



Australian Capital Territory

# **Legal Practitioners Act 1970      No 43**

**Republication No 10**

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(republication for amendments by A2003-2)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Legal Practitioners Act 1970* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 31 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 31 March 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Legal Practitioners Act 1970

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Australian Capital Territory

# Legal Practitioners Act 1970

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An Act relating to legal practitioners

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Legal Practitioners Act 1970*.

### 3 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***admission board*** means the Legal Practitioners Admission Board.

***authorised officer*** means an officer of the Supreme Court of a State or another Territory authorised in accordance with rules of court made under section 18 (1) (b).

***control***, in relation to moneys, means control by a solicitor, direct or indirect, over moneys of a client.

***controlled moneys*** means moneys over which a solicitor has control, but does not include—

- (a) trust moneys; or
- (b) a third-party payment.

***council*** means the Council of the law society.

***court*** means the Supreme Court.

***fidelity fund*** means the Solicitors' Fidelity Fund of the Australian Capital Territory established by section 132.

***indemnity fund*** means a fund approved under section 83.

***law society*** means The Law Society of the Australian Capital Territory as constituted by section 4.



**legal practitioner** means a person whose name is on, or is to be taken to be on, the roll of legal practitioners.

**Mutual Recognition Act** means the *Mutual Recognition Act 1992* (Cwlth).

**practising certificate** means an unrestricted practising certificate, or a restricted practising certificate, issued under part 7.

**professional conduct board** means the Professional Conduct Board of the law society.

**professional indemnity insurance** means a policy of insurance approved under section 76 or taken to be approved under section 77.

**registrar** means the registrar of the Supreme Court.

**restricted practising certificate** means a practising certificate certifying to the entitlement of the holder to perform the functions of a solicitor whilst in the employ of another person.

**roll of legal practitioners** means the roll kept under section 16C.

**rules of court** means rules of court under the *Supreme Court Act 1933*, section 36 .

**statutory interest account** means an account opened and maintained in accordance with section 128 (2).

**third-party payment** means a payment being a cheque, bank cheque, bank draft or money order—

- (a) received by a solicitor from or on behalf of a client with instructions, express or implied, that the payment is to be delivered to—
  - (i) the person to whom it is expressed to be payable; or
  - (ii) a person other than the solicitor, a partner of the solicitor or the solicitor's firm; and
- (b) made payable otherwise than to the solicitor, a partner of the solicitor or the solicitor's firm.

***Trans-Tasman Mutual Recognition Act*** means the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth).

***trust moneys*** means moneys that are, under section 87, to be deemed to be held by a solicitor in trust for a client of that solicitor.

***unrestricted practising certificate*** means a practising certificate certifying to the entitlement of the holder to practise as a solicitor on his or her own account or in partnership with another legal practitioner.

## Part 2                      Law society

### 4            Incorporation of law society

- (1) The Law Society of the Australian Capital Territory is hereby constituted a body corporate by the name ‘The Law Society of the Australian Capital Territory’.
- (2) The law society—
  - (a) has perpetual succession; and
  - (b) shall have a common seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the law society affixed to a document and shall presume that it was duly affixed.
- (4) The constitution of the law society is, subject to this Act, the constitution of The Law Society of the Australian Capital Territory as in force immediately before the commencement of this part.
- (5) An amendment of the constitution of the law society shall not take effect unless it is approved by the Attorney-General.
- (6) An amendment of the constitution of the law society that is approved by the Attorney-General takes effect—
  - (a) where the amendment specifies a day on which it is to take effect, being a day not earlier than the day on which the Attorney-General approves the amendment—on the day so specified; and
  - (b) in any other case—on the day on which the Attorney-General approves the amendment.

- (7) Any property held, immediately before the commencement of this part, by a person, in trust or otherwise, for or on behalf of The Law Society of the Australian Capital Territory is, subject to any charge or liability affecting the property, vested in the law society.
- (8) A person is not entitled to be a member of the law society unless his or her name is on, or is to be taken to be on, the roll of legal practitioners.
- (9) 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.
- (10) 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.

## Part 3 Her Majesty's counsel

### 5 Existing appointments

- (1) The repeal effected by the *Legal Practitioners (Amendment) Act 1995*, section 4 does not affect—
  - (a) the appointment of a person under this Act as in force at any time before the commencement of this section to be one of Her Majesty's Counsel for the ACT; or
  - (b) the power of the Executive to revoke that person's commission of appointment.
- (2) Section 5 (3) of this Act as in force immediately before the commencement of this section continues (except as regards a right or privilege of precedence) to apply in relation to a person referred to in subsection (1).

### 6 Abrogation of royal prerogative

- (1) Any prerogative right or power of the Crown to appoint a person to be one of Her Majesty's Counsel for the ACT, or to grant letters patent of precedence to a legal practitioner, is abrogated.
- (2) Subsection (1) is not to be taken, by implication, to abrogate any prerogative right or power of the Crown to revoke an appointment referred to in that subsection.

## **Part 5 Admission board**

### **7 Admission board**

- (1) There shall be a Legal Practitioners Admission Board consisting of 5 members, being legal practitioners, appointed by the Chief Justice.
- (2) Subject to section 8, a member of the admission board holds office for the period that—
  - (a) commences on the date of the instrument of appointment or, where the appointment is expressed to commence on some later date, on that later date; and
  - (b) ends on the following 31 December.
- (3) A member of the admission board is eligible for reappointment.
- (4) In the event of there being a vacancy in the office of a member of the admission board, the Chief Justice may appoint a legal practitioner to hold the vacant office, and a person so appointed holds office from the date of the appointment to the following 31 December.
- (5) The performance of the functions and the exercise of the powers of the admission board is not affected by reason only of there being a vacancy or vacancies in the membership of the board.
- (6) The registrar, or a person nominated for the purpose by the registrar, shall be the secretary to the admission board.

### **8 Vacation of the office of members of admission board**

- (1) The court may, on the application of the Attorney-General, remove a member of the admission board from office for misbehaviour or physical or mental incapacity.
- (2) If a member of the admission board—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors; or
- (b) ceases to be a legal practitioner; or
- (c) is absent, except on leave granted by the admission board, from 3 consecutive meetings of the board;

the court may remove the member from office.

## **9 Meetings of admission board**

- (1) At a meeting of the admission board, 3 members constitute a quorum.
- (2) At the first meeting of the board in each year the members present shall elect 1 of their number to be chairperson.
- (3) The chairperson shall preside at all meetings of the board at which he or she is present.
- (4) In the absence of the chairperson from a meeting, the members present shall elect 1 of their number to preside at the meeting.
- (5) The admission board shall hold meetings at such times and places as the chairperson or, if for any reason the chairperson is unable to act or there is a vacancy in the office of chairperson, the secretary to the board, directs or the board determines.

## **10 Legal protection for members**

Civil proceedings do not lie against a member or former member of the admission board for or in respect of an act or thing done in good faith by the board or the member or former member in the performance of a function under this Act.

## **Part 6 Admission or enrolment of legal practitioners**

### **11 Application for admission or enrolment**

- (1) A person who meets the requirements prescribed by the rules of court may apply to the court for admission as a legal practitioner.
- (2) Subsection (1) does not apply to a person entitled to practise law in a place outside the ACT.
- (3) An application for admission or enrolment under this section shall be in accordance with the rules of court.

### **12 Enrolment of persons entitled to registration under Mutual Recognition Act**

Where a person lodges with the court a notice under the Mutual Recognition Act, section 19 or the Trans-Tasman Mutual Recognition Act, section 18—

- (a) the lodgment of the notice shall be taken to be the making of an application for enrolment under this section based on that notice; and
- (b) the person on whose behalf the notice was lodged shall be taken to be the applicant.

### **13 Copies of applications to admission board and law society**

On receipt of an application under section 11 or 12, the registrar shall forward a copy of the application to the admission board and to the law society.



**14 Report by admission board—other cases**

- (1) The admission board shall, in respect of each application for admission or enrolment, make a report in writing to the court stating whether, in the opinion of the board, the applicant—
  - (a) is entitled to apply to be admitted or enrolled; and
  - (b) is of good fame and character; and
  - (c) is a person whose right to practise in federal courts or in a State or another Territory is not suspended or has not been cancelled.
- (2) Where the board reports that it is of the opinion that an applicant is not of good fame and character, the board shall state in the report the grounds for its belief.
- (3) Where the board reports that it is of the opinion that an applicant is of good fame and character, the board may include in its report any matter that in the opinion of the board is relevant to the question of the applicant's good fame and character.
- (4) Subject to subsection (5), the board shall furnish a copy of its report to the applicant and to the law society.
- (5) Where the application is to be heard by the court, the board shall furnish the copy of its report not less than 3 days before the day of the hearing.

**15 Response to applications by law society**

The law society may—

- (a) furnish information to the registrar regarding an applicant for admission or enrolment;
- (c) in the case of an application for enrolment under section 12—draw to the attention of the registrar, within 7 days of the making of that application, any grounds for postponement or refusal of enrolment of the applicant.

**16A Enrolment of practitioners under Mutual Recognition Act or Trans-Tasman Mutual Recognition Act—action by registrar and law society**

- (1) Where in relation to an application under section 12 the registrar considers that there are grounds under the Mutual Recognition Act or the Trans-Tasman Mutual Recognition Act for postponement or refusal of enrolment, the registrar shall, within 14 days of the making of the application, refer the application to the court.
- (2) In considering an application under subsection (1), the registrar shall have regard to any grounds for postponement or refusal drawn to his or her attention by the law society.
- (3) Subject to subsection (4), if the law society so requests, the registrar shall refer an application under section 12 to the court.
- (4) Unless the court orders that a request may be made at a later time, a request shall be made within 14 days of the making of the application.
- (5) Where an application is referred to the court, the registrar shall notify the applicant and the law society.
- (6) An application referred to the court shall be taken to be an application to the court for admission as a legal practitioner.

**16B Admission or entitlement to enrolment or registration**

- (1) If on an application for admission the court is satisfied that the applicant—
  - (a) is entitled to apply to be admitted as a legal practitioner; and
  - (b) is of good fame and character;the court shall admit the applicant as a legal practitioner.
- (2) If on an application that is taken to be an application for admission under section 16A (6) the court is satisfied that the applicant is entitled to registration as a legal practitioner under the Mutual Recognition Act or the Trans-Tasman Mutual Recognition Act the

applicant is entitled to be enrolled in accordance with section 16D (2).

- (3) The law society is entitled to be heard on the hearing of the application.

### **16C Roll of legal practitioners**

- (1) The registrar shall keep a roll to be known as the roll of legal practitioners.
- (2) The roll referred to in subsection (1) includes the roll of legal practitioners—mutual recognition scheme and trans-tasman mutual recognition scheme.
- (3) The roll shall be kept in accordance with any applicable rules of court.

### **16D Entry of names on roll**

- (1) The registrar shall enter on the roll of legal practitioners—
  - (a) the name of each person admitted as a legal practitioner; and
  - (b) the name of each person entitled to be enrolled as a legal practitioner; and
  - (c) the date on which the entry is made.
- (2) Where a person lodges a notice under the Mutual Recognition Act, section 19 or of the Trans-Tasman Mutual Recognition Act, section 18 and becomes entitled to registration under either of those Acts, the registrar shall, when the person becomes so entitled, enter on the part of the roll referred to in section 16C (2)—
  - (a) the name of the person; and
  - (b) the date on which the person became so entitled.

**17 Oath or affirmation**

- (1) A person shall, before being admitted as a legal practitioner under this part, take an oath or make an affirmation before the court.
- (2) A person whose name is, under section 16D (1) (b) or (2), entered on the roll of legal practitioners shall take an oath or make an affirmation before the registrar or an authorised officer.
- (3) An oath taken or affirmation made for subsection (1) or (2) shall be in accordance with the appropriate form in the schedule 1.

**18 Rules of court about enrolment**

- (1) The rules of court may provide for or with respect to—
  - (a) the manner and form in which the roll of legal practitioners is to be kept; and
  - (b) the authorisation of an officer of the Supreme Court of a State or another Territory to perform functions under this Act in accordance with the rules; and
  - (c) the taking of an oath, or the making of an affirmation, for section 17 (2) before an authorised officer; and
  - (d) the making by an authorised officer, on behalf of the registrar, of an entry under section 16D on the roll; and
  - (e) the signing of the roll under section 19 before an authorised officer.
- (2) Without limiting subsection (1) (a), rules of court made under that paragraph may provide for the roll of legal practitioners to be kept by means of a loose-leaf or other system to facilitate the making of entries on the roll by, and the signing of the roll before, authorised officers.
- (3) The Chief Justice may make arrangements with the Chief Justice, a judge or an officer of the Supreme Court of a State or another Territory for the purpose of giving effect to rules of court made under subsection (1).

**19 Signing roll**

A person whose name is entered on the roll of legal practitioners shall sign the roll.

**20 Right to practise**

Subject to this Act, a person who has, under section 19, signed the roll of legal practitioners—

- (a) is entitled to practise in the ACT—
  - (i) as a barrister and solicitor; or
  - (ii) as a barrister; or
  - (iii) as a solicitor; and
- (b) has the right of audience in any court of the ACT.

## Part 7                      Solicitors' practising certificates

### Division 7.1                Preliminary

#### 21     Meaning of *public employment*

In this part:

*public employment* means employment as—

- (a) a public employee in the Attorney-General's Department; or
- (b) a public employee in the Legal Aid Commission (A.C.T); or
- (c) a public employee in the Office of the Director of Public Prosecutions; or
- (d) an officer or employee in the Attorney-General's Department of the Commonwealth; or
- (e) an officer or employee in the Office of the Director of Public Prosecutions of the Commonwealth.

### Division 7.2                Requirement

#### 22     Practising certificates required

- (1) Subject to part 15A, a legal practitioner shall not practise as a solicitor on his or her own account or in partnership with another legal practitioner unless he or she holds a current unrestricted practising certificate.
- (2) For subsection (1), a person shall not be taken to practise as a solicitor by reason only that the person is a member of a partnership whose practice is conducted by another member or other members of the partnership.

- (3) A legal practitioner practising as a solicitor shall not employ another legal practitioner to perform the functions of a solicitor unless—
- (a) the employer holds a current unrestricted practising certificate; and
  - (b) the employee—
    - (i) holds a current practising certificate; or
    - (ii) is an interstate legal practitioner who is entitled to engage in legal practice in the ACT under section 191D.
- (4) A legal practitioner is not entitled to recover any costs or disbursements in respect of any work of a professional nature done by him or her as a solicitor unless, at the time at which the work was done, he or she was—
- (a) the holder of a current unrestricted practising certificate; or
  - (b) an interstate legal practitioner who is entitled to practise in the ACT, and to recover the costs or disbursements, under section 191D.
- (5) In this section, a reference to a person who holds a type of practising certificate includes a person named in an order under section 31 (4) or 36D (5) in respect of a practising certificate of that type specified in the order.

## **Division 7.3            Application**

### **23    Restrictions on persons who may apply**

- (1) An application for a practising certificate may be made only by a legal practitioner.
- (2) Subject to section 28 (2), a legal practitioner whose practising certificate is suspended (including a suspension under a law of another jurisdiction) is not entitled, during the period of the suspension, to apply for the issue of a practising certificate.

## **24 Applications for practising certificates**

- (1) An application for the issue of a practising certificate, shall be in a form approved by the law society and shall be signed by the applicant.
- (2) The form of the application is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **Division 7.4 Issue**

### **25 Issuing authority**

Subject to this division, practising certificates shall be issued by the law society.

### **26 Issue of certificates—generally**

- (1) The law society shall not issue a practising certificate unless the applicant has paid to the law society the fee fixed under section 36E (1).
- (2) The law society may refuse to issue a practising certificate if the applicant—
  - (a) fails to pay a fine or any costs, fees or expenses payable by him or her to the law society under this Act; or
  - (b) being required by the council to explain specified conduct by him or her as a solicitor, fails without reasonable excuse to give a reasonable written explanation to the council; or
  - (c) fails to fulfil any obligations he or she has under an agreement referred to in section 46; or
  - (d) fails to comply with a direction of the professional conduct board under section 58 (1) (b), 58 (2) or 59 (1); or



(e) has been sentenced to a term of imprisonment.

*Note* Section 147H (1) also contains restrictions on the issue of practising certificates to applicants required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

## 27 Issue of unrestricted practising certificates

- (1) Subject to this division, if the law society receives an application from a person under section 24 and is satisfied that the person is qualified as provided in an item of the table, the law society shall issue to the applicant an unrestricted practising certificate.

**Table**

<b>column 1 item</b>	<b>column 2 qualification</b>
1	A person who holds an unrestricted practising certificate in respect of a period that will expire on 30 June in a year and applies for an unrestricted practising certificate to commence later that year.
2	A person who— (a) held an unrestricted practising certificate not more than 5 years immediately preceding the date of the application (whether before or after the commencement of this section); and (b) has retained such a level of professional skill that it is appropriate that a further unrestricted practising certificate be issued to him or her.
3	A person who— (a) has not previously held an unrestricted practising certificate; and (b) during the period of 5 years immediately preceding the date of the application, has, for a period of not less than 2 years or for periods which, in the aggregate, are not less than 2 years— (i) been employed in a State or Territory under articles of clerkship; or

column 1 item	column 2 qualification
	<ul style="list-style-type: none"><li>(ii) been performing work of a legal nature as an employee of a solicitor in the Territory or in a State or another Territory; or</li><li>(iii) been performing work of a legal nature in public employment; or</li><li>(iv) practised in the ACT or in a State or another Territory as a solicitor, either on his or her own account or in partnership with another legal practitioner; or</li><li>(v) been employed or practised, as the case may be, in any 2 or more of the capacities referred to in subparagraphs (i), (ii), (iii) and (iv); and</li><li>(c) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</li></ul>
4	<p>A person who—</p> <ul style="list-style-type: none"><li>(a) has not previously held an unrestricted practising certificate; and</li><li>(b) during the period of 5 years immediately preceding the date of the application—<ul style="list-style-type: none"><li>(i) has served or practised for a period of not less than 12 months, or for periods which, in the aggregate, are not less than 12 months, in any 1 or more of the capacities referred to in item 3, column 2, paragraph (b); and</li><li>(ii) has completed a prescribed course of training for the practice of law; and</li></ul></li><li>(c) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</li></ul>

column 1 item	column 2 qualification
5	<p>A person who—</p> <ul style="list-style-type: none"><li>(a) has during the period of 5 years immediately preceding the date of the application—<ul style="list-style-type: none"><li>(i) practised in the ACT or in a State or another Territory as a barrister for a period of not less than 2 years; or</li><li>(ii) practised in the ACT or in a State or another Territory as a barrister for a period of not less than 1 year and served or practised, as the case may be, in any 1 or more of the capacities referred to in item 3, column 2, paragraph (b) for a period of not less than 1 year or for periods which, in the aggregate, are not less than 1 year; or</li><li>(iii) after completing a prescribed course of training for the practice of law, practised in the ACT or in a State or another Territory as a barrister for a period of not less than 1 year; and</li></ul></li><li>(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</li></ul>
6	<p>A person who—</p> <ul style="list-style-type: none"><li>(a) has previously held a practising certificate; and</li><li>(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</li></ul>
7	<p>A person who, being a New Zealand barrister and solicitor—</p> <ul style="list-style-type: none"><li>(a) has for a continuous period of not less than 6 months following the person's admission or enrolment in the ACT been employed by a legal practitioner in the ACT; and</li></ul>

column 1 item	column 2 qualification
	(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.

- (2) The law society shall not issue an unrestricted practising certificate unless the applicant has paid to the law society—
- (a) any contribution payable by the applicant to the fidelity fund in respect of the period for which the practising certificate will be in force; and
  - (b) any levy payable by the applicant under section 147.
- (3) Subject to subsection (4), the law society shall not issue an unrestricted practising certificate unless it is satisfied that the applicant has or will have professional indemnity insurance for the period during which the practising certificate sought by the applicant will be in force.
- (4) The law society may issue an unrestricted practising certificate to a solicitor in relation to a period without the solicitor having professional indemnity insurance in respect of that period if the law society is satisfied that the nature of the practice of the solicitor does not require professional indemnity insurance.
- (5) The law society may refuse to issue an unrestricted practising certificate if—
- (a) the applicant fails to comply with section 104 (6) or 106; or
  - (b) a report under division 11.5, 11.6 or 11.7 discloses a deficiency in the trust moneys held by him or her (not being a deficiency that was excusable and was made good before the date of the report).
- (6) The law society shall refuse to issue an unrestricted practising certificate if the applicant—

- (a) is bankrupt; or
  - (b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) has compounded with creditors or made an assignment of remuneration for the benefit of his or her creditors.
- (7) The law society shall not issue an unrestricted practising certificate to an applicant who has not previously held such a certificate unless the applicant has satisfied the law society by passing examinations or otherwise that he or she has an adequate knowledge of accounts and legal ethics.

## **28 Issue of restricted practising certificates**

- (1) Subject to this division, if the law society receives an application from a person under section 24 and is satisfied that the person is qualified to hold a restricted practising certificate, the law society shall issue to the applicant a practising certificate of that type.
- (2) The law society may issue a restricted practising certificate to a person whose unrestricted practising certificate—
  - (a) has been suspended; or
  - (b) has been cancelled in accordance with section 36A (2) or (3).

## **29 Issue of practising certificates to practitioners enrolled under Mutual Recognition Act or Trans-Tasman Mutual Recognition Act**

- (1) Where a person holds a practising certificate under the law of a State, New Zealand or another Territory (the *home State*) and—
  - (a) the name of the person is entered on the roll of legal practitioners under section 16D (2); and
  - (b) the person lodges with the law society a notice under the Mutual Recognition Act, section 19 or the Trans-Tasman Mutual Recognition Act, section 18;

the law society shall issue to the person a practising certificate subject to payment to the society of the amount provided for by section 26 (1) and any amounts provided for by section 27 (2).

- (2) If the practising certificate held by the person under the law of the home State corresponds most closely to—
- (a) an unrestricted practising certificate; or
  - (b) a restricted practising certificate;

the law society shall issue such a certificate to the person under this section.

- (3) Subject to this division, if the holder of a practising certificate issued under this section makes an application under section 24, the law society shall issue to the applicant a further practising certificate of the same type.

### **30 Notice of refusal to issue practising certificates**

Where the law society refuses to issue a practising certificate, it shall give notice in writing to the applicant of, and of the ground for, the refusal.

### **31 Powers of court relating to issue of practising certificates**

- (1) Where the law society—
- (a) has refused to issue a practising certificate of the type sought by a person; or
  - (b) has refused to issue an unrestricted practising certificate to a person in accordance with section 27 (4) in relation to a period without the person having professional indemnity insurance in respect of that period;

the person may, within 14 days after being given notice of the refusal or the condition, apply to the court for an order under subsection (2).

- (2) On an application under subsection (1), the court may direct the law society, as the case requires, to issue to the applicant—
  - (a) a practising certificate of the type sought by the applicant (with or without professional indemnity insurance); or
  - (b) if the applicant sought the issue of an unrestricted practising certificate—a restricted practising certificate.
- (3) A person who has made an application under subsection (1) may apply to the court for an order under subsection (4).
- (4) The court in its discretion may order that the person shall, until the determination of his or her application under subsection (1), be taken to be a person who holds a practising certificate of the type specified in the order.
- (5) The law society shall be the respondent to an application under this section.

### **32 Application to court by person not qualified under s 27 (1)**

- (1) A legal practitioner who—
  - (a) is not qualified, in accordance with section 27 (1), to have an unrestricted practising certificate issued to him or her; and
  - (b) having regard to his or her training and experience, has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her;may apply to the court for an order under subsection (2).
- (2) Where the court is satisfied having regard to the training and experience of the applicant, that the applicant has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her the court may direct the law society to issue to the applicant an unrestricted practising certificate.

- (3) The court may order that the practising certificate have effect subject to a condition or conditions specified in the order.
- (4) On an application under subsection (1), the court shall, on the application of the law society, order that the costs incurred by the law society in connection with the application be paid by the applicant unless the court is satisfied that, in the circumstances of the case, it would not be just and reasonable to do so.
- (5) The law society shall be the respondent to an application under this section.

### **33 Issue of certificates conditionally or unconditionally**

- (1) The law society may issue a practising certificate unconditionally or subject to conditions.
- (2) The law society may from time to time, by notice in writing to the holder of a practising certificate, add to, or vary or revoke a condition of, a practising certificate whether or not the certificate was originally issued unconditionally.
- (3) The imposition of conditions on a practising certificate under an order of the court does not limit the powers of the law society under subsection (2) in relation to that certificate.
- (4) Without limiting the conditions that may be imposed under subsection (1), added under subsection (2) or the effect of a condition as varied under subsection (2), the conditions that may be so imposed, added or varied include all or any of the following:
  - (a) restricting the holder of the certificate to certain specified classes of work;
  - (b) prohibiting the holder of the certificate from engaging in certain specified classes of work;
  - (c) requiring the holder of the certificate to undertake all work or certain specified classes of work subject to supervision of a specified type;



- (d) requiring the holder of the certificate to practise, or perform the functions of a solicitor, only in a type or types of specified employment or in the employment of a specified person;
  - (e) requiring the holder of the certificate to undertake education or training of a specified type or types;
  - (f) requiring the holder of the certificate to cease employing a specified person or persons;
  - (g) requiring the holder of the certificate to effect a specified type of insurance.
- (5) In subsection (4):  
*specified* means specified in the practising certificate.

### **34 Powers of court relating to conditions on practising certificates**

- (1) Where the law society has—
- (a) issued a practising certificate subject to a condition which the holder considers is unreasonable (not being a condition referred to in section 31 (1) (b)); or
  - (b) added a condition to a practising certificate which the holder of the certificate considers is unreasonable; or
  - (c) varied a condition on a practising certificate in a way which the holder of the certificate considers is unreasonable;
- the holder may apply to the court for an order under subsection (2).
- (2) The court may order that a practising certificate have effect—
- (a) free of any condition; or
  - (b) subject to any conditions the court thinks fit.
- (3) An order under subsection (2)—
- (a) may be expressed to have effect from a date earlier than the date on which the order is made; and

- (b) may provide that a condition or conditions specified in the order is or are to operate instead of another condition or conditions specified in the order.
- (4) The law society shall be the respondent to an application under this section.

## **Division 7.5 Surrender**

### **35 Surrender of practising certificates**

- (1) Subject to subsection (2), a legal practitioner may surrender his or her practising certificate by application in writing to the law society accompanied by the certificate.
- (2) The law society may decline to accept the surrender of a practising certificate.
- (3) A surrender of a practising certificate shall be taken to have effect on and from the date specified by the law society in the acknowledgment referred to in subsection (4) (a).
- (4) Where the law society accepts the surrender of a practising certificate it shall—
  - (a) acknowledge that fact in writing to the former holder of the certificate and specify in that writing the date on and from which the surrender is to be taken to have effect; and
  - (b) refund to the former holder a proportion, calculated in accordance with subsection (5), of—
    - (i) the fees paid for the issue of the certificate; and
    - (ii) any contribution made to the fidelity fund referred to in section 27 (2) (a).
- (5) The amount of a refund—
  - (a) of the fees shall bear the same proportion to the total amount of the fees; and

(b) of any contribution shall bear the same proportion to the total amount of the contribution;

as the number of whole months that would have been the unexpired period of the certificate if it had not been surrendered bear to the total period of the certificate if it had not been surrendered.

(6) The surrender of a practising certificate does not affect any liability of the former holder (other than the liability for fees and any contribution and levy paid for the issue of the certificate) that had been incurred or accrued before the surrender of the certificate.

## **Division 7.6                      Suspension and cancellation**

### **36            Suspension**

- (1) The law society may suspend for a specified period not exceeding 12 months a practising certificate held by a legal practitioner who—
- (a) fails to pay a fine or any costs, fees or expenses payable by him or her to the law society under this Act; or
  - (b) being required by the council to explain specified conduct by him or her as a solicitor, fails without reasonable excuse to give a reasonable written explanation to the council; or
  - (c) fails to fulfil any obligations he or she has under an agreement referred to in section 46; or
  - (d) fails to comply with a direction of the professional conduct board under section 58 (1) (b), 58 (2) or 59 (1).
- (2) The law society may suspend for a specified period not exceeding 12 months an unrestricted practising certificate held by a legal practitioner—
- (a) if the legal practitioner fails to comply with section 78 (1); or
  - (b) if the legal practitioner fails to comply with section 104 (6) or 106; or

- (c) if a report under division 11.5, 11.6 or 11.7 discloses a deficiency in the trust moneys held by him or her (not being a deficiency that was excusable and was made good before the date of the report).
- (3) If the law society is satisfied that a legal practitioner whose practising certificate has been suspended has paid the levy referred to in section 78 (1) (b), the law society shall revoke the suspension.
- (4) A legal practitioner whose practising certificate is suspended shall be taken, during the period of its suspension, not to hold a current practising certificate.

*Note* Section 147H (2) also contains provisions allowing the suspension of practising certificates of solicitors required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

### **36A Cancellation**

- (1) Where—
  - (a) the name of a person is removed from the roll of legal practitioners; or
  - (b) the right of a person to practise in the ACT as a solicitor or as a barrister and solicitor is suspended;a practising certificate held by the person is, by force of this section, cancelled.
- (2) The law society shall cancel an unrestricted practising certificate held by a legal practitioner if he or she—
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- (3) The law society may cancel a practising certificate held by a legal practitioner who has been sentenced to a term of imprisonment.

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### **36B Notice of cancellation or suspension**

Where the law society cancels or suspends a practising certificate it shall give the person to whom the certificate was issued notice in writing of, and of the ground for, the cancellation or suspension.

### **36C Delivery of cancelled certificate to law society etc**

(1) Subject to subsection (2), a legal practitioner who is given notice of the cancellation of his or her practising certificate shall forthwith deliver the certificate to the law society.

(2) Where—

- (a) a practising certificate has been cancelled; and
- (b) an order has been made under section 36D (5); and
- (c) the court refuses to make an order under section 36D (2);

the person who held the practising certificate shall, forthwith after the refusal, deliver the certificate to the law society.

(3) Where a practising certificate that has been cancelled is delivered to the law society under subsection (2) and before the expiration of the certificate in accordance with section 36F (2)—

- (a) the cancellation of the certificate is revoked; or
- (b) the court makes an order under section 36D (5);

the law society shall forthwith cause the certificate to be returned to the legal practitioner concerned.

