



Australian Capital Territory

Legal Profession Amendment Act 2007

A2007-28

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Australian Capital Territory

Legal Profession Amendment Act 2007

A2007-28

An Act to amend the *Legal Profession Act 2006*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2006-245

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Legal Profession Amendment Act 2007*.

2 Commencement

This Act commences on 1 October 2007.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Legal Profession Act 2006*.

Note This Act also amends the following legislation (see sch 1):

- *Court Procedures Rules 2006*
- *Legal Aid Act 1977*.

**4 Terms relating to associates and principals of law practices
Section 9, definition of *associate*, paragraph (a) (v)**

substitute

(v) an employee of, or consultant to, the law practice; or

5 Section 9, definition of *associate*, paragraph (e)

substitute

(e) a person (other than an Australian legal practitioner) who is a partner in a multi-disciplinary partnership; or

**6 Local lawyer is officer of Supreme Court
New section 28 (2)**

insert

(2) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

**7 Suitability to hold local practising certificate
Section 36 (2) (e) (ii)**

substitute

- (ii) whether the person has contravened a requirement imposed by the council about professional indemnity insurance; or

8 Section 36 (4) (b)

substitute

- (b) decided by a Supreme Court, the admissions board or a corresponding authority not to be sufficient for refusing admission;

9 Sections 38 and 39

substitute

38 Conditions on practising certificate—government lawyer and in-house lawyer

- (1) This section applies to the following people who apply for the grant or renewal of a local practising certificate:
 - (a) an Australian lawyer who is a government lawyer who, in the lawyer's application for the grant or renewal of the certificate, stated that the lawyer did not intend to engage in legal practice otherwise than as a government lawyer engaged in government work;
 - (b) an Australian lawyer who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services to the corporation.

- (2) The licensing body must not grant or renew a local practising certificate unless the licensing body—
 - (a) for an application by an Australian lawyer mentioned in subsection (1) (a)—imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than as a government legal officer engaged in government work; or
 - (b) for an application by an Australian lawyer mentioned in subsection (1) (b)—imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than by providing in-house legal services for a corporation by which the lawyer is employed.
- (3) A person must comply with a condition imposed under subsection (2) on the person's practising certificate.
- (4) A failure by an Australian lawyer to comply with subsection (3) can be unsatisfactory professional conduct or professional misconduct.

10 Application for grant or renewal of local practising certificate
Section 41 (2) (a)

substitute

- (a) if the lawyer is not an Australian legal practitioner at the time of making the application—
 - (i) the lawyer reasonably expects to be engaged in legal practice solely or principally in the ACT during the currency of the certificate or renewal applied for; or
 - (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to establish whether subparagraph (i) applies—the lawyer's place of residence in Australia is the ACT or the lawyer does not have a place of residence in Australia; or

11 Section 41 (2) (b) (i) and (iii)

omit

principally

substitute

solely or principally

12 Section 41 (2) (b) (iv)

omit

13 Section 41 (2) (b) (v)

omit

in the ACT

substitute

the ACT

14 Section 41 (3)

omit

principally

substitute

solely or principally

15 Section 41 (6), (7) and (8)

substitute

- (6) An Australian legal practitioner who engages in legal practice solely or principally in the ACT during a financial year and reasonably expects to engage in legal practice solely or principally in the ACT in the next financial year must apply for the grant or renewal of a local practising certificate in relation to the next financial year.

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

Example

A person practises both in Australia and overseas and the overseas practice is the principal part of the person's overall practice. The question whether the person is engaged in legal practice principally in the ACT is determined by reference to the person's practice in Australia.

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

- (10) A regulation under subsection (2) (c) may—
 - (a) limit the kind of practising certificate for which a lawyer prescribed for that paragraph may apply for grant or renewal; or
 - (b) provide that a council has a discretion as to whether or not to grant or renew a local practising certificate to a person in his or her capacity as a lawyer prescribed for that paragraph.

**16 Grant or renewal of unrestricted or restricted practising certificate
Section 44 (6), note**

substitute

Note 1 The licensing body must not grant or renew a practising certificate for an insurable legal practitioner unless satisfied that the practitioner will be covered by an approved indemnity insurance policy (see s 311).

Note 2 See also s 62 (Refusal to grant or renew unrestricted or restricted practising certificate—failure to show cause etc).

**17 Grant or renewal of barrister practising certificate
Section 45 (6), note**

substitute

Note 1 The licensing body must not grant or renew a practising certificate for an insurable legal practitioner unless satisfied that the practitioner will be covered by an approved indemnity insurance policy (see s 311).

Note 2 See also s 62 (Refusal to grant or renew unrestricted or restricted practising certificate—failure to show cause etc).

