tribunal under this chapter in relation to any complaints.

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459 Cooperation with corresponding authorities

(1) In dealing with a complaint, a council may consult and cooperate with another entity with functions under a corresponding law in relation to the person against whom the complaint was made.

(2) For subsection (1), the council and the other entity may exchange information about the complaint or complaints.

460 Compliance with disciplinary recommendations or orders made under corresponding laws

(1) Entities with relevant functions under this Act must—

(a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to functions 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 an Australian legal practitioner, or the employment of a person by a solicitor, in the ACT.

(2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed from the roll of lawyers under this Act, the Supreme Court must order the removal of the name from the local roll.

(3) If a corresponding disciplinary body makes a recommendation or order that an Australian legal practitioner pay a fine, a copy of the recommendation or order may be filed in the Supreme Court and the recommendation or order may be enforced as if it were an order of the court.

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461 Pt 4.10 does not affect other functions

This part does not affect any functions that an entity has apart from this part.

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Part 4.11 Miscellaneous—ch 4

462 Jurisdiction of Supreme Court not affected

The inherent jurisdiction and powers of the Supreme Court in relation 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 legal practice in the ACT.

463 Information about complaints procedure

(1) Each council must—

(a) produce information about the making of complaints and the procedure for dealing with complaints; and

(b) ensure that the information is available to members of the public on request.

(2) A council may advise members of the public about the complaints process.

464 Failure to comply with disciplinary orders

(1) If an order of the disciplinary tribunal is made under this Act against a person, or an order of a corresponding disciplinary body is made under a corresponding law against a person, the person must comply with the order.

(2) If an Australian legal practitioner fails to comply with an order of the disciplinary tribunal under this Act or an order of a corresponding disciplinary body under a corresponding law, the legal practitioner is not entitled to apply for the grant or renewal of a local practising certificate while the failure continues.

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465 Procedures for handling of complaints

Each council must develop and publish procedures and information material relating to the handling of complaints under this chapter.

466 Reports to Minister about handling of complaints

(1) A council must give the Minister, at the times and in relation to the periods required by the Minister, reports on the handling of complaints.

(2) A report is to deal with matters required by the Minister and other matters the council considers appropriate to include in the report.

(3) The obligations under this section are in addition to any obligations to provide an annual or other report under any other law.

467 Duty of council to report suspected offences

(1) This section applies if a council suspects on reasonable grounds, after investigation or otherwise, that a person has committed a serious offence.

(2) The council must—

(a) report the suspected offence to the chief police officer or other appropriate prosecuting authority; and

(b) make available to the chief police officer 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) continues while the council holds the relevant suspicion.

(4) In this section:

serious offence means an offence—

(a) for an offence committed in Australia—that is punishable by imprisonment for at least 1 year; or

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(b) for an offence committed outside Australia—that would be, if it had been committed in the ACT, punishable by imprisonment for at least 1 year.

468 Protection for things done in administration of ch 4

(1) A protected person is not civilly liable for anything done or omitted to be done honestly and without recklessness—

(a) for the purposes of the administration of this chapter; or

(b) in the exercise of a function under this chapter (other than in the exercise of a function of a council under part 4.9 (Publicising disciplinary action)); or

Note Section 451 provides protection for the exercise of functions under pt 4.9.

(c) in the reasonable belief that the act or omission was in the exercise of a function under this chapter (other than in the exercise of a function of the licensing body under part 4.9).

(2) In this section:

protected person means—

(a) the bar association or law society; or

(b) a council or any member of a council; or

(c) a committee or subcommittee of a council or any member of a committee or subcommittee; or

(d) anyone involved in the conduct of an investigation under this chapter; or

(e) the disciplinary tribunal or any member of the disciplinary tribunal; or

(f) the registrar of the disciplinary tribunal; or

(g) a mediator to whom a matter is referred under this chapter; or

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(h) any member of the staff of any entity mentioned in paragraph (a) to (f).

469 Non-compellability of certain witnesses

(1) A protected person under section 468 is not compellable in any legal proceeding (including a proceeding before the disciplinary tribunal) to give evidence or produce documents in relation to any matter in which the person was involved in the course of the administration of this chapter.

(2) This section does not apply in relation to—

(a) an inquiry under the *Inquiries Act 1991*; or

(b) the investigation of a complaint under the *Ombudsman Act 1989*; or

(c) an inquiry under the *Royal Commissions Act 1991*.

470 Confidentiality of client communications for ch 4

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 relation to a communication between the practitioner and a client.

471 Selfincrimination and other privileges overridden for ch 4 proceedings

(1) This section applies despite the Legislation Act, part 15.4 (Preservation of certain common law privileges) if a person is required by the disciplinary tribunal to disclose anything in a proceeding before the disciplinary tribunal under this chapter.

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(2) The person is not excused from the disclosure because—

(a) the disclosure might tend to incriminate the person or make the person liable to a penalty, or the person's property liable to forfeiture, under this Act or another territory law; or

(b) the disclosure would be in breach of an obligation (whether imposed by law or otherwise) of the person not to make the disclosure.

Example—client legal privilege

A person is not excused from disclosing a document because to do so would be in breach of an obligation by a lawyer to a client not to disclose the existence or contents of the document.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) However, the disclosure is inadmissible against the person making the disclosure in a civil or criminal proceeding except—

(a) in a criminal proceeding in relation to giving false or misleading documents, information or testimony; or

(b) in a proceeding on an application under this Act; or

(c) a proceeding resulting from a report or disclosure under section 467 (Duty of council to report suspected offences).

(d) for a document—in a civil proceeding in relation to a right or liability it gives or imposes.

(4) A proceeding does not lie against a person because of the disclosure if it is in breach of an obligation the person would otherwise have (whether imposed by law or applying otherwise).

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(5) In this section:

disclosure, by a person, includes—

(a) the person answering a question or giving testimony or information to someone else; and

(b) the person giving or producing a statement, document or anything else to someone else.

472 Waiver of privilege or duty of confidentiality

(1) If a client of an Australian legal practitioner makes a complaint about the practitioner, or an employee of the practitioner, the complainant is taken to have waived client legal 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 disclosed under that subsection may be used in or in relation to any procedures or proceedings relating to the complaint.

(3) This section has effect despite the Legislation Act, section 171 (Client legal privilege).

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Chapter 5 External intervention

Part 5.1 Preliminary—ch 5

473 Definitions—ch 5

(1) In this chapter:

external intervener means a supervisor, manager or receiver appointed for a legal practice under this chapter.

external intervention means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under this chapter.

regulated property, for 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 property mentioned in paragraph (a);

(c) documents or records of any description relating to anything mentioned in paragraph (a) or (b);

(d) any means by which any records mentioned in paragraph (c) that are not written may be reproduced in writing.

(2) Other terms used in this chapter have the same meanings as in part 3.1 (Trust money and trust accounts).

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474 Purpose—ch 5

(1) The purposes of this chapter are as follows:

(a) to ensure that an appropriate range of options is available for intervention in the business and professional affairs of lawyers (including foreign lawyers) for the purpose of protecting the interests of—

(i) the general public; and

(ii) clients; and

(iii) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with the interests of the general public and clients;

(b) to ensure that interventions happen in a way that minimises adverse consequences for the lawyers concerned and their clients.

(2) It is intended that interventions happen consistently with—

(a) similar interventions in other jurisdictions, especially if a law practice operates in the ACT and 1 or more other jurisdictions; and

(b) other provisions of this Act.

475 Application of ch 5—incorporated law practices etc

(1) This chapter applies to all law practices, irrespective of whether they are incorporated under the Corporations Act.

(2) This chapter is intended to apply so that it, rather than the Corporations Act or the *Bankruptcy Act 1966* (Cwlth), applies in relation to the winding up of trust property and in relation to the carrying on of a law practice by external intervention.

(3) This section is subject to section 476.

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476 Application of ch 5 to barristers

(1) Part 5.3 (Supervisors) and part 5.5 (Receivers) do not apply to the law practice of a barrister.

(2) This chapter applies to the law practice of a barrister as if the powers of the manager for a law practice of a barrister included power to reallocate or return briefs.

477 Application of ch 5 to Australian-registered foreign lawyers

This chapter applies, with necessary changes, to Australian-registered foreign lawyers in the same way as it applies to law practices.

478 Application of ch 5 to other people

This chapter applies to the following, with necessary changes, in the same way as it applies to law practices:

(a) a former law practice or former Australian legal practitioner;

(b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate;

(c) the administrator, or receiver, or receiver and manager of the property of an incorporated legal practice;

(d) the liquidator of an incorporated legal practice that is being or has been wound up.

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Part 5.2 Initiation of external intervention

479 Circumstances justifying external intervention

External intervention may take place in relation to a law practice in any of the following circumstances:

(a) if a legal practitioner associate involved in the practice—

(i) has died; or

(ii) stops being an Australian legal practitioner; or

(iii) has become an insolvent under administration; or

(iv) is in prison;

(b) for a firm—if the partnership has been wound up or dissolved;

(c) for an incorporated legal practice—if the corporation concerned—

(i) stops being an incorporated legal practice; or

(ii) is being or has been wound up; or

(iii) has been deregistered or dissolved;

(d) in any case—if the relevant council believes, 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 an associate of the practice; or

(ii) has committed a serious irregularity, or a serious irregularity has happened, in relation to trust money or trust property or the affairs of the practice; or

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(iii) has failed properly to account in a timely way to anyone for trust money or trust property received by the practice for or on behalf of the person; or

(iv) has failed properly to make a payment of trust money or a transfer of trust property when required to make the payment or transfer by a person entitled to the money or property or entitled to give a direction for payment or transfer; or

(v) is in breach of a regulation or the legal profession rules with the result that the record-keeping for the practice's trust account is inadequate; or

(vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or

(vii) is the subject of a complaint relating to trust money or trust property received by the practice; or

(viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Act; or

(ix) has stopped engaging in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding up the affairs of the practice;

(e) if any other proper cause exists in relation to the practice.

480 Decision about external intervention

(1) This section applies if the relevant council becomes aware that 1 or more of the circumstances mentioned in section 479 exist in relation to a law practice and decides that external intervention is justified, having regard to the interests of the clients, owners and employees of the practice and to other matters that it considers appropriate.

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(2) The relevant council may decide—

(a) for a law practice other than the law practice of a barrister—to appoint a supervisor for the law practice, if the relevant council is of the opinion—

(i) that external intervention is required because of issues relating to the practice's trust accounts; and

(ii) that it is not appropriate that the provision of legal services by the practice be wound up and ended because of those issues; or

(b) to appoint a manager for the law practice, if the relevant council is of the opinion—

(i) that the practice is or may be a viable business concern; and

(ii) that, for this to happen, there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

(c) for a law practice other than the law practice of a barrister—to apply to the Supreme Court under section 494 for the appointment of a receiver for the law practice, if the relevant council is of the opinion—

(i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(ii) that it may be appropriate that the provision of legal services by the practice be wound up and ended.

(3) The relevant council may, from time to time, make further decisions in relation to the law practice and for that purpose may revoke a previous decision with effect from a date or event stated by the council.

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(4) If the relevant council decides to revoke a decision to apply to the Supreme Court for the appointment of a receiver, the council must apply to the court for the revocation of the appointment.

(5) A further decision may be made under subsection (3)—

(a) whether or not there has been any change in the circumstances in consequence of which the original decision was made; and

(b) whether or not any further circumstances have come into existence in relation to the law practice after the original decision was made.

(6) An appointment of a supervisor or manager for a law practice may be made in relation to the law practice generally or may be limited in any way the relevant council considers appropriate, including, for example, to matters in relation to a particular legal practitioner associate or to matters in relation to a particular position or a particular subject matter.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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Part 5.3 Supervisors

Note to pt 5.3

This part does not apply to the law practice of a barrister (see s 476).

481 Appointment of supervisor

(1) This section applies if the law society council decides to appoint a supervisor of trust money for a law practice.

(2) The law society council may appoint a person as supervisor.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(3) The appointee must be either—

(a) an Australian legal practitioner; or

(b) a person holding accounting qualifications with experience in law practice trust accounts.

(4) The appointee may (but need not) be an employee of the law society.

(5) The appointment must—

(a) identify the law practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the law society council when the appointment is made; and

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(e) state any fees payable by way of remuneration to the supervisor specifically for carrying out the supervisor's duties in relation to the external intervention; and

Note Par (e) is intended to exclude remuneration payable generally, eg as an employee of the law society.

(f) provide for the legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.

(6) The appointment may state any reporting requirements to be observed by the supervisor.

482 Notice of appointment of supervisor

(1) As soon as possible after a supervisor is appointed for a law practice, the law society council must give written notice of the appointment to—

(a) the practice; and

(b) anyone else authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is kept; and

(e) anyone whom the council believes, on reasonable grounds, should be given notice of the appointment.

(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

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(c) state the term of the appointment; and

(d) state any reporting requirements to be observed by the supervisor; and

(e) state any conditions imposed by the law society council when the appointment was made; and

(f) include a statement that the law practice may appeal against the appointment of the supervisor under section 514; and

(g) contain or be accompanied by any other information or material prescribed by regulation.

483 Effect of service of notice of appointment of supervisor

(1) If an ADI is given notice under section 482 of the appointment of a supervisor for a law practice, then, while the appointment is in force, 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 the account signed by the supervisor; or

(b) the withdrawal or transfer is made by the supervisor using 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.

(2) A person commits an offence if—

(a) the person is given notice under section 482 of the appointment of a supervisor for a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

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(ii) signs a cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply to an ADI or the supervisor for the law practice.

(4) An offence against this section is a strict liability offence.

(5) The supervisor for a law practice may, for subsection (1) (b), enter into arrangements with an ADI for withdrawing funds from a trust account of the practice using electronic or internet banking facilities.

(6) If an amount is withdrawn or transferred in contravention of subsection (1) from a trust account of a law practice kept with an ADI, the supervisor for the practice may recover the amount from the ADI as a debt in a court of competent jurisdiction.

(7) The supervisor for the law practice must pay any amount recovered from the ADI under subsection (6) into the trust account of the practice.