### **36D Powers of court relating to cancellation or suspension of practising certificates**

(1) A person whose practising certificate has been cancelled or suspended by the law society may apply to the court for an order under subsection (2).

(2) Where, on an application under subsection (1), the court is satisfied that the circumstances are such that the cancellation or suspension

of the applicant's practising certificate ought to be revoked, the court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation or suspension of the applicant's practising certificate.

- (3) Where the court makes an order under subsection (2), the revocation of the cancellation or suspension of the applicant's practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.
- (4) A person who has made an application under subsection (1) may apply to the court for an order under subsection (5).
- (5) The court in its discretion may order that the person shall, until the determination of his or her application under subsection (1), be taken to be a person who holds a practising certificate of the type specified in the order.
- (6) The law society shall be the respondent to an application under this section.

## **Division 7.7                      Miscellaneous**

### **36E    Fees for practising certificates**

- (1) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is that fixed by the law society as the fee payable for that type of practising certificate.
- (2) Where an application for the issue of a practising certificate is made after 1 July in any year and before the following 30 June, the fee payable for the issue of the practising certificate is an amount that bears to the fee applicable under subsection (1) the same proportion as the number of months in the period between the date of the application and the following 30 June bears to 12.
- (3) Where the law society issues a practising certificate to a person who has, within the period of 12 months immediately preceding the date

of issue of the certificate, had his or her practising certificate cancelled—

- (a) the fee payable in respect of the application for the issue of the practising certificate may be reduced or payment of the fee may be waived by the society; and
- (b) where the person has already paid a contribution to the fidelity fund in respect of a period including the period for which the certificate will be in force—the person is not required to pay a contribution to the fidelity fund.

### **36F Date of effect and term of practising certificates**

- (1) A practising certificate takes effect on the date on which the certificate is expressed to take effect.
- (2) A practising certificate expires on 30 June next following the date on which the certificate takes effect.

### **36G Register of holders of practising certificates**

- (1) The law society shall keep a register of the names of all persons holding current unrestricted practising certificates and a register of the names of all persons holding current restricted practising certificates.
- (2) A register shall be kept in such manner and form as the law society determines.

### **36H Notice of change of circumstances**

- (1) The holder of an unrestricted practising certificate who—
  - (a) commences to practise at an address, or under a name, other than that stated in the application for the practising certificate; or
  - (b) commences to practise, as a member of a partnership, under a name different from the name stated in the application for the practising certificate; or

(c) ceases to practise at an address at which he or she was previously practising;

shall, within 14 days of commencing or ceasing so to practise, notify the law society of the fact and of the new name or address as the case requires.

(2) Where the holder of a restricted practising certificate who is employed by a solicitor—

(a) ceases employment with the solicitor; or

(b) commences employment with another solicitor;

the holder shall, within 14 days of ceasing or commencing employment, as the case may be, notify the law society of that fact.



## Part 8                      Discipline

### Division 8.1              Preliminary

#### 37      Definitions for pt 8

In this part:

*conference* means a conference convened under section 43.

*employee*, in relation to a solicitor, means an employee or former employee (not himself or herself a solicitor) of that solicitor.

*inquiry* means an inquiry under division 8.5.

*interested party*, in relation to a conference or inquiry, means—

- (a) the solicitor or employee whose conduct is the subject of the conference or inquiry; and
- (b) if the conduct is that of an employee—the solicitor who employs or employed the employee; and
- (c) any person who was a client of the solicitor referred to in paragraph (a) or (b) in the matter in relation to which the conduct occurred; and
- (d) if the person who brought the conduct, or any aspect of it, to the attention of the law society is not a client referred to in paragraph (c)—that person.

*professional misconduct* includes—

- (a) unsatisfactory professional conduct of a substantial, recurring or continuing nature; and
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law that would justify a finding that its perpetrator is not of good fame and character or is not a fit and proper person to remain on the roll of legal practitioners; and

- (c) conduct that is professional misconduct under section 118, 191D (3), 191E (3) or 191M (2).

*solicitor* means a legal practitioner who—

- (a) is a member of the law society and was not, at the relevant time, practising solely as a barrister; or
- (b) holds or, at the relevant time, held a practising certificate.

*unsatisfactory employment conduct*, in relation to an employee of a solicitor, means being a party to, or causing, an act or omission in relation to the solicitor's practice (whether with or without the connivance of the solicitor), being an act or omission in respect of which a complaint under section 50 has been, or could be, made against the solicitor.

*unsatisfactory professional conduct* includes conduct (whether consisting of an act or omission) occurring in connection with the practice of law that falls short of the standard of competence and diligence that a client is entitled to expect of a reasonably competent legal practitioner.

## **Division 8.2 Professional conduct board**

### **38 Establishment and membership**

- (1) There shall be a body to be known as the Professional Conduct Board of The Law Society of the Australian Capital Territory.
- (2) The professional conduct board shall consist of 7 members, as follows:
- (a) 5 members appointed by the council;
- (b) 2 members appointed by the Attorney-General after consultation with the law society.
- (3) A person is not eligible for appointment as a member referred to in subsection (2) (a), or for appointment under subsection (6) (a), unless not less than 5 years have elapsed since the person was first

admitted to practise as a legal practitioner (however described) in a State or Territory and the person—

- (a) holds a current unrestricted practising certificate; or
  - (b) is a legal practitioner practising as a barrister.
- (4) A person is not eligible for appointment as a member referred to in subsection (2) (b), or for appointment under subsection (6) (b), if the person is enrolled as a legal practitioner (however described) whether in the ACT or elsewhere or who has the educational qualifications prescribed for admission as a legal practitioner.
- (5) A member of the professional conduct board holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment and is eligible for reappointment.
- (6) In the event of a member of the professional conduct board ceasing to hold office before the member's term of office has expired—
- (a) in the case of a member referred to in subsection (2) (a)—the law society; and
  - (b) in the case of a member referred to in subsection (2) (b)—the Attorney-General, after consultation with the law society;
- may appoint a person to hold the vacant office for the balance of that term.
- (7) The members of the professional conduct board shall elect 1 of their number to be chairperson of the board.
- (8) A member of the professional conduct board may resign by writing signed by the member and delivered to—
- (a) in the case of a member referred to in subsection (2) (a)—the law society; and
  - (b) in the case of a member referred to in subsection (2) (b)—the Attorney-General.

### **39 Payment of remuneration and allowances**

The amount which a member of the professional conduct board is entitled to be paid by way of remuneration and allowances shall be paid by the law society out of moneys standing to the credit of a statutory interest account.

### **40 Secretary to professional conduct board**

- (1) There shall be a secretary to the professional conduct board who shall be appointed by the council.
- (2) If the secretary—
  - (a) is a legal practitioner; and
  - (b) is not employed by the law society;

the secretary is entitled to be paid as if he or she were a member of the professional conduct board.

### **41 Removal of member of professional conduct board**

- (1) The court may, on the application of the law society, remove a member of the professional conduct board from office for misbehaviour or physical or mental incapacity.
- (2) If a member of the professional conduct board—
  - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) in the case of a member referred to in section 38 (2) (a)—ceases to be a person referred to in subsection (3) (a) or (b); or
  - (c) in the case of a member referred to in section 38 (2) (b)—becomes enrolled as a legal practitioner (however described) whether in the ACT or elsewhere; or

(d) is convicted for an offence punishable by imprisonment for 1 year or longer; or

(e) is absent, except on leave granted by the professional conduct board from 3 consecutive meetings of the board;

the court may remove the member from office.

## **42 Meetings**

(1) At a meeting of the professional conduct board, 4 members constitute a quorum.

(2) Of the members referred to in subsection (1)—

(a) at least 1 shall be a member referred to in section 38 (2) (b); and

(b) a majority shall be members referred to in section 38 (2) (a).

(3) The chairperson of the professional conduct board shall preside at all meetings of the board at which he or she is present.

(4) In the absence of the chairperson from a meeting of the professional conduct board, the members present at the meeting shall elect 1 of their number to preside at the meeting and, in relation to that meeting, a reference in this Act to the chairperson is a reference to the person so elected.

(5) At a meeting of the professional conduct board, the chairperson or person elected under subsection (4) has a deliberative vote and, in the event of an equality of voting, also has a casting vote.

(6) If—

(a) a person who is a member of the board was the convenor of a conference convened under section 43; and

(b) an interested party notifies the board in writing that he or she objects to the participation of that member in an inquiry to be held in relation to the complaint;

that member is not entitled to be present at a meeting of the board for the purpose of such an inquiry.

## **Division 8.3 Conciliation**

### **43 Convening of conference**

- (1) Where the law society has reason to believe that unsatisfactory professional conduct, professional misconduct or unsatisfactory employment conduct may have occurred, it may direct that a conference be convened between the interested parties.
- (2) A conference shall be convened and chaired by a member, or a member of staff, of the law society appointed by the council in writing for the purpose.
- (3) The convenor—
  - (a) shall fix a time and place for the conference; and
  - (b) at the request of an interested party or of his or her own volition, may, subject to paragraph (c), adjourn the conference to a later time or to another place; and
  - (c) shall give the interested parties reasonable notice of the time and place.

### **44 Presence at conference**

- (1) An interested party may be represented at a conference by—
  - (a) a legal practitioner; or
  - (b) an agent; or
  - (c) in the case of an interested party which is a body corporate—  
an officer or employee of the body.
- (2) A person is not entitled to be present at a conference unless he or she is the convenor, an interested party, a person representing an interested party under subsection (1) or a person who is present with the consent of the interested parties.

#### **45 Confidentiality**

- (1) In any proceedings, evidence shall not be given of anything said or done at a conference unless the interested parties otherwise agree.
- (2) Nothing in subsection (1) prevents the convenor of a conference from informing the council of any matter which, in his or her view, the council should consider in deciding whether or not to make a written complaint under section 50 (1).

#### **46 Resolution by agreement**

If, at or after a conference, the interested parties agree on how to resolve the matter in respect of which the conference was convened to the satisfaction of the parties, the convenor shall arrange for the terms of the agreement to be put in writing, signed by or on behalf of the interested parties and lodged with the law society.

#### **47 Failure to reach agreement**

If, at or after a conference, the interested parties are unable to agree on how to resolve the matter in respect of which the conference was convened to the satisfaction of the parties, the convenor shall inform the council accordingly.

#### **48 Failure to attend conference**

If an interested party fails to attend a conference, the convenor of the conference shall inform the council accordingly.

#### **49 Agreement no bar**

Any agreement by interested parties on how to resolve a matter in respect of which a conference was convened is not to be taken to be a bar to the making of, or to prejudice in any way, a complaint by the council under section 50 (1) in relation to the same matter.

## **Division 8.4 Complaints**

### **50 Complaints**

- (1) The council may make a written complaint to the professional conduct board regarding the professional conduct of a solicitor or the employment conduct of an employee of a solicitor.
- (2) Where the council makes a complaint to the professional conduct board, it shall forward to the board—
  - (a) any documents or information received by the law society in relation to the complaint; and
  - (b) particulars of any statement relating to the complaint made to the law society by the solicitor, or employee, to whom the complaint relates.

## **Division 8.5 Inquiries**

### **51 Inquiries**

- (1) The professional conduct board shall inquire into a complaint made by the law society.
- (2) At an inquiry under this division—
  - (a) the law society; and
  - (b) each interested party;is entitled to be represented by a legal practitioner who may examine witnesses and address the board.
- (3) Subject to subsection (4), an inquiry under this division shall be open to the public.
- (4) The committee may order the exclusion of the public, of members of the public other than a person or persons specified by the committee, or of persons specified by the committee, from the inquiry where the committee is satisfied that the presence of the



public or of those persons, as the case may be, would be contrary to the interests of justice.

- (5) A person who refuses or fails to comply with an order under subsection (4) commits an offence.

Maximum penalty (subsection (5)): 20 penalty units.

**52 Professional conduct board to fix date and notify persons concerned**

Where a complaint is made to the professional conduct board, the board shall fix a time and place for the commencement of its inquiry and shall give notice of the time and place so fixed to—

- (a) the solicitor, or other person, to whose behaviour the inquiry will relate; and
- (b) where the inquiry is being held as the result of a written complaint to the law society by a person—that person; and
- (c) the law society.

**53 Procedure**

At an inquiry—

- (a) the procedure of the professional conduct board is, subject to this Act, within the discretion of the board; and
- (b) the rules of law governing the admission of evidence shall be observed; and
- (c) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the board permit.

## **54     Summons to witness**

- (1) For the purpose of an inquiry, the chairperson of the professional conduct board may, in writing, summon a person to appear at a specified time and place before the board—
  - (a) to produce the documents referred to in the summons; or
  - (b) at the inquiry—
    - (i) to give evidence; or
    - (ii) to give evidence and produce the documents referred to in the summons.
- (2) A person shall be taken to have complied with a summons of the kind referred to in subsection (1) (a) if the person delivers the documents referred to in the summons to the board before the time specified in the summons.
- (3) A person shall not, without reasonable excuse, fail to comply with a summons under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **55     Power to examine on oath etc**

The chairperson of the professional conduct board may administer an oath or affirmation to a person appearing as a witness at an inquiry under this division.

## **56     Record of proceedings at inquiry**

- (1) Subject to subsection (2), a record of the evidence of a witness at an inquiry under this division shall be made—
  - (a) by means of sound-recording apparatus; or
  - (b) by means of shorthand or any similar means.
- (2) Where the professional conduct board so directs, the evidence of a witness at an inquiry under this division shall not be recorded in

accordance with subsection (1), but shall be taken down in writing, and, after being read over to the witness or given to the witness to read, shall be signed by the witness and the chairperson of the professional conduct board.

- (3) The secretary to the professional conduct board shall have the custody of any record of evidence made in accordance with subsection (1) or (2).
- (4) The secretary to the professional conduct board shall give such directions as the secretary considers necessary for ensuring that, in any case where a transcript of the record of any evidence made in accordance with subsection (1) is or may be required, a transcript is prepared.
- (5) Where a transcript of a record is prepared in accordance with the directions of the secretary to the professional conduct board given under subsection (4), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, in writing signed by him or her, that the transcript is a true transcript of a record produced out of the custody of the secretary.
- (6) Where a record made by means of sound-recording apparatus, shorthand or similar means is produced out of the custody of the secretary to the professional conduct board and the record purports to be a record made in accordance with subsection (1) of the evidence of a witness at an inquiry under this division, the record is evidence that that person gave that evidence at that inquiry.
- (7) Where—
  - (a) a sound recording is produced out of the custody of the secretary to the professional conduct board; and
  - (b) the sound recording contains a record of comments that purport—

- (i) to have been made at the same time as a sound recording made in accordance with subsection (1) of the evidence of a witness at an inquiry under this division; and
- (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the lastmentioned sound recording or any other matter or things so recorded;

the firstmentioned sound recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

(8) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with subsection (1) of evidence given by a witness at an inquiry under this division; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with subsection (5);

the document is evidence that the witness gave the evidence of which the document purports to be a transcript at that inquiry.

(9) Where a document—

- (a) purports to be the evidence of a witness at an inquiry under this division as taken down in writing and signed in accordance with subsection (2); or
- (b) purports to be a copy of the evidence of a witness at such an inquiry as so taken down in writing and signed and bears a certificate by the secretary to the professional conduct board that it is a copy of the evidence so taken and signed;

the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

(10) On an application made by—

- (a) the solicitor, or other person, to whose behaviour the inquiry relates; or

- (b) a person who satisfies the professional conduct board that he or she has good reason for requiring a copy of a transcript or of any evidence recorded in accordance with this section;

the professional conduct board shall, on payment by the applicant of such fees as are fixed by the law society, furnish to the applicant a copy of the transcript or evidence so recorded.

- (11) Where a person applies to the secretary to the professional conduct board for a copy of any transcript and a copy of the transcript is not available, the secretary may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the secretary on account of the fee payable on the application such amount as the secretary determines, being an amount that does not, in the opinion of the secretary, exceed the amount of the fee that will become so payable.

## **57 Witnesses at inquiries**

- (1) Subject to section 63 (3), a person appearing as a witness at an inquiry under this division shall not, without reasonable excuse, refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him or her.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A statement made by a witness at an inquiry under this division is not, except in proceedings under this Act or in a prosecution for giving false evidence at the inquiry, admissible in evidence against the person in criminal proceedings in a court.

## **58 Disciplinary powers of board**

- (1) If, after an inquiry into the professional conduct of a solicitor, the professional conduct board is satisfied that the solicitor is guilty of professional misconduct or unsatisfactory professional conduct, the board may do all or any of the following:

- (a) in a case of professional misconduct—suspend for a specified period not exceeding 12 months any practising certificate held by the solicitor;
  - (b) direct the solicitor to do all or any of the following:
    - (i) cease to accept, for a specified time, instructions in relation to a specified class of work;
    - (ii) cease to employ in his or her practice a specified person or persons;
    - (iii) undertake specified further legal education;
    - (iv) seek advice in relation to the management of his or her practice from a specified person or persons;
  - (c) in a case of professional misconduct—impose on the solicitor a fine not exceeding \$10 000;
  - (d) reprimand the solicitor.
- (2) If satisfied that a person has suffered loss or other detriment as a consequence of professional misconduct or unsatisfactory professional conduct, in addition to its powers under subsection (1) the professional conduct board may, with the consent of the person, direct the solicitor to do all or any of the following:
- (a) carry out specified work for the person, either free of charge or for a specified fee;
  - (b) waive the whole or a specified part of fees otherwise payable, or refund the whole or a specified part of fees paid, by the person in respect of specified work;
  - (c) pay a specified amount not exceeding \$2 000 to the person by way of compensation;
  - (d) waive any lien in respect of a specified document or class of documents.
- (3) Payment of compensation to a person under a direction under subsection (2) (c) does not affect any other remedy available to the

person in respect of the relevant loss or detriment but any amount so paid may be taken into account—

- (a) in determining the amount of compensation payable to the person by the law society from the fidelity fund under division 12.2; or
- (b) in any other proceedings for the recovery of damages or compensation in respect of that loss or detriment.

### **59 Power of board on inquiry about conduct of employee**

- (1) If, after an inquiry into the employment conduct of an employee, the professional conduct board is satisfied that the employee is guilty of unsatisfactory employment conduct, the board may do any or all of the following:
  - (a) direct that, after a specified date, no solicitor shall employ or otherwise remunerate the employee in connection with his or her practice as a solicitor except in accordance with permission granted under section 198;
  - (b) direct the solicitor who employed the employee to do all or any of the things referred to in sections 58 (2) (a) to (d);
  - (c) reprimand the solicitor who employed the employee.
- (2) On the application of the law society or an employee in respect of whom a direction under subsection (1) (a) or (b) is in force, the professional conduct board may revoke the direction.
- (3) Section 58 (3) applies to the payment of compensation under a direction under subsection (1) (b) as if the reference to a direction under section 58 (2) (c) were a reference to a direction under subsection (1) (b).

### **60 Dismissal of complaint**

Where the professional conduct board is not satisfied as to the matters referred to in section 58 (1) or 59 (1), it shall dismiss the complaint.

## **61     Costs**

- (1) Where the professional conduct board exercises a power under section 58 or 59 (1) in respect of a solicitor or employee, the board may direct the solicitor or employee to pay to the law society an amount equal to the whole or a specified part of the costs of the relevant inquiry.
- (2) Where, after an inquiry, the professional conduct board does not exercise a power under section 58 or 59 (1) in respect of a solicitor or employee and, in the case of a solicitor, does not make a report under section 62, the board may direct the law society to pay to the solicitor or employee an amount equal to the whole or a specified part of his or her costs incurred in relation to the inquiry.
- (3) Where the professional conduct board considers an application under section 59 (2), the board may direct the law society, the employee in respect of whom the direction under section 59 (1) was given or the solicitor who employed the employee to pay an amount equal to the whole or a specified part of the other's costs incurred in relation to the application.
- (4) For subsection (1), (2) or (3), the costs shall be as assessed by the professional conduct board or, if the board directs that those costs be taxed by the registrar, as so taxed.
- (5) An amount directed to be paid under subsection (1), (2) or (3) is recoverable as a debt due to the law society or to the solicitor or employee, as the case requires.

## **62     Professional conduct board may report to court**

- (1) If, on the evidence given at an inquiry before it, the professional conduct board forms the opinion that there are reasonable grounds for believing that the conduct of the solicitor to whom the inquiry relates has been such that the matter should be dealt with by the court, the board shall prepare a report to the court stating—
  - (a) particulars of the conduct; and



- (b) the evidence on which its opinion is based.
- (2) Where the professional conduct board prepares a report under subsection (1), it shall, as soon as practicable—
  - (a) deliver the report to the registrar, together with a transcript of the evidence given before the committee; and
  - (b) deliver a copy of its report to the solicitor to whom the report relates and to the law society.

### **63 Protection of member of professional conduct board**

- (1) A member of, or the secretary to, the professional conduct board has, in the performance of his or her duties, the same protection and immunity as a judge of the court.
- (2) A legal practitioner appearing at an inquiry under this division for a person entitled to be heard at the inquiry has the same protection and immunity as a barrister has in appearing for a party in proceedings in the court.
- (3) A witness who gives evidence at an inquiry under this division has the same protection as a witness in proceedings in the court has.

### **64 Fees and allowances to witnesses**

- (1) A person who attends for the purpose of giving evidence at an inquiry under this division is entitled to receive such fees and travelling expenses as the person would be entitled to receive if he or she was appearing as a witness before the court.
- (2) Fees and allowances payable to a person in accordance with subsection (1) are payable—
  - (a) if the person attended at the inquiry, whether on summons or not, by reason of a request by a person other than the chairperson or a member of the committee—by the person at whose request the firstmentioned person attended; or
  - (b) in any other case—by the law society.

**65      Professional conduct board may inspect books etc**

The professional conduct board may inspect books or documents produced at an inquiry under this division, and may retain them for such reasonable period as it thinks fit and may copy such parts of them as are relevant to the subject matter of the inquiry.

**66      Publication of board's proceedings**

- (1) Where an inquiry is being or has been held under this division, a person who, otherwise than as provided by subsection (2), publishes, in relation to the inquiry—
  - (a) in the case of an inquiry held as a result of a complaint in relation to a solicitor—
    - (i) the name of the solicitor; or
    - (ii) the address at which the solicitor is practising; or
  - (b) in the case of an inquiry held as a result of a complaint in relation to an employee—
    - (i) the name of the employee; or
    - (ii) the name of the solicitor by whom the employee was employed and the address at which the employee was so employed; or
  - (c) any particulars likely to lead to the identification of the solicitor, the employee or the solicitor by whom the employee was employed, as the case requires; or
  - (d) any evidence given at the inquiry; or
  - (e) the name of a person who appeared as a witness at the inquiry; or

- (f) the name of a person who was summoned to give evidence at the inquiry but did not give evidence;

commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) Where—

- (a) the professional conduct board has exercised a power under section 58 or 59; and
- (b) the period of 21 days after the date on which the power was exercised has expired; and
- (c) either—
- (i) no appeal has been instituted under section 69 in relation to the exercise of power; or
  - (ii) an appeal under section 69 having been instituted, the appeal has been withdrawn or struck out or has been determined otherwise than by a decision of the court after a hearing;

then—

- (d) a person may publish a report of the prescribed matters in relation to the exercise of power; and
- (e) a person who publishes a fair and accurate report of the prescribed matters in relation to the exercise of power has the same protection, in relation to the publication of that report, as the person would have if the professional conduct board were a court of justice.
- (3) For subsection (2), the prescribed matters in relation to an exercise of power under section 58 or 59 are—
- (a) in the case of an exercise of power under section 58—the name of the solicitor in respect of whom the power was exercised

and the address at which, when the power was exercised the solicitor was practising; and

- (b) in the case of an exercise of power under section 59—the name of the person in respect of whom the power was exercised, the name of the solicitor by whom the person was employed and the address at which the person was so employed; and
- (c) the findings of the professional conduct board; and
- (d) where the professional conduct board so directs—the evidence, or part of the evidence, given at the inquiry and the name of a witness at the inquiry; and
- (e) the terms of the direction or revocation.

## **Division 8.6 Proceedings before Supreme Court**

### **67 Disciplinary powers of court**

- (1) If, on a report under section 62 or otherwise, the court is satisfied that a legal practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the court may, by order, do all or any of the following:
  - (a) direct that his or her name be removed from the roll of legal practitioners;
  - (b) suspend for such period as the court considers appropriate his or her right to practise in the ACT as a barrister, as a solicitor or as a barrister and solicitor;
  - (c) impose on him or her a fine not exceeding 200 penalty units;
  - (d) where the legal practitioner is practising solely as a barrister—reprimand him or her.
- (2) In addition to the powers vested in the court under subsection (1), the court may exercise all the powers of the professional conduct board under section 58 as if—

- (a) each reference in that section to an inquiry were a reference to proceedings on a report under section 62; and
  - (b) each reference in that section to the board were a reference to the court.
- (3) Where the court makes an order under subsection (1) (b) in respect of a legal practitioner, the court may also order that the legal practitioner may be employed in the practice of a solicitor for such a period and on such conditions as the court considers appropriate.
- (4) The law society is entitled to be represented in proceedings for an order under this section.

## **68 Costs**

- (1) Where the court makes an order under section 67 (1) or exercises a power under section 67 (2) in respect of a solicitor, the court may, in addition to any order as to costs made in the proceedings, order that the solicitor pay to the law society an amount equal to the whole or a specified part of the costs of the relevant inquiry.
- (2) Where, in proceedings on a report under section 62, the court does not make an order under section 67 (1) and does not exercise a power under section 67 (2) in respect of a solicitor, the court may, in addition to any order as to costs made in the proceedings, order that the law society pay to the solicitor an amount equal to the whole or a specified part of his or her costs incurred in relation to the relevant inquiry.
- (3) For subsection (1) or (2), the costs shall be as assessed by the court or, if the court directs that those costs be taxed by the registrar, as so taxed.
- (4) An amount ordered to be paid under subsection (1) or (2) is recoverable as a debt due to the law society or the solicitor, as the case requires.

## **69 Appeal against decision of professional conduct board**

- (1) Where the professional conduct board exercises a power under section 58 or 59 (1) in respect of a solicitor or employee, the solicitor or employee or the law society may, within 21 days after the date on which the power was exercised, appeal to the court from the decision of the board.
- (2) Where the professional conduct board refuses to exercise a power under section 58 or 59 (1), the law society may, within 21 days after the date on which the board made its decision, appeal to the court from the decision of the board.
- (3) Where the professional conduct board refuses to exercise power under section 59 (2) on the application of the employee in respect of whom a direction under section 59 (1) is in force, that employee may, within 21 days after the date of the refusal, appeal to the court from the decision of the board.
- (4) An appeal under this section shall be by way of rehearing.
- (5) In an appeal under this section—
  - (a) if the appeal is brought by the solicitor or employee—the law society shall be the respondent; and
  - (b) if the appeal is brought by the law society—the solicitor or employee shall be the respondent.

## **70 Admission of evidence before board**

In any proceedings before the court concerning the conduct of a solicitor or employee, evidence given before the professional conduct board concerning the conduct the subject of the proceedings may, with the consent of the solicitor or the employee, as the case requires, be admitted as evidence.

**71 Suspension from practice**

Where the court—

- (a) imposes a fine on a solicitor; or
- (b) makes an order for the payment by the solicitor of the costs of the proceedings before the court or the costs of the inquiry before the professional conduct board, or both;

the court may, if it thinks fit, suspend the right of the solicitor to practise in the ACT while the fine or costs remain unpaid.

**72 Removal from roll of legal practitioners**

Where the court makes an order directing that the name of a solicitor be removed from the roll of legal practitioners, the registrar shall make such entries in the roll as are necessary to give effect to the order.

**73 Other jurisdiction and power of court not affected**

This division is not to be taken to restrict or limit in any way the jurisdiction and power that the court has, apart from this Act, in relation to the control and discipline of legal practitioners.

**Division 8.7 General**

**74 Failure to comply with, or contravention of, certain laws etc**

A failure by a solicitor to comply with, or a contravention by a solicitor of, a direction given under section 59 (1) or a provision of this Act or of any other law in force in the ACT that imposes duties and obligations on solicitors is a matter—

- (a) that the council may take into consideration in deciding whether a complaint should be made to the professional conduct board regarding the professional conduct of the solicitor; and

- (b) that the professional conduct board may take into consideration in determining whether the professional conduct of the solicitor has been such as to justify it in exercising a power in respect of the solicitor under section 58 or in forming, in relation to the conduct of the solicitor, the opinion referred to in section 62; and
- (c) that the court may take into consideration in determining whether an order against the solicitor should be made under section 67.



## Part 9 Professional indemnity insurance

### 75 Definitions for pt 9

In this part:

*insurer* means a person who carries on insurance business, whether in the ACT or elsewhere.

*insurance business*—see the *Insurance Act 1973* (Cwlth).

*solicitor* means a barrister and solicitor who practises, either on his or her own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor.

### 76 Approval of indemnity insurance

- (1) For this part, the law society may approve—
  - (a) an insurer; and
  - (b) the terms of a policy of professional indemnity insurance for solicitors offered by the insurer.
- (2) The law society may—
  - (a) grant an approval under subsection (1) generally or in respect of any case or class of cases; or
  - (b) impose such conditions as it thinks fit on the grant of any such approval; or
  - (c) vary or revoke any such approval.

### 77 Indemnity insurance taken to be approved

Where an indemnity fund has been approved under section 83 and the rules or conditions applicable to the contributors to the fund

require a contributor to hold a policy of professional indemnity insurance, the terms of the policy shall be taken to be approved.

## **78 Maintenance of indemnity insurance**

- (1) A solicitor who is issued with an unrestricted practising certificate on the basis that he or she is, or will be, the holder of a policy of professional indemnity insurance for the period of the practising certificate shall—
  - (a) take all reasonable steps to ensure that the policy continues in force during that period and, if the policy ceases to be in force, obtain a replacement policy for that part of the period; and
  - (b) if the solicitor is a contributor to an indemnity fund—pay any levy payable in accordance with the rules or conditions applicable to contributors to the fund.
- (2) A solicitor referred to in subsection (1) who is issued with an unrestricted practising certificate shall notify the law society if his or her policy of professional indemnity insurance ceases to be in force before the expiration of the practising certificate.