**18 Conditions imposed on local practising certificate by licensing body or relevant council
Section 47 (8) (a) (ii)**

substitute

(ii) particular legal education or training; or

19 Section 47 (10)

omit

an academic or training course

substitute

particular legal education or training

20 Section 47 (10) (a)

substitute

- (a) the council is satisfied, having regard to—
- (i) the nature or currency of the holder's academic studies, legal training or legal experience; or
 - (ii) the holder's conduct;
- that it is reasonable to require the particular legal education or training to be undertaken; or

**21 Compliance with conditions of local practising certificate
Section 53 (2)**

omit

**22 Amending, suspending or cancelling local practising
certificate
Section 56 (1)**

omit

(the *show-cause notice*)

23 Section 56 (2) (a)

omit

show-cause notice

substitute

notice under subsection (1)

24 Section 56 (2) (b) and (c)

omit

show-cause

25 Section 56 (2) (c) (ii)

substitute

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

26 New section 56 (5)

insert

- (5) In this section:

amend, a certificate, means amend the certificate under section 47 (Conditions imposed on local practising certificate by licensing body or relevant council) during its currency, otherwise than at the request of the holder of the certificate.

**27 Other ways of amending or cancelling local practising certificate
Section 58 (1) and (2)**

substitute

- (1) The relevant council may amend or cancel a local practising certificate if the holder asks the council to do so.
- (2) The relevant council may also amend a local practising certificate—
 - (a) for a formal or clerical reason; or
 - (b) in another way that does not adversely affect the holder's interests.
- (2A) The relevant council must cancel a local practising certificate if the holder's name has been removed from the local roll or the holder stops being an Australian lawyer.
- (2B) The amendment or cancellation of a local practising certificate under this section must be by written notice given to the holder.

**28 Relationship of div 2.4.6 with ch 4
Section 59**

omit

the relevant council from making a complaint

substitute

a complaint from being made

**29 Applicant for local practising certificate—show-cause
event
Section 60 (3) and (4)**

substitute

- (3) However, the person need not give a statement under subsection (2) if the person (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously provided to the relevant council—

- (a) a statement under this section; or
- (b) a notice and statement under section 61;

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

**30 Relationship of div 2.4.7 with pt 4.4 and ch 6
Section 67 (3)**

omit

the relevant council from making a complaint

substitute

a complaint from being made

**31 Professional indemnity insurance—interstate legal practitioners
Section 72 (1) (b) (ii)**

substitute

- (ii) is for at least the relevant amount (including defence costs) unless, without affecting subparagraph (i) or (iii), the practitioner engages in legal practice only as or in the manner of a barrister; and

32 Section 72 (3) (a) and (b)

omit

government employee

substitute

government lawyer

33 Section 72 (4), new definition of *defence costs*

insert

defence costs, in relation to professional indemnity insurance covering an interstate legal practitioner, means costs (other than the claimant's costs) payable by an insurer in relation to a claim, or notification that may lead to a claim, under the policy of insurance held by the interstate legal practitioner.

34 Section 72 (4), definitions of *government agency* and *government employee*

omit

**35 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in ACT
New section 75 (2)**

insert

- (2) Subsection (1)—
- (a) does not apply if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction; or
 - (b) applies only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the interstate legal practitioner in the practitioner's home jurisdiction.

**36 Protocols with regulatory authorities
Section 77 (1) (a)**

omit

from which

substitute

in which

**37 Investigation of practising certificate applicants or holders etc
Section 78 (1)**

omit

or impose conditions on a local practising certificate,

**38 Government lawyers generally
Section 82 (2)**

omit

government employee

substitute

government lawyer

39 Section 82 (5)

omit

**40 Government lawyers of other jurisdictions
Section 83 (1) and (2)**

omit

government employee

substitute

government lawyer

**41 Section 83 (5), definitions of *government agency* and
*government lawyer***

omit

**42 Official notice to other jurisdictions of removals from
local roll
Section 88 (1)**

omit

local lawyer's

substitute

person's

43 Section 88 (3)

omit

lawyer's

substitute

person's

44 Section 91 heading

substitute

91 Lawyer to give notice of removal in another jurisdiction

45 Section 91 (1) (b)

omit

or foreign roll

46 Section 91 (1) (c)

omit

s 91

substitute

div 2.5.3

47 Section 91 (2) (b)

omit

or foreign roll

48 New section 92A

insert

92A Lawyer to give notice of foreign regulatory action

- (1) A person commits an offence if—
- (a) the person is a local lawyer (other than a local legal practitioner); and
 - (b) foreign regulatory action has been taken in relation to the person; and
 - (c) the person fails to give the registrar written notice of the foreign regulatory action in accordance with section 93 (1) (Provisions applying to notices under div 2.5.3) not later than 7 days after the day the person receives notice of the foreign regulatory action.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is a local legal practitioner; and
 - (b) foreign regulatory action has been taken in relation to the person to remove the person's name from a foreign roll for disciplinary reasons; and
 - (c) the person fails to give the registrar or the relevant council written notice of the removal in accordance with section 93 (1) not later than 7 days after the day the person receives notice of the foreign regulatory action.

Maximum penalty: 50 penalty units.

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

(4) In this section:

foreign regulatory action taken in relation to a person means either of the following:

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

49 Section 93 heading

substitute

93 Provisions applying to notices under div 2.5.3

50 Section 93 (1)

substitute

- (1) A notice to be given under section 91 or section 92A by a person must—
 - (a) state the person's name and address; and
 - (b) identify the roll from which the person's name has been removed; and
 - (c) state the date of the removal; and
 - (d) be accompanied by a copy of any official notification given to the person in relation to the removal.