484 Role of supervisor

(1) A supervisor for a law practice has the powers and duties of the practice in relation to trust money of the practice, including powers—

(a) to receive trust money on behalf of the practice; and

(b) to open and close trust accounts.

(2) For the purpose of exercising powers or duties under subsection (1), the supervisor may do any or all of the following:

(a) enter and remain on premises used by the law practice for or in relation to its engaging in legal practice;

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(b) require the practice, an associate or former associate of the practice, or anyone else having control of documents relating to trust money received by the practice, to give the supervisor—

(i) access to the documents the supervisor reasonably requires; and

(ii) information relating to the trust money the supervisor reasonably requires;

(c) operate equipment or facilities on the premises, or to require anyone on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;

(d) take possession of any relevant material and keep it for as long as may be necessary;

(e) secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.

(3) If the supervisor takes anything from the premises, the supervisor must issue a receipt for the thing and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give it to the occupier or person; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for a receipt, the form must be used.

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(4) If the supervisor is refused access to the premises or the premises are unoccupied, the supervisor may use whatever appropriate force is reasonable and 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 as far as the affairs relate to a trust account of the practice.

485 Records of and dealing with trust money of law practice under supervision

(1) A supervisor for a law practice must keep the records of the supervisor's dealings with trust money of the practice—

(a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and

(b) separately from the affairs of any other law practice for which he or she is supervisor; and

(c) in the way prescribed by regulation.

(2) Subject to subsection (1), a supervisor for a law practice must deal with the trust money of the practice in the same way as a law practice must deal with trust money.

486 Ending of supervisor's appointment

(1) The appointment of a supervisor for a law practice ends in the following circumstances:

(a) the term of the appointment ends;

(b) the appointment of a manager for the practice takes effect;

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(c) the appointment of a receiver for the practice takes effect;

(d) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;

(e) a decision of the law society council that the appointment be ended takes effect.

(2) The law society council may decide that the appointment be ended immediately or with effect from a stated date.

(3) The law society council must give written notice of the ending of the appointment to everyone given notice of the appointment.

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Part 5.4 Managers

487 Appointment of manager

(1) This section applies if the relevant council decides to appoint a manager for a law practice.

(2) The relevant council may appoint a person as manager.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(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 law society.

(4) However, for the appointment of a manager for the law practice of a barrister, the appointee may (but need not) be an employee of the bar association and need not be an Australian lawyer or the holder of an Australian practising certificate.

(5) The appointment must—

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the relevant council when the appointment is made; and

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(e) state 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 Par (e) is intended to exclude remuneration payable generally, eg as an employee of the law society or bar association.

(f) provide for the legal costs and expenses that may be incurred by the manager in relation to the external intervention.

(6) The appointment may state any reporting requirements to be observed by the manager.

488 Notice of appointment

(1) As soon as possible after a manager is appointed for a law practice, the relevant council must give written notice of the appointment to—

(a) the practice; and

(b) anyone else authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is kept; and

(e) any legal practitioner associate of the practice named under subsection (2) (f); and

(f) anyone whom the council believes, on reasonable grounds, should be given notice of the appointment.

(2) The notice must—

(a) identify the law practice and the manager; and

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(b) indicate that the external intervention is by way of appointment of a manager; and

(c) state the term of the appointment; and

(d) state any reporting requirements to be observed by the manager; and

(e) state any conditions imposed by the relevant council when the appointment was made; and

(f) name any legal practitioner associate of the practice who must not participate in the affairs of the practice except under the direct supervision of the manager; and

(g) include a statement that the law practice may appeal against the appointment of the manager under section 514; and

(h) contain or be accompanied by any other information or material prescribed by regulation.

489 Effect of service of notice of appointment of manager

(1) A person commits an offence if—

(a) the person is given notice under section 488 of the appointment of a manager for a law practice; and

(b) the person is a legal practitioner associate of the practice who is named in the notice under section 488 (2) (f); and

(c) the person participates in the affairs of the practice otherwise than under the direct supervision of the manager.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1) (a) and (b).

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(3) If an ADI is given notice under section 488 of the appointment of a manager for a law practice, then, while the appointment is in force, 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 the account signed by the manager or by a receiver appointed for the practice; or

(b) the withdrawal or transfer is made by the manager, or by a receiver appointed for the practice, using 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 manager or by a receiver appointed for the practice.

(4) A person commits an offence if—

(a) the person is given notice under section 488 of the appointment of a manager for a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

(ii) signs a cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 100 penalty units.

(5) Strict liability applies to subsection (4) (a).

(6) Subsection (4) does not apply to an ADI, the manager for the law practice, a receiver for the practice or a legal practitioner associate to whom subsection (1) applies.

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(7) The manager for a law practice may, for subsection (3) (b), enter into arrangements with an ADI for withdrawing funds from a trust account of the practice using electronic or internet banking facilities.

(8) If an amount is withdrawn or transferred in contravention of subsection (3) from a trust account of the law practice kept with an ADI, the manager for the practice, or a receiver for the practice, may recover the amount from the ADI as a debt in a court of competent jurisdiction.

(9) The manager or receiver for the law practice must pay any amount recovered from the ADI under subsection (8) into the trust account of the practice.

490 Role of manager

(1) A manager for a law practice may carry on the practice and may do everything that the practice or a legal practitioner associate of the practice might lawfully have done, including, for example, the following:

(a) transacting any urgent business of the practice;

(b) transacting, with the approval of any or all of the existing clients of the practice, any business on their behalf, including—

(i) starting, continuing, defending or settling any proceeding; and

(ii) receiving, retaining and disposing of property;

(c) accepting instructions from new clients and transacting any business on their behalf, including—

(i) starting, continuing, defending or settling any proceeding; and

(ii) receiving, retaining and disposing of regulated property;

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(d) charging and recovering legal costs, including legal costs for work in progress at the time of the manager's appointment;

(e) entering into, executing or performing any agreement;

(f) dealing with trust money in accordance with this Act;

Note ***This Act*** is defined in the dictionary.

(g) winding up the affairs of the practice.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) For the purpose of exercising powers under subsection (1), the manager may do any or all of the following:

(a) enter and remain on premises used by the law practice for or in relation to its engaging in legal practice;

(b) require the practice, an associate or former associate of the practitioner, or anyone else having control of client files and associated documents (including documents relating to trust money received by the practice), to give the manager—

(i) access to the files and documents the manager reasonably requires; and

(ii) information relating to client matters the manager reasonably requires;

(c) operate equipment or facilities on the premises, or to require anyone on the premises to operate equipment or facilities on the premises, for a purpose relevant to the manager's appointment;

(d) take possession of any relevant material and keep it for as long as may be necessary;

(e) secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

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(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.

(3) If the manager takes anything from the premises, the manager must issue a receipt for the thing and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give it to the occupier or person; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(4) If the manager is refused access to the premises or the premises are unoccupied, the manager may use whatever appropriate force is reasonable and necessary to enter the premises and may be accompanied by a police officer to assist entry.

491 Records and accounts of law practice under management and dealings with trust money

(1) A manager for a law practice must keep the records and accounts of the practice that the manager 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 way prescribed by regulation.

(2) Subject to subsection (1), a 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.

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492 Deceased estates—law practice under management

(1) The manager for a law practice must cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding up of the estate.

(2) The manager is not, in the exercise of powers and duties as manager, a legal personal representative of the deceased legal practitioner associate.

(3) Subsection (2) does not prevent the manager from exercising powers or duties as a legal personal representative if otherwise appointed as representative.

(4) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and duties are not affected by the death.

493 Ending of manager's appointment

(1) The appointment of a manager for a law practice ends in the following circumstances:

(a) the term of the appointment ends;

(b) the appointment of a receiver for the practice takes effect, if the terms of the appointment indicate that the receiver is authorised to exercise the powers and duties of a manager;

(c) the manager has wound up the affairs of the practice;

(d) a decision of the relevant council that the appointment be ended takes effect.

(2) The relevant council may decide that the appointment be ended immediately or with effect from a stated date.

(3) The relevant council must give written notice of the ending of the appointment to everyone given notice of the appointment.

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(4) If the appointment ends in the circumstances mentioned in subsection (1) (a), (b) or (d), the former manager must transfer and give 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.

(5) However, the former manager need not transfer regulated property and files to the law practice in compliance with subsection (4) unless the manager's expenses have been paid to the relevant council.

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Part 5.5 Receivers

Note to pt 5.5

This part does not apply to the law practice of a barrister (see s 476).

494 Appointment of receiver

(1) This section applies if the law society council decides to apply to the Supreme Court for the appointment of a receiver for a law practice.

(2) On the application of the law society council, the Supreme Court may appoint a person as receiver for the law practice.

(3) The Supreme Court may make the appointment if the court is of the opinion—

(a) that the appointment is necessary to protect the interests of clients of the law practice in relation to trust money or trust property; or

(b) that it may be appropriate that the provision of legal services be wound up and ended.

(4) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice has been given notice of the application and whether or not the practice or principal is a party to the proceeding.

(5) The Legislation Act, part 19.3 does not apply in relation to the appointment.

(6) Before starting to hear the application, the Supreme Court must order from the precincts of the court anyone who is not—

(a) an officer of the court; or

(b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or

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(c) a principal of the law practice; or

(d) a person who is about to or is in the course of giving evidence; or

(e) a person permitted by the court to be present in the interests of justice.

(7) The appointee must be—

(a) an Australian legal practitioner; or

(b) a person holding accounting qualifications with experience in law practice trust accounts.

(8) The appointee may (but need not) be an employee of the law society.

(9) The appointment must—

(a) identify the law practice and the receiver; and

(b) indicate that the external intervention is by way of appointment of a receiver; and

(c) state any conditions imposed by the Supreme Court when the appointment is made; and

(d) state any fees payable by way of remuneration to the receiver specifically for carrying out the receiver's duties in relation to the external intervention; and

Note Par (d) is intended to exclude remuneration payable generally, eg as an employee of the law society.

(e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.

(10) The appointment may—

(a) state the term (if any) of the appointment; and

(b) state any reporting requirements to be observed by the receiver.

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495 Notice of appointment of receiver

(1) As soon as possible after a receiver is appointed for a law practice, the law society council must give written notice of the appointment to—

(a) the practice; and

(b) anyone else authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is kept; and

(e) any legal practitioner associate of the practice named under subsection (2) (g); and

(f) anyone whom the Supreme Court directs should be given notice of the appointment; and

(g) anyone whom the council believes, on reasonable grounds, should be given notice of the appointment.

(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) indicate the extent to which the receiver has the powers of a manager for the practice; and

(d) state the term (if any) of the appointment; and

(e) state any reporting requirements to be observed by the receiver; and

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(f) state any conditions imposed by Supreme Court when the appointment was made; and

(g) name any legal practitioner of the practice who must not participate in the affairs of the practice; and

(h) contain or be accompanied by any other information or material prescribed by regulation.

496 Effect of service of notice of appointment of receiver

(1) A person commits an offence if—

(a) the person is given notice under section 495 of the appointment of a receiver for a law practice; and

(b) the person is a legal practitioner associate of the practice who is named in the notice under section 495 (2) (g); and

(c) the person participates in the affairs of the practice.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1) (a) and (b).

(3) If an ADI is given notice under section 495 of the appointment of a receiver for a law practice, then, while the appointment is in force, 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 receiver or by a manager appointed for the practice; or

(b) the withdrawal or transfer is made by the receiver, or by a manager appointed for the practice, using 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 receiver or by a manager appointed for the practice.

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(4) A person commits an offence if—

(a) the person is given notice under section 495 of the appointment of a receiver for a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

(ii) signs a cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 100 penalty units.

(5) Strict liability applies to subsection (4) (a).

(6) Subsection (4) does not apply to an ADI, the receiver for the law practice or a manager for the practice.

(7) The receiver for a law practice may, for subsection (3) (b), enter into arrangements with an ADI for withdrawing funds from a trust account of the practice using electronic or internet banking facilities.

(8) If an amount is withdrawn or transferred in contravention of subsection (2) from a trust account of the law practice kept with an ADI, the receiver for the practice, or a manager for the practice, may recover the amount from the ADI as a debt in a court of competent jurisdiction.

(9) The receiver or manager for the law practice must pay any amount recovered from the ADI under subsection (8) into the trust account of the practice.

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497 Role of receiver

(1) The role of a receiver for a law practice is—

(a) to be the receiver of regulated property of the practice; and

(b) to wind up and terminate the affairs of the practice.

(2) For the purpose of winding up the affairs of the law practice and in the interests of the practice's clients, the law society council may, in writing, authorise—

(a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) an Australian legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include 1 or more Australian legal practitioners who hold unrestricted practising certificates, stated in the authorisation to carry on the legal practice on behalf of the receiver.

(3) Subject to any written directions given by the law society council, 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 have been appointed as manager for the law practice.

(4) The law society council may end an authorisation to carry on a law practice granted under this section.

(5) For the purpose of exercising powers under subsection (1), the receiver may do any or all of the following:

(a) enter and remain on premises used by the law practice for or in relation to its engaging in legal practice;

(b) require the practice, an associate or former associate of the practitioner, or anyone else having control of client files and associated documents (including documents relating to trust money received by the practice), to give the receiver—

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(i) access to the files and documents the receiver reasonably requires; and

(ii) information relating to client matters the receiver reasonably requires;

(c) operate equipment or facilities on the premises, or to require anyone on the premises to operate equipment or facilities on the premises, for a purpose relevant to the receiver's appointment;

(d) take possession of any relevant material and keep it for as long as may be necessary;

(e) secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the receiver's appointment.

(6) If the receiver takes anything from the premises, the receiver must issue a receipt for the thing and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give it to the occupier or person; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is reasonable and necessary to enter the premises and may be accompanied by a police officer to assist entry.

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498 Records and accounts of law practice under receivership and dealings with trust money

(1) A receiver for a law practice must keep the records and accounts of the practice that the receiver manages—

(a) separately from the management of the affairs of the practice before his or her appointment as receiver; and

(b) separately from the affairs of any other law practice that the receiver is managing; and

(c) in the way prescribed by regulation.

(2) Subject to subsection (1), a 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.