## **79 Agreements and arrangements relating to provision of insurance**

- (1) The law society may—
  - (a) negotiate with insurers or other persons in relation to the provision of professional indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with—
    - (i) the practice or any former practice carried on by the solicitor or former solicitor; or
    - (ii) the administration of any trust or deceased estate of which the solicitor or former solicitor is, or formerly was, a trustee or executor; and

- (b) make agreements or arrangements relating to the provisions of any such insurance, including arrangements for the establishment and maintenance of an account into which any money received by the law society as a premium for any such insurance is to be paid.
- (2) The law society may make an agreement or arrangement with an insurer for the provision of professional indemnity insurance to solicitors only where the agreement or arrangement provides for each person who—
- (a) would, subject to compliance with section 27 (3), be entitled to have an unrestricted practising certificate issued to him or her; and
  - (b) applies under the agreement or arrangement to be granted professional indemnity insurance that is—
    - (i) of a kind available under the agreement or arrangement; and
    - (ii) in respect of a period for which insurance is available under the agreement or arrangement;
- to be granted the professional indemnity insurance applied for.
- (3) Any money paid into an account established under subsection (1) (b) for holding money received by the law society as a premium for professional indemnity insurance may, pending its application under an agreement or arrangement made under that paragraph, be invested by the law society in any investment authorised by the *Trustee Act 1925*.

## **80 Furnishing of information**

- (1) The law society may, by notice in writing, require a solicitor, or former solicitor, to furnish to the law society such information as is specified in the notice relating to—
- (a) the number of persons the solicitor or former solicitor employs, or formerly employed, in his or her practice; or

- (b) the duties performed by each of the persons the solicitor or former solicitor employs, or formerly employed, in his or her or her practice; or
  - (c) the gross income he or she received from fees during a period specified in the notice; or
  - (d) any claims made against him or her in respect of any alleged civil liability arising from—
    - (i) his or her practice or any former practice; or
    - (ii) the administration of any trust or deceased estate of which the solicitor or former solicitor is, or formerly was, a trustee or executor.
- (2) A person shall not, without reasonable excuse, fail to comply with a requirement in a notice under subsection (1).
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) A person who is a member, or former member, of the council or an employee, or former employee, of the law society shall not, without reasonable excuse, communicate any information furnished to the law society under subsection (1) to a person who is not—
- (a) a member of the council; or
  - (b) an employee of the law society; or
  - (c) a person with whom an agreement or arrangement has been made in accordance with section 79; or
  - (d) an employee or agent of a person referred to in paragraph (c).
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) Subsection (3) does not apply to a communication that is made—
- (a) in or for the purpose of proceedings in a court; or
  - (b) to the Attorney-General; or

- (c) at an inquiry by the professional conduct board; or
- (d) to a police officer acting in the course of his or her duties.

## Part10 Indemnity funds

### 82 Meaning of *indemnity fund*

In this part:

*indemnity fund* means a fund established to assist in meeting claims against a solicitor in respect of the conduct of his or her practice not being claims involving a dishonest act or omission.

### 83 Approval of funds

- (1) The law society may, by instrument, approve an indemnity fund to be a fund to which a solicitor may make contributions.
- (2) Without limiting the scope of subsection (1), an approval under that subsection may be given in respect of a fund established by or under the law of a State or Territory.

## **Part 11**                      **Trust moneys and controlled moneys**

### **Division 11.1**            **Preliminary**

#### **86**     **Definitions for pt 11**

In this part:

*banking day*, in relation to a trust account that has been opened at or is maintained at a bank, means a day other than a Saturday, Sunday or public holiday on which the bank is open for business.

*solicitor* means a barrister and solicitor who practises, either on his or her own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor.

*trust bank account* means a general trust account at a bank, credit union or building society, and includes a special trust account at a bank, credit union or building society.

*year* means a period of 12 months commencing on 1 April.

#### **87**     **Moneys received by solicitor**

- (1) All moneys received by a solicitor, in connection with the solicitor's practice in the ACT, from, or on behalf of, a client of the solicitor shall, for all purposes, be deemed to be held in trust for that client to be disbursed, or otherwise dealt with, by the solicitor in accordance with the instructions of the client.
- (2) Where a solicitor receives, in the course of practice in the ACT, moneys from a person who is not a client of the solicitor on the condition that the moneys are to be held by the solicitor and are subsequently to be disbursed or otherwise dealt with by the solicitor in accordance with the directions of that person or another person, those moneys shall, for this Act, be deemed to be held by the solicitor in trust for that person as if that person were a client of the

solicitor and this part applies to and in relation to those moneys as if that person were a client of the solicitor.

- (3) Subsection (1) does not apply to moneys received by a solicitor for or on account of his or her legal costs, whether already due or to become due.
- (4) Subsection (1) does not apply to or in relation to a third-party payment.
- (5) Nothing in this part affects a lien that a solicitor would, apart from this part, have over moneys held by the solicitor.

## **88 Joint and several responsibility of partners**

A provision of division 11.4, 11.5 or 11.8 that requires a solicitor to do, or to refrain from doing, an act or to carry out an obligation shall, in a case where 2 or more solicitors practise in partnership in the ACT, be read as imposing jointly and severally on those solicitors a like requirement to do, or to refrain from doing, the act or to carry out the obligation, as the case may be.

## **89 Application of pt 11**

Where—

- (a) a solicitor does not have a place in the ACT from which the solicitor conducts his or her practice; and
- (b) all trust moneys received by the solicitor in the ACT are paid into a trust bank account maintained by the solicitor in accordance with the laws in force in the State or Territory in which the solicitor has a place from which the solicitor conducts his or her practice;

nothing in division 11.3, 11.4, 11.5 (other than section 99 (1) and (2)), 11.6, 11.7 or 11.8 applies to or in relation to the solicitor.



## **Division 11.3 Trust bank accounts**

### **90 Trust accounts**

- (1) A solicitor, shall, for the purposes of his or her practice, open and maintain a trust bank account at a bank in the ACT under a title which includes the name or style under which the solicitor practises and words that indicate that it is the general trust bank account of the solicitor.
- (2) Where 2 or more solicitors practise in partnership in the ACT, it is sufficient compliance with subsection (1) if a trust bank account is opened and maintained on behalf of the partnership under a title that includes—
  - (a) the name or style of the partnership; and
  - (b) words that indicate that it is the general trust bank account of the partnership.

### **91 Payment into trust bank account**

- (1) A solicitor must pay all trust money received by the solicitor into—
  - (a) the general trust bank account maintained by the solicitor; or
  - (b) if the solicitor maintains 2 or more general trust bank accounts—1 of the accounts.
- (2) Trust money must be paid into the account as soon as practicable after the solicitor receives it and, in any case, not later than 5 banking days after the day the solicitor receives it.
- (3) However, if trust money is paid by direct deposit or electronic transfer into an account operated by the solicitor in relation to his or her practice, the solicitor must pay the money into the account on the next banking day after the day the solicitor becomes aware of the payment.
- (4) This section does not apply to trust money to which section 92 applies.

## **92 Special trust accounts**

- (1) If a client of a solicitor has given instructions to the solicitor that all trust moneys or specified trust moneys received or to be received by the solicitor in connection with the solicitor's practice in the ACT from, or on behalf of, the client are to be paid into a special trust bank account maintained or to be maintained by the solicitor for the client, the solicitor—
  - (a) if such an account is already maintained by him or her for the client—shall pay trust moneys to which the instructions relate into that account; or
  - (b) if such an account is not already maintained by him or her for the client—shall open such an account and shall pay trust moneys to which the instructions relate into the account so opened, not later than the next banking day after the day on which the trust moneys are received by the solicitor.
- (2) The title under which a trust bank account referred to in subsection (1) is maintained shall include the name or style under which the solicitor practises, the words 'trust account' and the name of the client for whom the account is maintained.

## **93 Instructions about certain trust moneys**

Where—

- (a) a solicitor receives from, or on behalf of, a client trust moneys that exceed \$5 000 or that, together with other trust moneys held by the solicitor for or on behalf of that client, exceed \$5 000; and
- (b) at the time when those trust moneys are received, the solicitor has reason to believe that, having regard to the disbursements likely to be made in accordance with the directions of the client out of those trust moneys in the period of 3 months next ensuing, the amount of the trust moneys held on behalf of the client by the solicitor at the end of that period will be not less than \$5 000;

the solicitor shall request the client to furnish the solicitor with instructions whether the client desires that those trust moneys or any part of those trust moneys be paid by the solicitor into a special trust bank account maintained or to be maintained by the solicitor for the client or be otherwise invested.

#### **94 Payments from trust bank accounts**

- (1) A solicitor must not pay an amount out of a trust bank account maintained by the solicitor for his or her practice except—
  - (a) by electronic transfer; or
  - (b) by a cheque marked ‘not negotiable’.
- (2) Subject to subsection (3) and to division 11.8, a solicitor shall not withdraw any money from a trust bank account except for the purposes of payment to, or disbursement according to the direction of, the person for whom the money is, under section 87, to be deemed to be held in trust.
- (3) Subsection (2) does not prevent a solicitor enforcing any lien held by the solicitor in respect of, or any other lawful claim that the solicitor has against, moneys standing to the credit of a trust bank account maintained by the solicitor for this part.

#### **95 Notification to law society of details of trust accounts**

- (1) A solicitor who opens a trust bank account in connection with the solicitor’s practice in the ACT shall, within 7 days after the account is opened, inform the law society in writing of the name of the bank and address of the branch at which the account is maintained and of the title and number under which the account is maintained.
- (2) If a change is made in the title or number under which, or address at which, a trust bank account referred to in subsection (1) is kept, the solicitor by whom the account is maintained shall, within 7 days after the change, inform the law society in writing of the new title, number or address, as the case requires.

## **96 Protection of trust moneys**

Moneys standing to the credit of a trust bank account maintained by a solicitor are not available for the payment of debts of the solicitor by whom it is maintained (other than debts payable out of those moneys) and those moneys are not liable to be attached or taken in execution for the purpose of satisfying a judgment against the solicitor other than a judgment for a debt so payable.

## **97 Provision applying to financial institutions**

- (1) A bank, credit union or building society at which a trust bank account is maintained in accordance with this division is not under any obligation to control or supervise transactions in relation to the trust bank account or to see to the application of money paid out of the account.
- (2) A bank, credit union or building society at which a trust bank account is maintained in accordance with this division does not have, in respect of any liability of the solicitor to the bank, credit union or building society, any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of the account.
- (3) Nothing in this section relieves a bank, credit union or building society from any liability to which it is subject apart from this Act.

## **Division 11.4 Solicitors' records**

### **98 Accounting records**

- (1) A solicitor shall keep such accounting and other records as disclose particulars of all trust moneys received or paid by the solicitor.
- (2) A solicitor shall—
  - (a) keep those records—
    - (i) at the place at which the solicitor carries on business in the ACT; or

- (ii) if the solicitor carries on business at more than 1 place of business in the ACT—at the solicitor's principal place of business; or
  - (iii) with the approval of the law society, at another place in the ACT; and
- (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
- (c) preserve those records for a period of 7 years.
- (3) It is sufficient compliance with subsection (1) if a solicitor, within 7 days after the day on which any trust moneys are received or paid by the solicitor, enters in the records referred to in that subsection the particulars of those moneys.
- (4) Where 2 or more solicitors practise in partnership in the ACT, it is sufficient compliance with this section if the accounting or other records are kept on behalf of the partnership.

## **99 Receipts for trust moneys**

- (1) Subject to this section, where a solicitor receives trust money from or on behalf of a person the solicitor shall issue to the person a receipt.
- (2) Subject to subsection (3), a receipt—
  - (a) shall be numbered; and
  - (b) shall specify—
    - (i) the amount of the payment; and
    - (ii) the date on which the payment was received; and
    - (iii) the name of the person from whom the payment was received; and
    - (iv) if the payment was made by a person on behalf of another person—the name of that other person; and

- (v) if the payment was received on behalf of a client of the solicitor—the name of the client; and
  - (vi) a notation sufficiently detailed to enable identification of the matter to which the payment relates.
- (3) Where particulars of the matters dealt with by the solicitor in the course of his or her practice are normally recorded in a computer and at the time of the payment—
- (a) the matter has not been entered in the computer; or
  - (b) the computer is not in operation;
- the solicitor shall issue an interim receipt in accordance with subsection (2) (b) and as soon as practicable after the matter has been so entered, or the computer is in operation, forward to the person on whose behalf the payment was made a receipt in accordance with subsection (2).
- (4) Where a solicitor issues a receipt for trust money, the solicitor shall keep a copy of the receipt or of the particulars referred to in subsection (2) (b).
- (5) Where the payment is made by direct deposit or electronic transfer into an account operated by the solicitor in connection with his or her practice, the solicitor shall, as soon as he or she becomes aware of the payment—
- (a) take reasonable steps to identify the person who made the payment; and
  - (b) issue to the person a receipt in accordance with subsection (2).

### **99A Records of controlled moneys**

- (1) Where a solicitor is given control over moneys of a client, the solicitor shall, as soon as practicable, give the client written acknowledgment of that control and retain a copy.
- (2) An acknowledgment shall identify the funds the subject of that control and specify the terms on which control may be exercised.

- (3) If, during a quarter, a solicitor makes a payment or payments out of funds under his or her control on behalf of a client, the solicitor shall prepare a statement in relation to those funds specifying particulars of that payment or those payments, as the case may be.
- (4) The statement shall be prepared—
  - (a) except where paragraph (b) applies—within 14 days after the end of the quarter; or
  - (b) if the quarter ends on the last day of December—within 1 month after the end of the quarter.
- (5) As soon as practicable after a solicitor prepares a statement in relation to funds under his or her control on behalf of a client, the solicitor shall forward a copy of the statement to the last-known address of the client.
- (6) In this section:

*quarter* means the period of 3 months ending on the last day of June, September, December or March in each year.

### **99B Monthly statements relating to trust moneys**

- (1) In respect of each month during which a solicitor maintains a trust account the solicitor shall obtain a bank statement.
- (2) The solicitor shall carry out a reconciliation in respect of each monthly bank statement within 7 days of receiving the statement.

### **100 Statements relating to trust moneys and controlled moneys at end of each quarter**

- (1) If at the end of a quarter a solicitor holds any trust moneys or controls other moneys, within 14 days of the end of the quarter or, in the case of the quarter ending on the last day of December, within 1 month of the end of that quarter, a solicitor shall prepare a statement setting out, as at the close of business on the last day of the quarter—

- (a) the name of each person on behalf of whom the solicitor held trust moneys or controlled other moneys; and
  - (b) the amount shown in the records kept by the solicitor in accordance with this division as the amount of trust money held, or other money controlled, by the solicitor on behalf of each of those persons; and
  - (c) the amount of trust money held by the solicitor and not paid into a general trust bank account maintained by the solicitor in accordance with section 91; and
  - (d) the amount standing to the credit of each trust bank account kept by the solicitor in accordance with this part; and
  - (e) in relation to each trust bank account kept by the solicitor in accordance with this part—
    - (i) the total amount of all cheques drawn on the account which have not been presented for payment; and
    - (ii) the total of all amounts deposited in the account which have not been credited to the account.
- (2) In subsection (1):

*quarter* means the period of 3 months ending on the last day of June, September, December or March in each year.

## **Division 11.5          Audit**

### **101    Audit of trust accounts and controlled moneys**

- (1) A solicitor shall, not later than 7 days after the end of each year, engage an auditor or firm of auditors to audit his or her records in respect of trust moneys held, and other moneys controlled, in that year and shall, within 1 month after the date on which he or she engages the auditor or firm, notify the law society in writing of the name of the auditor or of the firm, as the case requires.
- (2) Subject to subsection (5), where—



- (a) a solicitor who practises in the ACT on his or her own account ceases to practise on his or her own account; or
- (b) a solicitor who practises in the ACT as a member of a partnership retires from that partnership;

the solicitor shall, not later than 7 days after the date on which he or she so ceases to practise or retires from the partnership, as the case may be, engage an auditor or firm of auditors to audit his or her records, or the records kept on behalf of the partnership, in respect of trust moneys held, and other moneys controlled, during the period commencing on the first day of the year in which the solicitor ceases to practise or retires from the partnership and ending on the date on which the solicitor ceases to practise or retires from the partnership.

- (3) A solicitor shall not, without reasonable excuse, fail to comply with subsection (1) or (2).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Where a solicitor engages an auditor or a firm of auditors under subsection (2), the solicitor shall, within 14 days after the date on which he or she engages the auditor or firm, notify the law society in writing of the name of the auditor or firm, as the case requires.

Maximum penalty: 20 penalty units.

- (5) Subsection (2) does not apply to or in relation to a solicitor who practises in the ACT as a member of a partnership and who retires from that partnership where the business of the partnership is carried on by a continuing partner, either alone or in partnership with another person.
- (6) Where 2 or more solicitors practise in partnership in the ACT and keep accounting or other records on behalf of the partnership, it is sufficient compliance with subsection (1) if the auditor or firm of auditors is engaged to audit the records kept on behalf of the partnership.

- (7) A reference in this Act, other than in this section or in section 102, to an auditor includes, where a firm of auditors has been appointed under this section, a reference to the firm of auditors.

### **102 Auditors' qualifications**

- (1) A natural person shall not be engaged to conduct an audit under this division if he or she—
- (a) is not a registered company auditor within the meaning of the Corporations Act; or
  - (b) is an employee of the solicitor by whom the records are kept; or
  - (c) is the domestic partner of the solicitor by whom the records are kept; or
- Note* For the meaning of *domestic partner*, see Legislation Act, s 169.
- (d) is an employee of another solicitor.
- (2) A firm of auditors shall not be engaged to conduct an audit under this division unless—
- (a) at least 1 member of the firm is—
    - (i) ordinarily resident in Australia; and
    - (ii) a registered company auditor within the meaning of the Corporations Act; and
  - (b) no member of the firm is—
    - (i) an employee of the solicitor by whom the records are kept; or
    - (ii) the domestic partner of the solicitor by whom the records are kept; or
    - (iii) an employee of another solicitor.

### **103 Document etc for auditor**

- (1) An auditor engaged by a solicitor may, for the purposes of an audit under this division, require the solicitor—
  - (a) to produce forthwith to the auditor the books, papers, accounts, registers of receipts, securities and documents in his or her possession that relate to trust moneys received or paid, and other moneys controlled, by the solicitor during the period to which the audit relates; and
  - (b) to furnish to the auditor such information as the auditor requires and to answer all questions put to him or her by the auditor, in relation to—
    - (i) books and other documents referred to in paragraph (a); and
    - (ii) all transactions by the solicitor in the course of his or her practice in the period to which the audit relates; and
  - (c) to give to the auditor such authorities as are necessary to enable the auditor to inspect and make copies of documents or records kept at the bank, credit union or building society at which the solicitor maintains a trust bank account in accordance with this part and relating to that trust bank account.
- (2) A solicitor shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) For the purposes of an audit under this division, the solicitor shall furnish to the auditor a copy of the auditor's report in respect of the last audit.

## **104 Auditors' reports**

- (1) For this division, an auditor engaged by a solicitor is only required to examine such of the accounting and other records of the solicitor relating to trust moneys and controlled moneys as the auditor considers necessary for the purpose of ascertaining whether this part has been complied with.
- (2) The auditor shall prepare a report in writing of the audit and shall state in the report—
  - (a) whether, in the auditor's opinion, the solicitor has kept accounting and other records of the kind that the solicitor is required by this part to keep; and
  - (b) the notional amount, within the meaning of section 122 (2), standing to the credit of the general trust bank account of the solicitor in the year to which the report relates; and
  - (c) whether the solicitor has complied, within a reasonable time, with all requirements made by the auditor, being requirements that the auditor is authorised by this part to make; and
  - (d) any matter or thing in relation to those records of which the solicitor, or the law society, should, in the opinion of the auditor, be informed.
- (3) Where a firm of auditors prepares a report under subsection (2), a member of the firm who is registered company auditor within the meaning of the Corporations Act shall sign the report.
- (4) The auditor shall, as soon as practicable after the preparation of the report deliver the report in duplicate to the solicitor to whose records the report relates.
- (5) A solicitor, other than a solicitor to whom section 101 (2) applies, shall send the duplicate of any report delivered to the solicitor in accordance with subsection (4) to the law society not later than 31 May in the year next following the year to which the report relates or before the expiration of such further period (if any) as the

law society, on application made in writing by the solicitor before that date, allows.

- (6) A solicitor to whom section 101 (2) applies shall, within 7 days after a report is delivered to the solicitor in accordance with subsection (4), send the duplicate of the report to the law society.

### **105 Interim auditors' reports**

- (1) If the auditor engaged by a solicitor to examine and report on the accounting and other records of the solicitor relating to trust moneys and controlled moneys considers that the records of the solicitor have not been kept in such a manner as to enable them to be audited conveniently and properly or the auditor has reason to believe—

- (a) that there is any loss or deficiency of trust moneys or controlled moneys; or
- (b) that there has been any failure to pay or account for trust moneys or controlled moneys; or
- (c) that there has been a failure to comply with any provision of this part;

the auditor shall, as soon as practicable, report in writing accordingly to the solicitor and shall, immediately after furnishing the report to the solicitor, forward a copy of the report to the law society.

- (2) An auditor shall not, without reasonable excuse, fail to comply with subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Where a firm of auditors prepares a report under subsection (1), a member of the firm who is a registered company auditor within the meaning of the Corporations Act shall sign the report.

## **106 Late report by auditor**

(1) Where—

- (a) a solicitor applies for an unrestricted practising certificate; and
- (b) this division applies to that solicitor in respect of the period of 12 months that ended on 31 March immediately preceding the date of the application; and
- (c) a report under section 104 has not been delivered to the solicitor;

the solicitor shall send to the law society with the application for a practising certificate a statutory declaration by him or her stating—

- (d) the name and address of the auditor whom the solicitor has engaged to audit his or her records of trust moneys and controlled moneys in respect of the period referred to in paragraph (b); and
  - (e) the date on which the auditor was so engaged; and
  - (f) that a report under section 104 has not been delivered to the solicitor; and
  - (g) where the solicitor holds trust moneys—that there is standing to the credit of a trust bank account kept in accordance with part 11, and on deposit with the law society, a sum or sums sufficient to pay all moneys received by the solicitor or, in the case of a solicitor who practises with 1 or more solicitors in partnership in the ACT, received by the partnership, for or on behalf of a person and not previously paid by the solicitor, or paid on behalf of the partnership, to that person or in accordance with directions given by the solicitor; and
  - (h) where the solicitor does not hold any trust moneys—that fact.
- (2) A solicitor who has furnished a statutory declaration in accordance with subsection (1) shall take such steps as are necessary to ensure that a report by an auditor in respect of the period referred to in the statutory declaration is obtained by the solicitor and a copy of the

report furnished to the law society as soon as practicable after the furnishing of the declaration.

### **107 Statutory declaration relating to trust moneys and controlled moneys**

This division does not apply to a solicitor in respect of a year if the solicitor did not, at any time during the year, receive or hold any trust moneys or controlled moneys and the solicitor, within 14 days after the end of that year, makes and delivers to the law society a statutory declaration to that effect.

### **108 Secrecy**

- (1) A person who conducts an audit under this part shall not, without reasonable excuse, communicate to any person any matter that comes to his or her knowledge in the course of the audit unless the communication is made—
  - (a) in accordance with this Act; or
  - (b) in or for the purpose of proceedings in a court; or
  - (c) to the Attorney-General; or
  - (d) at an inquiry by the professional conduct board; or
  - (e) to a police officer acting in the course of his or her duties.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A member or former member of the council shall not, without reasonable excuse, communicate to any person, not being a member of the council, a matter contained in a report referred to in section 104 or 105 unless the communication is made—
  - (a) in accordance with this Act; or
  - (b) in or for the purpose of proceedings in a court; or
  - (c) to the Attorney-General; or

- (d) at an inquiry by the professional conduct board; or
- (e) to a police officer acting in the course of his or her duties.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **109 Legal protection for auditor**

Civil proceedings do not lie against a person who conducted an audit under this part for or in respect of an act or thing done in good faith by him or her in the performance of a function under this part.

## **Division 11.6 Examination of solicitors' records**

### **110 Appointment of examiner**

- (1) The law society may, at any time, appoint a person to examine the records relating to trust moneys kept, and other moneys controlled, by a solicitor or by 2 or more solicitors practising in partnership in respect of a period specified by the law society.
- (2) The law society may appoint a person for such period as the law society determines to make such examination of the records of trust moneys kept, and other moneys controlled, by such solicitors as are from time to time specified by the law society.
- (3) A person shall not be appointed under subsection (1) or (2) unless the person is a registered company auditor within the meaning of the Corporations Act.
- (4) A person who makes an examination under this section shall furnish to the law society a report of the examination and, in particular, shall state in the report whether or not, in the person's opinion—
  - (a) the records of the solicitor have been kept in such a manner as to enable the person to examine them conveniently and properly; or
  - (b) there is any loss or deficiency of trust moneys or controlled moneys; or



- (c) there has been any failure to pay or account for trust moneys or controlled moneys; or
  - (d) there has been any failure to comply with this part.
- (5) The costs of an examination under this section shall be paid by the law society out of the fidelity fund.
- (6) Where, as a result of an examination of records under this section—
- (a) a solicitor is convicted of an offence against this Act or any other law in force in the ACT; or
  - (b) an order is made against a solicitor under part 8;
- the law society may recover the costs of the examination from that solicitor as a debt due to the society.
- (7) Where an examination of records under this section discloses that, in relation to trust moneys or controlled moneys, a solicitor has failed to comply with part 11, the law society may recover the costs of the examination from that solicitor as a debt due to the society.
- (8) An amount recovered by the law society under subsection (6) or (7) shall be paid into the fidelity fund.

### **111 Production of books etc**

- (1) For this division, section 103 (1) applies as if—
- (a) a reference in that subsection to an auditor were a reference to a person appointed under section 110 (1) or (2); and
  - (b) a reference in that subsection to an audit were a reference to an examination under section 110.
- (2) A solicitor shall not, without reasonable excuse, fail to comply with a requirement made under section 103 (1) by a person appointed under section 110 (1) or (2).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) The president of the law society may cause to be served on the manager, or other person in charge, of a bank, credit union or building society, a demand in writing signed by the president of the law society, requiring the manager or that other person to permit a person specified in the demand, being a person appointed under section 110 (1) or (2), to inspect and make copies of the documents or records of the bank, credit union or building society relating to a trust bank account kept in accordance with this part by the solicitor or solicitors specified in the demand.
- (4) The manager, or other person in charge, of a bank, credit union or building society shall not, without reasonable excuse, fail to comply with a requirement under subsection (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **112 Secrecy**

- (1) A person who conducts an examination under section 110 shall not communicate to any person any matter that comes to his or her knowledge in the course of the examination unless the communication is made—
- (a) in accordance with this Act; or
  - (b) in or for the purpose of proceedings in a court; or
  - (c) to the Attorney-General; or
  - (d) at an inquiry by the professional conduct board; or
  - (e) to a police officer acting in the course of his or her duties.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A member or former member of the council shall not, without reasonable excuse, communicate to any person, not being a member of the council, any matter contained in a report referred to in section 110 unless the communication is made—

- (a) in accordance with this Act; or
- (b) in or for the purpose of proceedings in a court; or
- (c) to the Attorney-General; or
- (d) at an inquiry by the professional conduct board; or
- (e) to a police officer acting in the course of his or her duties.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Division 11.7 Investigation of affairs of solicitors**

### **113 Definitions for div 11.7**

- (1) In this division:

*accountant* means a registered company auditor within the meaning of the Corporations Act.

*affairs*, in relation to a solicitor, includes—

- (a) accounts kept under this part or otherwise by or on behalf of the solicitor or an associate of the solicitor; and
- (b) any other records kept by or on behalf of the solicitor or an associate of the solicitor; and
- (c) any transactions to which the solicitor was a party or in which the solicitor acted for a party.

*associate*, in relation to 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 referred to 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 referred to in paragraph (a), (b), (c) or (d).

**record** includes any document.

**solicitor**, except as an investigator, includes—

- (a) a firm of solicitors; and
  - (b) a former solicitor; and
  - (c) in relation to anything done or omitted by a solicitor—a deceased solicitor and a deceased former solicitor; and
  - (d) except in relation to anything done or omitted by a solicitor—the personal representative of a deceased solicitor or a deceased former solicitor.
- (2) For the definition of **associate** in subsection (1), a person is in a prescribed relationship to a solicitor or other 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 the regulations for this subsection.

*Note* For the meaning of **domestic partner**, see Legislation Act, s 169.

## **114 Appointment of investigator**

- (1) The law society may, by instrument under the common seal of the society, appoint an investigator to investigate the affairs, or specified affairs, of a solicitor or solicitors.
- (2) A person is not eligible to be appointed under subsection (1) unless the person is—
  - (a) a solicitor; or

- (b) an accountant; or
  - (c) an officer or employee of the law society.
- (3) An instrument of appointment under subsection (1) shall specify—
- (a) the period for which the investigator is appointed; and
  - (b) the nature of the investigation to be undertaken.

### **115 Investigator's assistant**

An investigator may, with the approval of the council, appoint an assistant.

### **116 Obligation to comply with investigator's requirements**

- (1) A solicitor under investigation and any other person who has possession or control of any records of, or relating to the affairs of, the solicitor shall, if required to do so by an investigator who produces evidence of his or her appointment, provide the investigator or his or her assistant, with—
- (a) access to such of the records as relate to the affairs being investigated; and
  - (b) information relating to those records or affairs that the solicitor or other person is able to provide; and
  - (c) authorities or orders on bankers or other persons relating to those records or affairs that the solicitor or other person is able to provide.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If a record is not—
- (a) in writing; or
  - (b) written in the English language; or
  - (c) decipherable on sight;

a requirement to provide access to the record is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.

- (3) A person is not entitled to refuse to comply with a requirement made of him or her under subsection (1) on the ground of legal professional privilege.
- (4) A person who complies with a requirement made under subsection (1) is not, by reason only of that compliance, subject to any liability, claim or demand.

### **117 Obstruction etc of investigator**

A person shall not hinder, obstruct or delay an investigator in the performance of functions under this division.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **118 Professional misconduct**

A solicitor who contravenes section 116 or 117 is, whether or not convicted of an offence in relation to the contravention, guilty of professional misconduct.