**51 Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction
Section 94 (1) (b)**

omit

96

substitute

97A

**52 Peremptory cancellation of local practising certificate following removal of name from interstate roll
Section 95 (1) (c)**

omit

96

substitute

97A

53 Sections 96 and 97

substitute

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

- (1) This section applies if the relevant council is satisfied that—
- (a) foreign regulatory action has been taken in relation to a local lawyer (other than a local legal practitioner); and
 - (b) no order mentioned in section 97A (1) (a) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.

- (2) The relevant council may serve on the lawyer a written notice stating that the council will apply to the Supreme Court for an order that the lawyer's name be removed from the local roll unless the lawyer shows cause to the council why his or her name should not be removed.
- (3) If the lawyer does not satisfy the relevant council that the lawyer's name should not be removed from the local roll, the council may apply to the Supreme Court for an order that the lawyer's name be removed from the local roll.
- (4) Before applying for an order that the lawyer's name be removed, the relevant council must give the lawyer a reasonable opportunity to show cause why his or her name should not be removed.
- (5) The Supreme Court may, on application made under this section, order that the lawyer's name be removed from the local roll.
- (6) The lawyer is entitled to appear before and be heard by the Supreme Court at a hearing in relation to an application under this section.
- (7) In this section:
relevant council means—
 - (a) if the lawyer holds a local practising certificate that is a barrister practising certificate—the bar council; or
 - (b) if the lawyer holds a local practising certificate that is an unrestricted practising certificate or restricted practising certificate—the law society council; or
 - (c) if the lawyer holds an interstate practising certificate—the bar council or law society council; or
 - (d) if the lawyer does not hold a local practising certificate—the law society council.

97 Show-cause procedure for cancellation of local practising certificate following foreign regulatory action

- (1) This section applies if the relevant council is satisfied that—
 - (a) foreign regulatory action has been taken in relation to a local legal practitioner; and
 - (b) no order mentioned in section 97A (1) (a) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.
- (2) The relevant council may serve on the practitioner a written notice stating that the council proposes to cancel the practitioner's practising certificate unless the practitioner shows cause to the council why his or her practising certificate should not be cancelled.
- (3) The relevant council must give the practitioner a reasonable opportunity to show cause why his or her practising certificate should not be cancelled.
- (4) If the practitioner does not satisfy the relevant council that the practising certificate should not be cancelled, the council may cancel the certificate.
- (5) The relevant council must, as soon as practicable, give the practitioner an information notice about its decision to cancel the practising certificate.
- (6) The practitioner may appeal to the Supreme Court against a decision of the authority to cancel the practising certificate.
- (7) On an appeal under this section, the Supreme Court may make the order it considers appropriate.

97A Order for non-removal of name or non-cancellation of local practising certificate

- (1) If an Australian lawyer reasonably expects that his or her name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the Supreme Court for either or both of the following orders:
 - (a) an order that his or her name not be removed from the local roll under section 94 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction) or section 96 (Show-cause procedure for removal of lawyer's name from local roll following foreign regulatory action);
 - (b) an order that his or her local practising certificate not be cancelled under section 95 (Peremptory cancellation of local practising certificate following removal of name from interstate roll).
- (2) The Supreme Court may make an order if satisfied that—
 - (a) the lawyer's name is likely to be removed from the interstate roll; and
 - (b) the reason for its removal from the interstate roll will not involve disciplinary action or the possibility of disciplinary action.
- (3) An order under this section may be made subject to any conditions the Supreme Court considers appropriate and remains in force for the period stated in it.
- (4) The Supreme Court may revoke an order made under this section, and either or both of section 94 and section 95 (as relevant) then apply as if the lawyer's name were removed from the interstate roll when the revocation takes effect.
- (5) This section does not affect action being taken in relation to the lawyer under other provisions of this Act.

54 **Definitions—pt 2.6**
Section 99 (2), definition of *disqualified person*

omit

55 **Incorporated legal practice must have legal practitioner director etc**
Section 107 (5)

omit

56 **Section 107 (6)**

omit

liability

substitute

liabilities

57 **Obligations of legal practitioner director relating to misconduct—incorporated legal practices**
New section 108 (1A)

after subsection (1), insert

- (1A) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subsection (1) if the director establishes that he or she took all reasonable steps to ensure that—
- (a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct mentioned in subsection (1) (a); or
 - (b) any other directors (other than Australian legal practitioners) of the incorporated legal practice did not engage in conduct mentioned in subsection (1) (b); or

- (c) unsuitable directors (other than Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as mentioned in subsection (1) (c).