499 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 allow the receiver to take possession of the regulated property if the receiver requires the person to allow the receiver to take possession of it.

(3) If a person contravenes subsection (2) in relation to regulated property, the Supreme Court may, on application by the receiver, order the person to give the 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 on the premises stated in the order and make any further orders it considers appropriate.

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(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 stated in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

(6) The receiver must return anything seized under this section that is not regulated property of the law practice.

500 Power of receiver to take delivery of regulated property

(1) If a receiver for a law practice believes, on reasonable grounds, that someone is under an obligation, or will later be under an obligation, to give regulated property to the practice, the receiver may by written notice require the other person to give the property to the receiver.

(2) A person commits an offence if—

(a) the person has notice that a receiver has been appointed for a law practice; and

(b) the person has possession or control of regulated property of the practice; and

(c) the person is given a notice under subsection (1) in relation to the property or otherwise has notice that the person is under an obligation to give the property to the receiver of the practice; and

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(d) the person fails to give the property to the receiver.

Maximum penalty: 50 penalty units.

(3) A document signed by a receiver acknowledging the receipt of regulated property given to the receiver is as effective as if it had been given by the law practice.

501 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 way in which the law practice could have lawfully dealt with the property.

502 Power of receiver to require documents or information

(1) A receiver for a law practice may, by written notice, require a relevant person for the practice to give the receiver either or both of the following within the reasonable time stated in the notice:

(a) access to documents the receiver reasonably requires;

(b) information the receiver reasonably requires.

(2) The relevant person commits an offence if the person contravenes a requirement of a notice given to the person under subsection (1).

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

(4) The relevant person cannot rely on the common law privileges against selfincrimination or exposure to the imposition of a civil penalty to refuse to comply with the requirement.

Note Section 597 (Professional privilege or duty of confidence does not affect validity of certain requirements etc) applies to the requirement.

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(5) However, any information, document or other thing obtained, directly or indirectly, because of complying with the requirement is not admissible against the person in a civil or criminal proceeding, other than a proceeding for—

(a) an offence in relation to the falsity or misleading nature of a document or information; or

(b) an offence against this Act; or

(c) any other offence relating to the keeping of trust accounts or the receipt of trust money.

(6) The person is not subject to any liability, claim or demand only because the person complies with the requirement.

(7) In this section:

relevant person, for a law practice, means—

(a) an associate or former associate of the practice; or

(b) anyone who has, or has had, control of documents of the practice.

503 Examinations for receivership

(1) On the application of a receiver for a law practice, the Supreme Court may make an order directing that an associate or former associate of the practice or any other person appear before the court for examination on oath in relation to the regulated property of the practice.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(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.

Note The Criminal Code, s 722 provides an offence for failing to answer a question.

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(3) A person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to answer a question.

(4) However, any information, document or other thing obtained, directly or indirectly, because of answering a question is not admissible against the person in a civil or criminal proceeding, other than a proceeding for—

(a) an offence in relation to the falsity or misleading nature of the answer; or

(b) an offence against this Act.

504 Lien for costs on regulated property

(1) This section applies if—

(a) a receiver has been appointed for a law practice; and

(b) a legal practitioner associate of the practice claims a lien for legal costs on regulated property of the practice.

(2) The receiver may give the legal practitioner associate a written notice requiring the associate to give the receiver within a stated period of not less than 1 month—

(a) particulars sufficient to identify the regulated property; and

(b) a detailed bill of costs.

(3) If the legal practitioner associate asks the receiver in writing to give access to the regulated property that is reasonably necessary to enable the associate to prepare a bill of costs to comply with subsection (2), the time allowed under that subsection does not start to run until the access is provided.

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(4) If a requirement of a notice under subsection (2) is not complied with, the receiver may disregard the legal practitioner associate's claim in dealing with the regulated property claimed to be subject to the lien.

505 Regulated property not to be attached

(1) 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.

(2) This section is declared to be a Corporations legislation displacement provision for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws) in relation to the provisions of that Act, chapter 5.

Note Subsection (2) ensures that that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which s (2) would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

506 Recovery of regulated property—breach of trust etc

(1) Subsection (2) 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 anyone else 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.

(3) On the recovery of the amount from the transferee, the transferee stops being liable for it to anyone else.

(4) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been paid in breach of trust, improperly or unlawfully to a person (the ***prospective plaintiff***) in relation to a cause of action that the prospective plaintiff had, or claimed to have, against a third party—

(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.

(5) 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 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 discharged less the consideration (if any) provided by the debtor for the discharge.

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(6) A person authorised by the law society council may give a certificate in relation to all or any of the following facts in relation to a law practice:

(a) the receipt of regulated property by the practice from anyone, 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 for the practice, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;

(c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the practice and the truth or falsity of the entries;

(d) the money and securities held by the practice at a stated time.

(7) If the receiver brings a proceeding under subsection (2), (4) or (5), a certificate given under subsection (6) is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it.

507 Improperly destroying property

(1) A person commits an offence if—

(a) the person does any of the following (the ***action***) in relation to regulated property of a law practice:

(i) destroys the property;

(ii) conceals the property;

(iii) moves the property from a place to another place;

(iv) delivers the property into someone else's possession;

(v) places the property under someone else's control; and

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(b) a receiver has been appointed, or is likely to be appointed, for the practice; and

(c) the person does the action with intent to defeat the operation of this part.

Maximum penalty: 100 penalty units.

(2) This section applies whether the person does the action before or after the appointment of a receiver for the law practice.

508 Deceased estates—law practice under receivership

(1) The receiver for a law practice must cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding up of the estate.

(2) The receiver is not, in the exercise of powers and duties as receiver, a legal personal representative of the deceased legal practitioner associate.

(3) Subsection (2) does not prevent the receiver from exercising powers or duties as a legal personal representative if otherwise appointed as representative.

(4) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and duties are not affected by the death.

509 Ending of receiver's appointment

(1) The appointment of a receiver for a law practice ends in the following circumstances:

(a) the term (if any) of the appointment ends;

(b) a decision of the Supreme Court that the appointment be ended takes effect.

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(2) The former receiver must transfer and give the regulated property of the law practice to—

(a) another external intervener appointed for the practice, if another external intervener is appointed for the practice not later than 14 days after the day the former receiver's appointment ends; or

(b) someone else in accordance with arrangements approved by the law society council, if it is not practicable to transfer and give the regulated property to the practice; or

(c) the practice, if paragraphs (a) and (b) do not apply.

(3) However, the former receiver need not transfer and give regulated property to the law practice in accordance with subsection (2) unless the expenses of receivership have been paid.

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Part 5.6 General—ch 5

510 Conditions on appointment of supervisor or manager

(1) An appointment of an supervisor or manager for a legal practice is subject to—

(a) any conditions imposed by the relevant council; and

(b) any conditions imposed by regulation.

(2) The relevant council may impose conditions—

(a) when the appointment is made; or

(b) during the term of the appointment.

(3) The relevant council may revoke or amend conditions imposed under subsection (2).

511 Conditions on appointment of receiver

(1) An appointment of a receiver for a legal practice is subject to—

(a) any conditions imposed by the Supreme Court; and

(b) any conditions imposed by regulation.

(2) The Supreme Court may impose conditions—

(a) when the appointment is made; or

(b) during the term of the appointment.

(3) The Supreme Court may revoke or amend conditions imposed under subsection (2).

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512 Status of acts of external intervener

(1) An act done or omitted to be done by an external intervener for a law practice is taken to have been done or omitted to be done by the practice for the purposes of—

(a) any proceeding; or

(b) any transaction that relies on the act or omission.

(2) This section does not subject an associate of the law practice to any personal liability.

513 Eligibility for reappointment or authorisation

A person who has been appointed as an external intervener for a law practice is eligible for reappointment as an external intervener for the practice, whether the later appointment is made in relation to the same kind of external intervention or is of a different kind.

514 Appeal against appointment of supervisor or manager

(1) The following people may appeal to the Supreme Court against the appointment of a supervisor or manager for a law practice:

(a) the practice;

(b) an associate of the practice;

(c) anyone authorised to operate a trust account of the practice;

(d) anyone else whose interests may be adversely affected by the appointment.

(2) The appeal must be filed not later than 7 days after the day notice of the appointment is given to—

(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.

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(3) The appointment of a supervisor or manager for a law practice is not stayed by the filing of an appeal, and the supervisor or manager may continue to exercise his or her functions as a supervisor or manager during the appeal proceeding except to the extent that the Supreme Court otherwise directs.

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers).

515 Directions of Supreme Court about external intervention

(1) This section applies if a supervisor, manager or receiver is appointed for a law practice.

(2) On application by—

(a) the supervisor, manager or receiver; or

(b) a principal of the practice; or

(c) anyone affected by the external intervention;

the Supreme Court may give directions in relation to anything affecting the intervention or the intervener's functions under this Act.

516 Requirement for ADI to disclose and permit access to accounts

Despite any rule of law to the contrary, an external intervener for a law practice may require an ADI in the which the practice has or has had an account—

(a) to disclose every account of the practice that, in the intervener's opinion, may be relevant to the affairs of the practice; and

(b) to permit the making of a copy or the taking of extracts from any account of that kind.

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517 Fees, legal costs and expenses of external intervener

(1) An external intervener for a law practice is entitled to be paid, in accordance with the intervener's appointment—

(a) fees by way of remuneration; and

(b) the legal costs and the expenses incurred in relation to the external intervention.

(2) An account of the external intervener for fees, costs and expenses may be assessed on the relevant council's application.

(3) The fees, costs and expenses are payable by and recoverable from the law practice.

(4) Fees, costs and expenses not paid to the external intervener by the law practice are payable from the fidelity fund.

(5) The relevant council 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 fidelity fund are to be paid to the fund.

518 Reports by external intervener

(1) An external intervener for a law practice must provide written reports in accordance with any reporting requirements to be observed by the intervener as stated in the intervener's appointment.

(2) If the appointment of the external intervener does not state any reporting requirements, the intervener must give—

(a) written reports as required from time to time by the relevant council; and

(b) a written report to the council at the end of the appointment.

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(3) The external intervener must also keep the relevant council informed of the progress of the external intervention, including by giving reports to the council about any significant events happening or state of affairs existing in relation to the intervention or any of the matters to which the intervention relates.

(4) This section does not affect any other reporting obligations that may exist in relation to the law practice.

519 Confidentiality by external interveners

(1) An external intervener for a law practice must not disclose information obtained because of the intervener's appointment except—

(a) so far as is necessary for exercising the intervener's functions; and

(b) as provided in subsection (2).

(2) The external intervener may disclose information to any of the following:

(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) any jurisdiction or the Commonwealth; or

(iii) an authority of any jurisdiction or the Commonwealth;

in relation to any proceeding, inquiry or other matter pending or contemplated arising out of the investigation or examination;

(d) a police officer of any jurisdiction or the Commonwealth if the relevant council, investigator or external intervener believes,

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on reasonable grounds, that the information relates to an offence that may have been committed by the law practice or an associate of the law practice;

(e) the law practice or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;

(f) a client or former client of the law practice concerned, if the information relates to the client or former client;

(g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by the other external intervener;

(h) any other external examiner carrying out an external examination of the trust records of the law practice.

520 Protection from liability—ch 5

(1) A protected person is not civilly liable for anything done or omitted to be done honestly and without recklessness—

(a) in the exercise of a function under this chapter; or

(b) in the reasonable belief that the act or omission was in the exercise of a function under this chapter.

(2) In this section:

protected person means—

(a) the bar association or law society; or

(b) a council or any member of a council; or

(c) an external intervener for a law practice; or

(d) any member of the staff of an entity mentioned in this definition.

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Chapter 6 Investigations

Part 6.1 Preliminary—ch 6

521 Definitions—pt 6.1

In this part:

complaint investigation means the investigation of a complaint under chapter 4 (Complaints and discipline).

ILP compliance audit means the conduct of an audit under division 2.6.2 (Incorporated legal practices) in relation to an incorporated legal practice.

investigator means—

(a) an investigator under subdivision 3.1.3.1; or

(b) an external examiner under subdivision 3.1.3.2; or

(c) an investigator under part 4.4; or

(d) in relation to an audit under division 2.6.2—the law society or a person appointed by the law society council to conduct the audit.

trust account examination means the external examination of the trust records of a law practice under subdivision 3.1.3.2 (External examinations).

trust account investigation means the investigation of the affairs of a law practice under subdivision 3.1.3.1 (Investigations).

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522 Main purpose—ch 6

The main purpose of this chapter is to provide powers that are exercisable in relation to—

(a) trust account investigations; and

(b) trust account examinations; and

(c) complaint investigations; and

(d) ILP compliance audits.

Note Ch 6 also applies in relation to matters under div 2.4.7 (see s 67) and matters under div 2.7.7 (see s 186).

523 Privileges against selfincrimination and exposure to civil penalty

(1) This section applies to a requirement made of a person under this chapter (other than in relation to a complaint investigation).

(2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to comply with a requirement.

Note The Legislation Act, s 171 deals with client legal privilege.

(3) However, any information, document or thing obtained, directly or indirectly, because of the giving of an answer or the production of a document is not admissible in evidence against the person in a civil or criminal proceeding, other than—

(a) a proceeding for an offence against this Act or the Criminal Code, part 3.4 (False or misleading statements, information and documents); or

(b) any other offence relating to the keeping of trust accounts or the receipt of trust money.

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(4) A failure of an Australian lawyer to comply with the requirement can be unsatisfactory professional conduct or professional misconduct.

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Part 6.2 Requirements relating to documents, information and other assistance

524 Application—pt 6.2

This division applies to—

(a) trust account investigations; and

(b) trust account examinations; and

(c) complaint investigations; and

(d) ILP compliance audits.