### **119 Report of investigation**

- (1) If, in the course of an investigation the council requires him or her to do so, the investigator shall provide the council with a progress report on the investigation.
- (2) On completing an investigation, the investigator shall—
  - (a) provide the council with a written report on the investigation; and
  - (b) forward a copy of the report to the solicitor under investigation by post to the address of the solicitor last known to the law society.

## **120 Costs of investigation**

- (1) The costs of an investigation shall be paid by the law society out of the fidelity fund.
- (2) An amount equal to the costs of an investigation, as certified by the council, is a debt due to the law society by the solicitor under investigation if, as a result of the investigation, the solicitor is found to have been guilty of professional misconduct or unsatisfactory professional conduct.

## **121 Secrecy**

- (1) An investigator or an investigator's assistant shall not, without reasonable excuse, make an unauthorised disclosure of—
  - (a) the appointment of the investigator or assistant; or
  - (b) any matter that comes to his or her knowledge in the course of an investigation; or
  - (c) anything contained in a report under section 119.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not prohibit a disclosure—
  - (a) of his or her appointment by an investigator in the course of making a requirement under section 116; or
  - (b) by an investigator to his or her assistant; or
  - (c) by an investigator's assistant to the investigator.
- (3) A member of the council, a solicitor or an officer or employee of the law society shall not, without reasonable excuse, make an unauthorised disclosure to any person who is not a member of the council of—
  - (a) the appointment of an investigator or assistant; or

(b) any matter contained in a report under section 119.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) For subsections (1) and (3), a disclosure is an unauthorised disclosure if it is made otherwise than—
- (a) in accordance with this Act; or
  - (b) in or for the purposes of proceedings in a court; or
  - (c) to the Attorney-General; or
  - (d) at an inquiry under division 8.5; or
  - (e) to a police officer acting in the course of duty.
- (5) If an investigator states in a report under section 119 that there are reasonable grounds for suspecting professional misconduct, unsatisfactory professional conduct, improper conduct or other irregularity in relation to the affairs investigated, subsection (3) is not contravened by the disclosure by a member of the council, a solicitor or an officer or employee of the law society of information in the report to a person to whom the council, being satisfied that the person has a direct and relevant interest in the information, decides that the information should be disclosed.

## **Division 11.8 Deposits with law society**

### **122 Interpretation for div 11.8**

- (1) In this division, a reference to the notional amount standing to the credit of the general trust bank account of a solicitor on the day immediately preceding the date fixed for section 123 (1) is a reference to the lowest amount that stood to the credit of that account at any time during the period of 6 months immediately preceding that date.
- (2) In this division, a reference to the notional amount standing to the credit of the general trust bank account of a solicitor on the last day



of a year is a reference to the lowest amount that stood to the credit of that account at any time during that year.

- (3) In relation to the period commencing on the date fixed for section 123 (1) and ending on the next 31 March, this division applies as if that period were a year.
- (4) In the application of this division to 2 or more solicitors carrying on practice in partnership with one another, a reference to a solicitor is a reference to those solicitors.
- (5) Where a solicitor maintains more than 1 general trust bank account in accordance with this part, a reference in this division to a general trust bank account maintained by the solicitor is a reference to the general trust bank accounts maintained by the solicitor.
- (6) Where a solicitor has—
  - (a) in the period of 6 months immediately before the date fixed for section 123 (1); or
  - (b) in any year;maintained 2 or more general trust bank accounts, the solicitor shall, for this division, be deemed to have maintained, during the period for which the solicitor maintained those general trust bank accounts, only 1 general trust bank account and the amount that stood, on any day during that period, to the credit of the general trust bank account that the solicitor is to be so deemed to have maintained shall be deemed, for this division, to be the total of the amounts that stood to the credit of the bank accounts that were in fact maintained by the solicitor on that day.
- (7) For this division, the amount standing to the credit of a general trust bank account on a day shall be the amount shown by the bank statement in relation to the account as standing to the credit of the account on that day.
- (8) For this division, the amount of any trust moneys paid into the general trust bank account maintained by a solicitor and subsequently paid by the solicitor into a special trust bank account

in accordance with the instructions of the client from, or on whose behalf, those moneys were received shall not be taken into account in ascertaining the lowest amount that stood to the credit of that general trust bank account at any time.

**123 Solicitor to deposit portion of trust moneys with law society**

- (1) Subject to this division, where the notional amount standing to the credit of the general trust bank account kept by a solicitor on the day immediately preceding a date fixed by the Attorney-General for this subsection is not less than \$3 000, the solicitor is under an obligation to deposit, within 1 month after that date, with the law society an amount which is equal to  $\frac{2}{3}$  of that notional amount.
- (2) Subject to this division, where, on the last day of a year—
  - (a) the notional amount standing to the credit of the general trust bank account kept by a solicitor is not less than \$3 000; and
  - (b) no trust moneys of the solicitor are on deposit with the law society;

the solicitor is under an obligation to deposit, within 3 months after that day, with the law society an amount which is equal to  $\frac{2}{3}$  of the notional amount referred to in paragraph (a).

- (3) Subject to this division, where, on the last day of a year—
  - (a) trust moneys of a solicitor are on deposit with the law society; and
  - (b) the amount of those moneys is less than  $\frac{2}{3}$  of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that solicitor;

the solicitor is under an obligation to deposit, within 3 months after that day, with the law society such an amount as will bring the amount of the moneys on deposit with the law society to an amount equal to  $\frac{2}{3}$  of the aggregate referred to in paragraph (b).

- (4) Subsections (2) and (3) do not apply to or in relation to a year that ends before the date fixed for subsection (1).

## **124 Repayment of deposits**

- (1) Subject to subsection (2), moneys on deposit with the law society in accordance with this division are repayable on demand to the solicitor by whom they were deposited.
- (2) A solicitor shall not make a demand for the repayment of moneys under subsection (1) unless—
- (a) the repayment of the moneys is required to enable necessary payments to be made out of his or her general trust bank account; and
  - (b) the solicitor has reasonable grounds for believing that the payment is to be made within 7 days after the day on which the demand is made.
- (3) Where, on the last day of a year—
- (a) trust moneys of a solicitor are on deposit with the law society; and
  - (b) the amount of those moneys exceeds  $\frac{2}{3}$  of the aggregate of the amount of those moneys and the notional amount standing on that day to the credit of the general trust bank account kept by that solicitor;

the solicitor is entitled to be repaid an amount equal to the amount of the excess.

- (4) Where, on the last day of a year—
- (a) trust moneys of a solicitor are on deposit with the law society; and
  - (b) the aggregate of the amount of those moneys and the notional amount standing to the credit of the general trust bank account kept by that solicitor on that day is less than \$3 000;

the solicitor is entitled to have repaid to him or her the amount that the solicitor has on deposit.

### **125 Obligation to deposit subject to availability of trust funds**

- (1) Where—
- (a) a solicitor has not, before the expiration of a period within which the solicitor is required to discharge an obligation imposed on him or her by this division, discharged that obligation; and
  - (b) on the last day of that period, the moneys standing to the credit of his or her general trust bank account are not sufficient for the discharge of the obligation;

the period within which the solicitor is required to discharge the obligation is extended until there is standing to the credit of his or her general trust bank account on a subsequent quarter day occurring in the year in which the end of that period occurs an amount sufficient for the discharge of the obligation.

- (2) In subsection (1):

*quarter day* means 30 September, 31 December or 31 March.

### **126 Variation of notional amount by law society**

- (1) Where the law society is during a year satisfied, on an application made to it by a solicitor who is under an obligation to deposit, or has on deposit, with the law society moneys in accordance with this division, that, having regard to the amount of trust moneys standing, on the date of the application, to the credit of the general trust bank account of the solicitor, it is appropriate that the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the year preceding that year should be reduced, the law society may determine that that notional amount be reduced to such amount as is specified by it in the determination.

- (2) Where the law society has made a determination referred to in subsection (1) in relation to a solicitor—
- (a) this division, in its application to and in relation to the obligations imposed on the solicitor, shall apply, during the remainder of the year in which the determination is made, as if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year; and
  - (b) if, on the date on which the determination is made, the solicitor has on deposit with the law society moneys exceeding the amount that he or she would have been required to have on deposit with the law society if the amount specified in the determination had been the notional amount standing to the credit of the general trust bank account of the solicitor on the last day of the preceding year—the solicitor is entitled to be repaid an amount equal to the amount of the excess.

## **127 Statutory deposits trust account**

- (1) The law society shall open and maintain an account at a bank, credit union or building society in the ACT under the title of the ‘statutory deposits trust account’.
- (2) The law society shall deposit in the statutory deposits trust account—
  - (a) the moneys deposited with the society by a solicitor in accordance with this division; and
  - (b) any other moneys required by law to be deposited in that account.
- (3) The law society shall operate the statutory deposits trust account for this division.

## **128 Statutory interest account**

- (1) Moneys deposited with the law society by a solicitor in accordance with this division shall be invested by the law society—
  - (a) on interest-bearing deposit with a bank, credit union or building society in the ACT; or
  - (b) with the consent of the Attorney-General, in an investment authorised by the *Trustee Act 1925*.
- (2) The law society shall open, and shall maintain, an account or accounts at a bank, credit union or building society in the ACT the title or each of the titles of which includes the words ‘statutory interest account’.
- (3) The interest received in respect of moneys invested in accordance with subsection (1) shall be paid into a statutory interest account.
- (4) The law society may, with the consent in writing of the Attorney-General given either generally or in a particular case, use moneys standing to the credit of 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 assist and promote postgraduate legal education and legal research and to meet the costs of maintaining any scheme of continuing legal education conducted by the law society, including such proportion of the salary paid to an employee of the law society who is engaged in maintaining such a scheme as is attributable to the time spent by that employee in so maintaining the scheme; and
  - (d) to pay or reimburse the amount of any costs and disbursements incurred by the law society in relation to—
    - (i) an inquiry before the professional conduct board or proceedings before the Supreme Court under part 8

- (including deciding whether an inquiry should be made or a proceeding should be instituted); or
- (ii) other action taken before the court in relation to a legal practitioner or an unqualified person practising as a legal practitioner (including deciding whether such action should be taken); and
- (e) to pay or reimburse the amount of any costs and disbursements incurred by the law society in relation to—
    - (i) the law society making an objection to an application for admission or enrolment (including deciding whether an objection should be made); or
    - (ii) the law society assisting the court in relation to an application for admission or enrolment; and
  - (f) to assist in the conduct and maintenance of a prescribed course of training for the practice of law; and
  - (g) to pay the amount of any costs incurred by the law society in administering moneys deposited with the society by a solicitor in accordance with this division; and
  - (h) to assist in the conduct and maintenance of a mooting program by the Faculty of Law of the Australian National University; and
  - (i) to assist in the preparation of an ACT supplement to the Law Handbook (NSW); and
  - (j) to meet the costs of administering that account.

## **129 Arrangement relating to trust bank account**

- (1) The law society may enter into an arrangement with a bank, credit union or building society in the ACT for payment by the bank, credit union or building society to the law society of amounts in respect of moneys held in any trust bank account maintained by a solicitor at that bank, credit union or building society.

- (2) The law society shall credit an amount paid to it under an arrangement of a kind referred to in subsection (1) to a statutory interest account.

**130 Audit of deposits etc**

- (1) The law society shall cause records to be kept showing particulars of—
- (a) moneys deposited with it in accordance with this division; and
  - (b) interest received by it from the investment of those moneys; and
  - (c) amounts credited to an account under section 129 (2); and
  - (d) payments made by it out of moneys referred to in paragraph (a); and
  - (e) the use of moneys standing to the credit of a statutory interest account;

and shall cause those records to be audited annually by a person who is a registered company auditor within the meaning of the Corporations Act.

- (2) The law society shall forward a copy of each audit under this section to the Attorney-General.



## **Part 12**                      **Fidelity fund**

### **Division 12.1**              **General**

#### **131**    **Meaning of *solicitor* in pt 12**

In this part:

*solicitor*—see part 11.

#### **132**    **Fidelity fund**

- (1) A fund is hereby established to be known as the Solicitors' Fidelity Fund of the Australian Capital Territory.
- (2) The fund shall consist of—
  - (a) contributions and levies paid under this part; and
  - (b) income derived from the investment of moneys of the fund; and
  - (c) moneys paid into the fund out of a statutory interest account; and
  - (d) moneys recovered by the law society under this part; and
  - (e) such other moneys as may lawfully be paid into the fund.
- (3) The law society shall pay all moneys constituting the fund into an account maintained by it at a bank, credit union or building society in the ACT under the title of the 'Solicitors' Fidelity Fund of the Australian Capital Territory'.
- (4) The law society shall keep separate accounts in relation to the moneys constituting the fund.
- (5) The assets of the fidelity fund, and the accounts in connection therewith, shall be kept separate from other assets and accounts of the law society.

- (6) The costs of discharging the functions, and exercising the powers, of the law society under this part and the costs of enforcing the rights conferred on the law society by this part shall be paid out of the fidelity fund.

### **133 Investment of fund**

The moneys of the fidelity fund shall, so far as is practicable, be invested by the law society in any manner in which trust funds may for the time being be invested under the *Trustee Act 1925*.

### **134 Audit**

- (1) The law society shall cause the accounts of the fidelity fund to be audited annually by an auditor who is a registered company auditor within the meaning of the Corporations Act.
- (2) The law society shall forward a copy of the report of each audit under this section to the Attorney-General.

### **135 Contributions to fund**

- (1) A solicitor shall, not later than each 30 June, pay to the law society such contribution to the fidelity fund as is fixed by the council in respect of the period of 12 months commencing on the following 1 July.
- (2) A solicitor who applies for a practising certificate for a period of less than 12 months shall, in respect of that period, pay to the law society a contribution that bears to the contribution fixed under subsection (1) the same proportion as the period for which the certificate is sought bears to a year.

## Division 12.2      Claims against fidelity fund

### 136    Definitions for div 12.2

In this division:

*failure to account* means a failure by a solicitor to account for, pay or deliver money or other valuable property received by or entrusted to the solicitor or an employee or partner of the solicitor in the course of the solicitor's or partnership's practice, being a failure that arose from a dishonest act or omission of the solicitor, an employee or partner.

*pecuniary loss* includes—

- (a) the costs of a claimant that are due to a failure to account; and
- (b) the reasonable costs incurred in making an application for compensation; and
- (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the application is determined, being interest calculated at the rate fixed under the rules of court for the *Supreme Court Act 1933*, section 70.

### 137    Persons who may apply for compensation

- (1) Subject to this part, a person who suffers pecuniary loss by reason of a solicitor's failure to account may apply to the law society for compensation under this part in respect of that loss.
- (2) For this part, the pecuniary loss in respect of which compensation may be paid to an applicant under this part is the amount of the pecuniary loss suffered by the applicant less any amount that the applicant has recovered in respect of the loss.

### 138    Calls for claims

- (1) Where the law society believes on reasonable grounds that there has been a failure to account on the part of a solicitor, the law society

may cause to be published in a daily newspaper published in the ACT a notice requiring persons entitled to apply for compensation under this part in respect of pecuniary loss suffered by reason of such a failure to account to make their applications within the period specified in the notice.

- (2) The period to be specified in a notice published under this section shall be not less than 3 months commencing on the date of publication of the notice.
- (3) No action for damages lies against the law society, or any publisher, printer or distributor of a relevant newspaper, in respect of the publication in good faith of a notice under this section.

### **139 Time for making applications**

- (1) Subject to subsection (2), an application for compensation under this part shall not be accepted unless it is made within a period of 6 months after the applicant becomes aware of the pecuniary loss or within such further time as the law society, in its discretion and either before or after the expiration of that period, allows.
- (2) Where a notice is published under section 138, an application for compensation under this part in respect of a pecuniary loss suffered before the publication of the notice by reason of a failure to account by the solicitor named in the notice shall be made before the expiration of the period specified in the notice or within such further time as the law society, in its discretion and either before or after the expiration of that period, allows.

### **140 Manner of making claims**

- (1) An application for compensation under this part shall be made by the delivery to the law society of full particulars of the claim supported by a statutory declaration.
- (2) The law society may, by notice in writing delivered to an applicant for compensation under this part, require the applicant—

- (a) to give to the law society information in the possession of the applicant with regard to any matter relating to the application; and
  - (b) to deliver to the law society any documents in the possession of the applicant which tend to establish the fact of the pecuniary loss and the amount of the loss to which the application relates.
- (3) The law society may retain a document delivered to the society in accordance with a requirement under subsection (2) for as long as is necessary for this part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy certified by an officer of the law society to be a true copy, and such a certified copy shall be received in all courts as evidence as if it were the original.
- (4) Where the law society makes a requirement under subsection (2), it is not required to take any further steps in relation to the application until the requirement is satisfied.

#### **141 Determination of applications**

- (1) Subject to section 140 (4), the law society shall consider each application made in accordance with this part and shall determine—
- (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this part; or
  - (b) that there is no pecuniary loss in respect of which compensation may be so paid.
- (2) Subsection (1) does not require the law society to be satisfied—
- (a) that any person has been convicted of an offence in relation to the pecuniary loss; or
  - (b) that there is evidence on which a person might be convicted of such an offence.

- (3) Before making a determination under subsection (1), the law society may, if it is of the opinion that the circumstances so warrant, require the applicant to institute against the solicitor in respect of whose failure to account the claim relates or any other person considered to be liable in respect of the loss arising out of that failure, or both, proceedings for the recovery of the money the subject of the failure to account, including proceedings to follow assets and any property into which the money may have been converted.
- (4) Where the law society requires a person to institute proceedings under subsection (3), the law society is liable to pay out of the fidelity fund all costs and expenses necessarily incurred by the person by reason of the institution of the proceedings.

#### **143 Payment of compensation**

- (1) Subject to this section, where an amount has been determined under this part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this part, the law society shall pay to the applicant an amount equal to the amount so determined.
- (2) The amounts paid under subsection (1) to applicants for compensation in respect of failures to account by the same solicitor shall not exceed, in the aggregate, \$200 000 or such larger amount as the council may determine in a particular case.
- (3) Where the aggregate of the amounts the law society would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of failures to account by the same solicitor exceeds the amount available under subsection (2), the law society shall—
  - (a) divide the amount available under subsection (2) among those applicants in proportion to the amounts payable to those applicants; and
  - (b) subject to any limitations imposed by this Act, finally satisfy those amounts from future accumulations of the fidelity fund.

- (4) Where, at any time, the amount of the fidelity fund is insufficient for the payment of all amounts that the law society would, but for this subsection, be required to pay, the law society shall—
- (a) divide the amount in the fidelity fund among the persons to whom it would be required to pay those amounts in proportion to those amounts; and
  - (b) subject to any limitations imposed by this Act, finally satisfy those amounts from future accumulations of the fidelity fund.
- (5) The fidelity fund is the only property of the law society available for payment of compensation to an applicant under this part.

#### **144 Subrogation**

Where the law society has paid compensation to a person under this part, the society is, to the extent of the payment, subrogated to the rights of that person against the solicitor in respect of whose failure to account the compensation was paid.

#### **145 Solicitors' claims**

- (1) Where—
- (a) the law society has paid all the amounts of compensation that it is required to pay in respect of pecuniary loss suffered by reason of a solicitor's failure to account; and
  - (b) the sum of those amounts is less than \$50 000;
- a solicitor who was, at the time at which that failure to account occurred, a partner of the firstmentioned solicitor and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of that failure may apply to the law society for compensation under this part in respect of that payment.
- (2) Section 139 does not apply in relation to an application made under this section.

- (3) Where—
- (a) an application is made under this section; and
  - (b) the law society is satisfied that—
    - (i) the solicitor by whom the application is made is entitled to make an application under this section; and
    - (ii) in relation to the failure to account to which the claim relates, the solicitor acted in good faith;
- the law society may pay compensation out of the fidelity fund to that solicitor.
- (4) The amount to be paid under subsection (3) is such an amount, not exceeding the difference between the amount of \$50 000 and the sum of the amounts referred to in subsection (1) (a), as the law society thinks proper.

#### **146 Interim payments of compensation**

- (1) Where, in relation to an application made under this part (other than an application under section 145), the law society has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the law society may, if it thinks fit, make an interim payment of compensation to the applicant.
- (2) An amount paid to a person under this section shall be set off against the compensation that the law society is required by section 86 to pay to the person.

### **Division 12.3 Levies**

#### **147 Levies to supplement fund**

- (1) If, at any time, the council considers that the fund is not sufficient to satisfy the liabilities of the law society in relation to the fund, the council may impose a levy of such amount as it thinks fit for payment into the fund.



- (2) Subject to this section—
- (a) a levy imposed under subsection (1) is payable on the date fixed by the council; and
  - (b) a levy imposed under subsection (1) is payable by each solicitor who, on that date, holds an unrestricted practising certificate.
- (3) The council may, if it thinks the circumstances so warrant, extend the time for the payment of a levy by a solicitor, and, in such a case, the levy is payable by that solicitor on the date fixed by the council under this subsection.

## Part 12A Mortgage practices and managed investment schemes

### Division 12A.1 Preliminary

#### 147A Definitions for pt 12A

In this part:

**ASIC exemption** means an exemption from the Corporations Act given by the Australian Securities and Investments Commission under that Act.

**approved policy of fidelity insurance**—see section 147E (Solicitor to have fidelity cover for regulated mortgages).

**associate**, in relation to a solicitor—see section 113.

**borrower** means a person who borrows from a lender or contributor money that is secured by a mortgage.

**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 a person who holds the mortgage in trust for the contributors.

***financial institution*** means—

- (a) an authorised deposit-taking institution; or
- (b) a friendly society under the *Life Insurance Act 1995* (Cwlth); or
- (c) a trustee company mentioned in the *Trustee Companies Act 1947*, schedule 1; or
- (d) a property trust or other corporation established by or in respect of a church that may invest money in accordance with an Act; or
- (e) an entity prescribed under the regulations for this definition.

***lender*** means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

***managed investment scheme***—see the Corporations Act, section 9 (Dictionary).

***member***, of a managed investment scheme—see the Corporations Act, section 9 (Dictionary).

***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 under the regulations for this definition; and
- (b) a proposed mortgage.

***professional misconduct***—see section 37.

***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 under the regulations as exempt from this definition.

**responsible entity**—see the Corporations Act, section 9 (Dictionary).

**run-out mortgage** means a regulated mortgage entered into before the date this part commences, 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 Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

**solicitor**—see part 11.

**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 the regulations under that Act).

**Territory regulated mortgage practice** means a solicitor's practice for which a nomination under section 147C is in force.

## **Division 12A.2 Mortgage practices**

### **147B 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—
    - (a) the Corporations Act, or that Act as modified by any ASIC exemption or the regulations under that Act; and
    - (b) this Act.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).
- (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 of that fact within 21 days after becoming aware of the contravention.
- (7) A solicitor who contravenes this section commits professional misconduct.

*Note* The law society or the council may take action under division 8.3 (Conciliation) or division 8.4 (Complaints) in relation to professional misconduct by a solicitor.

#### **147C 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, nominate the solicitor's practice as a Territory regulated mortgage practice.
- (2) A nomination may, if the law society 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.

- (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.
- (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; or
  - (b) the solicitor's practising certificate ceases to be in force; or

- (c) the law society, by written notice given to the solicitor, rejects the nomination of the solicitor's practice.
- (5) A nomination must include the information required under the regulations or the rules of court.
- (6) In this section:
- interstate legal practitioner*—see section 191A.
- practising certificate*, for an interstate legal practitioner—see section 191A.

#### **147D Law society to be notified of Territory regulated mortgages**

- (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 Territory regulated mortgage must give the law society written notice of that fact in accordance with the regulations or rules of court.
- Maximum penalty: 20 penalty units.
- (2) A solicitor who contravenes this section also commits professional misconduct.

#### **147E Solicitor to have fidelity cover for regulated mortgages**

- (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 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; and
  - (b) any conditions imposed by the order are complied with.
- (3) A solicitor commits an offence if the solicitor, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or act in relation to a regulated mortgage without ensuring that an approved policy of fidelity insurance is in force in relation to the solicitor in accordance with this section.

Maximum penalty: 20 penalty units.

- (4) A solicitor who contravenes subsection (3) also commits professional misconduct.
- (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.

*Note* For transitional arrangements applying to mortgages entered into before the commencement of this section, see div 12A.4.

#### **147F 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 147E.
- (2) Subsection (1) does not apply if the solicitor who acts for the lender or contributor contravenes section 147E 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 147E; 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 had been in force in relation to the solicitor in accordance with that section.

#### **147G 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, within 7 days after the money is entrusted to the solicitor, give the client written notice that—
- (a) tells the client about the effect of section 147F; 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 solicitor who contravenes this section commits professional misconduct.
- (4) A contravention of this section does not limit the operation of section 147F.

- (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.

### **147H Failure to obtain fidelity insurance for regulated mortgage**

- (1) The law society must not issue a practising certificate to an applicant who is or will be required to comply with section 147E (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 must suspend the practising certificate of a solicitor who is required to comply with section 147E unless it is satisfied that—
- (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 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 must suspend the entitlement under part 15A (Interstate legal practitioners) to practise in the ACT of a solicitor who is required to comply with section 147E 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 15A to practise in the ACT.

- (5) The law society 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 12A.3      Managed investment schemes**

### **147I Involvement of solicitors in managed investment schemes**

- (1) This part does not prevent a solicitor from carrying out any legal work 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.
- (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 the regulations or the rules of court.
- (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 of that fact within 21 days after becoming aware of the contravention.
- (6) A solicitor who contravenes this section commits professional misconduct.
- (7) In this section:

*legal work* includes the work involved in preparing an instrument that—

- (a) is a will or other testamentary disposition; or
- (b) creates, regulates or affects rights between parties (or purports to do so); or
- (c) affects real or personal property; or
- (d) relates to a legal proceeding.

*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
- (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 under the regulations or the rules of court in the managed investment scheme or the responsible entity.

### **147J 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 147I (2) and (3).
- (3) In this section:  
*relevant interest*—see section 147I (7).

### **147K Transfer of mortgages to responsible entity**

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, is responsible for the administration of a regulated mortgage 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 solicitor who contravenes this section commits professional misconduct.
- (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 12A.4 Miscellaneous**

### **147L Law society may require information about mortgage practices**

- (1) The law society may, by written notice, require a solicitor to provide information to the law society 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 proposes:
    - (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;
  - (d) any other information, relating to regulated mortgages, prescribed under the regulations or rules of court.
- (2) A solicitor who contravenes a notice under this section commits professional misconduct.

### **147M Indemnity insurance**

This part does not affect the terms of any policy of professional indemnity insurance approved under section 76.

### **147N Approved forms**

- (1) The Minister may, in writing, approve forms for this part.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

*Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **147O Regulations and rules relating to pt 12A**

- (1) The regulations and, subject to the regulations, the rules of court 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, the regulations and the rules of court may make provision about, or for the purpose of, the following:
  - (a) the making of and acting in relation to regulated mortgages by solicitors;
  - (b) how the law society 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.

## **Division 12A.5 Transitional arrangements— pre-existing mortgages**

### **147P Meaning of *commencement date***

In this division:

*commencement date* means the date this part commences.

### **147Q Part extends to pre-existing mortgages**

Except as provided by this division, this part applies to mortgages that were entered into before the commencement date.

### **147R Requirement to obtain fidelity insurance for pre-existing mortgages**

- (1) Section 147E (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to a regulated mortgage that was entered into before the commencement date.
- (2) Despite subsection (1), section 147E 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 the commencement date.
- (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 147E, and comply with section 147G (Notification of insurance arrangements for regulated mortgages); and
  - (b) section 147F (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 147F to the advance, the date that money is entrusted to the solicitor by the client is taken to be the later of—
  - (i) the commencement date; and
  - (ii) the date the money is entrusted to the solicitor.
- (4) This section is subject to section 147T (Substitution of lender or contributor under run-out mortgage).

**147S 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 the regulations or the rules of court relating to run-out mortgages.
- (2) A solicitor who contravenes this section commits professional misconduct.

**147T Substitution of lender or contributor under run-out mortgage**

- (1) Despite section 147S, 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 147E (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 147U; 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 solicitor who contravenes this section commits professional misconduct.

#### **147U 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 the commencement date.
- (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 147T (3).

#### **147V Expiry of div 12A.5**

- (1) This division expires 3 years after it commences.
- (2) This division is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

## Part 13 Appointment of receivers

### 148 Interpretation for pt 13

(1) In this part:

*solicitor* means a barrister and solicitor who practises, either on his or her own account or as a member of a partnership, as a solicitor or as both a solicitor and a barrister, but does not include a solicitor referred to in section 89.

*trust bank account*—see section 86.

(2) In this part, a reference to trust property is a reference to—

- (a) in relation to a solicitor—personal property that has been entrusted to, or received on behalf of any other person by, the solicitor in the course of, or in connection with, the practice of the solicitor; or
- (b) in relation to solicitors practising in partnership—personal property that has been entrusted to, or received on behalf of any other person by, those solicitors in the course of, or in connection with, the practice of those solicitors;

being property held under a trust that has not been terminated in accordance with directions given by the beneficiaries.

(3) Without limiting its generality, *personal property* includes, for this part—

- (a) trust moneys and controlled moneys; and
- (b) documents evidencing the title to land; and
- (c) all other documents, instruments, securities and writings.

(4) For this part, a reference to a solicitor includes, in the case where a person has ceased to be a solicitor, a reference to such a person.

**149 Appointment of receiver**

- (1) Where the court is satisfied—
- (a) that there are reasonable grounds for believing that a failure to account (within the meaning of division 12.2) by a solicitor or solicitors practising in partnership has occurred or that an offence involving fraud or dishonesty has been committed in relation to trust moneys; or
  - (b) that a solicitor has failed or refused to comply with the requirement of an auditor, or a person appointed under section 110 (1), made under section 103 (1); or
  - (c) that through—
    - (i) the mental or physical incapacity of a solicitor; or
    - (ii) the death of a solicitor; or
    - (iv) a solicitor ceasing, for any other reason, to practise as a solicitor;

a person to whom trust moneys of the solicitor or of the partnership of which the solicitor is or was a member are payable is unable to obtain payment of the trust moneys or a person entitled to delivery of trust property of the solicitor or of the partnership of which the solicitor is or was a member is unable to obtain delivery of the trust property;

the court may by order appoint a person specified in the order to be receiver of the trust property of the solicitor or of the partnership.