**58 Advertising requirements—incorporated legal practices
Section 116 (2)**

omit

the business of the relevant class of Australian legal practitioners

substitute

business in that branch of the legal profession or in that style of legal practice

59 Section 118 heading

substitute

**118 Sharing of receipts, revenue or other income—
incorporated legal practices**

60 Section 118 (1) and (2)

omit

receipts

substitute

receipts, revenue or other income

**61 Disqualified people—incorporated legal practices
Section 119 (1) (c)**

omit

receipts of

substitute

receipts, revenue or other income arising from

**62 Audit of incorporated legal practices
Section 120 (3)**

substitute

- (3) The appointment may be made generally or in relation to a particular incorporated legal practice or a particular audit.

63 Section 146 heading

substitute

**146 Sharing of receipts, revenue or other income—
multidisciplinary partnerships**

64 Section 146 (1) and (2)

omit

receipts

substitute

receipts, revenue or other income

**65 Disqualified people—multidisciplinary partnerships
Section 147 (b)**

omit

receipts of

substitute

receipts, revenue or other income arising from

66 Section 147, note

omit

**67 Definitions—pt 2.7
Section 152, definition of *commercial legal presence***

omit

**68 Requirement for registration to practice foreign law
Section 155 (2)**

substitute

- (2) This section does not apply to an overseas-registered foreign lawyer who—
- (a) either—
- (i) practises foreign law in the ACT for 1 or more periods that do not in aggregate exceed 90 days in any 12-month period; or
 - (ii) is subject to a restriction imposed under the *Migration Act 1958* (Cwlth) that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and

- (b) either—
- (i) does not maintain an office for the purpose of practising foreign law in the ACT; or
 - (ii) does not become a partner or director of a law practice.

**69 Application of Australian professional ethical and practice standards to practice of foreign law
Section 159 (1)**

omit

be

substitute

be capable of being

**70 Advertising by Australian-registered foreign lawyers
Section 162 (1)**

omit

on the practice of law

substitute

on legal practice engaged in

**71 Trust money and trust accounts—Australian-registered foreign lawyers
Section 164 (1)**

before

Australian legal practitioners

insert

law practices and

72 Section 164 (2), new note

insert

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

**73 Professional indemnity insurance—Australian-registered foreign lawyers
Section 165 (3) (c)**

substitute

- (c) if the insurance is for less than the relevant amount (including defence costs)—provides a disclosure statement to each client stating the level of cover.

74 Section 165 (5)

substitute

- (5) A disclosure statement must—
 - (a) be in writing; and
 - (b) be given before, or as soon as practicable after, the foreign lawyer is retained in a matter.
- (5A) A disclosure statement given to a person before the foreign lawyer is retained in a matter is taken to be given to the person as a client for the purposes of this section.
- (5B) A disclosure statement must be given in accordance with, and must comply with, any requirement under regulation.

75 Section 165 (6), new definition of *defence costs*

insert

defence costs, in relation to professional indemnity insurance covering an Australian-registered foreign lawyer, means costs (other than the claimant's costs) payable by an insurer in relation to a claim, or notification that may lead to a claim, under the policy of insurance held by the lawyer.

**76 Approved form for grant or renewal application—foreign lawyers
Section 171 (2) (a)**

substitute

- (a) matters that may be relevant to or affect the licensing body's consideration of the application for the grant or renewal of registration; and

**77 Requirements for applications for grant or renewal of registration—foreign lawyers
Section 172 (2) (d)**

substitute

- (d) state whether the applicant has been convicted of an offence in Australia or a foreign country and, if so, state—
- (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the applicant's age when the offence was committed; and

78 Section 172 (2) (f) and (g)

substitute

(f) state—

(i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and

(ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place;

because of any criminal, civil or disciplinary proceeding in Australia or a foreign country; and

(g) state any special conditions imposed in Australia or a foreign country as a restriction on legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and

79 Section 172 (2) (i)

substitute

(i) state which of section 165 (2), (3) or (4) (Professional indemnity insurance—Australian-registered foreign lawyers) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and

80 Section 172 (3) (b)

omit

practise law

substitute

engage in legal practice

**81 Grant or renewal of registration as foreign lawyer
Section 173 (1), note**

substitute

Note When granting or renewing registration as a foreign lawyer, the licensing body may impose conditions on the registration under s 193 (Conditions imposed on local registration by licensing body).

82 Section 173 (4)

substitute

- (4) The licensing body must give the applicant an information notice if the licensing body—
- (a) refuses to grant or renew registration; or
 - (b) imposes a condition on the registration and the applicant does not agree to the condition.

**83 Requirement to grant or renew registration as foreign lawyer if criteria satisfied
Section 174 (1) (b), (c) and (d)**

substitute

- (b) considers an effective system exists for regulating engaging in practice in 1 or more of the foreign countries; and
- (c) considers the applicant is not, because of any criminal, civil or disciplinary proceeding in any of the foreign countries, subject to—
 - (i) any special conditions in engaging in legal practice in any of the foreign countries that would make it inappropriate to register the person; or
 - (ii) any undertakings about engaging in legal practice in any of the foreign countries that would make it inappropriate to register the person; and

- (d) is satisfied the applicant demonstrates an intention to start practising foreign law in the ACT within a reasonable period if registration were to be granted;

**84 Refusal to grant or renew registration as foreign lawyer
New section 175 (2) (g)**

substitute

- (g) the applicant has failed to pay any expenses of receivership payable under this Act; or
- (h) the applicant's foreign legal practice is in receivership (however described).