525 Requirements that may be imposed for investigations, examinations and audits under pt 3.1 and pt 2.6

(1) For 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 the investigator's appointment, require the practice or an associate or former associate of the practice or anyone (including, for example, an ADI, auditor or liquidator) having control of documents relating to the affairs of the practice to give the investigator—

(a) access to the documents relating to the practice's affairs the investigator reasonably requires; and

(b) information relating to the practice's affairs the investigator reasonably requires (verified by statutory declaration if stated in the requirement).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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(2) A person commits an offence if the person does not comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

526 Requirements that may be imposed for investigations under ch 4

(1) For 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 1 or more of the following:

(a) to produce, at or before a stated reasonable time and at a stated reasonable place, a stated document (or a copy of the document);

(b) to produce, at a stated reasonable time and stated reasonable place, a stated document (or a copy of the document);

(c) to provide written information on or before a stated reasonable date (verified by statutory declaration if stated in the requirement);

(d) to otherwise assist in, or cooperate with, the investigation of the complaint in a stated reasonable way.

(2) For carrying out a complaint investigation in relation to an Australian lawyer, the investigator may, on production of evidence of the investigator's appointment and by written notice require an associate or former associate of the lawyer or anyone (including, for example, an ADI, auditor or liquidator but not including the lawyer) having control of documents relating to the affairs of the lawyer to give the investigator—

(a) access to the documents relating to the lawyer's affairs the investigator reasonably requires; and

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(b) information relating to the lawyer's affairs the investigator reasonably requires (verified by statutory declaration if the requirement so states).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) A person commits an offence if the person does not comply with a requirement made of the person under subsection (1) or (2).

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

527 Provisions relating to requirements under pt 6.2

(1) This section applies to a requirement made of 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 the ground that a law practice or legal practitioner has a lien over a particular document or class of documents.

Note Section 597 (Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements etc) contains a similar provision in relation to client legal privilege and duties of confidence. Section 523 (Privileges against selfincrimination and exposure to civil penalty) also applies to a requirement made of a person under this chapter.

(3) The investigator imposing the requirement may—

(a) inspect any document provided under the requirement; and

(b) make copies of the document or any part of the document; and

(c) keep the document for a period the investigator considers necessary for the purposes of the investigation in relation to which it was produced.

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(4) The person is not subject to any liability, claim or demand only because of compliance with the requirement.

(5) A failure of an Australian lawyer to comply with the requirement can be unsatisfactory professional conduct or professional misconduct.

(6) The relevant council may suspend a local practitioner's local practising certificate while a failure by the practitioner to comply with the requirement continues.

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Part 6.3 Entry and search of premises

Division 6.3.1 Preliminary—pt 6.3

528 Application—pt 6.3

(1) This division applies to—

(a) trust account investigations; and

(b) complaint investigations.

(2) This division does not apply to—

(a) trust account examinations; or

(b) ILP compliance audits.

529 Definitions—pt 6.3

In this part:

connected—a thing is ***connected*** with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

data includes—

(a) information in any form; and

(b) a program (or part of a program).

data storage device means a thing containing, or designed to contain, data for use by a computer.

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occupier, of premises, includes—

(a) a person believed, on reasonable grounds, to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

person assisting, in relation to a search warrant, means a person who has been authorised by an investigator to assist in executing the warrant.

search warrant means a warrant issued under division 6.3.3 (Search warrants) that is in force.

Division 6.3.2 Powers of investigators

530 Power to enter premises

(1) For this Act, an investigator may, in relation to a trust account investigation—

(a) enter premises of the law practice whose affairs are being investigated, or any other premises where the investigator suspects, on reasonable grounds, that the trust records of the law practice required to be kept under this Act are being kept—

(i) at any reasonable time; or

(ii) at any time, with the occupier's consent; or

(b) enter premises in accordance with a search warrant; or

(c) at any time, without the consent of the occupier and without a warrant, enter premises if the investigator believes, on reasonable grounds, that it is urgently necessary to prevent the destruction of or interference with relevant material.

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(2) For this Act, an investigator may, in relation to a complaint investigation—

(a) at any time, enter premises with the occupier's consent; or

(b) enter premises in accordance with a search warrant.

(3) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.

(4) An investigator must not enter premises under subsection (1) (c) unless the relevant council has authorised the investigator (orally or in writing) to enter the premises without consent and without a warrant.

(5) An investigator may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

(6) To remove any doubt, an investigator may enter premises under subsection (1) or (2) without payment of an entry fee or other charge.

531 Consent to entry

(1) When seeking the consent of an occupier of premises to enter premises under section 530 (1) or (2) an investigator must—

(a) produce evidence of the investigator's appointment; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) that anything found and seized under this part may be used in evidence in court; and

(iii) that consent may be refused.

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(2) If the occupier consents, the investigator must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—

(a) that the occupier was told—

(i) the purpose of the entry; and

(ii) that anything found and seized under this part may be used in evidence in court; and

(iii) that consent may be refused; and

(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.

(3) If the occupier signs an acknowledgment of consent, the investigator must immediately give a copy to the occupier.

(4) A court must find that the occupier did not consent to entry to the premises by the investigator under this part if—

(a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

(b) an acknowledgment of consent for the entry is not produced in evidence; and

(c) it is not proved that the occupier consented to the entry.

532 General powers on entry to premises

(1) An investigator who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:

(a) inspect or examine;

(b) take photographs, films, or audio, video or other recordings;

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(c) require the occupier, or anyone at the premises, to give the investigator reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

(2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (c).

Maximum penalty: 50 penalty units.

533 Power to require name and address

(1) An investigator may require a person to state the person's name and home address if the investigator believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The investigator must tell the person the reason for the requirement and, as soon as practicable, record the reason.

(3) The person may ask the investigator to produce evidence of the investigator's appointment for inspection by the person.

(4) A person must comply with a requirement made of the person under subsection (1) if the investigator—

(a) tells the person the reason for the requirement; and

(b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

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(6) In this section:

home address, of a person, means the address of the place where the person usually lives.

534 Power to seize things

(1) An investigator who enters premises under this part with the occupier's consent may seize anything at the premises if—

(a) the investigator is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An investigator who enters premises under a warrant under this part may seize anything at the premises that the investigator is authorised to seize under the warrant.

(3) An investigator who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an investigator may—

(a) remove the thing from the premises where it was seized (the ***place of seizure***) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

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(5) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and

(b) the person does not have an investigator's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

(6) An offence against this section is a strict liability offence.

Division 6.3.3 Search warrants

535 Warrants generally

(1) An investigator may apply to a magistrate for a warrant to enter premises.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

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(5) 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 offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

(d) the hours when the premises may be entered; and

(e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

536 Warrants—application made other than in person

(1) An investigator may apply for a warrant by phone, fax, radio or other form of communication if the investigator considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances.

(2) Before applying for the warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.

(3) The investigator may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the investigator if it is practicable to fax the copy.

(5) If it is not practicable to fax a copy to the investigator—

(a) the magistrate must tell the investigator—

(i) the terms of the warrant; and

(ii) the date and time the warrant was issued; and

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(b) the investigator must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The faxed copy of the warrant, or the warrant form properly completed by the investigator, authorises the entry and the exercise of the investigator's powers under this part.

(7) The investigator must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the investigator completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by the investigator was not authorised by a warrant under this section if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.

537 Search warrants—announcement before entry

(1) An investigator must, before anyone enters premises under a search warrant—

(a) announce that the investigator is authorised to enter the premises; and

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(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

(2) The investigator is not required to comply with subsection (1) if the investigator believes, on reasonable grounds, that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the investigator or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

538 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the investigator or a person assisting must make available to the person—

(a) copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

539 Occupier entitled to be present during search etc

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

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(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

540 Use of electronic equipment at premises

(1) An investigator or a person assisting may operate electronic equipment at premises entered under a search warrant to access data (including data not held at the premises) if the investigator or person believes, on reasonable grounds, that—

(a) the data might be something to which the warrant relates; and

(b) the equipment can be operated without damaging the data.

(2) If the investigator or person assisting believes, on reasonable grounds, that any data accessed by operating the electronic equipment might be something to which the warrant relates, the investigator or person may—

(a) copy the data to a data storage device brought to the premises; or

(b) if a person in charge of the premises agrees in writing—copy the data to a data storage device at the premises.

(3) The investigator or person assisting may take the device from the premises.

(4) The investigator or person assisting may do the following things if the investigator or person finds that anything to which the warrant relates (the ***material***) is accessible using the equipment:

(a) seize the equipment and any data storage device;

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(b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents produced.

(5) An investigator may seize equipment under subsection (4) (a) only if—

(a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in subsection (4) (b); or

(b) possession of the equipment by a person in charge of the premises or someone else could be an offence.

541 Person with knowledge of computer or computer system to assist access etc

(1) An investigator may apply to a magistrate for an order requiring a stated person to provide any information or assistance that is reasonably necessary to allow the investigator or a person assisting to do 1 or more of the following:

(a) access data held in or accessible from a computer that is at the premises;

(b) copy the data to a data storage device;

(c) convert the data into documentary form.

(2) The magistrate may make an order if satisfied that—

(a) there are reasonable grounds for suspecting that something to which the warrant relates is accessible from the computer; and

(b) the stated person is—

(i) reasonably suspected of possessing, or having under the person's control, something to which the warrant relates; or

(ii) the owner or lessee of the computer; or

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(iii) an employee or agent of the owner or lessee of the computer; and

(c) the stated person has knowledge of—

(i) the computer or a computer network of which the computer forms a part; or

(ii) measures applied to protect data held in or accessible from the computer.

(3) A person commits an offence if the person contravenes an order under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(4) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

542 Securing electronic equipment

(1) This section applies if the investigator or a person assisting believes, on reasonable grounds, that—

(a) something to which the warrant relates (the ***material***) may be accessible by operating electronic equipment at the premises; and

(b) expert assistance is required to operate the equipment; and

(c) the material may be destroyed, altered or otherwise interfered with if the investigator or person does not take action.

(2) The investigator or person may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

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(3) The investigator or a person assisting must give written notice to a person in charge of the premises of—

(a) the investigator's or person's intention to secure the equipment; and

(b) the fact that the equipment may be secured for up to 24 hours.

(4) Equipment may be secured until the earlier of the following events happens:

(a) the end of the 24-hour period;

(b) the equipment is operated by the expert.

(5) If the investigator or a person assisting believes, on reasonable grounds, that the expert assistance will not be available within the 24-hour period, the investigator or person may apply to a magistrate to extend the period.

(6) The investigator or a person assisting must tell a person in charge of the premises of the intention to apply for an extension, and the person is entitled to be heard on the application.

(7) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

543 Copies of seized things to be provided

(1) This section applies if—

(a) a person in charge of premises, or someone else who apparently represents the person, is present at the premises while a search warrant is executed; and

(b) the investigator seizes—

(i) a document, film, computer file or something else that can be readily copied; or

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(ii) a data storage device containing information that can be readily copied.

(2) The person in charge or other person may ask the investigator to give the person a copy of the thing or information.

(3) The investigator must give the person the copy as soon as practicable after the seizure.

(4) However, the investigator is not required to give the copy if—

(a) the thing was seized under section 540 (Use of electronic equipment at premises); or

(b) possession of the thing or information by a person in charge of the premises or someone else would be an offence.

Division 6.3.4 Return and forfeiture of things seized

544 Receipt for things seized

(1) As soon as practicable after an investigator seizes a thing under this part, the investigator must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the investigator must leave the receipt, secured conspicuously, at the place of seizure under section 534 (Power to seize things).

(3) A receipt under this section must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the investigator's name, and how to contact the investigator;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

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545 Moving things to another place for examination or processing under search warrant

(1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

(ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

(b) the occupier of the premises agrees in writing.

(2) The thing may be moved to another place for examination or processing for no longer than 72 hours.

(3) An investigator may apply to a magistrate for an extension of time if the investigator believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.

(4) The investigator must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the investigator must, if practicable—

(a) tell the occupier of the premises the address of the place where, and the time when, the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

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(6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

546 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

(a) inspect it; and

(b) if it is a document—take extracts from it or make copies of it.

547 Return of things seized

(1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the relevant council to the owner for the loss of the thing if either—

(a) a prosecution for an offence relating to the thing is not started within the 1-year period; or

(b) a prosecution for an offence relating to the thing is started within the 1-year period but the court does not find the offence proved.

(2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the relevant council; and

(b) may be sold, destroyed or otherwise disposed of as the council directs.

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Division 6.3.5 Miscellaneous—pt 6.3

548 Damage etc to be minimised

(1) In the exercise, or purported exercise, of a function under this part, an investigator must take all reasonable steps to ensure that the investigator, and anyone assisting the investigator, causes as little inconvenience, detriment and damage as practicable.

(2) If an investigator, or a person assisting an investigator, damages anything in the exercise or purported exercise of a function under this part, the investigator must give written notice of the particulars of the damage to the person the investigator believes, on reasonable grounds, is the owner of the thing.

(3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

549 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the relevant council if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an investigator or a person assisting an investigator.

(2) Compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

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(4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 6.4 Additional powers in relation to incorporated legal practices

550 Application—pt 6.4

(1) This part applies to—

(a) trust account investigations; and

(b) complaint investigations; and

(c) ILP compliance audits;

conducted in relation to incorporated legal practices.

(2) The provisions of this part are additional to the other provisions of this chapter.

551 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.

552 Examination of people under pt 6.4

(1) The investigator, by force of this section, has and may exercise the same powers as the powers given to the Australian Securities and Investments Commission by the *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3, division 2.

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(2) The *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3, division 2 applies to the exercise of those powers, with the following changes (and any changes prescribed by regulation and any other necessary changes):

(a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the law society council or investigator;

(b) a reference to a matter that is being or is to be investigated under that Act, part 3, division 1 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 that Act, section 19 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 under this Act.

(3) The *Australian Securities and Investments Commission Act 2001* (Cwlth), section 22 (2) and (3), section 25 (2) and (2A), sections 26 and 27 do not apply in relation to the exercise of the powers given by this section.

553 Inspection of books under pt 6.4

(1) The investigator, by force of this section, has and may exercise the same powers as the powers given to the Australian Securities and Investments Commission by the *Australian Securities and Investments Commission Act 2001* (Cwlth), section 30 (1), section 34 and sections 37 to 39.

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(2) Those provisions apply to the exercise of those powers, with the following changes (and any changes prescribed by regulation and any other necessary changes):

(a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the law society council or investigator;

(b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;

(c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;

(d) a reference to a member or staff member is taken to be a reference to the law society council or a person authorised by the council who is an officer or employee of the law society;

(e) a reference in that Act, section 37 to a proceeding is taken to be a reference to an investigation, examination or audit to which this part applies.