- (2) Where an unrestricted practising certificate issued to a solicitor has been cancelled or suspended, the court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the solicitor or, if the solicitor carried on practice in partnership with other solicitors, of the partnership.
- (3) Where the court makes an order under section 67 that the name of a solicitor be removed from the roll of legal practitioners or that the

right of a solicitor to practise be suspended, the court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the solicitor or, if the solicitor carried on practice in partnership with other solicitors, of the partnership.

- (4) An application for an order under subsection (1), (2) or (3) shall not be made except by the law society.
- (5) The court may give such directions as it thinks fit with respect to the person or persons on whom, and the manner in which, an application for an order under subsection (1) and a copy of an order made under subsection (1) or (3) are to be served.
- (6) Nothing in this part prevents a person who is a manager within the meaning of part 14 of a solicitor's or partnership's practice from being appointed as a receiver of the solicitor's or partnership's trust property.

### **150 Receiver's powers**

- (1) A receiver of the trust property of a solicitor or of solicitors practising in partnership may—
  - (a) take possession of all books, accounts and other documents relating to trust moneys of the solicitor or partnership together with all cash representing trust money held by the solicitor or partnership; and
  - (b) take possession of all trust property of the solicitor or partnership; and
  - (c) require a person who has in his or her possession any trust property of the solicitor or partnership or books, accounts or other documents relating to the trust property or trust money of the solicitor or partnership to deliver that property or those books, accounts or documents to the receiver; and
  - (d) require the solicitor or a member of the partnership, or any person who the receiver believes may be in a position to do so,

to give to the receiver information in respect of the trust moneys or trust property of the solicitor or partnership or in respect of the books, accounts or other documents relating to those moneys or that property.

- (2) A requirement under this section shall be in writing and shall be delivered to the solicitor or other person to whom it is directed.
- (3) A solicitor or other person to whom a requirement under this section is delivered shall not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **151 Notice to financial institution**

- (1) A receiver of the trust property of a solicitor or of solicitors practising in partnership may, by instrument in writing—
  - (a) give to the manager, or other person in charge, of the bank, credit union or building society at which the solicitor or partnership maintains a trust bank account in accordance with division 11.3 notice of the receiver's appointment; and
  - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from the trust bank account.
- (2) Where a receiver of the trust property of a solicitor or of a partnership has reasonable grounds for believing that there is, in an account maintained at a bank, credit union or building society by the solicitor or a member of the partnership, whether in the solicitor's name or any other name, a credit arising from the payment into that account of moneys received for or on behalf of any person by a solicitor or arising from the payment into that account of moneys paid out, otherwise than in accordance with the directions of the person or persons on whose behalf the moneys were held, from a trust bank account maintained by the solicitor in accordance with division 11.3, the receiver may, by instrument in writing—

- (a) give to the manager, or other person in charge, of the bank, credit union or building society at which the account is maintained notice of the receiver's appointment; and
  - (b) forbid, except by the receiver or on the authority of the receiver, any withdrawal of moneys from that account.
- (3) A copy of an instrument given by a receiver under this section shall, except where the receiver has been appointed after the death of a solicitor, be delivered to the solicitor.
- (4) The receiver may withdraw all the moneys in an account referred to in this section, or from time to time withdraw any of such moneys, and pay them into a trust bank account opened for the purpose and may operate on and otherwise deal with the account in accordance with directions given under section 158.

## **152 Examination of solicitor and other persons about trust moneys and trust property**

- (1) The court may, on application by a receiver of the trust property of a solicitor, by order direct that the solicitor, or a person to whom a requirement under section 150 (1) (c) has been delivered, appear before the court for examination in relation to the trust moneys and trust property of the solicitor.
- (2) On an examination under this section, the receiver and the solicitor or other person are each entitled to be represented by a legal practitioner.
- (3) The examination of a solicitor or other person under this section shall be conducted on oath or affirmation.
- (4) On an examination under this section, the solicitor or other person shall answer all questions that the court allows to be put to him or her.
- (5) On an examination under this section, a solicitor or other person is not excused from answering a question on the ground that the answer might tend to incriminate him or her, but the answer is not

admissible against him or her in any criminal proceedings other than—

- (a) proceedings for an offence arising out of the falsity of the answer; or
- (b) proceedings under this Act.

**153 Power of court to order delivery of trust property to receiver**

- (1) Where the court is satisfied, on application made by the receiver of the trust property of a solicitor or a partnership of solicitors, that a person who has in his or her custody or under his or her control trust property of the solicitor or of the solicitors practising in the partnership has failed to deliver the trust property to the receiver in accordance with a requirement under section 150 (1), the court may by order direct that person to deliver the trust property to the receiver.
- (2) A failure by a person to comply with an order made by the court under subsection (1) is punishable as a contempt of the court.

**154 Power of receiver to take delivery of property receivable by solicitor after appointment of receiver**

- (1) Where—
  - (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed under this part; and
  - (b) the receiver has reason to believe that another person is under an obligation, or will, at some future date, be under an obligation to deliver to the solicitor or to the partnership personal property to be received by the solicitor or the partnership on behalf of some other person;



the receiver may, by notice in writing given to the firstmentioned person, require that person to deliver the personal property to the receiver.

(2) Where—

- (a) a person has knowledge of the appointment of a receiver of the trust property of a solicitor or of solicitors practising in partnership; and
- (b) that person is under an obligation to deliver personal property to the solicitor or to the partnership to be received by the solicitor or the partnership on behalf of some other person;

that firstmentioned person may deliver the personal property to the receiver.

- (3) A document signed by the receiver of the trust property of a solicitor or solicitors practising in partnership acknowledging the receipt of personal property delivered to the receiver in accordance with subsection (1) or (2) is as valid and effectual as if it had been given by the solicitor or the solicitors practising in partnership.
- (4) Personal property delivered to a receiver in accordance with this section shall be dealt with and disposed of by the receiver as if it were trust property of which he or she has taken possession under this part.

### **155 Right of solicitor, partnership or person to apply to court for order in relation to property**

(1) Where—

- (a) a receiver of the trust property of a solicitor or of solicitors practising in partnership has been appointed; and
- (b) the receiver has taken into his or her possession property which the receiver claims to be trust property;

the solicitor, any member of the partnership, the personal representative, in the case where a solicitor has died, of a deceased

solicitor or any other person who has delivered the property to the receiver may apply to the court for an order under this section.

- (2) The court may, if it is satisfied that the property referred to in the application is not trust property of the solicitor or of the solicitors practising in partnership, order the receiver to return the property to the person making the application or to such other person as the court directs.

### **156 Liens for costs on property held by receiver**

- (1) Where—
  - (a) a receiver of trust property of a solicitor or solicitors practising in partnership has been appointed under this part; and
  - (b) the solicitor or the partnership claims a lien for costs on personal property held by the receiver;

the receiver may, by notice in writing, require the solicitor or the partnership to give to the receiver, within a period specified in the notice (being a period of not less than 30 days after the date on which the notice is given), particulars of the property on which a lien is claimed together with a detailed bill of costs in respect of each lien claimed.

- (2) The receiver may, by the same or a subsequent notice in writing, require the solicitor or the partnership claiming the lien to lodge, within a time specified in the notice or within such further time as the receiver or the court on an application made for the purpose allows, such a bill for taxation.
- (3) If the solicitor or the partnership fails to comply with a requirement contained in a notice given under subsection (1) or (2), the lien is discharged.
- (4) The receiver of the trust property of a solicitor or solicitors practising in partnership shall, if requested so to do, give to the solicitor or those solicitors or a person authorised for the purpose by the solicitor or those solicitors such access to all documents and

books as is reasonably necessary to enable a bill of costs referred to in subsection (1) to be prepared and, where such a request is made, time does not, for this section, run in the period commencing on the day on which access is requested and ending on the day on which access as requested is given.

### **157 Receiver to report to court**

- (1) A receiver of the trust property of a solicitor or of solicitors practising in partnership shall, as soon as is practicable, make a report to the court setting out—
- (a) the amount of trust moneys held by the solicitor or solicitors on the appropriate date; and
  - (b) the amount of moneys on deposit with the law society by the solicitor or solicitors on the appropriate date; and
  - (c) the amounts of money paid to the receiver which, if paid to the solicitor or solicitors, would have been trust moneys; and
  - (d) the liabilities of the solicitor or solicitors in respect of trust moneys on the appropriate date and in respect of moneys referred to in paragraph (c); and
  - (e) if moneys are held by the receiver, the manner in which the receiver recommends that those moneys be dealt with; and
  - (f) particulars of all other trust property held by the receiver.

- (2) In this section:

*the appropriate date* means the date of the appointment of the receiver or, in a case where a solicitor has died, the date of death of the solicitor.

### **158 Power of court to give directions**

Subject to section 159, where—

- (a) a receiver has made a report to the court in accordance with section 157; and

- (b) that report discloses that moneys or trust property is held by the receiver;

the court may, from time to time, give to the receiver directions as to the manner in which those moneys or that trust property are to be dealt with.

### **159 Unclaimed moneys**

- (1) Where it appears to the court that—
- (a) a person is entitled to moneys or trust property held by a receiver; and
  - (b) that person cannot be found;
- the court shall direct the receiver to pay those moneys to the law society or to deliver that property to the law society.
- (2) Moneys paid to the law society under a direction under subsection (1) shall be held by the society as if they were moneys deposited with the society under division 11.8.
- (3) Where trust property is delivered to the law society in accordance with this section, the law society shall deal with the property in such manner as the court, on the application of the society, directs, and, if, in accordance with the directions of the court, the property is sold, the proceeds shall be held by the society as if they were moneys deposited with the society under division 11.8.
- (4) Where the court is satisfied that a person is entitled to moneys paid, or property delivered, to the law society in accordance with a direction given under subsection (1), it shall, on application by that person, by order direct the law society to repay the moneys, or to deliver the property to that person.

**160 Termination of receivership**

- (1) Where, for any reason, a receiver appointed under this part is unable to continue to perform his or her functions as receiver, the court may by order terminate his or her appointment and appoint another person to be receiver in his or her place.
- (2) The court may, before making an order under subsection (1), require the receiver to submit a full report of his or her conduct of the receivership.
- (3) Where a receiver appointed under this part has—
  - (a) complied with the directions of the court; and
  - (b) filed with the registrar accounts of all moneys received or paid by the receiver in his or her capacity as receiver; and
  - (c) filed with the registrar a report showing the manner in which trust property (other than money) received by the receiver has been disposed of;the court may, by order, terminate the appointment of the receiver.
- (4) The registrar shall cause a copy of an order made under subsection (3) together with copies of the accounts and reports filed by a receiver to be delivered to the solicitor or the solicitors practising in partnership in respect of whose trust property the receiver was appointed and to the law society.
- (5) Where the court makes an order under subsection (3), the court may give directions with respect to the disposal by the receiver of any books, accounts or other documents that have come into the receiver's possession in the course of the receivership.

**161 Remuneration of receiver**

- (1) A receiver appointed under this part shall be paid by the law society such fees as are agreed or, in default of agreement, as the court, on the application of the law society, determines.

- (2) The fees payable to the receiver and his or her disbursements are payable out of the fidelity fund.
- (3) The amount of the fees and disbursements paid by the law society under this section are recoverable as a debt due to the law society from the solicitor, or from the solicitors, in respect of whose trust property the receiver was appointed.
- (4) Where an amount is recoverable under subsection (3) from 2 or more persons, the liability of those persons is joint and several.
- (5) An amount recovered under subsection (3) shall be paid into the fidelity fund.

**162 Payments by receiver deemed to be made by solicitor**

Moneys paid, or trust property delivered, by a receiver in accordance with a direction of the court shall, for all purposes, be deemed to have been paid, or delivered, by the solicitor or solicitors in respect of whose trust property the receiver was appointed.

**163 Concealing etc documents**

A person shall not wilfully—

- (a) conceal, mutilate, destroy or alter; or
- (b) render illegible, indecipherable or unidentifiable;

a document relating to trust property of a solicitor or of solicitors practising in partnership if the person knows or has reasonable grounds for believing that the document is or may be required by a person appointed under section 149 to be the receiver of that trust property.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**164 Reimbursement of receiver**

The law society may pay to a receiver appointed under this part out of the fidelity fund an amount equal to the amount of any liability incurred by the receiver for costs, charges, expenses or damages for any act or omission done or made in good faith by the receiver, his or her servants or agents and in the execution or purported execution of powers conferred, or duties imposed, on the receiver by or under this part.

**165 Reimbursement of law society**

- (1) Where the law society is a party to proceedings under this part, the costs and disbursements of the society in respect of the proceedings are payable out of the fidelity fund.
- (2) Where the costs and disbursements are in respect of an application under section 149 and a receiver is appointed on that application, the costs and disbursements are recoverable as a debt due to the law society from the solicitor, or from the solicitors, in respect of whose trust property the receiver was appointed.
- (3) Where an amount is recoverable under subsection (2) from 2 or more persons, the liability of those persons is joint and several.
- (4) An amount recovered under subsection (2) shall be paid into the fidelity fund.

## Part 14 Managers

### 166 Definitions for pt 14

In this part:

*manager* means a person appointed under section 167 (1) to be the manager of the practice of a solicitor or partnership.

*solicitor* means a barrister and solicitor who practises, either on his or her own account or as a member of a partnership, as a solicitor or as both a solicitor and a barrister, but does not include a solicitor referred to in section 89.

### 167 Appointment of manager

- (1) In the circumstances in which the court may, under section 149, appoint a person to be the receiver of the trust property of a solicitor or of solicitors practising in partnership, the law society may, if it considers that the circumstances so warrant, by instrument, appoint a person to be the manager of the solicitor's or partnership's practice on such terms and conditions as are specified in the instrument.
- (2) A person is not eligible to be appointed to be a manager unless he or she is a solicitor who holds an unrestricted practising certificate.

### 168 Management under receivership

- (1) A manager may continue to perform his or her functions under this part notwithstanding the appointment under section 149 of a receiver of the trust property of the same solicitor or partnership.
- (2) A manager shall, in the continued performance, under subsection (1), of his or her functions under this part, comply with any lawful direction given by the receiver in connection with the conduct of the practice.



**169 Solicitor as employee**

A person who practises as a solicitor in a practice for which a manager has been appointed does so only as an employee of the manager.

**170 Powers of manager**

- (1) Subject to the instrument under section 167 (1), a manager may—
  - (a) act as a solicitor on behalf of existing clients of the practice; and
  - (b) accept instructions from, and act as a solicitor on behalf of, new clients; and
  - (c) dispose of, or otherwise deal with, any property in relation to the solicitor; and
  - (d) exercise any right in the nature of a lien over property held on behalf of a client of the practice; and
  - (e) incur such expenses as are reasonably related to the conduct of the practice; and
  - (f) do anything ancillary to the performance of a function under paragraphs (a) to (e);

as if he or she were the solicitor to whom the practice belonged.

- (2) A manager is not entitled to perform any function in relation to the affairs of a client of the practice unless the client has consented in writing to the performance of that function by the manager.

**171 Act of manager is act of solicitor**

- (1) An act done by a manager shall, for the purposes of any proceedings or transaction that relies on that act, be taken to have been done by the solicitor to whom the practice belongs.

- (2) Subsection (1) does not operate to subject a solicitor to any personal liability for or in respect of any act done by the manager of the solicitor's practice.

### **172 Reimbursement for damages**

- (1) The law society shall reimburse a manager for any damages or costs awarded against the manager or against an employee or agent of the manager in respect of any act or omission in good faith in the exercise or purported exercise of a function under this part to the extent to which those damages or costs are not recovered under the manager's professional indemnity insurance.
- (2) An amount by way of reimbursement under subsection (1) shall be paid from the fidelity fund.
- (3) Neither the manager nor the law society are liable for any loss incurred by a solicitor as a consequence of any act or omission of the manager in good faith in the exercise or purported exercise of a function under this part.

### **173 Expenses of management**

- (1) So much of the expenses of the management of a practice as have not been met out of the income of the practice are payable to the manager by the law society from the fidelity fund.
- (2) An amount paid by the law society under subsection (1) is recoverable as a debt due to the law society from the solicitor.
- (3) An amount recovered under subsection (2) shall be paid into the fidelity fund.
- (4) In subsection (1):  
*expenses* includes an amount paid or payable to a manager by way of remuneration.

**174 Reports**

- (1) A manager shall, at such times and as regards such matters as are specified in a notice in writing given to the manager by the council, report to the council on the management of the practice.
- (2) At the conclusion of the period of the managership, a manager shall—
  - (a) report to the council on the management of the practice; and
  - (b) give a copy of that report, together with all records relating to the managership, to the solicitor.
- (3) In addition to his or her obligation to report under subsection (1) or (2), a manager may report to the law society on the management of the practice whenever he or she considers it desirable to do so.

**175 Application of Act to managers**

The provisions of part 11 and sections 135, 149 and 178 apply in relation to managers as they apply in relation to solicitors.

**176 Termination of managership—reversion of moneys**

When a solicitor's practice ceases to be under management under this part, any moneys (other than trust moneys or controlled moneys) held by the manager that remain after—

- (a) the fidelity fund has been duly reimbursed; and
- (b) all other expenses related to the management of the practice have been paid;

become the property of the solicitor.

## Part 15 Costs

### 177 Definitions for pt 15

In this part:

*client*, in relation to costs or disbursements payable to a solicitor, means the person from whom the solicitor is entitled to claim the costs and disbursements.

*itemised statement*, in relation to a solicitor's costs and disbursements, means a statement—

- (a) showing each item of costs or disbursements claimed by the solicitor; and
- (b) signed by—
  - (i) the solicitor; or
  - (ii) another solicitor who is—
    - (A) a partner of; or
    - (B) the employer of; or
    - (C) employed by;the firstmentioned solicitor.

*solicitor*—see section 75.

### 178 No action by solicitor for costs until detailed statement delivered

- (1) Subject to subsection (2), a solicitor is not entitled to institute proceedings in a court for the recovery of costs or disbursements for, or in respect of, work of a professional nature until the expiration of a period of 1 month after the solicitor delivers to the person from whom the solicitor claims the costs or disbursements an itemised statement of those costs or disbursements.

- (2) Where the court is satisfied that there are reasonable grounds for believing that a person to whom a statement has been delivered in accordance with subsection (1) is about to leave Australia, the court may grant leave to the solicitor by whom the statement was delivered to institute proceedings for the recovery of the costs or disbursements to which the statement relates, and those proceedings may be instituted notwithstanding that a period of 1 month has not elapsed since the delivery of the statement.

### **179 Right to request statement**

- (1) Subject to subsection (2), a person who is liable to pay or, being so liable, has paid, a solicitor's costs or disbursements may request in writing the solicitor to give to the person an itemised statement of the costs and disbursements.
- (2) A request under subsection (1) shall be made—
- (a) in the case of a person who has not paid a solicitor's costs or disbursements—within 3 months after receiving a written account of those costs or disbursements; or
  - (b) in the case of a person who has paid a solicitor's costs or disbursements—within 3 months after paying those costs or disbursements; or
  - (c) within such further time as the registrar allows.
- (3) The person making the request shall, if that person is not the client, cause a copy of the request to be given to the client.
- (4) Where—
- (a) a solicitor receives a request under subsection (1) from a person who has paid the costs and disbursements to which the request relates; and
  - (b) the solicitor does not, within 3 months of the date of receiving the request or within such further time as the registrar allows, give to the person an itemised statement of the costs and disbursements;

the solicitor is liable to repay the amount of the costs and disbursements to the person.

- (5) Where a solicitor receives a request under subsection (1) and the client is given a copy of that request under subsection (3)—
- (a) any proceedings instituted in respect of those costs and disbursements are stayed; and
  - (b) proceedings may not be instituted for the recovery of those costs and disbursements;

until the expiration of 1 month after the solicitor gives an itemised statement of those costs and disbursements to the person who made the request.

- (6) Where a solicitor gives an itemised statement to a person other than the client in accordance with a request made under subsection (1), the solicitor shall inform the client that the solicitor has given the statement to the person.

### **180 Notice for taxation**

- (1) A person to whom a statement is delivered under this part may—
- (a) within 1 month after delivery of the statement; or
  - (b) within such further time as the registrar allows;

give notice to the registrar, to the solicitor by whom the statement was delivered and, if the person is not the solicitor's client, to the client that the person giving notice wishes to have the amount payable by him or her determined by taxation.

- (2) Notwithstanding subsection (1), a person is not entitled to give notice under that subsection after judgment has been entered in proceedings for the recovery of the costs of disbursements, or any part of the costs or disbursements, specified in a statement delivered under this part.
- (3) Subsection (1) applies whether or not the costs or disbursements to which a statement relates have been paid.

- (4) The registrar shall not allow further time for the giving of notice under subsection (1) unless the registrar is satisfied that it was not practicable for notice to be given within 1 month after the delivery of the statement.

### **181 Form of notice etc**

- (1) A notice under section 180 (1) shall be in writing and shall be accompanied by the statement to be taxed and a copy of the statement.
- (2) Where notice is given to the registrar under section 180 (1), the registrar shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person requesting the taxation and to the solicitor concerned.

### **182 Taxation in absence of party**

- (1) Where a person gives notice under section 180 (1) and fails to appear at the time and place fixed by the registrar under section 181 (2), the notice shall be deemed to have been withdrawn.
- (2) Where a person gives notice under section 180 (1) that he or she wishes to have a statement taxed and the solicitor who delivered the statement does not appear at the time and place fixed by the registrar under section 181 (2), the registrar shall, subject to subsection (1), proceed with the taxation.

### **183 Matters to be considered on taxation**

- (1) The registrar shall, in assessing the proper sum to be charged for doing any act in respect of which no charge is provided for in a scale of costs prescribed by or under a law in force in the ACT, allow such sum as is fair and reasonable having regard to all the circumstances of the case.
- (2) The registrar shall not reduce the amount specified in a statement delivered in accordance with this part in respect of a disbursement unless he or she is satisfied that the amount of the disbursement is unreasonable.

**184    Costs of taxation**

- (1) Where the amount claimed in a statement delivered under this part is reduced on taxation by  $\frac{1}{6}$  or more, the solicitor who delivered the statement is liable to pay to the person to whom the statement was delivered that person's costs of the taxation.
- (2) Where the amount claimed in a statement delivered under this part is not reduced on taxation or is reduced by less than  $\frac{1}{6}$ , the person to whom the statement was delivered is liable to pay to the solicitor who delivered the statement the solicitor's costs of the taxation.
- (3) The amount to be paid under subsection (1) or (2) shall be assessed by the registrar forthwith after the completion of the taxation.

**185    Certificate of taxation**

- (1) On the taxation of a statement delivered under this part, the registrar shall certify in writing the amount (if any) that, having regard to the result of the taxation and the amount payable under section 184 is, in his or her opinion, due to the solicitor who delivered the statement or, if the solicitor has received payment of the amount specified in the statement, the amount due by the solicitor.
- (2) The registrar shall deliver a copy of the certificate under subsection (1) to each of the persons who appeared, or was represented, on the taxation.
- (3) In an action by a solicitor for the recovery of any amount as costs, a certificate by the registrar given under subsection (1) is conclusive with respect to the amount due to the solicitor.
- (4) A reference in subsection (2) or (3) to a certificate given under subsection (1) includes a reference to such a certificate as amended under section 186 (3).



**186 Review of taxation**

- (1) A person aggrieved by the decision of the registrar as to any item in a statement delivered under this part may, within 14 days after the date on which a copy of the registrar's certificate under section 185 is delivered to him or her or within such further time as the court allows, make application to the court for a review of the decision of the registrar.
- (2) On an application under this section, the court may affirm or vary the decision of the registrar and may give such directions as it thinks necessary in respect of the amendment of the certificate given by the registrar under section 185.
- (3) The registrar shall comply with any directions given by the court under subsection (2) and shall deliver a copy of the amended certificate to each of the persons to whom the certificate was delivered in accordance with section 185 (2).

**187 Stay of proceedings**

Where notice is given under section 180 (1) in respect of a statement delivered under this part, any proceedings commenced in relation to the costs and disbursements to which the statement relates are, by force of this section, stayed until the expiration of 14 days after the date of the certificate of the registrar under section 185 or, where application is made under section 186, until the determination of the application.

**188 Amount due by legal practitioner recoverable as debt**

Where a certificate of the registrar under section 185, or such a certificate as amended under section 186 (3), specifies an amount as the amount that is, in the opinion of the registrar, due to a person to whom a statement has been delivered under this part, the amount so specified is recoverable by that person as a debt due to him or her by the solicitor by whom the statement was delivered.

### **189 Costs payable by mortgagor or lessee**

Where a person who proposes to take a mortgage over property (the *mortgagee*), or grant a lease over property (the *lessor*), gives or causes to be given, to the mortgagor or lessee, before the mortgagor or lessee enters into the mortgage or lease in respect of the property, a notice in writing—

- (a) informing the mortgagor or lessee that he or she is liable to pay the costs and disbursements of the mortgagee or lessor in relation to the taking of the mortgage or the granting of the lease; and
  - (b) containing a statement of those costs and disbursements;
- then—
- (c) the preceding provisions of this part do not apply in relation to those costs and disbursements; and
  - (d) the mortgagor or lessee is not liable to pay, in respect of the costs of the mortgagee or lessor an amount greater than the amount shown in that statement in respect of those costs.

### **190 Agreement as to costs**

- (1) The preceding provisions of this part, other than 179 and 189, do not apply in respect of the costs to be paid to a solicitor for work to which an agreement under this section relates.
- (2) A solicitor may make an agreement with a person that the amount of the costs (excluding disbursements) payable, or to be payable, by the person to the solicitor for work of a professional nature already undertaken, or to be undertaken, for the person by the solicitor shall be the amount specified in, or ascertainable in accordance with, the agreement.
- (3) An agreement referred to in subsection (2) is not enforceable unless a note or memorandum containing the terms of an agreement is signed by the person liable to pay the costs to which the agreement relates.

- (4) A note or memorandum of an agreement signed in accordance with subsection (3) is evidence of the terms of the agreement.
- (5) A solicitor who is a party to an agreement under this section is not entitled, in respect of work to which the agreement relates, to receive an amount for costs (including disbursements) greater than the amount specified in, or ascertainable in accordance with, the agreement.

### **191 Powers of court where contract not fair and reasonable**

- (1) Where, on an application by a person who has made an agreement with a solicitor under section 190, the court is satisfied that the agreement is not fair and reasonable, the court may, by order—
  - (a) direct that the amount payable under the agreement be reduced to an amount specified in the order; or
  - (b) declare that the agreement is not binding on the parties to the agreement.
- (2) Where, under subsection (1), the court directs that the amount payable under an agreement be reduced, the agreement is enforceable as if the amount specified in the order of the court were specified in the agreement as the amount payable under the agreement.
- (3) Where, under subsection (1), the court declares that an agreement is not binding on the parties to the agreement—
  - (a) the court may make such further orders as it thinks necessary to restore the parties to the agreement to the position in which they would have been if the agreement had not been made; and
  - (b) this part (other than section 190) applies as if the agreement had not been made.
- (4) Except by leave of the court, a person is not entitled to make an application under this section in respect of an agreement after the institution of proceedings for the recovery from that person of the amount payable under the agreement.

## Part 15A Interstate legal practitioners

### Division 15A.1 Preliminary

#### 191A Definitions for pt 15A

In this part:

*corresponding law* means a law of another State that contains provisions that substantially correspond to the provisions of this part.

*home State*, in relation to a legal practitioner, means the State in which the practitioner has his or her principal place of practice.

*interstate legal practitioner* means a person—

- (a) who has been admitted to legal practice in a participating State; and
- (b) who holds a practising certificate issued by a regulatory authority, or is otherwise entitled to engage in legal practice, in that State; and
- (c) whose principal place of practice is in that State.

*legal practitioner* means an interstate legal practitioner or a local legal practitioner.

*local legal practitioner* means a person—

- (a) who has been admitted or enrolled as a legal practitioner under part 6; and
- (b) who holds a practising certificate issued by the law society or is otherwise entitled to engage in legal practice as a solicitor in the ACT; and
- (c) whose principal place of practice is in the ACT.

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

*practice rules* means rules for engaging in legal practice.

*practising certificate* means a certificate that confers authority to engage in legal practice, whether—

- (a) generally or of a particular type; or
- (b) unconditionally or subject to conditions, restrictions or limitations.

*regulatory authority*—

- (a) in respect of the ACT—means the court, the law society or the professional conduct board; and
- (b) in respect of a participating State—means a person or body in that State having the function conferred by law of admitting persons to legal practice, issuing practising certificates to persons, making practice rules or receiving complaints against, investigating the conduct of, or disciplining, persons engaged in legal practice.

*State* includes a Territory.

### **191B When does interstate legal practitioner establish office**

For this part, an interstate legal practitioner establishes an office in the ACT when the practitioner offers and provides legal services to the public in the ACT from an office maintained by the practitioner, or by the employer or a partner in legal practice of the practitioner, for that purpose in the ACT.

## **Division 15A.2 Legal practice by interstate legal practitioners**

### **191C Status of interstate legal practitioners**

An interstate legal practitioner shall be taken—

- (a) to be a person whose name has been entered on the roll of legal practitioners; and
- (b) to have signed the roll under section 19.

**191D Interstate legal practitioner may practise in this jurisdiction**

- (1) An interstate legal practitioner is entitled to engage in legal practice in the ACT, subject to this Act, in accordance with the terms of the practitioner's entitlement to practise in his or her home State.
- (2) In so doing, the practitioner, subject to this part—
  - (a) shall comply with this Act; and
  - (b) shall comply with any practice rules that apply to all local legal practitioners engaged in the same type of legal practice; and
  - (c) is subject to any condition, limitation, restriction or prohibition imposed on the practitioner in respect of his or her practice by a regulatory authority in the ACT or a participating State (whether as a result of disciplinary action or otherwise).

*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 2001*, s 104).

*Note 2* Section 147H(3) contains provisions allowing the suspension of entitlement under this part to practise in the ACT of solicitors required to comply with s 147E (Solicitor to have fidelity cover for regulated mortgages).

- (3) An interstate legal practitioner who contravenes subsection (2) is guilty of professional misconduct.
- (4) A regulatory authority in the ACT shall not impose a condition, restriction, limitation or prohibition on an interstate legal practitioner in respect of his or her practice that is more onerous than it would impose on a local legal practitioner in the same or similar circumstances.