**85 Grounds for amending, suspending or cancelling
registration of foreign lawyer
Section 177 (b) to (g)**

substitute

- (b) the person fails to comply with a requirement of this part;
- (c) the person fails to comply with a condition imposed on the person's registration;
- (d) the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the person's capacity as—
 - (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian lawyer;
- (e) the person has been convicted of an offence in Australia or a foreign country;

- (f) the person's registration is cancelled or currently suspended in any place because of any disciplinary action in Australia or a foreign country;
- (g) the person does not meet the requirements of section 165 (Professional indemnity insurance—Australian-registered foreign lawyers);

86 New section 177 (2)

insert

- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 193 (Conditions imposed on local registration by licensing body).

**87 Amending, suspending or cancelling registration of foreign lawyer
Section 178 (1)**

omit

(the *show-cause notice*)

88 Section 178 (2) (a)

omit

show-cause notice

substitute

notice under subsection (1)

89 Section 178 (2) (b) and (c)

omit

show-cause

90 Section 178 (2) (c) (ii)

substitute

- (ii) suspend the registration for a stated period; or
- (iii) amend the registration in a less onerous way the council considers appropriate because of the representations.

91 New section 178 (5)

insert

- (5) In this section:

amend, a person's registration, means amend the registration under section 193 (Conditions imposed on local registration by licensing body) during its currency, otherwise than at the person's request.

**92 Relationship of div 2.7.6 with ch 4
Section 181**

omit

the licensing body from making a complaint

substitute

a complaint from being made

**93 Investigation of applicants and locally-registered foreign lawyers etc
Section 200 (1)**

omit everything before paragraph (a), insert

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this part, the licensing body may, by written notice to the applicant or foreign lawyer, require the applicant or lawyer—

**94 Appeals or reviews
Section 207 (3), except the note**

omit

**95 Definitions—pt 3.1
Section 210 (1), definition of *controlled money***

omit

received by a law practice with

substitute

received or held by a law practice for which the practice has

96 Section 210 (1), new definition of *deposit record*

insert

deposit record includes a deposit slip or duplicate deposit slip.

97 Section 210 (2), definition of *controlled money account*

omit

approved

98 Section 210 (2), definition of *trust records*, paragraph (d)

substitute

(d) deposit records;

99 New section 210 (4)

insert

- (4) A reference in this part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of someone else is a reference to a power given to the practice or associate that is exercisable by—

- (a) the practice alone; or
- (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
- (c) the practice or an associate of the practice jointly or severally, or jointly and severally with either of the following:
 - (i) 1 or more associates of the practice;
 - (ii) the person, or 1 or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

**100 Money involved in financial services or investments
Section 212 (3) (a)**

omit

or property

**101 When money is received by law practice
Section 216 (1) (b), (c) and (d)**

substitute

- (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
- (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of someone else.

**102 Keeping of general trust account
Section 221 (3)**

substitute

- (3) Subsection (1) does not apply to a law practice in relation to any period during which the practice receives only either or both of the following:
- (a) controlled money;
 - (b) transit money received in a form other than cash.

**103 Certain trust money to be deposited in general trust account
Section 222 (2) (d)**

substitute

- (d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of someone else.

104 Section 222 (5)

omit

105 New section 222 (8A)

insert

- (8A) This section is subject to section 226A (Trust money received in form of cash).

106 New section 223A

insert

223A Way of withdrawing trust money from general trust account

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subsection (1), the following are prohibited:
 - (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.

(3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.
- (7) This section has effect despite anything to the contrary in any direction given to the law practice, even if the direction is given by a person who is otherwise legally entitled to give the law practice directions in relation to dealings with the trust money.

107 New section 224A

insert

224A Way of withdrawing controlled money from controlled money account

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subsection (1), the following are prohibited:
 - (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

Note For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.

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

**108 Transit money
New section 225 (6)**

insert

- (6) This section is subject to section 226A (Trust money received in form of cash).

**109 Trust money subject to specific powers
Section 226 (1)**

substitute

- (1) A law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

110 Section 226 (2)

omit

required by regulation

substitute

prescribed by regulation

111 New section 226 (6)

insert

- (6) This section is subject to section 226A (Trust money received in form of cash).

112 New section 226A*insert***226A Trust money received in form of cash**

- (1) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.
- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—
 - (a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (1); and
 - (b) the money is after that to be dealt with in accordance with any applicable terms of the direction to the extent that the terms are not inconsistent with paragraph (a).
- (3) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 224 (Controlled money).
- (4) A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.
- (5) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.
- (6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.