554 Power to hold hearings under pt 6.4

(1) The law society council or an investigator may hold hearings for the purposes of an investigation, examination or audit to which this part applies.

(2) The *Australian Securities and Investments Commission Act 2001* (Cwlth), section 52, section 56 (1), section 58, section 59 (1), (2), (5), (6) and (8) and section 60 (except paragraph (b)) apply to a hearing, with the following changes (and any changes prescribed by regulation and any other necessary changes):

(a) a reference to Australian Securities and Investments Commission (however expressed) is taken to be a reference to the law society council or investigator;

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(b) a reference to a member or staff member is taken to be a reference to the law society council or a person authorised by the council who is an officer or employee of the law society;

(c) a reference to a prescribed form is taken to be a reference to a form approved by the law society council under section 587.

555 Failure to comply with investigation under pt 6.4

The following acts or omissions can be unsatisfactory professional conduct or professional misconduct:

(a) a failure by an Australian legal practitioner to comply with any requirement made by the law society council or investigator, or a person authorised by the council or investigator, in the exercise of powers given by this part;

(b) a contravention by an Australian legal practitioner of any condition imposed by the law society council or investigator in the exercise of powers given by this part;

(c) a failure by a legal practitioner director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:

(i) any requirement made by the law society council or investigator, or a person authorised by the council or investigator, in the exercise of powers given by this part;

(ii) any condition imposed by the law society council or investigator in the exercise of powers given by this part.

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Part 6.5 Miscellaneous—ch 6

556 Additional obligations 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 mislead an investigator or the relevant council in the exercise of—

(a) any function under this part; or

(b) any function under a provision of a corresponding law that corresponds to this part.

(3) An Australian lawyer who is subject to—

(a) a requirement under section 526 (Requirements that may be imposed for investigations under ch 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.

557 Permitted disclosure of confidential information—ch 6

(1) The relevant council 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 entity acting judicially;

(b) the relevant council or any other entity regulating legal practitioners in any jurisdiction;

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(c) any officer of or Australian legal practitioner instructed by—

(i) the relevant council or any other entity regulating legal practitioners in any jurisdiction; or

(ii) the Territory, the Commonwealth, a State or another Territory; or

(iii) an authority of the Territory, the Commonwealth, a State or another Territory;

in relation to any proceeding, inquiry or other matter pending or contemplated arising out of the investigation, examination or audit;

(d) an investigative or prosecuting authority established under legislation (for example, the Australian Securities and Investments Commission);

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(e) a police officer if the relevant council or investigator is reasonably satisfied 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;

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.

(2) No liability (including liability in defamation) is incurred by a protected person in relation to anything done or omitted to be done honestly for the purpose of disclosing information under this section.

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(3) In this section:

protected person means—

(a) the bar association or law society; or

(b) a council or any member of a council; or

(c) an investigator; or

(d) a member of the staff of any entity mentioned in this definition; or

(e) a person acting at the direction of any entity mentioned in this definition.

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Chapter 7 Regulatory authorities

Part 7.1 Admissions board

558 Admissions board

(1) The Legal Practitioners Admissions Board (the ***admissions board***) is established.

Note The Legislation Act, dict, pt 1, defines ***establish*** as including continue in existence.

(2) The admissions board consists of 5 lawyers including 2 barristers.

(3) The Chief Justice must appoint the members of the admissions board.

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

(4) Subject to section 559, the appointment of a member of the admissions board ends on the 31 December after the day the appointment commences.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

(5) The registrar, or a public servant approved by the Chief Justice, is the secretary to the admissions board.

559 Ending appointments of members

(1) The Supreme Court may, on the application of the Attorney-General, end the appointment of a member of the admissions board—

(a) for misbehaviour; or

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(b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

(2) The Supreme Court may end the appointment of a member of the admissions board—

(a) if the member contravenes a territory law; or

(b) for misbehaviour; or

(c) if the member becomes bankrupt or executes a personal insolvency agreement; or

(d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or

(e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

(f) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or

(g) if the member stops being a lawyer; or

(h) if the member is absent from 3 consecutive meetings of the admissions board except on leave given by the board.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

(3) The Supreme Court may also end the appointment of the member if the board tells the Supreme Court in writing that it has resolved, by a majority of at least 2/3 of the members, to recommend that the member's appointment be ended.

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(4) The admissions board may pass a resolution mentioned in subsection (3) in relation to the member only if—

(a) at least 3 weeks written notice of the intention to consider the proposed resolution has been given to the member; and

(b) the member has been given an opportunity to make submissions and present documents to a meeting of the board; and

(c) if the member has used the opportunity mentioned in paragraph (b)—a summary of the member's submissions is recorded in the minutes of the board and a copy of any documents presented is included in the minutes.

560 Chair of admissions board

The members of the admissions board must elect a chair for the board.

561 Meetings of admissions board

(1) Meetings of the admissions board are to be held when and where it decides.

(2) Business may be carried on at a meeting of the admissions board only if at least 3 members are present.

(3) The chair presides at all meetings at which the chair is present.

(4) If the chair is absent, the member chosen by the members present presides.

562 Protection of members from liability

(1) A member of the admissions board is not civilly liable for anything done or omitted to be done honestly and without recklessness—

(a) in the exercise of a function under this Act; or

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(b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a member attaches instead to the Territory.

Part 7.2 Disciplinary tribunal

563 Establishment of disciplinary tribunal

The Legal Practitioners Disciplinary Tribunal (the ***disciplinary tribunal***) is established.

564 Functions of disciplinary tribunal

The disciplinary tribunal has the following functions:

(a) to decide applications made to the tribunal under part 4.7;

(b) any other function given to the board under this Act or any other territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

565 Members of disciplinary tribunal

The disciplinary tribunal consists of—

(a) a judicial member appointed under section 566; or

(b) a judicial member appointed under section 566 and 2 non-judicial members.

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566 Appointment of judicial members of the disciplinary tribunal

(1) The Attorney-General must appoint the chair and the deputy chair.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(2) The Attorney-General may appoint a person to be chair or deputy chair only if the person is judicially qualified.

(3) The chair and the deputy chair are the ***judicial members*** of the disciplinary tribunal.

(4) The *Supreme Court Act 1933*, section 16 (Holding other judicial offices) does not apply to the appointment of a judge as a judicial member.

(5) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) does not apply to the appointment of a magistrate as a judicial member.

(6) The appointment of a person who is a judge or magistrate as a judicial member does not affect the person's office of judge or magistrate.

(7) A person who is a judge or magistrate may exercise the functions of the person's office as judge or magistrate even though the person is a judicial member.

(8) For this section, each of the following are ***judicially qualified***:

(a) a judge or retired judge;

(b) a magistrate or retired magistrate;

(c) a person qualified to be appointed as a judge.

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567 Term of appointment of disciplinary tribunal member

The appointment of a disciplinary tribunal member must not be for longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

568 Role of disciplinary tribunal chair

(1) The disciplinary tribunal chair is responsible for ensuring the orderly and prompt discharge of the tribunal's business.

(2) Without limiting subsection (1), the chair may give directions about the judicial member who is to be the judicial member of a particular disciplinary tribunal and whether the tribunal is to consist of the judicial member alone.

569 Presiding member of disciplinary tribunal

A judicial member of the disciplinary tribunal must preside at a proceeding before the tribunal.

570 Conditions of appointment of judicial members

The conditions of appointment of a judicial member of the disciplinary tribunal are the conditions agreed between the Attorney-General and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

571 Ending appointment of judicial members

(1) The Attorney-General may end the appointment of a judicial member of the disciplinary tribunal—

(a) for misbehaviour; or

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(b) if the member becomes bankrupt or executes a personal insolvency agreement.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

(2) The Attorney-General must end the appointment of a judicial member of the disciplinary tribunal—

(a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or

(b) the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or

(c) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

(d) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or

(e) for a judicial member, if the member stops being a judicially qualified person.

572 How is a disciplinary tribunal constituted for application?

(1) For hearing and deciding an application made to the disciplinary tribunal under part 4.7, the tribunal is constituted by—

(a) a judicial member of the tribunal; or

(b) a judicial member of the tribunal and the following members:

(i) 1 member chosen by the judicial member from the list of suitably qualified legal practitioners under section 573 (1) (a) or (b); and

(ii) 1 member chosen by the judicial member from the list of lay people kept under section 573 (1) (c).

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(2) The members chosen by the judicial member are the ***non-judicial members*** of the disciplinary tribunal.

573 Lists of non-judicial members

(1) The disciplinary tribunal chair must keep the following lists:

(a) a list of at least 3 suitably qualified legal practitioners nominated by the bar council;

(b) a list of at least 3 suitably qualified legal practitioners nominated by the law society council;

(c) a list of at least 3 lay people nominated by the Attorney-General.

(2) For subsection (1) (c), the Attorney-General must nominate people who, in the Attorney-General's opinion, have the qualifications, training or experience to give specialist assistance to the disciplinary tribunal.

(3) In this section:

suitably qualified legal practitioner means a legal practitioner who has been admitted for at least 5 years and holds an unrestricted practising certificate or a barrister practising certificate.

574 Disciplinary tribunal trust fund

(1) The Attorney-General must keep and administer a fund called the disciplinary tribunal trust fund.

(2) The chief executive must open and maintain under the *Financial Management Act 1996*, section 51 (Departmental trust banking accounts) a trust account with an authorised deposit-taking institution (the ***disciplinary tribunal trust account***) to be used only for the fund.

(3) The fund may be used only for the purpose of meeting the recurrent costs of remuneration and administration of the disciplinary tribunal.

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Chapter 8 Professional bodies

Part 8.1 Bar council

575 Functions of bar council

(1) The bar council has the following functions:

(a) to take any step it considers necessary or proper for or in relation to the investigation under this Act of any question about—

(i) the conduct of a barrister; or

(ii) the conduct of anyone who is or was employed by a barrister in relation to the barrister's practice as a barrister; or

(iii) conduct that is, or may be, a contravention of part 2.2 (Reservation of legal work and legal titles); or

(iv) conduct that is, or may be, a contravention of part 2.7 (Legal practice—foreign lawyers);

(b) to appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of a function of the Supreme Court under this Act or otherwise in relation to a barrister or locally-registered foreign lawyer registered by the bar council;

(c) to start proceedings for breaches of provisions of this Act;

(d) to appear by barrister or solicitor before, and be heard by, any court in any matter affecting the bar association or its members or in which the bar association is concerned or interested;

(e) to recover as a debt owing to the bar association any amount payable to the bar association under this Act;

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(f) any other function given to the bar council under this Act or any other territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

(2) The bar council may delegate the council's functions under this Act to—

(a) a committee of the council; or

(b) a member of the staff of the bar association.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

(3) In this section, a reference to a ***barrister*** (other than for the bar council appearing before or being heard by a court) is a reference to—

(a) an Australian legal practitioner to whom chapter 4 (Complaints and discipline) applies and who is, or was, the holder of a barrister practising certificate; or

(b) an Australian-registered foreign lawyer to whom chapter 4 applies and who is, or was, the holder of a barrister practising certificate.

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Part 8.2 Law society and law society council

576 Establishment of law society

(1) The Law Society of the Australian Capital Territory is established.

Note The Legislation Act, dict, pt 1, defines ***establish*** as including continue in existence.

(2) The law society—

(a) is a corporation; and

(b) may sue and be sued in its corporate name; and

(c) may have a seal.

(3) The law society has the legal capacity and powers of an individual both in and outside the ACT (including outside Australia).

Examples

1 to enter into a contract

2 to own, deal with and dispose of property

3 to act as trustee

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) The constitution of the law society is, subject to this Act, the constitution of the law society as in force immediately before the commencement of this section.

(5) An amendment of the constitution of the law society does not take effect unless it is approved by the Attorney-General.

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(6) An amendment of the constitution of the law society that is approved by the Attorney-General takes effect—

(a) if the amendment states a day when it is to take effect that is not earlier than the day after the day the Attorney-General approves the amendment—at the beginning of the day stated; and

(b) in any other case—at the beginning of the day after the day the Attorney-General approves the amendment.

(7) A person is not entitled to be a member of the law society unless the person's name is on the roll of legal practitioners.

(8) A person who holds a practising certificate is entitled, on application to the law society, to be admitted to membership of the society without paying a fee for admission.

(9) A member of the law society is not, while the member holds a practising certificate, liable to pay to the society any annual subscription to the society's funds.

577 Functions of law society council

(1) In addition to its other functions, the law society council has the following functions:

(a) to take any step it considers necessary or proper for or in relation to the investigation under this Act of any question about—

(i) the conduct of a solicitor; or

(ii) the conduct of anyone who is or was employed by a solicitor in relation to the solicitor's practice as a solicitor; or

(iii) conduct that is, or may be, a contravention of part 2.2 (Reservation of legal work and legal titles); or

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(iv) conduct that is, or may be, a contravention of part 2.7 (Legal practice—foreign lawyers);

(b) to appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of a function of the Supreme Court under this Act or otherwise in relation to a solicitor or locally-registered foreign lawyer registered by the law society council;

(c) to start proceedings for breaches of provisions of this Act;

(d) to appear by barrister or solicitor before, and be heard by, any court in any matter affecting the law society or its members or in which the law society is concerned or interested;

(e) to recover as a debt owing to the law society any amount payable to the law society under this Act;

(f) to distribute information to increase public awareness of the requirements of this Act and the Corporations Act in relation to solicitors who negotiate the making of or act in relation to regulated mortgages within the meaning of part 3.5 (Mortgage practices and managed investment schemes) or are involved in managed investment schemes;

(g) to exercise any other function given to the law society council under this Act or any other territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

(2) The law society council may delegate the council's functions under this Act to—

(a) a committee of the council; or

(b) to a member of the staff of the law society.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

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(3) In this section, a reference to a ***solicitor*** (other than for the law society council appearing before or being heard by a court) is a reference to—

(a) an Australian legal practitioner to whom chapter 4 (Complaints and discipline) applies and who is not, or was not, the holder of a barrister practising certificate; or

(b) an Australian-registered foreign lawyer to whom chapter 4 applies and who is not, or was not, the holder of a barrister practising certificate.