**191E Notification of establishment of office required**

- (1) An interstate legal practitioner who—
  - (a) practises as a solicitor or as both a barrister and solicitor; and
  - (b) establishes an office in the ACT;shall give written notice to the law society within 28 days after establishing the office.
- (2) A notice under this section shall specify—
  - (a) the residential address of the interstate legal practitioner; and
  - (b) the address at which the interstate legal practitioner practises, or proposes to practise, in the ACT; and
  - (c) each place at which the interstate legal practitioner practises outside the ACT; and
  - (d) if the interstate legal practitioner practises in partnership with other persons—the names of those other persons and the name under which the partnership is carried on.
- (3) An interstate legal practitioner who contravenes subsection (1) is guilty of professional misconduct.

**191F Professional indemnity insurance required if office established**

- (1) This section applies to an interstate legal practitioner—
  - (a) who establishes an office in the ACT; and
  - (b) who, if he or she were a local legal practitioner, would be required to have professional indemnity insurance.
- (2) An interstate legal practitioner to whom this section applies shall not practise as a solicitor, or both as a barrister and solicitor, unless he or she has appropriate indemnity insurance in respect of his or her practice in the ACT.

- (3) An interstate legal practitioner to whom this section applies has appropriate indemnity insurance in respect of his or her practice in the ACT during a period if in respect of that period—
- (a) there is in force in respect of the practitioner a policy of insurance that provides the same or a higher level of indemnity as, and the terms of which are broadly equivalent to, a current policy of insurance approved under section 76; and
  - (b) if the practitioner is a contributor to an indemnity fund—the practitioner pays any levy payable in accordance with the rules or conditions applicable to contributors to the fund.

### **191G Fidelity fund contributions**

An interstate legal practitioner who—

- (a) practises as a solicitor or as both a barrister and solicitor; and
- (b) establishes an office in the ACT;

shall, in respect of each financial year, pay a contribution to the fidelity fund equivalent to the amount (if any) he or she would be required to pay to the fund if he or she were a local legal practitioner.

## **Division 15A.3 Disputes, complaints and inquiries**

### **191H Interstate legal practitioners**

- (1) A reference in this section to an interstate legal practitioner is a reference to an interstate legal practitioner who practises in the ACT as a solicitor or as both a barrister and solicitor.
- (2) A dispute between a person and an interstate legal practitioner in connection with the practitioner's legal practice in the ACT may be resolved under part 8 as if the interstate legal practitioner were a local legal practitioner.



- (3) A complaint may be made under part 8 about the conduct of an interstate legal practitioner in respect of his or her legal practice in the ACT as if he or she were a local legal practitioner.
- (4) An inquiry may be undertaken under part 8 into the conduct of an interstate legal practitioner in respect of his or her legal practice in the ACT as if he or she were a local legal practitioner.
- (5) Section 58 applies in relation to the conduct of an interstate legal practitioner in respect of his or her legal practice in the ACT as if he or she were a local legal practitioner.
- (6) In its application under subsection (5), a reference in section 58 to a practising certificate includes a reference to a practising certificate within the meaning of this part.

#### **191I Local legal practitioners**

- (1) A dispute between a person and a local legal practitioner in connection with the practitioner's legal practice in a participating State may be resolved under part 8.
- (2) A complaint may be made under part 8 about the conduct of a local legal practitioner in respect of his or her legal practice in a participating State.
- (3) An inquiry may be undertaken under part 8 in relation to the conduct of a local legal practitioner in respect of his or her legal practice in a participating State.

#### **191J Referral of disputes and disciplinary matters to regulatory authorities in participating States**

- (1) A reference in this section to a legal practitioner is a reference to a legal practitioner who practises as a solicitor or as both a barrister and solicitor.
- (2) If it considers it appropriate to do so, the law society may refer a dispute lodged with it in relation to a legal practitioner to a

regulatory authority in a participating State, to be dealt with according to the law of that State.

- (3) If it considers it appropriate to do so, the law society may refer a complaint made to it in relation to a legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.
- (4) If it considers it appropriate to do so, the law society may request a regulatory authority in a participating State to investigate the conduct of a legal practitioner in accordance with the law of that State.
- (5) After a referral under subsection (2) or (3) or a request under subsection (4) has been made, no further action may be taken by the law society in relation to the subject matter of the referral or request, other than action required to comply with section 191M, unless the regulatory authority in the participating State declines to deal with the matter.

### **191K Dealing with matters referred by regulatory authorities in participating States**

- (1) A reference in this section to a legal practitioner is a reference to a legal practitioner who practises as a solicitor or as both a barrister and solicitor.
- (2) The law society may resolve a dispute between a person and a legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject matter of the dispute arose in or outside the ACT.
- (3) The law society may investigate a complaint against a legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject matter of the complaint allegedly occurred in or outside the ACT.
- (4) If a regulatory authority in a participating State requests the law society to investigate the conduct of a legal practitioner, the society

may investigate that conduct whether or not the conduct allegedly occurred in or outside the ACT.

### **191L Furnishing information**

- (1) A regulatory authority in the ACT shall furnish without delay any information about a legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner.
- (2) A regulatory authority may provide the information notwithstanding any law of the ACT relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.
- (4) A regulatory authority in the ACT shall notify the appropriate regulatory authority in each participating State of any condition, restriction, limitation or prohibition imposed by it on a legal practitioner in respect of his or her legal practice as a result of disciplinary action against the practitioner.

## **Division 15A.4 Miscellaneous**

### **191M Local practitioners are subject to interstate regulatory authorities**

- (1) A local legal practitioner, in engaging in legal practice in the ACT, shall comply with any condition, restriction, limitation or prohibition in respect of his or her practice imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner.
- (2) A local legal practitioner who contravenes subsection (1) is guilty of professional misconduct.
- (3) A regulatory authority in a participating State—
  - (a) that has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension,

cancellation, variation of the conditions of or imposition of further conditions on, a practising certificate issued to an interstate legal practitioner in that State; and

(b) to which a local legal practitioner is subject in that State;

may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or the imposition of further conditions on, a practising certificate issued to the local legal practitioner under this Act.

- (4) The law society shall comply with an order of a regulatory authority in a participating State under subsection (3).
- (5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll of practitioners in that State may order that the name of a local legal practitioner be removed from the roll of legal practitioners and, if such an authority does so order, the court shall cause the practitioner's name to be removed from the roll.

### **191N Local legal practitioner receiving trust money interstate**

A local legal practitioner shall deal with trust moneys received in the course of engaging in legal practice outside the ACT (other than trust moneys received in the course of engaging in legal practice in a participating State in which the practitioner has established an office) in accordance with part 11 as if the trust moneys had been received in the course of engaging in legal practice in the ACT.

### **191O Regulatory authority may exercise powers conferred by corresponding law**

A regulatory authority in the ACT may exercise in respect of an interstate legal practitioner any power conferred on it by a corresponding law.

## **191P Fidelity fund claims**

(1) In this section:

*failure to account*—see section 136.

*legal practitioner* means a legal practitioner who practises as a solicitor or as both a barrister and solicitor.

(2) A claim lies against the fidelity fund—

(a) in relation to a loss occurring wholly in the ACT from a failure to account by a legal practitioner (whether or not in the course of engaging in legal practice in the ACT); or

(b) in relation to a loss from a failure to account by a local legal practitioner (whether or not in the course of engaging in legal practice in the ACT), if—

(i) the loss occurred both in the ACT and a participating State; or

(ii) the loss occurred in the ACT or a participating State or both, but it cannot be determined precisely where the loss occurred; or

(c) in the circumstances where an agreement or arrangement under subsection (3) provides that a claim is payable.

(3) The law society may make agreements or arrangements with a regulatory authority in a participating State for the payment of claims arising from failures to account by legal practitioners who are required to contribute to a fidelity fund in the ACT and in the participating State.

(4) This section applies notwithstanding anything to the contrary in part 12.

## Part 15B Foreign legal practitioners

### Division 15B.1 Preliminary

#### 191Q Definitions for pt 15B

In this part:

*commercial legal presence* means an interest in a law firm practising foreign law.

*domestic legal practitioner* means a person (including a foreign legal practitioner) who is—

- (a) duly registered by the law society to practise law in the ACT as a solicitor; or
- (b) otherwise entitled to practise law in the ACT as a solicitor.

*foreign law* means law of a place outside Australia.

*foreign legal practitioner* means a person who is duly registered to practise law in a place outside Australia by a foreign registration authority.

*foreign registration authority* means the person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place.

*home registration authority*, in relation to a foreign legal practitioner means the foreign registration authority stated in the practitioner's registration notice under section 191T.

*law firm* means—

- (a) a person practising as a legal practitioner on the person's own account; or
- (b) a partnership of 2 or more persons practising as legal practitioners.

*locally registered foreign legal practitioner* means a person who is registered as a foreign legal practitioner under this part.

*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 the law of the ACT, would ordinarily be done or transacted by a domestic legal practitioner practising as a solicitor.

*registered* means—

- (a) when used in connection with a place outside Australia—having all necessary licences, approvals, admissions, certifications, or other forms of authorisation (including practising certificates), required by or under legislation for the carrying on of the practice of law in that place; or
- (b) when used in connection with the exercise of a function by the law society otherwise than under this part—holding a current practising certificate.

### **191R Application of pt 15B**

- (1) This part applies to any individual (other than a domestic legal practitioner) who practises foreign law in the ACT.
- (2) Nothing in this part requires a domestic legal practitioner (including a foreign legal practitioner who is also a domestic legal practitioner) to be registered as a foreign legal practitioner under this part in order to practise foreign law in the ACT.

## **Division 15B.2 Local registration of foreign legal practitioners**

### **191S Registration requirement**

- (1) A person shall not practise foreign law in the ACT unless the person—
  - (a) is a locally registered foreign legal practitioner and practises foreign law in the ACT in accordance with this part; or

- (b) is a foreign legal practitioner who practises foreign law in the ACT on a temporary basis or is subject to a migration restriction and who—
  - (i) does not maintain an office for the purpose of practising as a legal practitioner in the ACT; or
  - (ii) does not have a commercial legal presence in the ACT; or
- (c) is a domestic legal practitioner, or is a person employed by a domestic legal practitioner to provide advice on foreign law to, and for use by, a domestic legal practitioner; or
- (d) is a person who provides advice on foreign law in the capacity of a consultant.

Maximum penalty: 50 penalty units.

- (2) In this section:

***migration restriction*** means a restriction imposed on a person who is not an Australian citizen 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.

### **191T Registration notice**

- (1) A foreign legal practitioner may lodge a written notice with the law society seeking registration as a foreign legal practitioner under this Act.
- (2) The notice shall—
  - (a) state the practitioner's educational and professional qualifications; and
  - (b) state that the practitioner is registered to practise law by a specified foreign registration authority in a place outside Australia; and



- (c) state that the practitioner is not the subject of any disciplinary proceedings in that place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration; and
  - (d) state that the practitioner's registration in that place is not cancelled or currently suspended as a result of any disciplinary action; and
  - (e) state that the practitioner is not otherwise personally prohibited from carrying on the practice of law in that place or bound by any undertaking not to carry on the practice of law in that place, and is not subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in that place; and
  - (f) specify any special conditions imposed as a restriction on the practice of law by the practitioner or any undertaking given by the practitioner restricting the practitioner's practice of law; and
  - (g) give consent to the making of inquiries of, and the exchange of information with, the home registration authority regarding the practitioner's activities in practising law in that place or otherwise regarding matters relevant to the notice.
- (3) The notice shall be accompanied by an original instrument, or a copy of an original instrument, from the home registration authority—
- (a) verifying the practitioner's educational and professional qualifications; and
  - (b) verifying the practitioner's registration by the authority to practise law in the place concerned and the date of registration; and
  - (c) describing anything done by the practitioner in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an

adverse effect on the practitioner's professional standing within the legal profession of that place.

- (4) The practitioner shall certify in the notice that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The law society may require the practitioner to verify the statements in the notice by statutory declaration or by other proof acceptable to the society.
- (6) If the accompanying instrument is not in English, it shall be accompanied by a certified translation in English.

#### **191U Fee for registration**

- (1) The notice shall be accompanied by such fee as the law society may determine.
- (2) The fee shall not be greater than the fee paid by domestic legal practitioners for registration by the law society to carry on the practice of law in the ACT as solicitors.

#### **191V Entitlement to registration**

- (1) A person is entitled to be registered under this Act as a foreign legal practitioner if—
  - (a) the person lodges a notice in accordance with section 191T; and
  - (b) the law society is satisfied that the person is registered to practise law in a place outside Australia; and
  - (c) the law society considers that the person's home registration authority effectively regulates and disciplines the practice of law in that place; and
  - (d) the law society considers that the person is not, as a result of criminal, civil or disciplinary proceedings in that place, subject to any special conditions in carrying on the practice of law in

that place or any undertakings concerning the person's practice of law in that place that would make it inappropriate to register the person; and

- (e) the person demonstrates an intention to practise foreign law in the ACT and to establish an office or a commercial legal presence in the ACT within a reasonable period after grant of registration for the purpose of so practising.
- (2) Residence or domicile in the ACT is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign legal practitioner under this part.

### **191W Conditions**

- (1) The law society may at any time impose any condition on the registration of a foreign legal practitioner under this part that is equivalent to any special condition of carrying on practice imposed on the practitioner by the practitioner's home registration authority and may at any time by notice in writing revoke or vary such a condition.
- (2) The law society may not impose any other conditions on registration of a foreign legal practitioner under this part.

### **191X Notification of decision**

- (1) The law society shall give a foreign legal practitioner who lodges a notice in accordance with section 191T written notice of its decision to grant registration under this part, to refuse registration, or to impose conditions on registration.
- (2) The law society is to be taken to have refused registration if registration is not granted within 28 days after a notice is duly lodged under section 191T.

### **191Y Duration of registration and annual fee**

- (1) When granted, registration under this part takes effect from the day on which the notice under section 191T was lodged.

- (2) Registration remains in force, unless sooner cancelled, until the expiration of 30 June next following the day on which it takes effect.
- (3) Registration may be renewed by the payment of an annual fee determined by the law society.
- (4) Payment shall be made on or before a day notified in writing to the locally registered foreign legal practitioner by the law society.
- (5) The annual fee shall not be greater than any annual fee paid by domestic legal practitioners in respect of registration by the law society to carry on the practice of law in the ACT as solicitors.

### **191Z Register**

- (1) The law society shall keep, in such form as it thinks fit, a register of persons registered as foreign legal practitioners under this part.
- (2) The register shall be made available for public inspection during office hours.

### **191ZA Cancellation of registration**

- (1) The law society may, by notice in writing to a locally registered foreign legal practitioner, cancel the practitioner's registration under this part if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if—
  - (a) the foreign legal practitioner's home registration authority cancels registration of the practitioner as a result of criminal, civil or disciplinary proceedings; or
  - (b) the foreign legal practitioner fails to comply with any requirements of this Act; or
  - (c) the registration of the foreign legal practitioner by the practitioner's home registration authority has lapsed; or

- (d) the foreign legal practitioner has not established an office to practise foreign law, or a commercial legal presence, in the ACT within a reasonable period after being granted registration; or
  - (e) the foreign legal practitioner fails to comply with any condition imposed on the practitioner's registration under this part.
- (3) Registration is not to be cancelled on a ground referred to in subsection (2) unless the foreign legal practitioner is given reasonable opportunity to make written submissions to the law society.
  - (4) The registration of a foreign legal practitioner is not to be cancelled on the ground referred to in subsection (2) (c) if the practitioner demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the practitioner but from circumstances beyond the practitioner's control.
  - (5) Registration as a foreign legal practitioner under this part is automatically cancelled if the practitioner concerned—
    - (a) is registered as a domestic legal practitioner; or
    - (b) requests the cancellation.
  - (6) Cancellation of registration at the request of a legal practitioner does not affect the exercise by the law society of any power relating to disciplinary proceedings brought against the practitioner before the cancellation.

## **191ZB Appeals**

- (1) If the law society—
  - (a) refuses to register a foreign legal practitioner under this part; or
  - (b) cancels the registration of a foreign legal practitioner under this part; or
  - (c) takes any disciplinary action against a foreign legal practitioner under this Act;

the practitioner may appeal to the Supreme Court.

- (2) The Supreme Court may make any order in relation to the refusal, cancellation or disciplinary action that might be made in relation to an appeal by—
  - (a) an applicant for registration as a domestic legal practitioner who is refused registration as a solicitor; or
  - (b) a domestic legal practitioner whose registration as a solicitor is cancelled by the law society; or
  - (c) a domestic legal practitioner against whom disciplinary action has been taken by the law society.

## **Division 15B.3 Legal practice**

### **191ZC Scope of practice**

- (1) A locally registered foreign legal practitioner may provide only the following legal services:
  - (a) doing any work, or transacting any business, in the ACT concerning the law of the place in which the practitioner is registered by the practitioner's home registration authority;
  - (b) legal services (including appearances) in relation to arbitration proceedings in the ACT of a kind prescribed by the regulations;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
  - (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the ACT of a kind prescribed by the regulations.

- (2) Nothing in this part authorises a locally registered foreign legal practitioner to advise on the law of any Territory or State or the Commonwealth or to appear in any court (except on the practitioner's own behalf).

### **191ZD Form of practice**

- (1) A locally registered foreign legal practitioner may practise—
- (a) as a foreign legal practitioner on the practitioner's own account; or
  - (b) in partnership with other locally registered foreign legal practitioners or with domestic legal practitioners (or both).
- (2) Any such affiliation does not entitle the locally registered foreign legal practitioner to practise domestic law in the ACT.

### **191ZE Professional conduct**

- (1) A locally registered foreign legal practitioner has the same duties to maintain the standards of professional conduct of the legal profession of the ACT as a domestic legal practitioner.
- (2) However, a locally registered foreign legal practitioner need not comply with any standard if the practitioner proves that to do so would subject the practitioner to disciplinary action by the practitioner's home registration authority if done in the place of foreign registration.

### **191ZF Discipline**

- (1) A locally registered foreign legal practitioner is subject to the disciplinary provisions and arrangements that are applicable to domestic legal practitioners.
- (2) However, a locally registered foreign legal practitioner cannot be disciplined for the breach of any provision if the practitioner proves that such a breach would not subject the practitioner to disciplinary

action by the practitioner's home registration authority if done in the foreign place of registration.

- (3) The regulations may exempt any foreign legal practitioner or class of foreign legal practitioners from compliance with all or specified disciplinary provisions or arrangements.

### **191ZG Letterhead and other identifying documents**

- (1) A locally registered foreign legal practitioner may describe himself or herself and any law firm with which the foreign legal practitioner is associated in any of the ways designated in section 191ZH.
- (2) A locally registered foreign legal practitioner shall indicate on the practitioner's letterhead, and any other document used when practising foreign law in the ACT to identify the practitioner as a legal practitioner, the fact that the practitioner is a locally registered foreign legal practitioner and a statement that such registration does not entitle the practitioner to practise as a domestic legal practitioner in the ACT.
- (3) A locally registered foreign legal practitioner may (but need not) indicate all Territories and States in which the practitioner (and any of the practitioner's partners) are registered as foreign legal practitioners on any document referred to in this section.
- (4) A locally registered foreign legal practitioner may (but need not) indicate all places outside Australia in which the practitioner is registered to practise law on any document referred to in this section.

### **191ZH Designation**

- (1) A locally registered foreign legal practitioner may use the following designations:
  - (a) the practitioner's own name;



- (b) the title the practitioner is authorised by law to use in the place outside Australia in which the practitioner is registered by the home registration authority;
  - (c) subject to subsection (2), the name of any law firm outside Australia with which the practitioner is affiliated (whether as a partner or otherwise);
  - (d) if the foreign legal practitioner is a member of any law firm in Australia that includes both locally registered foreign legal practitioners and domestic legal practitioners—a description of the firm that includes reference to both domestic legal practitioners and registered foreign legal practitioners.
- (2) A locally registered foreign legal practitioner who is a partner of a law firm outside Australia may use the name of the firm in practising foreign law in the ACT, or use the name in connection with the practice, only if—
- (a) the practitioner indicates on the practitioner’s letterhead, and any other document used in the ACT to identify the practitioner as a legal practitioner, the purely foreign nature of the law firm; and
  - (b) the practitioner has provided the law society with a copy of the partnership agreement or other acceptable evidence that the practitioner is a partner of the law firm; and
  - (c) use of the name complies with any requirements of the law of the ACT concerning use of business names and will not lead to any confusion with the name of any established domestic or foreign law firm in the ACT.
- (3) A locally registered foreign legal practitioner who is a partner of a law firm may use the name of the firm as referred to in this section whether or not other partners in the firm are locally registered foreign legal practitioners.

### **191ZI Advertising**

- (1) A locally registered foreign legal practitioner shall comply with any advertising restrictions imposed by the law society or by law on the practice of law by a domestic legal practitioner that are relevant to the practice of foreign law in the ACT.
- (2) Without limiting subsection (1), a locally registered foreign legal practitioner shall not advertise (or use any description on the practitioner's letterhead or any other document used in the ACT to identify the practitioner as a legal practitioner) in any way that might reasonably be regarded as—
  - (a) false, misleading or deceptive; or
  - (b) suggesting that the locally registered foreign legal practitioner is a domestic legal practitioner;or that contravenes any requirements of the regulations.

### **191ZJ Employment**

- (1) A locally registered foreign legal practitioner may employ, or be employed by, 1 or more domestic legal practitioners.
- (2) Any such arrangement does not entitle the locally registered foreign legal practitioner to practise domestic law in the ACT.
- (3) A period of employment by a locally registered foreign legal practitioner may not be used by a domestic legal practitioner to satisfy any requirement concerning a period of supervised practice imposed on the domestic legal practitioner by the law society.

### **191ZK Indemnity insurance**

- (1) A foreign legal practitioner who practises foreign law in the ACT shall comply with any requirement concerning indemnity insurance that is equivalent to any such requirement that applies by or under a law to domestic legal practitioners and that is designed to protect the public, clients or others.

- (2) A foreign legal practitioner who contravenes subsection (1) is guilty of professional misconduct.

### **191ZL Trust accounts, controlled moneys and fidelity fund contributions**

- (1) A locally registered foreign legal practitioner who receives money on behalf of another person in the course of practising as a foreign legal practitioner in the ACT shall comply with any applicable provisions of the law of the ACT that require a domestic legal practitioner receiving money on behalf of another person in the course of practising as a domestic legal practitioner to maintain a trust account or to maintain records of controlled moneys.
- (2) A locally registered foreign legal practitioner who maintains a trust account or who is given control over moneys of a client shall not practise foreign law in the ACT without complying with any requirement made by the law society concerning contributions to the fidelity fund that is equivalent to any such requirement made in respect of domestic legal practitioners who practise as solicitors and that is designed to protect the public, clients or others.
- (3) In this section, a reference to money is not limited to a reference to money in the ACT.

### **191ZM Application of provisions to locally registered foreign legal practitioners**

The provisions of division 11.7, parts 13, 14 and 15 and sections 196, 197 and 198 apply in relation to locally registered foreign legal practitioners as they apply in relation to solicitors.

## **Division 15B.4      Miscellaneous**

### **191ZN Membership of professional association**

A locally registered foreign legal practitioner is not required to join (but may, if eligible, join) any professional association.

## Part 16                      Offences by unqualified persons

### 192    Holding out as qualified

A person other than a legal practitioner shall not—

- (a) hold himself or herself out to be, or to be qualified to perform any of the functions of, a barrister, a solicitor, or a legal practitioner; or
- (b) permit his or her name to be so used as to suggest that he or she is, or is qualified to perform any of the functions of, a barrister, a solicitor, or a legal practitioner.

Maximum penalty: 50 penalty units.

### 193    Preparation of documents for reward

- (1) A person other than a legal practitioner shall not, for reward, draw, or cause his or her employee to draw—

- (a) a will or other testamentary instrument; or
- (b) an instrument—
  - (i) creating or regulating rights between persons; or
  - (ii) relating to real or personal property; or
  - (iii) relating to a legal proceeding.

Maximum penalty: 50 penalty units.

- (2) It is not an offence against subsection (1)—

- (a) for a person to draw an instrument in the course of his or her employment as—
  - (i) a public employee; or

- (ii) a member of the Australian Public Service; or
  - (iii) a member of the Defence Force; or
  - (iv) an employee of a trust company within the meaning of the *Trustee Companies Act 1947*; or
- (b) for a person to engross an instrument in the course of his or her employment; or
- (c) for a person who is employed to draw an instrument of a kind referred to in subsection (1) as part of his or her ordinary duties to draw such an instrument if the employer of the person is a legal practitioner and the person drawing the instrument does not receive, in respect of the drawing of the instrument, any fee or reward other than his or her salary; or
- (d) if the drawing of the instrument is involved in the performance of prescribed work, or of work included in a prescribed class of work.
- (3) In this section:  
*draw* includes prepare and fill in.

#### **194 Preparation of probate etc papers for reward**

- (1) A person other than a legal practitioner shall not, for reward—
- (a) take instructions, either on the person's own behalf or as agent for another person, for the preparation of papers to be used in support of, or in opposition to, an application for the grant of probate or letters of administration; or
  - (b) draw or prepare such papers.
- Maximum penalty: 50 penalty units.
- (2) Subsection (1) does not apply to—
- (a) a public employee; or
  - (b) a member of the Australian Public Service; or

- (c) an employee of a trust company within the meaning of the *Trustee Companies Act 1947*.

### **195 Offences by corporations**

- (1) Where a body corporate does an act which, if done by a natural person, would be an offence against section 192, 193 or 194, the body corporate commits an offence.

Maximum penalty: 50 penalty units.

- (2) Where, under subsection (1), a body corporate commits an offence, every person who, at the time of the commission of the offence, was a director or officer of the body corporate also commits the offence and is punishable as if the offence had been committed by him or her unless the person proves that the offence was committed without his or her knowledge and that he or she took reasonable steps to prevent the commission of the offence by the body corporate.

## Part 17                      Miscellaneous

### 196    **Solicitors not to share receipts with persons not practising as solicitors**

- (1) Subject to this section, a solicitor shall not share the receipts from his or her practice with a person other than a solicitor.
- (2) Subsection (1) does not apply to a solicitor to the extent that he or she shares the receipts from the practice with—
  - (a) a person with whom he or she formerly carried on practice in partnership; or
  - (b) a dependant or legal personal representative of a person referred to in paragraph (a); or
  - (c) a person who carries on practice in a State or another Territory and, in the course of his or her practice, performs work of a professional nature as the agent of the solicitor; or
  - (d) a person who carries on practice in a State or another Territory and for whom the solicitor, in the course of his or her practice, performs work of a professional nature as the agent of that person.

### 197    **Employment of persons who have ceased to be legal practitioners**

Except with the permission of the council, a solicitor shall not employ a person in connection with his or her practice as a solicitor if he or she knows that the name of that person has been removed, otherwise than at his or her own request, from—

- (a) the roll of legal practitioners; or
- (b) the register of practitioners kept under the *Judiciary Act 1903* (Cwlth), section 55C; or

- (c) the roll or register of legal practitioners (however described) of the Supreme Court of a State, another Territory or of the High Court of New Zealand.

### **198 Permission for employment of certain persons**

- (1) The council may, by instrument in writing, grant permission, for such a period and subject to such conditions as the council thinks fit, for the employment by a solicitor of—

- (a) a person with respect to whom a direction under section 59 (1) is in force; or
- (b) a person of the kind referred to in section 197.

- (2) A person—

- (a) with respect to whom a direction under section 59 (1) is in force; or
- (b) of the kind referred to in section 197;

may, within 21 days of the council's granting or refusing to grant permission in respect of the person under subsection (1), or within such further time as the court, on an application made before or after the expiration of that period, allows, appeal to the court from a decision of the council—

- (c) refusing to grant permission under subsection (1) in respect of the person; or
  - (d) granting permission subject to conditions.
- (3) The law society shall be the respondent to an appeal under this section.

### **198A Review by tribunal**

Application may be made to the administrative appeals tribunal for review of a decision or determination, as the case may be, of the law society—



- (a) under section 76 (1) to refuse to approve an insurer or to refuse to approve the terms of a policy of professional indemnity insurance; or
- (b) under section 76 (2) (b) to impose conditions on the grant of an approval; or
- (c) under section 76 (2) (c) to vary or revoke an approval; or
- (d) under section 139 (1) to refuse to allow further time within which an application for compensation under part 12 may be accepted; or
- (e) under section 139 (2), where a notice is published under section 138, to refuse to allow further time within which an application for compensation under part 12 may be accepted; or
- (f) under section 141 (1) (a) as to the amount of pecuniary loss in respect of which compensation may be paid to an applicant under part 12; or
- (g) under section 141 (1) (b) that there is no pecuniary loss in respect of which compensation may be paid to an applicant under part 12; or
- (h) under section 145 (3) to refuse to pay compensation out of the fidelity fund to a solicitor; or
- (i) under section 145 (3) as to the amount of compensation paid out of the fidelity fund to a solicitor; or
- (j) under section 146 (1) to refuse to make an interim payment of compensation to an applicant under part 12; or
- (k) under section 146 (1) as to the amount of an interim payment of compensation paid to an applicant under part 12.

### **198B Notification of decisions**

- (1) The law society shall cause notice of a decision or determination referred to in section 198A to be given to the applicant concerned.

- (2) A notice under subsection (1) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **199 Immunity from suit**

- (1) Civil proceedings do not lie against—
- (a) the law society; or
  - (b) a member or employee of the law society; or
  - (c) a person appointed under section 110, 114 or 115;
- for or in respect of an act or thing done in good faith by the society, member, employee or person, as the case may be—
- (d) in the course of the making or investigation of a complaint in respect of the professional behaviour of a legal practitioner or the employment conduct of an employee or former employee of a solicitor; or
  - (e) otherwise in the exercise of its or his or her powers, or the performance of its or his or her duties or functions, under this Act or any other law of the ACT.
- (2) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by a legal practitioner, or a partner or employee of a solicitor, by reason of any matter arising out of the making or investigation of a complaint referred to in subsection (1) (d).