- (7) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (4) or (5), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units

- (8) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (4) or (5) each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (9) An offence against subsection (7) or (8) is a strict liability offence.
- (10) In this section:

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

general trust money means trust money other than—

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

**113 Dealing with trust money—legal costs and unclaimed money
Section 229 (1) (a)**

omit

practitioner

substitute

practice

114 Section 229 (1) (b)

omit

the procedure prescribed by regulation

substitute

any relevant provision of this Act

115 Section 229 (1), new note

insert

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

116 Section 229 (2)

omit

review

substitute

assessment

117 **Costs of investigation**
Section 239 (2), (3) and (4)

substitute

- (2) However, the licensing body may decide that all or part of the costs of carrying out the investigation is payable to the licensing body, and decide the amount payable, if—
- (a) an investigator states in his or her report that there is evidence that a breach of this Act has been committed or that a default (within the meaning of part 3.4 (Fidelity cover)) has happened in relation to the law practice whose affairs are under investigation; and
 - (b) the licensing body is satisfied that the breach or default is intentional or of a substantial nature.

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

- (3) An amount decided by the licensing body under subsection (2) is a debt owing to the licensing body by the law practice whose affairs are under investigation.

118 **Sections 241 and 242**

substitute

241 **Trust records to be externally examined**

- (1) A law practice must at least once in each financial year have its trust records externally examined by an external examiner appointed as required by regulation.
- (2) The licensing body may appoint an external examiner to examine a law practice's trust records if the licensing body is not satisfied—
- (a) that the practice has had its trust records externally examined under subsection (1); or

- (b) that an external examination of the practice's trust records has been carried out as required by regulation.
- (3) This section has effect subject to any exemption under a regulation from the requirement to have trust records examined under this section.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

Note For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.

119 Reports, records and information by ADIs Section 252 (6)

after

any

insert

legislation or

**120 Statutory deposits
Section 253 (1) and (2)**

substitute

253 Statutory deposits

- (1) A regulation may require the following:
 - (a) a law practice to pay amounts out of a general trust account of the practice into an ADI account kept by the law society (a *statutory deposit account*);
 - (b) the law society to pay interest on money in a statutory deposit account into another ADI account kept by the law society (a *statutory interest account*).
- (2) A regulation may make provision in relation to the following:
 - (a) the type of account to be kept by the law society;
 - (b) payments to be made to the account;
 - (c) the use of money in the account;
 - (d) for a statutory interest account—the person entitled to interest on the money in the account.

**121 Application of pt 3.1 to incorporated legal practices and multidisciplinary partnerships
New section 255 (1A)**

before subsection (1), insert

- (1A) The obligations imposed on law practices by this part, and any other provisions of this Act relating to trust money and trust accounts, apply to an incorporated legal practice or multidisciplinary partnership only in relation to legal services provided by the practice or partnership.

122 Section 255 (2)

omit

**123 Disclosure—money not received as trust money
Section 257 (3)**

omit

The legal profession rules

substitute

A regulation

124 Section 260

substitute

260 Regulations and legal profession rules—pt 3.1

A regulation or the legal profession rules may make provision in relation to—

- (a) the establishment, keeping and closure of general trust accounts and controlled money accounting; and
- (b) the way of receiving, depositing, withdrawing, making records about and otherwise dealing with an accounting for trust money; and
- (c) without limiting paragraph (a) or (b)—
 - (i) the keeping and reconciliation of trust records; and
 - (ii) the establishment and keeping of trust ledger accounts; and
 - (iii) the establishment and keeping of records about controlled money and transit money; and
 - (iv) the establishment and keeping of registers of powers and estates where trust money is involved; and

- (v) the recording of information about the investment of trust money; and
- (vi) the giving of statements about trust money; and
- (d) the notification to the licensing body of information relating directly or indirectly to matters to which this part relates, including information about—
 - (i) trust accounts, trust money and trust records; and
 - (ii) the proposed or actual termination of a law practice that holds trust money; and
 - (iii) the proposed or actual termination of engaging in legal practice in the ACT by a law practice that holds trust money; and
 - (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money; and
- (e) the creation and exercise of liens over trust money; and
- (f) providing exemptions, or for the giving of exemptions, from all or any requirements of this part.

125 Part 3.2 heading

substitute

Part 3.2 Costs disclosure and assessment

**126 Definitions—pt 3.2
Section 261, definition of *client***

omit

127 Section 261, definition of *costs review*

substitute

costs assessment means an assessment of legal costs under division 3.2.7.

128 Section 261, definition of *itemised bill*

omit

reviewed

substitute

assessed

129 Section 261, new definition of *public authority*

insert

public authority means an entity established for a public purpose by or under a Territory law, or the law of the Commonwealth, a State or another Territory.

130 Section 261, new definitions of *sophisticated client* and *third party payer*

insert

sophisticated client means a client to whom, because of section 272 (1) (c) or (d) (Exceptions to requirement for disclosure), disclosure under section 269 (Disclosure of costs to client) or section 270 (1) (Disclosure if another law practice is to be retained) is not, or was not, required.

third party payer—see section 261A.

131 Section 261, definition of *uplift fee*

substitute

uplift fee means additional legal costs (excluding disbursements) payable under a costs agreement on the successful outcome of the matter to which the agreement relates.