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Part 8.3 Legal profession rules

Division 8.3.1 Preliminary

578 Purpose—pt 8.3

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

Division 8.3.2 Rules for Australian legal practitioners and locally-registered foreign lawyers

579 Rules for barristers

(1) The bar council may make rules for or in relation to practice as a barrister.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) The bar council may make rules for or in relation to practice as an Australian-registered foreign lawyer.

580 Rules for solicitors

(1) The law society council may make rules for or in relation to practice as a solicitor.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) The law society council may make rules for or in relation to practice as an Australian-registered foreign lawyer.

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581 Joint rules for Australian legal practitioners

(1) The bar council and the law society council may jointly make rules (***joint rules***) for or in relation to any matter about which they may separately make rules.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) A joint rule may, but need not, apply in the same way to both barristers and solicitors.

(3) Joint rules prevail, to the extent of any inconsistency, over legal profession rules made separately by the bar council or law society council (whether made before or after the joint rules).

582 Subject matter of legal profession rules

Legal profession rules for Australian legal practitioners or locally-registered foreign lawyers may make provision in relation to any aspect of legal practice, including standards of conduct expected of practitioners or lawyers to whom the rules apply.

583 Public notice of proposed legal profession rules

(1) The council or councils proposing to make a legal profession rule under this division must ensure that a notice is published in a daily newspaper circulating in the ACT—

(a) explaining the object of the proposed rule; and

(b) advising where or how a copy of the proposed rule may be accessed, obtained or inspected; and

(c) inviting comments and submissions within a stated period of not less than 21 days after the date of first publication of the notice.

(2) The council or councils must ensure that a copy of the proposed rule is given to the Attorney-General before the notice is published.

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(3) The council or councils must not make the rule before the end of the period stated 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 council or councils may make the rule before the end of the period stated in the notice for making comments and submissions if—

(a) in the opinion of the council or councils, the urgency of the case justifies immediate action; and

(b) the notice indicates that opinion and that immediate action is to be taken.

(5) Subsections (1) to (4) do not apply to a proposed rule that in the opinion of the council or councils does not justify publication because of its minor or technical nature.

Division 8.3.3 Rules for incorporated legal practices and multidisciplinary partnerships

584 Rules for incorporated legal practices and multidisciplinary partnerships

(1) The law society council may make rules for or in relation to the following matters:

(a) the provision of legal services by or in relation to incorporated legal practices or multidisciplinary partnerships, and in particular the provision of legal services by—

(i) officers or employees of incorporated legal practices; or

(ii) partners or employees of multidisciplinary partnerships;

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(b) the provision of services that are not legal services by or in relation to incorporated legal practices or multidisciplinary partnerships, but only if the provision of those services by any of the following people may give rise to a conflict of interest relating to the provision of legal services:

(i) officers or employees of incorporated legal practices;

(ii) partners or employees of multidisciplinary partnerships.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) The rules under this section may make provision for or in relation to professional obligations relating to legal services provided by or in relation to incorporated legal practices or multidisciplinary partnerships.

(3) However, the rules under this section 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 relation to 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 multidisciplinary partnership or partners or employees of a multidisciplinary partnership may provide or conduct (other than the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise); or

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(d) regulate or prohibit the conduct of partners or employees of a multidisciplinary partnership (otherwise 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 under this section is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

Division 8.3.4 General

585 Binding nature of legal profession rules

(1) Legal profession rules are binding on Australian legal practitioners and locally-registered foreign lawyers to whom they apply.

(2) Failure to comply with legal profession rules can be unsatisfactory professional conduct or professional misconduct.

586 Legal profession rules inconsistent with Act or regulation

(1) Legal profession rules do not have effect to the extent that they are inconsistent with this Act, a regulation or rules made under the *Court Procedures Act 2004*.

(2) Legal profession rules do not have effect to the extent that they are inconsistent with a direction or guideline under the *Director of Public Prosecutions Act 1990*, section 12 (Directions and guidelines by director).

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Chapter 9 General provisions

587 Approved forms—licensing body and councils

(1) If the licensing body or a council has functions under this Act in relation to a matter, it may approve forms for use in relation to the matter.

(2) If the licensing body or a council approves a form under this section for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

588 Liability of principals of law practice

(1) If a law practice contravenes, whether by act or omission, any provision of this Act or a regulation imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that—

(a) the practice contravened the provision without the knowledge actual, imputed or constructive of the principal; or

(b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or

(c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.

(2) Subsection (1) does not affect the liability of the law practice for the contravention.

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(3) A contravention of a requirement imposed on a law practice by this Act can be unsatisfactory professional conduct or professional misconduct by a principal of the practice.

589 Associates who are disqualified or convicted people

(1) A law practice must not have a person as a lay associate if—

(a) the law practice knows that the person—

(i) is a disqualified person; or

(ii) has been convicted of a serious offence; and

(b) the person is not approved by the relevant council.

(2) The relevant council may, on application, approve a lay associate for this section.

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

(4) A person may appeal to the Supreme Court against a decision of the relevant council under subsection (2) or (3).

Note See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

(5) A person commits an offence if—

(a) the person is—

(i) a disqualified person; or

(ii) a person who has been convicted of a serious offence; and

(b) the person applies to become a lay associate of a law practice; and

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(c) the person has not told the law practice of the disqualification or conviction.

Maximum penalty: 50 penalty units.

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

(7) In this section:

disqualified person means any of the following people:

(a) a person whose name has been removed from an Australian roll (whether or not at the request of the person) and who has not later been admitted to the legal profession under this Act or a corresponding law;

(b) a person who is not an Australian legal practitioner because the person's Australian practising certificate has been cancelled under this Act or a corresponding law;

(c) a person whose Australian practising certificate has been suspended under this Act or a corresponding law and in relation to whom the suspension is in force;

(d) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law and who has not later been granted an Australian practising certificate;

(e) 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 relation to the practice;

(f) 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;

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(g) a person who is the subject of an order under section 123 (Disqualification from managing incorporated legal practice) or section 148 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) or under a provision of a corresponding law that corresponds to section 123 or section 148.

590 Injunctions to restrain offences against Act

(1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Act.

Note 1 A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

(2) A council or any other interested person may apply to the Magistrates Court for an injunction.

(3) On application under subsection (2), the Magistrates Court may grant an injunction restraining the person from contravening this Act (including by requiring the person to do something).

(4) The Magistrates Court may grant the injunction—

(a) whether or not it appears to the court that the person intends to contravene this Act, contravene this Act again or continue to contravene this Act; and

(b) whether or not the person has previously contravened this Act; and

(c) whether or not there is a likelihood of substantial damage to anyone else if the person contravenes this Act; and

(d) whether or not a proceeding for an offence against this Act has begun or is about to begin.

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(5) The Magistrates Court may grant an interim injunction restraining the person from committing an offence against this Act (including requiring the person to do something) before deciding an application for an injunction under this section.

591 Enforcement of injunctions

The Magistrates Court has the same powers as the Supreme Court to enforce an injunction (including an interim injunction) made under this chapter.

592 Amendment or discharge of injunctions

The Magistrates Court may amend or discharge an injunction (including an interim injunction) made under this chapter on the application of the licensing body or any other interested person.

593 Interim injunctions—undertakings about damages

(1) If a council applies for an injunction under this chapter, the Magistrates Court must not require the council to give an undertaking about costs or damages as a condition of granting an interim injunction.

(2) The Magistrates Court must accept an undertaking from a council about costs or damages, and not require a further undertaking from anyone else, if—

(a) the applicant for an injunction under this chapter is not the council; and

(b) the court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and

(c) the council gives the undertaking.

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594 Magistrates Court's other powers not limited

(1) The powers given to the Magistrates Court under this chapter are in addition to any other powers of the court.

(2) In particular, an application to the Magistrates Court for an injunction under this chapter may be made without notice to the person against whom the injunction is sought.

595 Disclosure of information by local regulatory authorities

(1) A local regulatory authority may disclose information to another local regulatory authority about anything 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 anything relating to or arising under this Act or a corresponding law.

(3) In this section:

interstate regulatory authority means—

(a) an authority with functions under a corresponding law; or

(b) an entity prescribed by regulation.

local regulatory authority means—

(a) a council; or

(b) another entity with functions under this Act; or

(c) an entity prescribed by regulation.

596 Confidentiality of personal information

(1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

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divulge includes communicate.

local regulatory authority means—

(a) a council; or

(b) another entity with functions under this Act; or

(c) an entity prescribed by regulation.

person to whom this section applies means anyone who is, or has been—

(a) a local regulatory authority; or

(b) a member of a local regulatory authority; or

(c) a member of the staff of the bar association or the law society; or

(d) acting under the direction or authority of a local regulatory authority; or

(e) providing advice, expertise or assistance to 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 an individual whose identify is apparent, or can be reasonably ascertained, from the information or opinion, but does not include information or an opinion prescribed by regulation.

produce includes allow access to.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of personal information about a person; and

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(ii) is reckless about whether the information is personal information about a person; or

(b) the person—

(i) does something that divulges personal information about a person; and

(ii) is reckless about whether—

(A) the information is protected information about a person; and

(B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law, a law of the Commonwealth or a corresponding law;

(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law;

(c) to a court or tribunal in the course of a proceeding;

(d) under an order of a court or tribunal;

(e) to the extent reasonably required to enable the investigation or enforcement of an offence or disciplinary action.

(4) Subsection (2) does not apply to the divulging of protected information about a law practice or another person—

(a) to the practice or person; or

(b) with the written consent of the practice or person; or

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(c) if divulging the information is necessary for properly conducting an investigation and making the report of the investigation; or

(d) as provided in section 557 (Permitted disclosure of confidential information—ch 6).

597 Professional privilege or duty of confidence does not affect validity of certain requirements etc

(1) This section applies to a requirement under—

(a) section 231 (Reporting certain irregularities etc) to give written notice of an irregularity in relation to a trust account, a trust ledger account or trust money; or

(b) section 502 (Power of receiver to require documents or information) to give access to documents or information; or

(c) section 527 (Provisions relating to requirements under part 6.2) to produce documents, provide information or otherwise assist in, or cooperate 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 client legal privilege or any other duty of confidence.

598 Reviewable decisions

The following decisions of the law society council are ***reviewable decisions***:

(a) under section 338 (Deciding claims generally) completely or partly disallowing a claim;

(b) under section 338 (5) reducing the amount payable on a claim.

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599 Review of decisions

Application may be made to the AAT for review of a reviewable decision.

600 Notice of reviewable decisions

(1) If the law society council makes a reviewable decision, it must give a written notice of the decision to each person affected by the decision.

(2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

601 Minister may determine fees

(1) The Minister may determine fees for this Act in relation to the admissions board.

(2) A determination is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

602 Regulation-making power

(1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) A regulation may create offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

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603 Review of Act

(1) The Attorney-General must review the operation of this Act and present a report of the review to the Legislative Assembly as soon as practicable after 30 June 2010.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) This section expires on 30 June 2011.

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Chapter 10 Transitional

604 Definitions—ch 10

In this chapter:

commencement day means the day this chapter commences.

repealed Act means the *Legal Practitioners Act 1970*.

605 Continuing application of provisions of Legal Practitioners Act about trust money

(1) In this section:

existing trust account provisions means the provisions of the repealed Act, part 11 (Trust moneys and controlled moneys) in force immediately before the commencement day, other than the following provisions:

(a) division 11.5 (Audit);

(b) division 11.6 (Examination of solicitors' records);

(c) division 11.7 (Investigation of affairs of solicitors).

(2) For the period beginning on the commencement day and ending on 31 March 2007—

(a) the provisions of part 3.1 (Trust money and trust accounts) do not apply to law practices; and

(b) the existing trust account provisions apply to law practices as if—

(i) those provisions were provisions of this Act; and

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(ii) all necessary changes, and any changes prescribed by regulation, were made to apply those provisions as provisions of this Act.

(3) This section expires on 1 April 2007.

606 Continuing application of provisions of Legal Practitioners Act about costs

(1) In this section:

existing costs provisions means the provisions of the repealed Act, part 15 (Costs) in force immediately before the commencement day.

(2) For the period beginning on the commencement day and ending on 31 December 2006—

(a) the provisions of part 3.2 (Costs disclosure and review) do not apply to law practices; and

(b) the existing costs provisions apply to law practices as if—

(i) those provisions were provisions of this Act; and

(ii) all necessary changes, and any changes prescribed by regulation, were made to apply those provisions as provisions of this Act.

(3) This section expires on 1 January 2007.

607 Cost disclosure

(1) In this section:

existing costs provisions means the provisions of the repealed Act, part 15 (Costs) in force immediately before the commencement day.

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(2) If a client of a law practice first instructs the law practice in relation to a matter before 1 January 2007—

(a) the provisions of part 3.2 (Costs disclosure and review) do not apply to the law practice in relation to the matter; and

(b) the existing costs provisions apply to the law practice in relation to the matter as if—.

(i) those provisions were provisions of this Act; and

(ii) all necessary changes, and any changes prescribed by regulation, were made to apply those provisions as provisions of this Act.

(3) If a law practice is retained by another law practice on behalf of a client on or after 1 January 2007 in relation to a matter for which the other law practice was retained by the client before 1 January 2007—

(a) the provisions of part 3.2 (Costs disclosure and review) do not apply to the law practice in relation to the matter; and

(b) the existing costs provisions apply to the law practice in relation to the matter as if—

(i) those provisions were provisions of this Act; and

(ii) all necessary changes, and any changes prescribed by regulation, were made to apply those provisions as provisions of this Act.

(4) This section does not apply to the determination of a statement of costs and disbursements by taxation if section 608 applies to the determination.

(5) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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608 Notice for taxation of costs

(1) This section applies if—

(a) before 1 January 2007 a person gives notice to the registrar under the repealed Act, section 180 (including that section as applied as a provision of this Act) that the person wishes to have a statement of costs and disbursements determined by taxation; and

(b) immediately before 1 January 2007 the taxation has not been completed or the notice withdrawn.