### **200 Unclaimed moneys**

- (1) Where any trust moneys held, or other moneys controlled, by a solicitor have become unclaimed moneys, the solicitor shall, within 1 month after those moneys become unclaimed moneys, pay those moneys to the ACT by payment to the chief executive.
- (2) Trust moneys held, or other moneys controlled, by a solicitor are unclaimed moneys for this section if—

- (a) the trust moneys have been held or other moneys controlled, whether before or after the commencement of this Act, by the solicitor for a period of not less than 6 years, and during that period, the solicitor has had no knowledge of the existence or the address of the person on whose behalf those moneys are held or controlled, as the case may be; or
  - (b) the person has refused to accept payment of those moneys when tender of payment has been made or, in the case of controlled other moneys, to resume control of those moneys when requested.
- (3) A person who claims to be entitled to any moneys that have been paid to the ACT under subsection (1) may apply to the court for an order under this subsection declaring the person to be so entitled and, if the court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.
- (4) Upon receipt by the Attorney-General of an office copy of an order under subsection (3), the ACT shall pay to the person in whose favour the order was made an amount equal to the amount specified in the order.

## **201 Fines to be paid into fidelity fund**

- (1) A fine imposed on a person by the professional conduct board or by the court under part 8 shall be paid to the law society.
- (2) A fine paid to the law society in accordance with subsection (1) shall be paid by the law society into the fidelity fund.

## **202 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Schedule 1

(see s 17)

### Oath

I, A.B., do swear that I will well and honestly conduct myself in the practice of law as a legal practitioner of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

So help me God!

### Affirmation

I, A.B., do solemnly and sincerely affirm and declare that I will well and honestly conduct myself in the practice of law as a legal practitioner of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

## 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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Legal Practitioners Ordinance 1970* No 43 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Legal Practitioners Act 1970 No 43**

notified 27 November 1970

commenced 14 December 1970

as amended by

##### **Legal Practitioners Ordinance (No 3) 1970 No 51**

notified 30 December 1970

commenced 30 December 1970

##### **Legal Practitioners Ordinance 1971 No 9**

notified 4 March 1971

commenced 4 March 1971

##### **Legal Practitioners Ordinance 1972 No 4**

notified 10 February 1972

commenced 10 February 1972

##### **Legal Practitioners Ordinance 1973 No 2**

notified 1 February 1973

commenced 1 February 1973

##### **Legal Practitioners Ordinance 1974 No 5**

notified 26 March 1974

commenced 26 March 1974

**Legal Practitioners Ordinance 1975 No 1**

notified 9 January 1975  
commenced 9 January 1975

**Legal Practitioners Ordinance (No 2) 1975 No 9**

notified 7 April 1975  
commenced 7 April 1975

**Legal Practitioners Ordinance (No 3) 1975 No 22**

notified 25 August 1975  
commenced 25 August 1975

**Legal Practitioners Ordinance (No 4) 1975 No 45**

notified 23 December 1975  
commenced 23 December 1975

**Legal Practitioners (Amendment) Ordinance 1976 No 28**

notified 29 June 1976  
commenced 29 June 1976

**Legal Practitioners (Amendment) Ordinance (No 2) 1976 No 68**

notified 22 December 1976  
commenced 22 December 1976

**Legal Practitioners (Amendment) Ordinance 1977 No 20**

notified 24 June 1977  
commenced 24 June 1977

**Legal Practitioners (Amendment) Ordinance (No 2) 1977 No 55**

notified 29 September 1977  
commenced 29 September 1977

**Legal Practitioners (Amendment) Ordinance (No 3) 1977 No 62**

notified 24 November 1977  
commenced 24 November 1977

**Legal Practitioners (Amendment) Ordinance 1978 No 8**

notified 21 February 1978  
commenced 21 February 1978

**Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

## Endnotes

3 Legislation history

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**Legal Practitioners (Amendment) Ordinance 1979 No 20**

notified 26 July 1979  
commenced 26 July 1979

**Legal Practitioners (Amendment) Ordinance (No 2) 1979 No 40**

notified 18 December 1979  
commenced 18 December 1979

**Legal Practitioners (Amendment) Ordinance 1980 No 16**

notified 30 June 1980  
commenced 30 June 1980

**Ordinances Revision (Companies Amendments) Ordinance 1982 No 38**

notified 30 June 1982  
commenced 1 July 1982

**Legal Practitioners (Amendment) Ordinance 1983 No 61**

notified 30 December 1983  
commenced 30 December 1983

**Legal Practitioners (Amendment) Ordinance (No 2) 1983 No 62**

notified 30 December 1983  
commenced 1 August 1983

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9**

notified 8 March 1985  
commenced 28 October 1985 (Cwlth Gaz 1985 No G42)

**Legal Practitioners (Amendment) Ordinance 1985 No 29**

notified 6 August 1985  
commenced 6 August 1985

**Legal Practitioners (Amendment) Ordinance 1986 No 7**

notified 9 May 1986  
commenced 9 May 1986

**Legal Practitioners (Amendment) Ordinance (No 2) 1986 No 79**

notified 9 December 1986  
commenced 9 December 1986



**Legal Practitioners (Amendment) Ordinance (No 3) 1986 No 82**

notified 22 December 1986

s 10 commenced 1 March 1987

remainder commenced 22 December 1986

**Legal Practitioners (Amendment) Ordinance 1987 No 21**

notified 15 June 1987

commenced 15 June 1987

**Legal Practitioners (Amendment) Ordinance 1988 No 52**

notified 10 August 1988

commenced 10 August 1988

**Government Solicitor Ordinance 1989 No 36 sch**

notified 10 May 1989

s 1, s 2 commenced 10 May 1989

sch commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

remainder commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

**Legal Practitioners (Amendment) Ordinance 1990 No 3**

notified 23 May 1990

commenced 23 May 1990

**Self-Government (Consequential Amendments) Ordinance 1990 No 5 sch 1, notes**

notified 27 June 1990

s 1, s 2 commenced 27 June 1990 (s 2 (1))

sch 1, notes commenced 1 July 1990 (s 2 (2))

**Legal Practitioners (Amendment) Ordinance (No 2) 1990 No 11**

notified 4 July 1990

commenced 4 July 1990

## Endnotes

3 Legislation history

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### **Legislation after becoming ACT enactment**

#### **Legal Practitioners (Amendment) Act 1991 No 37**

notified 20 September 1991 (Gaz 1991 No S95)  
ss 1-3, 5, 14 and 15 commenced 20 September 1991 (s 2 (1))  
remainder commenced 10 October 1991 (s 2 (2) and Gaz 1991 No S113)

#### **Legal Practitioners (Amendment) Act (No 2) 1991 No 60**

notified 29 October 1991 (Gaz 1991 No S117)  
commenced 29 October 1991 (s 2)

#### **Legal Practitioners (Amendment) Act (No 3) 1991 No 92 (as am by 1993 No 1 sch 1)**

notified 24 December 1991 (Gaz 1991 No S155)  
commenced 24 December 1991

#### **Law Officer Act 1992 No 54 s 7**

notified 25 September 1992 (Gaz 1992 No S162)  
commenced 25 September 1992

#### **Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
commenced 17 December 1993 (s 2)

#### **Legal Practitioners (Amendment) Act 1993 No 94**

notified 24 December 1993 (Gaz 1993 No S267)  
commenced 24 December 1993 (s 2)

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 52**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 52 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Legal Practitioners (Amendment) Act 1994 No 76**

notified 23 November 1994 (Gaz 1994 No S247)  
commenced 23 November 1994 (s 2)

#### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

**Legal Practitioners (Amendment) Act 1995 No 42**

notified 7 November 1995 (Gaz 1995 No S274)  
commenced 7 November 1995 (s 2)

**Legal Practitioners (Amendment) Act 1996 No 2**

notified 12 March 1996 (Gaz 1996 No S35)  
commenced 12 March 1996 (s 2)

**Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 15**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Legal Practitioners (Amendment) Act (No 2) 1996 No 43**

notified 9 September 1996 (Gaz 1996 No S231)  
commenced 9 September 1996 (s 2)

**Legal Practitioners (Amendment) Act 1997 No 26**

notified 25 June 1997 (Gaz 1997 No S175)  
s 1, s 2 commenced 25 June 1997 (s 2 (1))  
remainder (ss 3-8) commenced 1 July 1997 (s 2 (2))

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

**Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

**Legal Practitioners (Amendment) Act (No 2) 1997 No 89**

notified 1 December 1997 (Gaz 1997 No S380)  
commenced 1 December 1997 (s 2)

**Legal Practitioners (Amendment) Act (No 3) 1997 No 95**

notified 1 December 1997 (Gaz 1997 No S380)  
ss 1-3 commenced 1 December 1997 (s 2 (1))  
s 39 taken to have commenced 23 September 1997  
remainder (ss 4-21, sch) commenced 1 June 1998 (s 2 (4))

## Endnotes

3 Legislation history

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**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (see Gaz 1998 No 49)

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 219**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 219 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.33**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2002 No 27 pt 7**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 7 commenced 10 September 2002 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 taken to have commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal  
(Consequential Amendments) Act 1997 No 41.

**Justice and Community Safety Legislation Amendment Act 2003 A2003-2 pt 12**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 12 commenced 31 March 2003 (s 2 (2))

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.22**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.22 commenced 28 March 2003 (s 2)

## 4 Amendment history

### Commencement

s 2 om R6 LRA

### Definitions for Act

s 3 orig s 3 om 1978 No 46  
 (prev s 5) sub 1972 No 4  
 renum 1993 No 94 s 44  
 def **admission board** ins 1993 No 94 sch  
 sub 1997 No 95 s 4  
 def **authorised officer** ins 1991 No 37 s 4  
 def **barrister and solicitor** am 1997 No 26 s 4  
 om 1997 No 95 s 4  
 def **Chief Judge** ins 1979 No 20 s 3  
 om 1986 No 82 s 4  
 def **Chief Justice** ins 1986 No 82 s 4  
 am 1993 No 91 sch 3  
 om 1993 No 93 sch  
 def **control** ins 1996 No 2 s 4  
 def **controlled moneys** ins 1994 No 76 s 4  
 sub 1996 No 2 s 4  
 def **council** ins 1993 No 94 s 4  
 def **court** ins 1997 No 95 s 4  
 def **Director** ins 1975 No 22 s 3 (but see 1975 No 9 s 3)  
 om 1986 No 82 s 4  
 def **fidelity fund** ins 1993 No 94 sch  
 def **government law office** ins 1989 No 36 sch  
 om 1991 No 60 s 4  
 def **indemnity fund** ins 1997 No 95 s 4  
 def **law society** ins 1993 No 94 sch  
 def **legal practitioner** ins 1997 No 95 s 4  
 def **Mutual Recognition Act** ins 1997 No 95 s 4  
 def **practising certificate** ins 1997 No 26 s 4  
 def **prescribed person** ins 1986 No 82 s 4  
 om 1993 No 94 s 4  
 def **professional conduct board** ins 1993 No 94 s 4  
 def **professional indemnity insurance** ins 1997 No 95 s 4  
 def **registrar** ins 1993 No 94 sch  
 def **relevant administrative unit** ins 1991 No 60 s 4  
 am 1994 No 38 sch 1 pt 52  
 om 1994 No 76 s 4  
 def **roll of barristers and solicitors** ins 1993 No 94 sch  
 om 1997 No 95 s 4  
 def **roll of legal practitioners** ins 1997 No 95 s 4  
 def **rules of court** ins 1991 No 37 s 4  
 am 1993 No 91 sch 3

## Endnotes

### 4 Amendment history

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def **statutory interest account** ins 1991 No 92 s 3  
def **the admission board** om 1993 No 94 sch  
def **the court** om 1993 No 94 sch  
def **the disciplinary committee** am 1991 No 92 s 3  
om 1993 No 94 s 4  
def **the fidelity fund** om 1993 No 94 sch  
def **the judge** om 1979 No 20 s 3  
def **the law society** om 1993 No 94 sch  
def **the registrar** om 1993 No 94 sch  
def **the roll of barristers and solicitors** om 1993 No 94 sch  
def **third party payment** ins 1996 No 2 s 4  
def **Trans-Tasman Mutual Recognition Act** ins 1999 No 66  
sch 3  
def **trust moneys** am 1993 No 94 sch; 1994 No 76 s 4  
def **unrestricted practising certificate** am 1993 No 94 sch;  
1997 No 95 sch

#### **The Law Society**

pt 2 hdg (prev pt 1A hdg) ins 1972 No 4  
renum 1993 No 94 s 44

#### **Incorporation of law society**

s 4 orig s 4 sub 1972 No 4  
om 1975 No 9  
(prev s 6) am 1970 No 51  
sub 1972 No 4  
am 1985 No 29; 1990 No 5; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 26; 1997 No 95; ss renum R7 LA

#### **Her Majesty's counsel**

pt 3 hdg (prev pt 1B hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
om 1995 No 42  
ins 1995 No 42

#### **Existing appointments**

s 5 (prev s 6A) ins 1972 No 4  
am 1986 No 82; 1988 No 52; 1990 No 5; 1991 No 37; 1993 No  
94  
renum 1993 No 94 s 44  
sub 1995 No 42

#### **Abrogation of royal prerogative**

s 6 (prev s 6B) ins 1972 No 4  
am 1991 No 92; 1992 No 54; 1993 No 94  
renum 1993 No 94 s 44  
sub 1995 No 42  
am 1997 No 95

**Precedence of barristers and solicitors**

pt 4 hdg orig pt 4 hdg om 1986 No 82  
(prev pt 1C hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
om 1995 No 42

**The director of legal aid**

pt 1D hdg ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Director of legal aid**

s 6C ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Functions of director**

s 6D ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Appointment of persons to assist director**

s 6E ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Rights of director and staff**

s 6F ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Director may act for person having interest adverse to Australia**

s 6G ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Director may advertise**

s 6H ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Certain provisions not to apply to director**

s 6J ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Certain laws to apply as if persons appointed under s 6E were employees of director**

s 6K ins 1975 No 22 (but see 1975 No 9)  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Expiration of part**

s 6L ins 1975 No 22  
am 1975 No 45; 1976 No 28; 1976 No 68; 1977 No 20; 1977 No  
55; 1977 No 62; 1978 No 8  
om 1978 No 8 (see also s 6L as am by 1978 No 8 s 3)

**Admission board**

pt 5 hdg (prev pt 2 hdg) renum 1993 No 94 s 44

## Endnotes

### 4 Amendment history

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#### **Admission board**

s 7 am 1972 No 4; 1973 No 2; 1979 No 20; 1986 No 82; 1991 No 92; 1993 No 94; 1997 No 95

#### **Vacation of the office of members of admission board**

s 8 am 1979 No 20; 1991 No 92; 1993 No 94; 1997 No 95

#### **Meetings of admission board**

s 9 sub 1979 No 20  
am 1990 No 5; 1993 No 94

#### **Legal protection for members**

s 10 (prev s 9A) ins 1993 No 94  
renum 1993 No 94 s 44

#### **Admission or enrolment of legal practitioners**

pt 6 hdg sub 1997 No 95

#### **Application for admission or enrolment**

s 11 (prev s 10) am 1975 No 1; 1979 No 40; 1983 No 61; 1986 No 79; 1986 No 82; 1991 No 37; 1993 No 91; 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95  
am 1999 No 66 sch 3; ss renum R7 LA

#### **Enrolment of persons entitled to registration under Mutual Recognition Act**

s 12 (prev s 10A) ins 1972 No 4  
sub 1991 No 37  
renum 1993 No 94 s 44  
sub 1997 No 95  
am 1999 No 66 sch 3

#### **Copies of applications to admission board and law society**

s 13 (prev s 11) am 1983 No 61; 1986 No 82  
sub 1991 No 37  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

#### **Report by admission board—other cases**

s 14 (prev s 12) am 1972 No 4  
sub 1986 No 82  
am 1991 No 37  
renum 1993 No 94 s 44  
am 1997 No 95



**Response to applications by law society**

s 15 (prev s 12A) ins 1972 No 4  
am 1983 No 61  
sub 1991 No 37  
renum 1993 No 94 s 44  
sub 1997 No 95  
am 1999 No 66 sch 3

**Effect of bankruptcy on unrestricted practising certificate**

s 15H ins 1972 No 4  
am 1991 No 92  
om 1993 No 94

**Enrolment of New Zealand practitioners—action by registrar and law society**

s 16 orig s 16 am 1972 No 4; 1979 No 40  
om 1986 No 82  
(prev s 13) am 1972 No 4; 1991 No 37; 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95  
om 1999 No 66 sch 3

**Enrolment of practitioners under Mutual Recognition Act or Trans-Tasman Mutual Recognition Act—action by registrar and law society**

s 16A hdg am 1999 No 66 sch 3  
s 16A ins 1997 No 95  
am 1999 No 66 sch 3

**Admission or entitlement to enrolment or registration**

s 16B ins 1997 No 95  
am 1999 No 66 sch 3; ss renum R7 LA

**Roll of legal practitioners**

s 16C ins 1997 No 95  
am 1999 No 66 sch 3

**Entry of names on roll**

s 16D ins 1997 No 95  
am 1999 No 66 sch 3

**Oath or affirmation**

s 17 orig s 17 om 1986 No 82  
(prev s 14) am 1983 No 61  
sub 1991 No 37  
renum 1993 No 94 s 44  
am 1997 No 95

**Rules of court about enrolment**

s 18 orig s 18 om 1986 No 82  
(prev s 14A) ins 1991 No 37  
renum 1993 No 94 s 44  
am 1997 No 95

## Endnotes

### 4 Amendment history

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#### **Signing roll**

s 19 orig s 19 am 1983 No 61  
om 1986 No 82  
(prev s 15) am 1991 No 37  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Right to practise**

s 20 orig s 20 om 1986 No 82  
(prev s 15A) ins 1972 No 4  
am 1991 No 37  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Solicitors' practising certificates**

pt 7 hdg (prev pt 3A hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
sub 1997 No 95

#### **Preliminary**

div 7.1 hdg (prev pt 3A div 1 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 1 hdg) renum R7 LA

#### **Meaning of *public employment***

s 21 orig s 21 om 1986 No 82  
(prev s 15B) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 26  
sub 1997 No 95

#### **Requirement**

div 7.2 hdg (prev pt 3A div 2 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 2 hdg) renum R7 LA

#### **Practising certificates required**

s 22 orig s 22 om 1986 No 82  
(prev s 15C) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

#### **Application**

div 7.3 hdg (prev pt 3A div 3 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 3 hdg) renum R7 LA

**Restrictions on persons who may apply**

s 23 orig s 23 om 1986 No 82  
(prev s 15D) ins 1972 No 4  
am 1980 No 16 s 4; 1987 No 21; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1996 No 43  
sub 1997 No 95

**Issue of unrestricted practising certificates to certain persons**

s 23A ins 1996 No 43  
om 1997 No 95

**Applications for practising certificates**

s 24 orig s 24 om 1986 No 82  
(prev s 15E) ins 1972 No 4  
am 1974 No 5; 1980 No 16 s 4; 1986 No 82; 1989 No 36; 1991  
No 60; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
sub 1994 No 76; 1997 No 95  
am 2001 No 44 amdt 1.2618, amdt 1.2619

**Issue at discretion of law society**

s 24A ins 1994 No 76  
om 1997 No 95

**Issue to certain New Zealand legal practitioners**

s 24B ins 1994 No 76  
om 1997 No 95

**Issue**

div 7.4 hdg (prev pt 3A div 4 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 4 hdg) renum R7 LA

**Issuing authority**

s 25 (prev s 15F) ins 1972 No 4  
am 1974 No 5; 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Issue of certificates—generally**

s 26 (prev s 15G) ins 1972 No 4  
sub 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95  
am 2002 No 27 s 21

**Issue of unrestricted practising certificates**

s 27 (prev s 15GA) ins 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

## Endnotes

### 4 Amendment history

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**Issue of restricted practising certificates**

s 28 (prev s15GB) ins 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Issue of practising certificates to practitioners enrolled under Mutual Recognition Act or Trans-Tasman Mutual Recognition Act**

s 29 hdg am 1999 No 66 sch 3  
s 29 (prev s 15J) ins 1972 No 4  
am 1979 No 20; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1996 No 43  
sub 1997 No 95  
am 1999 No 66 sch 3

**Notice of refusal to issue practising certificates**

s 30 (prev s 15K) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Powers of court relating to issue of practising certificates**

s 31 (prev s 15L) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Application to court by person not qualified under s 27 (1)**

s 32 (prev s 15M) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Issue of certificates conditionally or unconditionally**

s 33 (prev s 15N) ins 1972 No 4  
renum 1993 No 94 s 44  
sub 1997 No 95

**Powers of court relating to conditions on practising certificates**

s 34 (prev s 15NA) ins 1979 No 20  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Surrender**

div 7.5 hdg (prev pt 3A div 5 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 5 hdg) renum R7 LA

**Surrender of practising certificates**

s 35 (prev s 15P) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Suspension and cancellation**

div 7.6 (prev pt 3A div 6 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 6 hdg) renum R7 LA

**Suspension**

s 36 (prev s 15Q) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95  
am 2002 No 27 s 22

**Cancellation**

s 36A ins 1997 No 95

**Notice of cancellation or suspension**

s 36B ins 1997 No 95

**Delivery of cancelled certificate to law society etc**

s 36C ins 1997 No 95

**Powers of court relating to cancellation or suspension of practising certificates**

s 36D ins 1997 No 95

**Miscellaneous**

div 7.7 hdg (prev pt 3A div 7 hdg) ins 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 7 div 7 hdg) renum R7 LA

**Fees for practising certificates**

s 36E ins 1997 No 95

**Date of effect and term of practising certificates**

s 36F ins 1997 No 95

**Register of holders of practising certificates**

s 36G ins 1997 No 95

**Notice of change of circumstances**

s 36H ins 1997 No 95

**Discipline**

pt 8 hdg (prev pt 5 hdg) sub 1972 No 4  
renum 1993 No 94 s 44

## Endnotes

### 4 Amendment history

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#### **Preliminary**

div 8.1 hdg (prev pt 5 div 1A hdg) ins 1993 No 94 s 11  
renum 1993 No 94 s 44  
(prev pt 8 div 1 hdg) renum R7 LA

#### **Definitions for pt 8**

s 37 (prev s 24) ins 1993 No 94 s 11  
renum 1993 No 94 s 44  
def **conference** ins 1993 No 94 s 11  
def **employee** ins 1993 No 94 s 11  
def **inquiry** ins 1993 No 94 s 11  
def **interested party** ins 1993 No 94 s 11  
def **professional misconduct** ins 1993 No 94 s 11  
def **solicitor** ins 1993 No 94 s 11  
def **unsatisfactory employment conduct** ins 1993 No 94 s 11  
def **unsatisfactory professional conduct** ins 1993 No 94 s 11

#### **Professional conduct board**

div 8.2 hdg (prev pt 5 div 1 hdg) sub 1993 No 94  
renum 1993 No 94 s 44  
(prev pt 8 div 2 hdg) renum R7 LA

#### **Establishment and membership**

s 38 (prev s 25) sub 1972 No 4; 1986 No 82  
am 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Payment of remuneration and allowances**

s 39 (prev s 25A) ins 1987 No 21  
am 1990 No 5  
sub 1991 No 92  
am 1993 No 94  
renum 1993 No 94 s 44  
om 1997 No 41 sch 1  
ins 1997 No 95

#### **Secretary to professional conduct board**

s 40 (prev s 26) sub 1972 No 4  
am 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Removal of member of professional conduct board**

s 41 (prev s 27) sub 1972 No 4; 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Meetings**

s 42 (prev s 28) am 1970 No 51  
sub 1972 No 4  
am 1986 No 82; 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44

**Practising certificate may be issued in some circumstances notwithstanding absence of full insurance**

s 42K ins 1980 No 16  
om 1991 No 92

**Conciliation**

div 8.3 hdg (prev pt 5 div 1AA hdg) ins 1993 No 94  
renum 1993 No 94 s 44  
(prev pt 8 div 3 hdg) renum R7 LA

**Convening of conference**

s 43 orig s 43 om 1972 No 4  
(prev s 28A) ins 1993 No 94  
renum 1993 No 94 s 44

**Presence at conference**

s 44 (prev s 28B) ins 1993 No 94  
renum 1993 No 94 s 44

**Confidentiality**

s 45 (prev s 28C) ins 1993 No 94  
renum 1993 No 94 s 44

**Resolution by agreement**

s 46 (prev s 28D) ins 1993 No 94  
renum 1993 No 94 s 44

**Failure to reach agreement**

s 47 (prev s 28E) ins 1993 No 94  
renum 1993 No 94 s 44

**Failure to attend conference**

s 48 (prev s 28F) ins 1993 No 94  
renum 1993 No 94 s 44

**Agreement no bar**

s 49 (prev s 28G) ins 1993 No 94  
renum 1993 No 94 s 44

**Complaints**

div 8.4 hdg (prev pt 5 div 1AB hdg) ins 1993 No 94  
renum 1993 No 94 s 44  
(prev pt 8 div 4 hdg) renum R7 LA

## Endnotes

### 4 Amendment history

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#### **Complaints**

s 50 (prev s 29) sub 1972 No 4  
am 1986 No 7; 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

#### **Inquiries**

div 8.5 hdg (prev pt 5 div 2 hdg) ins 1993 No 94  
renum 1993 No 94 s 44  
(prev pt 8 div 5 hdg) renum R7 LA

#### **Inquiries**

s 51 (prev s 30) sub 1972 No 4  
am 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81

#### **Professional conduct board to fix date and notify persons concerned**

s 52 (prev s 31) sub 1972 No 4  
am 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

#### **Procedure**

s 53 (prev s 31A) ins 1993 No 94  
renum 1993 No 94 s 44

#### **Summons to witness**

s 54 (prev s 32) sub 1972 No 4  
am 1986 No 82; 1990 No 5; 1991 No 92  
sub 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch

#### **Power to examine on oath etc**

s 55 (prev s 33) sub 1972 No 4  
am 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44

#### **Record of proceedings at inquiry**

s 56 (prev s 34) sub 1972 No 4  
am 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

#### **Witnesses at inquiries**

s 57 (prev s 35) sub 1972 No 4  
am 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch



**Disciplinary powers of board**

s 58 (prev s 36) sub 1972 No 4  
am 1983 No 61; 1986 No 82; 1990 No 5  
sub 1993 No 94  
renum 1993 No 94 s 44

**Power of board on inquiry about conduct of employee**

s 59 (prev s 36A) ins 1993 No 94  
renum 1993 No 94 s 44

**Dismissal of complaint**

s 60 (prev s 36B) ins 1993 No 94  
renum 1993 No 94 s 44

**Costs**

s 61 (prev s 36C) ins 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76

**Professional conduct board may report to court**

s 62 (prev s 37) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Protection of member of professional conduct board**

s 63 (prev s 38) sub 1972 No 4  
am 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Fees and allowances to witnesses**

s 64 (prev s 39) sub 1972 No 4  
am 1990 No 5; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Professional conduct board may inspect books etc**

s 65 (prev s 40) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44

**Publication of board's proceedings**

s 66 (prev s 40A) ins 1979 No 20  
sub 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1994 No 81 sch; 1997 No 95

**Proceedings before Supreme Court**

div 8.6 hdg (prev pt 5 div 3 hdg) renum 1993 No 94 s 44  
(prev pt 8 div 6 hdg) renum R7 LA

## Endnotes

### 4 Amendment history

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#### **Disciplinary powers of court**

s 67 (prev s 41) sub 1972 No 4  
am 1983 No 61; 1986 No 82  
sub 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1994 No 81 sch; 1997 No 95

#### **Costs**

s 68 (prev s 41A) ins 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Appeal against decision of professional conduct board**

s 69 orig s 69 om 1972 No 4  
(prev s 42) sub 1972 No 4  
am 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Admission of evidence before board**

s 70 (prev s 42A) ins 1972 No 4  
sub 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Suspension from practice**

s 71 (prev s 42B) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Removal from roll of legal practitioners**

s 72 (prev s 42C) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **Other jurisdiction and power of court not affected**

s 73 (prev s 42D) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

#### **General**

div 8.7 hdg (prev pt 5 div 4 hdg) renum 1993 No 94 s 44  
(prev pt 8 div 6 hdg) renum R7 LA

**Failure to comply with, or contravention of, certain laws etc**

s 74 (prev s 42E) ins 1972 No 4  
am 1986 No 82  
sub 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Professional indemnity insurance**

pt 9 hdg (prev pt 6 hdg) om 1972 No 4  
ins 1980 No 16  
renum 1993 No 94 s 44

**Definitions for pt 9**

s 75 (prev s 42F) ins 1980 No 16 s 6  
renum 1993 No 94 s 44  
def **insurer** ins 1980 No 16 s 6  
def **insurance business** ins 1980 No 16 s 6  
def **solicitor** ins 1980 No 16 s 6  
am 1993 No 94 sch

**Application of s 76 and s 77**

s 75A ins 1996 No 43  
om 1997 No 95

**Approval of indemnity insurance**

s 76 (prev s 42G) ins 1980 No 16 s 6  
renum 1993 No 94 s 44  
sub 1997 No 95

**Indemnity insurance taken to be approved**

s 77 (prev s 42H) ins 1980 No 16 s 6  
am 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

**Maintenance of indemnity insurance**

s 78 (prev s 42J) ins 1980 No 16 s 6  
renum 1993 No 94 s 44  
sub 1997 No 95

**Agreements and arrangements relating to provision of insurance**

s 79 (prev s 42L) ins 1980 No 16 s 6  
am 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95; 2001 No 56 amdt 3.443

**Furnishing of information**

s 80 (prev s 42M) ins 1980 No 16 s 6  
am 1990 No 5; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 95; 1998 No 54 sch

## Endnotes

4 Amendment history

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### Appeals to Supreme Court

s 81 (prev s 42N) ins 1980 No 16 s 6  
renum 1993 No 94 s 44  
am 1994 No 76  
om 1997 No 95

### Indemnity funds

pt 10 hdg (prev pt 6A hdg) ins 1987 No 21 s 6  
renum 1993 No 94 s 44  
om 1997 No 95  
ins 1997 No 95

### Meaning of *indemnity fund*

s 82 (prev s 42O) ins 1987 No 21  
am 1991 No 92  
renum 1993 No 94 s 44  
sub 1997 No 95

### Approval of funds

s 83 (prev s 42P) ins 1987 No 21  
am 1991 No 92  
renum 1993 No 94 s 44  
am 1996 No 43  
sub 1997 No 95

### Failure to pay levy

s 84 (prev s 42Q) ins 1987 No 21  
am 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
om 1997 No 95