132 New section 261A

insert

261A Terms relating to third party payers

- (1) In this part:
 - (a) a person is a ***third party payer***, in relation to a client of a law practice if the person—
 - (i) is not the client; and
 - (ii) either—
 - (A) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (B) being under that obligation, has paid all or a part of the legal costs; and
 - (b) a third party payer is an ***associated third party payer*** if the legal obligation mentioned in paragraph (a) is owed to the law practice, whether or not it is also owed to the client of someone else; and
 - (c) a third party payer is a ***non-associated third party payer*** if the legal obligation mentioned in paragraph (a) is owed to the client or someone else but not to the law practice.
- (2) The legal obligation mentioned in subsection (1) can arise by or under contract or legislation.

- (3) A law practice that retains another law practice to act on behalf of a client is not for that reason a third party payer in relation to the client.

**133 Purpose—pt 3.2
Section 262 (d)**

omit

review

substitute

assessment

**134 Pt 3.2 also applies by agreement or at client's election
Section 264 (1) (c) (i)**

substitute

- (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2) (a) in relation to the matter; or

135 Section 264 (2) (a)

substitute

- (a) accept, in writing or by other conduct, a written offer that complies with subsection (2A) to enter into an agreement with the law practice that this part is to apply to the matter; or

136 New section 264 (2A)

insert

- (2A) An offer mentioned in subsection (2) (a) must clearly state—
- (a) that it is an offer to enter into an agreement that this part is to apply to the matter; and

- (b) that the client may accept it in writing or by other conduct; and
- (c) the type of conduct that will constitute acceptance of the offer.

**137 Displacement of pt 3.2
Section 265 (2) (b) (i)**

substitute

- (i) the client enters under the corresponding law of the other jurisdiction into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

138 Section 266

substitute

266 How and where does a client first instruct a law practice?

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

**139 What happens when different laws apply to a matter?
Section 268 (4) and (5)**

substitute

- (4) However—
 - (a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this part are to apply in relation to all legal costs incurred in relation to the matter, and division 3.2.7 (Costs assessment) accordingly applies in relation to the costs; or

- (b) the client may enter into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in relation to all legal costs incurred in relation to the matter, and division 3.2.7 accordingly does not apply in relation to the costs.
- (5) A written agreement mentioned in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by fax, email or other written form.
- (6) If a corresponding law applied to a matter for a period and this part applies to the matter afterwards, this part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.
- (7) This section has effect despite any other provisions of this part.

**140 Disclosure of costs to client
Section 269 (1) (b) (iii)**

substitute

- (iii) request an itemised bill if the client receives a lump sum bill for more than the threshold amount; and

141 New section 269 (1) (ba)

insert

- (ba) that the client is not entitled to request an itemised bill if the bill is for an amount equal to or less than the threshold amount; and

142 Section 269 (1) (e)

substitute

- (e) the rate of interest (if any) that the law practice charges on unpaid legal costs, whether the rate is a specific rate of interest or is a benchmark rate of interest; and

Note For interest a law practice may charge on unpaid legal costs, see s 281 (Interest on unpaid legal costs).

143 Section 269 (1) (i) (i)

substitute

- (i) costs assessment under division 3.2.7;

144 Section 269 (1) (l) (i)

substitute

- (i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

145 Section 269 (1) (l), note

omit

sign

substitute

enter into

146 New section 269 (1A) and (1B)

insert

- (1A) For subsection (1) (e), a ***benchmark rate of interest*** is a rate of interest for the time being equal to or worked out by reference to a rate of interest that is specified or determined by an ADI or another entity and that is publicly available.
- (1B) A regulation may make provision in relation to the use of benchmark rates of interest, and in particular in relation to permitting, regulating or preventing the use of particular benchmark rates.

147 New section 269 (3) and (4)

insert

- (3) A law practice may disclose any or all of the details mentioned in subsection (1) (b) (i) to (iii), (g), (i), (j) and (l) in a form approved by the licensing body under section 587 and if it does so at the time the other details are disclosed as required by this section the practice is taken to have complied with this section in relation to the details disclosed.
- (4) In this section:
threshold amount—see section 292 (10).

**148 Disclosure if another law practice is to be retained
Section 270 (1)**

omit

on behalf of the client

substitute

on behalf of a client

149 Section 271 heading

substitute

271 How and when must disclosure be made to a client?

150 Section 271 (2) and (3)

substitute

- (2) Disclosure under section 270 (1) (Disclosure if another law practice is to be retained) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for section 269 and section 270.

**151 Exceptions to requirement for disclosure
Section 272 (1) (a)**

after

\$1 500

insert

(exclusive of GST)

152 Section 272 (1) (c) (ii)

substitute

- (ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (each within the meaning of the Corporations Act); or

153 Section 272 (1) (c) (iv)

substitute

- (iv) a liquidator, administrator or receiver (as respectively mentioned in the Corporations Act); or
- (v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
- (vi) a proprietary company (within the meaning of the Corporations Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or
- (vii) an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other member of the group who is not someone to whom disclosure of costs is not required has indicated that he or she waives the right to disclosure; or
- (viii) a Minister of a jurisdiction or the Commonwealth acting in the Minister's official capacity, or a government department or public authority of a jurisdiction or the Commonwealth;

154 Section 272 (2)

after

\$1 500

insert

(exclusive of GST)

155 Section 274

substitute

274 Additional disclosure—uplift fees

- (1) If a costs agreement involves an uplift fee, the law practice must disclose to the client in writing, before entering the agreement—
 - (a) the uplift fee (or the basis for working out the uplift fee); and
 - (b) the reasons why the uplift fee is justified.
- (2) The disclosure under subsection (1) is in addition to any information required to be disclosed to the client under section 269 (Disclosure of costs to client).
- (3) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

**156 Form of disclosure
Section 275 (1)**

after

disclosures

insert

to a client

157 Section 277 (1), (2) and (3)

substitute

277 Effect of failure to disclose

- (1) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under division 3.2.7.