(2) If the registrar has started the taxation, the registrar may complete the taxation as if the repealed Act had not been repealed.

(3) If the registrar has not started the taxation, the statement of costs and disbursements may be assessed under this Act as if it were an itemised bill given to the person under division 3.2.6 (Billing).

609 Roll of legal practitioners

(1) The roll of legal practitioners kept by the registrar under the repealed Act, section 16C immediately before the commencement day is taken to be, or form part of, the local roll kept by the Supreme Court under this Act.

(2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

610 Existing legal practitioners

(1) If a person was a legal practitioner under the repealed Act immediately before the commencement day, the person is taken to have been admitted as a lawyer under this Act.

(2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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611 Pending applications for admission

(1) This section applies to a person if the person applied for admission as a legal practitioner under the repealed Act and, immediately before the commencement day, the application was not decided.

(2) If the Supreme Court is satisfied that the person could have been admitted as a legal practitioner under the repealed Act if that Act had not been repealed—

(a) the requirements of section 21 (Eligibility for admission) are taken to have been satisfied in relation to the person; and

(b) the Supreme Court may admit the person as a lawyer under this Act.

(3) The Supreme Court may have regard to anything it considers appropriate, including but not limited to—

(a) any report of the admission board under the repealed Act, section 14 in relation to the application; or

(b) any information given to the registrar by the law society under the repealed Act, section 15 about the applicant for admission.

(4) Subsection (5) applies to anything done by the admissions board if the doing of the thing was effective immediately before the commencement day.

(5) The Legislation Act, section 94 (Continuance of appointments etc made under amended provisions) applies to the thing done as if that Act, section 94 (4), definition of ***amend*** read as follows:

amend includes omit and re-enact in the same or another law (with or without changes).

(6) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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612 Pending complaints before professional conduct board

(1) This section applies in relation to a complaint that was made under the repealed Act and in relation to which, immediately before the commencement day, the professional conduct board had not completed its inquiry.

(2) The complaint is to be dealt with as if this Act had not been enacted.

(3) The professional conduct board established under the repealed Act continues in existence but only for this section.

(4) The provisions of the repealed Act, division 8.5 (Inquiries) apply in relation to the complaint as if—

(a) those provisions were provisions of this Act; and

(b) all necessary changes, and any changes prescribed by regulation, were made to apply those provisions as provisions of this Act.

613 New complaints about old conduct

(1) This section applies to conduct that happened or is alleged to have happened before the commencement day and that could have been, but was not, the subject of a complaint under the repealed Act.

(2) A complaint about the conduct may be made, and dealt with, under this Act, even if the conduct could not be the subject of a complaint under this Act if it had happened after the commencement day.

(3) Chapter 4, and all other relevant provisions of this Act, apply in relation to the conduct with any necessary changes.

(4) However, disciplinary action may not be taken against a person under this Act in relation to the conduct that is more onerous than the disciplinary action that could have been taken against the person under the repealed Act in relation to the conduct.

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614 Statutory interest account

A statutory interest account kept by the law society under the repealed Act, section 128 is taken to be a statutory interest account under this Act.

616 HIH insurance

(1) The provisions in schedule 3 apply in relation to a legal practitioner who is insured under an approved policy that was issued or renewed by an HIH group member.

Note HIH Casualty and General Insurance Limited (***HIH***) was the insurer under approved policies for the period from 1 July 1998 to 1 July 2001. HIH, together with other HIH group members, were also insurers under approved policies before that period. A provisional liquidator was appointed in relation to HIH and other HIH group members on 15 March 2001.

(2) In this section:

approved policy means a policy of indemnity insurance approved under the repealed Act, part 9 (Professional indemnity insurance).

HIH group member means—

(a) HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited; or

(b) any corporation that is, for a corporation mentioned in paragraph (a), a related body corporate within the meaning of the Corporations Act, section 50.

(3) This section and schedule 3 are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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617 Mortgage practices and managed investment schemes—old mortgages

(1) The provisions in schedule 4 apply in relation to mortgages that were entered into before the commencement day.

(2) This section and schedule 4 are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

618 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

(2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

(3) A regulation under subsection (2) has effect despite anything in another territory law.

619 Expiry—ch 10

This chapter, schedule 3 and schedule 4 expire on 1 July 2008.

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Schedule 3 HIH provisions

(see s 616)

3.1 Definitions—sch 3

In this schedule:

approved policy means a policy of indemnity insurance approved under the repealed Act, part 9 (Professional indemnity insurance).

HIH group member means—

(a) HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited; or

(b) any corporation that is, for a corporation mentioned in paragraph (a), a related body corporate within the meaning of the Corporations Act, section 50.

insurable solicitor—see section 308.

repealed Act means the *Legal Practitioners Act 1970*.

3.2 Payments relating to HIH group insurance policies

(1) The law society must make payments from the fidelity fund for the purpose of indemnifying a person who is or was insured under an approved policy to the extent of the indemnity provided by the policy.

(2) On making a payment, the law society is subrogated to the rights and remedies of the insured person under the approved policy, in relation to the subject matter of the payment, subject to the terms of any agreement entered into under this section.

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(3) Subsection (2) extends, but is not limited to, a right or remedy against any of the following:

(a) an HIH group member;

(b) any insurer or reinsurer of an HIH group member;

(c) anyone who, under a law in force in the ACT, is liable for a failure of an HIH group member to satisfy its obligations under or in relation to an approved policy.

(4) The law society may exercise its rights and remedies under this section in its own name or in the name of an insured person.

(5) If the law society exercises its rights and remedies under this section in the name of an insured person, the law society must indemnify the insured person against any liability incurred by the person as a result of the exercise of the rights and remedies.

(6) The law society may make an agreement with an HIH group member (including a provisional liquidator or liquidator of an HIH group member), or with an insured person, in relation to the payment of amounts from the fidelity fund.

(7) In particular, an agreement may provide for the following:

(a) the assignment or subrogation to the law society of the rights and remedies of an HIH group member or the insured person (or both) under or in relation to the approved policy;

(b) the recovery by the law society from an HIH member of any amount paid from the fidelity fund under this section.

(8) Any payment made from the fidelity fund under this section, and any agreement made with an insured person under subsection (6), does not prevent the recovery by the law society from an HIH group member of any amount that would have been recoverable by the insured person under or in relation to the approved policy had the payment or agreement not been made.

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(9) Any amount recovered by the law society because of the exercise of its functions under this section (including its functions under a subrogation or agreement under subsection (6)) must be paid into the fidelity fund.

(10) However, subsection (9) does not apply to any amount that is payable to someone else—

(a) under a law in force in the ACT; or

(b) under an agreement under subsection (6).

(11) A payment may be made from the fidelity fund for the purpose of meeting any reasonable costs and expenses incurred by the law society in exercising a function under this section, including a function under a subrogation or an agreement under subsection (6).

3.3 Special contributions and levies—HIH liabilities

(1) The law society council may—

(a) require any insurable solicitor who is or was insured under an approved policy issued or renewed by an HIH group member to pay a special annual contribution to the fidelity fund; or

(b) require any solicitor or former solicitor who is or was insured under an approved policy issued or renewed by an HIH group member to pay a special levy to the fidelity fund.

(2) The contribution or levy is payable to the law society council in the way and within the reasonable period required by the council.

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Schedule 4 Mortgage practices and managed investment schemes—provisions about old mortgages

(see s 617)

Part 4.1 Preliminary—sch 4

4.1 Interpretation—sch 4

(1) In this schedule:

commencement day means the day chapter 10 (Transitional) commences.

repealed Act means the *Legal Practitioners Act 1970*.

(2) An expression used in this schedule has the same meaning as in part 3.5 (Mortgage practices and managed investment schemes).

4.2 Mortgage practices and managed investment schemes

(1) Part 3.5 (Mortgage practices and managed investment schemes) extends to mortgages that were entered into before the commencement day.

(2) Subsection (1) does not limit this schedule, part 4.2 (Special provisions about old mortgages).

(3) Anything done or omitted to be done under the repealed Act, part 12A before the commencement day continues to have the same effect as if done or omitted to be done under part 3.5.

(4) Part 3.5 has effect, and is to read, as if it included the provisions of this schedule.

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Part 4.2 Special provisions about old mortgages

Note This part substantially re-enacts the provisions of the repealed Act, div 12A.5 (Transitional arrangements—pre-existing mortgages) that expired on 10 September 2005. Div 12A.5 is a law to which the Legislation Act, section 88 (Repeal does not end transitional or validating effect etc) applies (see s 147V (2) (now expired)).

4.3 Part extends to pre-existing mortgages

Except as provided by this part, part 3.5 (Mortgage practices and managed investment schemes) applies to mortgages that were entered into before 10 September 2002.

Note 10 September 2002 is the date of commencement of the repealed Act, pt 12A, as inserted by the *Justice and Community Safety Legislation Amendment Act 2002*, s 24.

4.4 Requirement to obtain fidelity insurance for pre-existing mortgages

(1) Section 373 (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to a regulated mortgage that was entered into before 10 September 2002.

(2) Despite subsection (1), section 373 applies to a solicitor if money entrusted to the solicitor by a client (whether before, on or after the commencement date) is advanced or proposed to be advanced on or after the commencement date to a borrower for a regulated mortgage entered into before 10 September 2002.

(3) If subsection (2) applies—

(a) the solicitor must ensure that a policy of fidelity insurance is in force in relation to the advance in accordance with section 373, and comply with section 375 (Notification of insurance arrangements for regulated mortgages); and

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(b) section 374 (Bar on claims against fidelity fund relating to regulated mortgages) applies to any claim against the fidelity fund so far as it relates to such an advance; and

(c) for the application of section 374 to the advance, the date that money is entrusted to the solicitor by the client is taken to be the later of—

(i) 10 September 2002; and

(ii) the date the money is entrusted to the solicitor.

(4) This section is subject to section 4.6 (Substitution of lender or contributor under run-out mortgage).

4.5 No further action to be taken in relation to run-out mortgages

(1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor—

(a) advance any money entrusted to the solicitor to a borrower for a run-out mortgage; or

(b) do anything for the purpose of extending the term of a run-out mortgage; or

(c) accept any money from a client for the purpose of advancing money to a borrower for a run-out mortgage; or

(d) do anything else in relation to a run-out mortgage in contravention of a regulation relating to run-out mortgages.

(2) A contravention of this section by a solicitor can be professional misconduct.

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4.6 Substitution of lender or contributor under run-out mortgage

(1) Despite section 4.5, a solicitor may accept money from a client, and do other work that is necessary solely for the purpose of substituting a lender or contributor under a run-out mortgage.

(2) Section 373 (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to anything done by a solicitor under subsection (1) and, accordingly, the solicitor is not required to obtain fidelity insurance to compensate the substitute lender or contributor for any financial loss.

(3) If a client entrusts or proposes to entrust money to a solicitor for the purpose of substituting a lender or contributor under a run-out mortgage, the solicitor must give the client written notice telling the client—

(a) about the effect of section 4.7; and

(b) that the solicitor is not required to have fidelity insurance in relation to a run-out mortgage.

(4) The solicitor must not advance the money to a borrower for a run-out mortgage unless the solicitor has given the client notice under subsection (3).

(5) A contravention of this section by a solicitor can be professional misconduct.

4.7 No claims against fidelity fund by substitute lenders

(1) This section applies to a person who entrusts money to a solicitor to become a lender or contributor under a run-out mortgage after 10 September 2002.

(2) The person is not entitled to make a claim against the fidelity fund to obtain compensation for any financial loss in relation to that mortgage if the solicitor gave notice to the person in accordance with section 4.6.

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- authorised deposit-taking institution (or ADI)
- business day
- change
- contravene
- Commonwealth
- corporation
- Corporations Act
- document
- entity
- exercise
- external territory
- financial year
- for
- foreign country
- function
- indictable offence
- individual
- in relation to
- may (see s 146)
- must (see s 146)
- power
- State
- Supreme Court
- territory law
- under.

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admissions board means the Legal Practitioners Admissions Board established by section 558.

admission rules means rules relating to the admission of lawyers and associated matters made under the *Court Procedures Act 2004* for part 2.3 (Admission of local lawyers), and includes any forms approved under that Act for those rules or that part.

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.

affairs, of a law practice, includes the following:

(a) all accounts and records required under this Act to be kept by the practice or an associate or former associate of the practice;

Note ***This Act*** is defined in the dictionary.

(b) other records of the practice or an associate or former associate of the practice;

(c) any transaction to which the practice or an associate or former associate of the practice was or is a party;

(d) any transaction in which the practice or an associate or former associate of the practice has acted for a party.

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amend includes—

(a) in relation to a practising certificate—

(i) impose a condition on the certificate; and

(ii) amend or revoke a condition already imposed on the certificate; and

(b) in relation to registration as a foreign lawyer—

(i) amend the lawyer's registration certificate; and

(ii) impose a condition on the registration; and

(iii) amend or revoke a condition already imposed on the registration.

approved, for a policy of indemnity insurance, for part 3.3 (Professional indemnity insurance)—see section 312.

approved ADI, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

approved policy of fidelity insurance, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

ASIC exemption, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

associate—

(a) of a law practice, for the Act—see section 9; and

(b) of a solicitor, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

Australia, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

Australian law, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

Australian lawyer—see section 7.

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Australian legal practitioner—see section 8.

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

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

Australian roll means the local roll or an interstate roll.

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

bar association means the Australian Capital Territory Bar Association (ACN 008 481 258), a corporation incorporated under the Corporations Act.

bar council means the Council of the bar association.

barrister means—

(a) a local legal practitioner who holds a current barrister practising certificate; 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.

borrower, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

capping and sufficiency provisions, for part 3.4 (Fidelity cover)—see section 316.

claim, for part 3.4 (Fidelity cover)—see section 316.

claimant, for part 3.4 (Fidelity cover)—see section 316.