### Appeals to Supreme Court

s 85 (prev s 42R) ins 1987 No 21  
renum 1993 No 94 s 44  
om 1997 No 95

### Trust moneys and controlled moneys

pt 11 hdg (prev pt 7 hdg) renum 1993 No 94 s 44  
am 1996 No 2

### Preliminary

div 11.1 hdg (prev pt 7 div 1 hdg) renum 1993 No 94 s 44  
(prev pt 11 div 1 hdg) renum R7 LA

### Definitions for pt 11

s 86 (prev s 44) renum 1993 No 94 s 44  
def **banking day** ins 1997 No 95 s 13  
def **solicitor** am 1993 No 94 sch  
def **trust bank account** sub 1997 No 88 sch  
def **year** am 1993 No 94 sch

**Moneys received by solicitor**

s 87 (prev s 45) sub 1972 No 4  
renum 1993 No 94 s 44  
(prev s 88) reloc and renum 1994 No 76  
am 1996 No 2

**Controlled moneys**

s 87A ins 1994 No 76  
om 1996 No 2

**Joint and several responsibility of partners**

s 88 (prev s 45A) ins 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
(prev s 89) reloc and renum 1994 No 76

pt 11 div 2 hdg (prev pt 7 div 1 hdg) renum 1993 No 94 s 44  
om 1994 No 76

**Application pf pt 11**

s 89 (prev s 46) am 1972 No 4; 1993 No 94  
renum 1993 No 94 s 44  
(prev s 87) reloc and renum 1994 No 76

**Trust bank accounts**

div 11.3 hdg (prev pt 7 div 3 hdg) renum 1993 No 94 s 44  
(prev pt 11 div 3 hdg) renum R7 LA

**Trust accounts**

s 90 (prev s 47) am 1979 No 20; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95; par renum R7 LA

**Payment into trust bank account**

s 91 orig s 91 om 1972 No 4  
(prev s 48) sub 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95  
sub A2003-2 s 60

**Special trust accounts**

s 92 (prev s 49) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Instructions about certain trust moneys**

s 93 (prev s 50) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

## Endnotes

4 Amendment history

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### **Payments from trust bank accounts**

s 94 (prev s 51) am 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; A2003-2 s 61

### **Notification to law society of details of trust accounts**

s 95 (prev s 52) am 1972 No 4; 1986 No 82; 1990 No 11  
renum 1993 No 94 s 44

### **Protection of trust moneys**

s 96 (prev s 53) renum 1993 No 94 s 44

### **Provision applying to financial institutions**

s 97 (prev s 54) renum 1993 No 94 s 44  
am 1997 No 88 sch

### **Solicitors' records**

div 11.4 hdg (prev pt 7 div 4 hdg) renum 1993 No 94 s 44  
(prev pt 11 div 4 hdg) renum R7 LA

### **Accounting records**

s 98 (prev s 55) am 1972 No 4; 1979 No 20; 1993 No 94  
renum 1993 No 94 s 44

### **Receipts for trust moneys**

s 99 (prev s 56) am 1983 No 61; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 88 sch  
sub 1997 No 95

### **Records of controlled moneys**

s 99A ins 1996 No 2

### **Monthly statements relating to trust moneys**

s 99B ins 1997 No 95

### **Statements relating to trust moneys and controlled moneys at end of each quarter**

s 100 (prev s 57) am 1990 No 11  
renum 1993 No 94 s 44  
am 1996 No 2

### **Audit**

div 11.5 hdg (prev pt 7 div 5 hdg) renum 1993 No 94 s 44  
(prev pt 11 div 5 hdg) renum R7 LA

### **Audit of trust accounts and controlled moneys**

s 101 (prev s 58) am 1972 No 4  
sub 1979 No 20  
am 1983 No 61; 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1996 No 2

**Auditors' qualifications**

s 102 (prev s 59) am 1979 No 20; 1982 No 38; 1990 No 11; 1991 No 92  
renum 1993 No 94 s 44  
par renum R7 LA  
am A2003-14 amdt 1.72, amdt 1.73

**Document etc for auditor**

s 103 (prev s 60) am 1993 No 94  
renum 1993 No 94 s 44  
am 1996 No 2; 1997 No 88 sch; 1998 No 54 sch

**Auditors' reports**

s 104 (prev s 61) am 1972 No 4; 1983 No 61; 1986 No 82; 1990 No 11; 1991 No 92  
renum 1993 No 94 s 44  
am 1996 No 2

**Interim auditors' reports**

s 105 (prev s 62) am 1972 No 4; 1990 No 11; 1991 No 92  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1996 No 2

**Late report by auditor**

s 106 (prev s 63) am 1972 No 4; 1978 No 46; 1979 No 20; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1996 No 2

**Statutory declaration relating to trust moneys and controlled moneys**

s 107 (prev s 64) am 1972 No 4; 1993 No 94  
renum 1993 No 94 s 44  
am 1996 No 2

**Secrecy**

s 108 (prev s 65) sub 1972 No 4; 1979 No 20  
am 1990 No 5; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 95

**Legal protection for auditor**

s 109 (prev s 65A) ins 1993 No 94  
renum 1993 No 94 s 44

**Examination of solicitors' records**

div 11.6 hdg (prev pt 7 div 6 hdg) renum 1993 No 94 s 44  
(prev pt 11 div 6 hdg) renum R7 LA

## Endnotes

### 4 Amendment history

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#### **Appointment of examiner**

s 110 (prev s 66) am 1972 No 4; 1979 No 20; 1982 No 38; 1983 No 61; 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1996 No 2

#### **Production of books etc**

s 111 (prev s 67) am 1972 No 4; 1979 No 20; 1983 No 61; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 88 sch

#### **Secrecy**

s 112 (prev s 68) sub 1972 No 4; 1979 No 20  
am 1990 No 5; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 95

#### **Investigation of affairs of solicitors**

div 11.7 hdg (prev pt 7 div 6A hdg) ins 1993 No 94 s 31  
renum 1993 No 94 s 44  
(prev pt 11 div 7 hdg) renum R7 LA

#### **Definitions for div 11.7**

s 113 (prev s 69) ins 1993 No 94 s 31  
renum 1993 No 94 s 44  
am A2003-14 amdt 1.74, amdt 1.75  
def **accountant** ins 1993 No 94 s 31  
def **affairs** ins 1993 No 94 s 31  
def **associate** ins 1993 No 94 s 31  
def **record** ins 1993 No 94 s 31  
def **solicitor** ins 1993 No 94 s 31

#### **Appointment of investigator**

s 114 (prev s 69A) ins 1993 No 94 s 31  
renum 1993 No 94 s 44

#### **Investigator's assistant**

s 115 (prev s 69B) ins 1993 No 94 s 31  
renum 1993 No 94 s 44

#### **Obligation to comply with investigator's requirements**

s 116 (prev s 69C) ins 1993 No 94 s 31  
renum 1993 No 94 s 44  
am 1998 No 54 sch

#### **Obstruction etc of investigator**

s 117 (prev s 69D) ins 1993 No 94 s 31  
renum 1993 No 94 s 44  
am 1998 No 54 sch



**Professional misconduct**

s 118 (prev s 69E) ins 1993 No 94 s 31  
renum 1993 No 94 s 44

**Report of investigation**

s 119 (prev s 69F) ins 1993 No 94 s 31  
renum 1993 No 94 s 44

**Costs of investigation**

s 120 (prev s 69G) ins 1993 No 94 s 31  
renum 1993 No 94 s 44

**Secrecy**

s 121 (prev s 69H) ins 1993 No 94 s 31  
renum 1993 No 94 s 44  
am 1998 No 54 sch

**Deposits with law society**

div 11.8 hdg (prev pt 7 div 7 hdg) sub 1972 No 4  
renum 1993 No 94 s 44  
(prev pt 11 div 8 hdg) renum R7 LA

**Interpretation for div 11.8**

s 122 (prev s 70) am 1971 No 9; 1972 No 4; 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

**Solicitor to deposit portion of trust moneys with law society**

s 123 (prev s 71) am 1971 No 9; 1972 No 4; 1979 No 20; 1983 No 61;  
1993 No 94  
renum 1993 No 94 s 44

**Repayment of deposits**

s 124 (prev s 72) am 1972 No 4; 1978 No 46; 1986 No 82; 1993 No  
94  
renum 1993 No 94 s 44

**Obligation to deposit subject to availability of trust funds**

s 125 (prev s 73) am 1993 No 94  
renum 1993 No 94 s 44

**Variation of notional amount by law society**

s 126 orig s 126 om 1991 No 92  
(prev s 74) sub 1972 No 4; 1991 No 92  
am 1993 No 94  
renum 1993 No 94 s 44

**Statutory deposits trust account**

s 127 (prev s 74AA) ins 1990 No 11  
renum 1993 No 94 s 44  
am 1997 No 88 sch

## Endnotes

### 4 Amendment history

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#### **Statutory interest account**

s 128 (prev s 74A) ins 1972 No 4  
am 1979 No 20; 1982 No 38; 1983 No 61; 1983 No 62; 1986  
No 82; 1987 No 21; 1990 No 3; 1990 No 5; 1991 No 92; 1993  
No 94  
renum 1993 No 94 s 44  
am 1997 No 88 sch; 1997 No 95; 2001 No 56 amdt 3.443; 2002  
No 27 s 23

#### **Arrangement relating to trust bank account**

s 129 (prev s 74B) ins 1983 No 62  
am 1991 No 92  
renum 1993 No 94 s 44  
am 1997 No 88 sch

#### **Audit of deposits etc**

s 130 (prev s 74C) ins 1983 No 62  
renum 1993 No 94 s 44

#### **Fidelity fund**

pt 12 hdg orig pt 12 hdg om 1991 No 92  
(prev pt 8 hdg) om 1972 No 4  
ins 1972 No 4  
renum 1993 No 94 s 44

#### **General**

div 12.1 hdg (prev pt 8 div 1 hdg) renum 1993 No 94 s 44  
(prev pt 12 div 1 hdg) renum R7 LA

#### **Meaning of *solicitor* in pt 12**

s 131 orig s 131 om 1993 No 94  
(prev s 75) sub 1972 No 4  
am 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44

#### **Fidelity fund**

s 132 orig s 132 om 1972 No 4  
(prev s 76) sub 1972 No 4  
am 1991 No 92 (as am 1993 No 1)  
renum 1993 No 94 s 44  
am 1997 No 88 sch

#### **Investment of fund**

s 133 (prev s 77) sub 1978 No 4  
am 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44  
am 2001 No 56 amdt 3.443

#### **Audit**

s 134 (prev s 78) sub 1972 No 4  
am 1982 No 38; 1991 No 92  
renum 1993 No 94 s 44

**Contributions to fund**

s 135 (prev s 79) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44

**Claims against fidelity fund**

div 12.2 hdg (prev pt 8 div 2 hdg) renum 1993 No 94 s 44  
(prev pt 12 div 2 hdg) renum R7 LA

**Definitions for div 12.2**

s 136 (prev s 79A) ins 1990 No 3 s 4  
am 1991 No 92 s 32; 1993 No 94 sch  
renum 1993 No 94 s 44  
def **failure to account** ins 1990 No 3 s 4  
sub 1991 No 92 s 32  
def **pecuniary loss** ins 1990 No 3 s 4  
am 1993 No 91 sch 3; 1994 No 76 s 16; 1997 No 95 sch

**Persons who may apply for compensation**

s 137 (prev s 80) sub 1972 No 4  
am 1990 No 3  
renum 1993 No 94 s 44

**Calls for claims**

s 138 (prev s 81) sub 1972 No 4  
am 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44

**Time for making applications**

s 139 (prev s 82) sub 1972 No 4  
am 1990 No 3; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44

**Manner of making claims**

s 140 (prev s 83) sub 1972 No 4  
am 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44

**Determination of applications**

s 141 (prev s 84) sub 1972 No 4  
am 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76

**Review of law society's determination**

s 142 (prev s 85) sub 1972 No 4  
am 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44  
om 1994 No 76

## Endnotes

### 4 Amendment history

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#### **Payment of compensation**

s 143 (prev s 86) sub 1972 No 4  
am 1983 No 61; 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76

#### **Subrogation**

s 144 (prev s 87) sub 1972 No 4  
am 1990 No 3  
renum 1993 No 94 s 44

#### **Solicitors' claims**

s 145 (prev s 88) sub 1972 No 4  
am 1990 No 3; 1993 No 94  
renum 1993 No 94 s 44

#### **Interim payments of compensation**

s 146 (prev s 89) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44

#### **Review by tribunal**

s 146A ins 1994 No 76  
om 1997 No 95

#### **Notification of decisions**

s 146B ins 1994 No 76  
om 1997 No 95

#### **Levies**

div 12.3 hdg (prev pt 8 div 3 hdg) renum 1993 No 94 s 44  
(prev pt 12 div 3 hdg) renum R7 LA

#### **Levies to supplement fund**

s 147 (prev s 90) sub 1972 No 4  
am 1983 No 61; 1993 No 94  
renum 1993 No 94 s 44

#### **Mortgage practices and managed investment schemes**

pt 12A hdg ins 2002 No 27 s 24

#### **Preliminary**

div 12A.1 hdg ins 2002 No 27 s 24

#### **Definitions for pt 12A**

s 147A ins 2002 No 27 s 24

#### **Mortgage practices**

div 12A.2 hdg ins 2002 No 27 s 24

#### **Conduct of mortgage practices**

s 147B ins 2002 No 27 s 24

**Nomination of practice as Territory regulated mortgage practice**

s 147C ins 2002 No 27 s 24

**Law society to be notified of Territory regulated mortgages**

s 147D ins 2002 No 27 s 24

**Solicitor to have fidelity cover for regulated mortgages**

s 147E ins 2002 No 27 s 24

**Bar on claims against fidelity fund relating to regulated mortgages**

s 147F ins 2002 No 27 s 24

**Notification of insurance arrangements for regulated mortgages**

s 147G ins 2002 No 27 s 24

**Failure to obtain fidelity insurance for regulated mortgage**

s 147H ins 2002 No 27 s 24

**Managed investment schemes**

div 12A.3 hdg ins 2002 No 27 s 24

**Involvement of solicitors in managed investment schemes**

s 147I ins 2002 No 27 s 24

**Claims against fidelity fund relating to managed investment schemes connected with solicitors**

s 147J ins 2002 No 27 s 24

**Transfer of mortgages to responsible entity**

s 147K ins 2002 No 27 s 24

**Miscellaneous**

div 12A.4 hdg ins 2002 No 27 s 24

**Law society may require information about mortgage practices**

s 147L ins 2002 No 27 s 24

**Indemnity insurance**

s 147M ins 2002 No 27 s 24

**Approved forms**

s 147N ins 2002 No 27 s 24

**Regulations and rules relating to pt 12A**

s 147O ins 2002 No 27 s 24

**Transitional arrangements—pre-existing mortgages**div 12A.5 hdg ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))**Meaning of commencement date**s 147P ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

## Endnotes

4 Amendment history

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### **Part extends to pre-existing mortgages**

s 147Q ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **Requirement to obtain fidelity insurance for pre-existing mortgages**

s 147R ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **No further action to be taken in relation to run-out mortgages**

s 147S ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **Substitution of lender or contributor under run-out mortgage**

s 147T ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **No claims against fidelity fund by substitute lenders**

s 147U ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **Expiry of div 12A.5**

s 147V ins 2002 No 27 s 24  
exp 9 September 2005 (s 147V (1))

### **Appointment of receivers**

pt 13 hdg (prev pt 9 hdg) renum 1993 No 94 s 44

### **Interpretation for pt 13**

s 148 (prev s 92) am 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1996 No 2

### **Appointment of receiver**

s 149 (prev s 93) am 1972 No 4; 1979 No 20; 1990 No 3; 1991 No 92;  
1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

### **Receiver's powers**

s 150 (prev s 94) am 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch

### **Notice to financial institution**

s 151 (prev s 95) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 88 sch

### **Examination of solicitor and other persons about trust moneys and trust property**

s 152 (prev s 96) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Power of court to order delivery of trust property to receiver**

s 153 (prev s 97) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Power of receiver to take delivery of property receivable by solicitor after appointment of receiver**

s 154 (prev s 98) am 1993 No 94  
renum 1993 No 94 s 44

**Right of solicitor, partnership or person to apply to court for order in relation to property**

s 155 (prev s 99) am 1993 No 94  
renum 1993 No 94 s 44

**Liens for costs on property held by receiver**

s 156 (prev s 100) am 1993 No 94  
renum 1993 No 94 s 44

**Receiver to report to court**

s 157 (prev s 101) am 1972 No 4; 1993 No 94  
renum 1993 No 94 s 44

**Power of court to give directions**

s 158 (prev s 102) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Unclaimed moneys**

s 159 (prev s 103) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Termination of receivership**

s 160 (prev s 104) am 1978 No 46; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Remuneration of receiver**

s 161 (prev s 105) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Payments by receiver deemed to be made by solicitor**

s 162 (prev s 106) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

## Endnotes

### 4 Amendment history

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#### **Concealing etc documents**

s 163 (prev s 107) am 1991 No 92  
sub 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch

#### **Reimbursement of receiver**

s 164 (prev s 108) sub 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44

#### **Reimbursement of law society**

s 165 (prev s 108A) ins 1986 No 82  
renum 1993 No 94 s 44

#### **Managers**

pt 14 hdg (prev pt 9A hdg) ins 1993 No 94  
renum 1993 No 94 s 44

#### **Definitions for pt 14**

s 166 (prev s 108B) ins 1993 No 94 s 38  
renum 1993 No 94 s 44  
def **manager** ins 1993 No 94 s 38  
def **solicitor** ins 1993 No 94 s 38  
am 1994 No 76 s 22

#### **Appointment of manager**

s 167 (prev s 108C) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Management under receivership**

s 168 (prev s 108D) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Solicitor as employee**

s 169 (prev s 108E) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Powers of manager**

s 170 (prev s 108F) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Act of manager is act of solicitor**

s 171 (prev s 108G) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Reimbursement for damages**

s 172 (prev s 108H) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

#### **Expenses of management**

s 173 (prev s 108I) ins 1993 No 94 s 38  
renum 1993 No 94 s 44



**Reports**

s 174 (prev s 108J) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

**Application of Act to managers**

s 175 (prev s 108K) ins 1993 No 94 s 38  
renum 1993 No 94 s 44

**Termination of managership—reversion of moneys**

s 176 (prev s 108L) ins 1993 No 94 s 38  
renum 1993 No 94 s 44  
am 1994 No 76

**Costs**

pt 15 hdg (prev pt 10 hdg) renum 1993 No 94 s 44

**Definitions for pt 15**

s 177 (prev s 109) sub 1986 No 82 s 37  
renum 1993 No 94 s 44  
def *client* ins 1986 No 82 s 37  
def *itemised statement* ins 1994 No 76 s 24  
def *solicitor* ins 1986 No 82 s 37

**No action by solicitor for costs until detailed statement delivered**

s 178 (prev s 110) am 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1997 No 95

**Right to request statement**

s 179 (prev s 110A) ins 1986 No 82  
am 1991 No 37; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; ss renum R7 LA

**Notice for taxation**

s 180 (prev s 111) am 1986 No 82; 1991 No 37; 1993 No 94  
renum 1993 No 94 s 44

**Form of notice etc**

s 181 (prev s 112) am 1993 No 94  
renum 1993 No 94 s 44

**Taxation in absence of party**

s 182 (prev s 113) am 1993 No 94  
renum 1993 No 94 s 44

**Matters to be considered on taxation**

s 183 (prev s 114) am 1993 No 94  
renum 1993 No 94 s 44

**Costs of taxation**

s 184 (prev s 115) am 1993 No 94  
renum 1993 No 94 s 44

## Endnotes

4 Amendment history

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### **Certificate of taxation**

s 185 (prev s 116) am 1993 No 94  
renum 1993 No 94 s 44

### **Review of taxation**

s 186 (prev s 117) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

### **Stay of proceedings**

s 187 (prev s 118) am 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

### **Amount due by legal practitioner recoverable as debt**

s 188 (prev s 119) am 1993 No 94  
renum 1993 No 94 s 44

### **Costs payable by mortgagor or lessee**

s 189 (prev s 119A) ins 1986 No 82  
renum 1993 No 94 s 44

### **Agreement as to costs**

s 190 (prev s 120) am 1986 No 82; 1993 No 94  
renum 1993 No 94 s 44

### **Powers of court where contract not fair and reasonable**

s 191 (prev s 121) am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95; 2002 No 27 s 24

### **Interstate legal practitioners**

pt 15A hdg ins 1997 No 26 s 8

### **Preliminary**

div 15A.1 hdg ins 1997 No 26 s 8  
(prev pt 15A div 1 hdg) renum R7 LA

### **Definitions for pt 15A**

s 191A ins 1997 No 26 s 8  
def **corresponding law** ins 1997 No 26 s 8  
def **home State** ins 1997 No 26 s 8  
def **interstate legal practitioner** ins 1997 No 26 s 8  
def **legal practitioner** ins 1997 No 26 s 8  
def **local legal practitioner** ins 1997 No 26 s 8  
am 1997 No 95 sch  
def **participating State** ins 1997 No 26 s 8  
def **practice rules** ins 1997 No 26 s 8  
def **practising certificate** ins 1997 No 26 s 8  
def **regulatory authority** ins 1997 No 26 s 8  
def **State** ins 1997 No 26 s 8

### **When does interstate legal practitioner establish office**

s 191B ins 1997 No 26 s 8

**Legal practice by interstate legal practitioners**

div 15A.2 hdg ins 1997 No 26 s 8  
(prev pt 15A div 2 hdg) renum R7 LA

**Status of interstate legal practitioners**

s 191C ins 1997 No 26 s 8  
am 1997 No 95 sch

**Interstate legal practitioner may practise in this jurisdiction**

s 191D ins 1997 No 26 s 8  
am 2001 No 44 amdt 1.2620, amdt 1.2621; 2002 No 27 s 25

**Notification of establishment of office required**

s 191E ins 1997 No 26 s 8

**Professional indemnity insurance required if office established**

s 191F ins 1997 No 26 s 8  
am 1997 No 95 sch

**Fidelity fund contributions**

s 191G ins 1997 No 26 s 8

**Disputes, complaints and inquiries**

div 15A.3 hdg ins 1997 No 26 s 8  
(prev pt 15A div 3 hdg) renum R7 LA

**Interstate legal practitioners**

s 191H ins 1997 No 26 s 8

**Local legal practitioners**

s 191I ins 1997 No 26 s 8

**Referral of disputes and disciplinary matters to regulatory authorities in participating States**

s 191J ins 1997 No 26 s 8

**Dealing with matters referred by regulatory authorities in participating States**

s 191K ins 1997 No 26 s 8

**Furnishing information**

s 191L ins 1997 No 26 s 8

**Miscellaneous**

div 15A.4 hdg ins 1997 No 26 s 8  
(prev pt 15A div 4 hdg) renum R7 LA

**Local practitioners are subject to interstate regulatory authorities**

s 191M ins 1997 No 26 s 8  
am 1997 No 95 sch

**Local legal practitioner receiving trust money interstate**

s 191N ins 1997 No 26 s 8

**Regulatory authority may exercise powers conferred by corresponding law**

s 191O ins 1997 No 26 s 8

## Endnotes

4 Amendment history

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### **Fidelity fund claims**

s 191P ins 1997 No 26 s 8

### **Foreign legal practitioners**

pt 15B hdg ins 1997 No 89 s 4

### **Preliminary**

div 15B.1 hdg ins 1997 No 89 s 4  
(prev pt 15B div 1 hdg) renum R7 LA

### **Definitions for pt 15B**

s 191Q ins 1997 No 89 s 4  
def **commercial legal presence** ins 1997 No 89 s 4  
def **domestic legal practitioner** ins 1997 No 89 s 4  
def **foreign law** ins 1997 No 89 s 4  
def **foreign legal practitioner** ins 1997 No 89 s 4  
def **foreign registration authority** ins 1997 No 89 s 4  
def **home registration authority** ins 1997 No 89 s 4  
def **law firm** ins 1997 No 89 s 4  
def **locally registered foreign legal practitioner** ins 1997  
No 89 s 4  
def **practise foreign law** ins 1997 No 89 s 4  
def **registered** ins 1997 No 89 s 4

### **Application of pt 15B**

s 191R ins 1997 No 89 s 4

### **Local registration of foreign legal practitioners**

div 15B.2 hdg ins 1997 No 89 s 4  
(prev pt 15B div 2 hdg) renum R7 LA

### **Registration requirement**

s 191S ins 1997 No 89 s 4

### **Registration notice**

s 191T ins 1997 No 89 s 4

### **Fee for registration**

s 191U ins 1997 No 89 s 4

### **Entitlement to registration**

s 191V ins 1997 No 89 s 4

### **Conditions**

s 191W ins 1997 No 89 s 4

### **Notification of decision**

s 191X ins 1997 No 89 s 4

### **Duration of registration and annual fee**

s 191Y ins 1997 No 89 s 4

### **Register**

s 191Z ins 1997 No 89 s 4

**Cancellation of registration**

s 191ZA ins 1997 No 89 s 4

**Appeals**

s 191ZB ins 1997 No 89 s 4

**Legal practice**

div 15B.3 hdg ins 1997 No 89 s 4  
(prev pt 15B div 3 hdg) renum R7 LA

**Scope of practice**

s 191ZC ins 1997 No 89 s 4

**Form of practice**

s 191ZD ins 1997 No 89 s 4

**Professional conduct**

s 191ZE ins 1997 No 89 s 4

**Discipline**

s 191ZF ins 1997 No 89 s 4

**Letterhead and other identifying documents**

s 191ZG ins 1997 No 89 s 4

**Designation**

s 191ZH ins 1997 No 89 s 4

**Advertising**

s 191ZI ins 1997 No 89 s 4

**Employment**

s 191ZJ ins 1997 No 89 s 4

**Indemnity insurance**

s 191ZK ins 1997 No 89 s 4

**Trust accounts, controlled moneys and fidelity fund contributions**

s 191ZL ins 1997 No 89 s 4

**Application of provisions to locally registered foreign legal practitioners**

s 191ZM ins 1997 No 89 s 4

**Miscellaneous**

div 15B.4 hdg ins 1997 No 89 s 4  
(prev pt 15B div 4 hdg) renum R7 LA

**Membership of professional association**

s 191ZN ins 1997 No 89 s 4

**Offences by unqualified persons**

pt 16 hdg (prev pt 11) renum 1993 No 94 s 44

## Endnotes

4 Amendment history

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### **Holding out as qualified**

s 192 (prev s 122) am 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 95

### **Preparation of documents for reward**

s 193 (prev s 123) am 1986 No 82; 1989 No 36; 1990 No 5; 1991  
No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch; 1997 No 95

### **Preparation of probate etc papers for reward**

s 194 (prev s 124) am 1985 No 9; 1986 No 82; 1989 No 36; 1989  
No 38; 1990 No 5; 1991 No 60; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 76; 1994 No 81 sch; 1997 No 95

### **Offences by corporations**

s 195 (prev s 125) am 1986 No 82; 1991 No 92; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 81 sch

### **Miscellaneous**

pt 17 hdg (prev pt 12 hdg) renum 1993 No 94 s 44

### **Solicitors not to share receipts with persons not practising as solicitors**

s 196 (prev s 127) am 1972 No 4; 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

### **Employment of persons who have ceased to be legal practitioners**

s 197 (prev s 128) am 1972 No 4; 1993 No 94  
renum 1993 No 94 s 44  
sub 1997 No 95

### **Permission for employment of certain persons**

s 198 (prev s 129) om 1972 No 4  
ins 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

### **Review by tribunal**

s 198A ins 1997 No 95

### **Notification of decisions**

s 198B ins 1997 No 95  
pars renum R7 LA

**Immunity from suit**

s 199 (prev s 129A) ins 1986 No 82  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Unclaimed moneys**

s 200 (prev s 130) am 1986 No 82; 1990 No 5; 1993 No 94  
renum 1993 No 94 s 44  
am 1994 No 38 sch 1 pt 52; 1994 No 76; 1996 No 2; 1996  
No 26 sch pt 15; 1997 No 95

**Fines to be paid into fidelity fund**

s 201 (prev s 130A) ins 1972 No 4  
am 1993 No 94  
renum 1993 No 94 s 44  
am 1997 No 95

**Regulation-making power**

s 202 (prev s 133) am 1990 No 5  
renum 1993 No 94 s 44  
sub 2001 No 44 amdt 1.2622

**Schedule 1**

sch 1 hdg (prev sch) sub 1997 No 95  
sch 1 (prev sch) am 1997 No 95  
renum R7 LA

**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. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1991 No 60	31 October 1991
2	Act 1993 No 94	31 December 1993
3	Act 1996 No 2	12 March 1996
4	Act 1996 No 43	30 November 1996
5	Act 1997 No 95	1 June 1998
6	Act 1999 No 66	14 November 2000

## Endnotes

6 Renumbered provisions

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7	Act 2001 No 56	8 February 2002
8	Act 2002 No 27	10 September 2002
8 (RI)	Act 2002 No 27 ‡	11 February 2003
9	A2003-14	28 March 2003

‡ includes retrospective amendments by Act 2002 No 49

## 6 Renumbered provisions

as made by 1993 No 94 s 44

previous number	provision heading	renumbered or inserted as
5	Definitions for Act	3
<b>Part 1A</b>	<b>Law society</b>	<b>Part 2</b>
6	Incorporation of law society	4
<b>Part 1B</b>	<b>Her Majesty's counsel</b>	<b>Part 3</b>
6A	Existing appointments	5
6B	Abrogation of royal prerogative	6
<b>Part 1C</b>	<b>Precedence of barristers and solicitors</b>	<b>Part 4</b>
<b>Part 2</b>	<b>Admission board</b>	<b>Part 5</b>
9A	Legal protection for members	10
<b>Part 3</b>	<b>Admission or enrolment of legal practitioners</b>	<b>Part 6</b>
10	Application for admission or enrolment	11
10A	Enrolment of persons entitled to registration under Mutual Recognition Act	12
11	Copies of applications to admission board and law society	13
12	Report by admission board—other cases	14
12A	Response to applications by law society	15
13	Enrolment of New Zealand practitioners—action by registrar and law society	16
14	Oath or affirmation	17



previous number	provision heading	renumbered or inserted as
14A	Rules of court about enrolment	18
15	Signing roll	19
15A	Right to practise	20
<b>Part 3A</b>	<b>Solicitors' practising certificates</b>	<b>Part 7</b>
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