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client—

(a) for part 3.2 (Costs disclosure and review)—see section 261; and

(b) for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

commercial legal presence, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

compensation order, for part 4.8 (Compensation)—see section 441.

complaint, for chapter 4 (Complaints and discipline)—see section 383.

compliance certificate—see section 29 (Compliance certificates).

complying community legal centre—see section 208.

concerted interstate default, for part 3.4 (Fidelity cover)—see section 316.

conditional costs agreement, for part 3.2 (Costs disclosure and review)—see section 261.

conditions means conditions, limitations or restrictions.

conduct, for chapter 4 (Complaints and discipline)—see section 383.

connected, for part 6.3 (Entry and search of premises)—see section 529.

contributor, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

contributory, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

controlled money—see section 210 (1).

controlled money account, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

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conviction—see section 13.

corporation, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

corresponding authority means—

(a) an entity with functions under a corresponding law; or

(b) when used in the context of an entity having functions under this Act (the ***local authority***)—

(i) an entity with corresponding functions under a corresponding law; and

(ii) without limiting subparagraph (i), if the functions of the local authority relate to local lawyers or local legal practitioners generally or are limited to any particular class of local lawyers or local legal practitioners—an entity having corresponding functions under a corresponding law, whether or not they relate to interstate lawyers or interstate legal practitioners generally or are limited to any particular class of interstate lawyers or interstate legal practitioners.

corresponding disciplinary body means—

(a) a court or tribunal with functions under a corresponding law that correspond to any of the functions of the disciplinary tribunal; or

(b) the Supreme Court of another jurisdiction exercising—

(i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyer; or

(ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to any Australian lawyer.

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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 law means the following:

(a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the other jurisdiction to be a law that corresponds to this Act, the law declared under that regulation for the other jurisdiction;

(b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction—a previous law applying to legal practice in the other jurisdiction.

costs agreement, for part 3.2 (Costs disclosure and review)—see section 261.

costs review, for part 3.2 (Costs disclosure and review)—see section 261.

council means the bar council or law society council.

data, for part 6.3 (Entry and search of premises)—see section 529.

data storage device, for part 6.3 (Entry and search of premises)—see section 529.

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default, in relation to a law practice, for part 3.4 (Fidelity cover)—see section 316.

director, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

disbursements, for part 3.2 (Costs disclosure and review)—see section 261.

disciplinary action, for part 4.9 (Publicising disciplinary action)—see section 447.

disciplinary tribunal means the Legal Practitioners Disciplinary Tribunal established under section 563.

disciplinary tribunal trust account—see section 574 (2).

dishonesty, for part 3.4 (Fidelity cover)—see section 316.

disqualified person, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

engage in legal practice includes practise law.

external examination, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

external examiner, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

external intervener, for chapter 5 (External intervention)—see section 473.

external intervention, for chapter 5 (External intervention)—see section 473.

fidelity fund—see section 320.

financial institution, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

foreign law, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

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foreign law practice, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

foreign licensing body, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

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

general trust account, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

grant an interstate practising certificate includes issue an interstate practising certificate.

home jurisdiction—see section 10.

incorporated legal practice—see section 101.

information notice—see section 12.

insolvent under administration means—

(a) a person who is an undischarged bankrupt within the meaning of the *Bankruptcy Act 1966* (Cwlth) (or the corresponding provisions of the law of a foreign country or external territory); or

(b) a person who has executed a personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth) (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 created by the agreement have been discharged; or

(c) a person for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part 9 (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

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(d) a person who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part 10 (or the corresponding provisions of the law of a foreign country or external territory) if the terms of the deed have not been fully complied with; or

(e) a person whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part 10 (or the corresponding provisions of the law of a foreign country or external territory) if a final payment has not been made under the composition.

interstate lawyer—see section 7.

interstate legal practitioner—see section 8.

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 kept under a corresponding law.

interstate trust account means a trust account kept under a corresponding law.

investigation, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

investigator, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

itemised bill, for part 3.2 (Costs disclosure and review)—see section 261.

judicial member, of the disciplinary tribunal—see section 566 (3).

jurisdiction means a State or Territory.

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law firm means a partnership consisting only of—

(a) Australian legal practitioners; or

(b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

law practice means—

(a) for the Act—

(i) an Australian legal practitioner who is a sole practitioner; or

(ii) a law firm; or

(iii) a multidisciplinary partnership; or

(iv) an incorporated legal practice; and

(b) for part 3.1—see section 218 (2).

law society means the Law Society of the Australian Capital Territory established under section 576.

law society council means the Council of the law society.

lay associate, of a law practice—see section 9.

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

legal practitioner associate, of a law practice—see section 9.

legal practitioner director, of an incorporated legal practice—see section 99.

legal practitioner partner, of a multidisciplinary partnership—see section 99.

legal profession rules means rules made under part 7.4.

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

lender, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

licensing body means the law society council.

litigious matter, for part 3.2 (Costs disclosure and review)—see section 261.

local lawyer—see section 7.

local legal practitioner—see section 8.

local practising certificate means a current practising certificate granted under this Act.

local registration certificate, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

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

local trust account means a trust account kept under this Act.

locally-registered foreign lawyer means a person who is registered as a foreign lawyer under this Act.

lump sum bill, for part 3.2 (Costs disclosure and review)—see section 261.

managed investment scheme—see the Corporations Act, section 9.

member, of a managed investment scheme, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

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) an instrument prescribed by regulation for this definition; and

(b) a proposed mortgage.

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

(a) acting as an intermediary to match a prospective lender and borrower; or

(b) arranging the loan; or

(c) receiving or dealing with payments for the purposes of, or under, the loan;

but does not include providing legal advice or preparing an instrument for the loan.

multidisciplinary partnership—see section 134.

non-judicial member, of the disciplinary tribunal—see section 572 (2).

occupier, for part 6.3 (Entry and search of premises)—see section 529.

offence, for part 6.3 (Entry and search of premises)—see section 529.

officer, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

official complaint, for chapter 44 (Complaints and discipline)—see section 383.

overseas-registered foreign lawyer, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

pecuniary loss, in relation to a default, for part 3.4 (Fidelity cover)—see section 316.

permanent form, in relation to a trust record, for part 3.1 (Trust money and trust accounts)—see section 210 (2) and (3).

person assisting, for part 6.3 (Entry and search of premises)—see section 529.

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practical legal training means—

(a) legal training by participation in course work; or

(b) legal training under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise; or

(c) a combination of both kinds of legal training.

practise foreign law, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

premises includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

prescribed relationship, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

principal, of a law practice—see section 9.

professional misconduct—see section 387.

professional obligations, of an Australian legal practitioner, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

quashing, of a conviction for an offence—see section 13.

register of disciplinary action—see section 448.

registered, used in relation to a foreign country, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

registrar means the registrar of the Supreme Court.

regulated mortgage, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

regulated property, for a law practice, for chapter 5 (External intervention)—see section 473.

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regulatory authority means—

(a) in relation to the ACT—

(i) a council; or

(ii) another authority having functions under this Act; or

(iii) an entity prescribed by regulation for this paragraph; or

(b) in relation to another jurisdiction, means—

(i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority, unless subparagraph (iii) applies; or

(ii) if there are separate regulatory authorities for the other jurisdiction for different branches of the legal profession or for people who practise in a particular style of legal practice—the regulatory authority relevant to the branch or style concerned, unless subparagraph (iii) applies; or

(iii) if a regulation prescribes 1 or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the prescribed regulatory authority or authorities.

related body corporate, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

relevant council means—

(a) in relation to an Australian legal practitioner who is, or a former Australian legal practitioner who was, a barrister or who is an applicant for grant of a barrister practising certificate—the bar council; or

(b) in relation to an Australian legal practitioner who is, or a former Australian legal practitioner who was, a solicitor or who is an applicant for grant of an unrestricted practising certificate or a restricted practising certificate—the law society council; or

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(c) in relation to an employee, or former employee, of a solicitor—the law society council;

and includes the law society council in relation to the exercise of a function by the law society council as the licensing body.

relevant jurisdiction, for part 3.4 (Fidelity cover)—see section 327.

responsible entity, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

restricted practising certificate means a local practising certificate or interstate practising certificate that is not an unrestricted practising certificate or barrister practising certificate.

run-out mortgage, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

scale of costs, for part 3.2 (Costs disclosure and review)—see section 261.

search warrant, for part 6.3 (Entry and search of premises)—see section 529.

serious offence means an offence whether committed in or outside the ACT 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 territory law if committed in the ACT (whether or not the offence could be dealt with summarily if committed in the ACT); or

(c) an offence against a law of a foreign country that would be an indictable offence against a territory law or a law of the Commonwealth if committed in the ACT (whether or not the offence could be dealt with summarily if committed in the ACT).

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show-cause event, in relation to a person, means—

(a) the person becoming an insolvent under administration; or

(b) the person being convicted of a serious offence or tax offence, whether or not—

(i) the offence was committed in or outside the ACT; or

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

(iii) other people 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 unrestricted practising certificate or restricted practising certificate; or

(b) an interstate legal practitioner who holds an interstate practising certificate that does not restrict the practitioner to engage in legal practice only as or in the manner of a barrister.

statutory interest account—see section 253.

suitability matter, for an individual—see section 11.

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

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

(i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

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

(b) as a partner in a law firm, if—

(i) at least 1 other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and

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

(c) in a capacity approved under the legal profession rules.

tax offence means any offence against the *Taxation Administration Act 1953* (Cwlth), whether committed in or outside the ACT.

territory regulated mortgage, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

territory regulated mortgage practice, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

this Act includes the admission rules and any other rules made under the *Court Procedures Act 2004* for this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation or legal profession rule (see Legislation Act, s 104).

transit money—see section 210 (1).

trust account, for part 3.1 (Trust money and trust accounts)—see section 210 (2) and (3).

trust money means money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice for or on behalf of another person, and includes—

(a) money received on account of legal costs in advance of providing the services; and

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(b) controlled money; and

(c) transit money; and

(d) money controlled by a law practice (or by an associate of the practice, whether alone or with another associate) under a power to deal with money for or on behalf of someone else that is—

(i) exercisable by the practice (or by an associate of the practice, whether alone or with another associate); or

(ii) exercisable jointly and severally with the person or a nominee or nominees of the person;

but does not include money to which section 212 (Money involved in financial services or investments) applies.

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

trust records, for part 3.1 (Trust money and trust accounts)—see section 210 (2) and (3).

uplift fee, for part 3.2 (Costs disclosure and review)—see section 261.

unrestricted practising certificate means a local practising certificate that is an unrestricted practising certificate or an interstate practising certificate that—

(a) is not subject to a condition under a corresponding law similar to the condition under section 49 (Statutory condition about practice as solicitor) or a similar condition under a corresponding law; and

(b) is not subject to a condition that restricts the holder of the certificate to practise only as or in the manner of a barrister; and

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(c) is not subject to any other condition (other than a condition requiring the holder of the certificate to undertake and complete 1 or more courses of continuing legal education or a condition prescribed by regulation); and

(d) is not subject to a condition similar to a condition under section 49 and whose holder would not be subject to a condition under that section if the holder were to apply for and be granted a local practising certificate.

unsatisfactory employment conduct—see section 388.

unsatisfactory professional conduct—see section 386.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended
amdt = amendment
ch = chapter
def = definition
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
renum = renumbered
reloc = relocated
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
sub = substituted
SL = Subordinate Law
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

Legal Profession Act 2006 A2006-25
notified LR 21 June 2006
s 1, s 2 commenced 21 June 2006 (LA s 75 (1))
remainder commenced 1 July 2006 (s 2)

as amended by

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.22
notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 2 pt 2.22 commenced 29 September 2006 (s 2 (1))

4 Amendment history

Commencement
s 2 om LA s 89 (4)

Appeal to Supreme Court on refusal of declaration
s 25 am A2006-40 amdt 2.119

Appeals against decisions of licensing body or relevant council
s 81 am A2006-40 amdt 2.119, amdt 2.120

Appeals or reviews
s 207 am A2006-40 amdt 2.121

Costs of investigation
s 239 am A2006-40 amdt 2.122, amdt 2.123

Costs of examination
s 249 am A2006-40 amdt 2.124, amdt 2.125

Appeals from disciplinary tribunal to Supreme Court
s 437 am A2006-40 amdt 2.126

Appeal against appointment of supervisor or manager
s 514 am A2006-40 amdt 2.127

Associates who are disqualified or convicted people
s 589 am A2006-40 amdt 2.128

Review of Act
s 603 exp 30 June 2011 (s 603 (2))

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Transitional
ch 10 hdg exp 1 July 2008 (s 619)

Definitions—ch 10
s 604 exp 1 July 2008 (s 619)

Continuing application of provisions of Legal Practitioners Act about trust money
s 605 exp 1 April 2007 (s 605 (3))

Continuing application of provisions of Legal Practitioners Act about costs
s 606 exp 1 January 2007 (s 606 (3))

Cost disclosure
s 607 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Notice for taxation of costs
s 608 exp 1 July 2008 (s 619)

Roll of legal practitioners
s 609 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Existing legal practitioners
s 610 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Pending applications for admission
s 611 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Pending complaints before professional conduct board
s 612 exp 1 July 2008 (s 619)

New complaints about old conduct
s 613 exp 1 July 2008 (s 619)

Statutory interest account
s 614 exp 1 July 2008 (s 619)

Legal profession rules
s 615 exp 1 July 2006 (s 615 (8) (LA s 88 declaration applies))

HIH insurance
s 616 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Mortgage practices and managed investment schemes—old mortgages
s 617 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Transitional regulations
s 618 exp 1 July 2008 (s 619)

Expiry—ch 10
s 619 exp 1 July 2008 (s 619)

Repeals and consequential amendments
ch 11 hdg om LA s 89 (3)

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Legislation repealed
s 620 om LA s 89 (3)

Legislation amended—sch 2
s 621 om LA s 89 (3)

Legal profession rules
sch 1 exp 1 July 2006 (s 615 (8))

Consequential amendments
sch 2 om LA s 89 (3)

HIH provisions
sch 3 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

Mortgage practices and managed investment schemes—provisions about old mortgages
sch 4 exp 1 July 2008 (s 619 (LA s 88 declaration applies))

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2006	1 July 2006- 1 July 2006	not amended	new Act
R2 2 July 2006	2 July 2006– 28 Sept 2006	not amended	commenced expiry

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