Note Under s 302 (Costs of costs assessment), the costs of an assessment in these circumstances are generally payable by the law practice.

- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this division to be disclosed may not bring a proceeding against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under division 3.2.7.
- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client or associated third party payer may also apply under section 288 (Setting aside costs agreements) for the costs agreement to be set aside.
- (3A) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed, the amount of the costs may, on an assessment of the relevant legal costs, be reduced by an amount considered by the Supreme Court to be proportionate to the seriousness of the failure to disclose.

- (3B) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client only because the retained law practice failed to disclose relevant information to the first law practice as required by section 270 (2) (Disclosure if another law practice is to be retained), subsections (1) to (3A)—
- (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and
 - (b) do apply to the legal costs owing to the retained law practice;
- (3C) In a matter involving both a client and an associated third party payer, if disclosure has been made to 1 of them but not the other—
- (a) subsection (1) does not affect the liability of the person to whom disclosure was made to pay the legal costs; and
 - (b) subsection (2) does not prevent proceedings being maintained against the person to whom the disclosure was made for the recovery of the legal costs.

158 **Progress reports**
Section 278 (4), new note

insert

Note An associated third party payer for a client has the same right as the client to obtain reports under this section to the extent that the costs are payable by the associated third party payer (see s 281A).

**159 On what basis are legal costs recoverable?
Section 279, note**

omit

review

substitute

assessment

160 Section 281 (1), new example

insert

Example

A law practice gives a client a bill for costs on 1 May 2008. The bill remains unpaid on 1 June 2008, that is, for longer than 30 days after the day the practice gave the client the bill. The law practice may charge interest on those costs for the period that the costs remain unpaid, beginning on 2 May 2008.

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

161 Section 281 (4) (b)

substitute

(b) if a rate is not prescribed by regulation—the rate applying under the *Court Procedures Rules 2006*, schedule 2, part 2.2 (Interest after judgment).

162 New section 281 (5)

insert

(5) Subsection (1) applies to a bill of costs given in the form of a lump sum bill even if the client later requests or is later given an itemised bill.

Note A person may request an itemised bill not later than 90 days after the person receives a lump sum bill (see s 292).

163 New section 281A

in division 3.2.4, insert

281A Disclosure to associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the practice under this division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details of matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in relation to legal services provided to the client.
- (2) The disclosure must be made in writing—
 - (a) at the time the disclosure to the client is required under this division; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.
- (3) Section 275 (Form of disclosure) applies to a disclosure under this section in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 278 (Progress reports) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in relation to legal services provided to the client.

**164 Making costs agreements
New section 282 (1) (d)**

insert

- (d) between a law practice and an associated third party payer.

165 Section 282 (4) (a) and (b)

substitute

- (a) that it is an offer to enter into a costs agreement; and
- (b) that the offer can be accepted in writing or by other conduct; and

166 Section 282 (5)

substitute

- (5) Except as provided by section 300A (Assessment of costs by reference to costs agreement), a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under division 3.2.7.

Note If it attempts to do so, the costs agreement will be void (see s 287 (1)).

- (6) A reference in section 288 (Setting aside costs agreements) and in any prescribed provisions of this part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as mentioned in subsection (1) (d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

**167 Conditional costs agreements
Section 283 (5)**

substitute

- (5) Subsection (3) (c) (iii), (d) and (e) also do not apply to a conditional costs agreement made with a sophisticated client.

- (6) If a client terminates a conditional costs agreement within the period mentioned in subsection (3) (e), the law practice—
 - (a) may recover only the legal costs in relation to legal services performed for the client before the termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during the period; and
 - (b) without limiting paragraph (a), may not recover the uplift fee (if any).

**168 Conditional costs agreements involving uplift fees
Section 284 (1) to (4)**

substitute

- (1) A conditional costs agreement may provide for the payment of an uplift fee.

Note The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) and pt 14.2 (Costs in damages claims if no reasonable prospects of success) contain limitations on legal costs.
- (2) The basis for working out the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable—
 - (a) a range of estimates of the uplift fee; and
 - (b) an explanation of the major variables that will affect the amount of the uplift fee.
- (4) If a conditional costs agreement relates to a litigious matter—
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and

- (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.

**169 Contingency fees prohibited
Section 285 (1)**

substitute

- (1) A law practice must not enter into a costs agreement under which the amount payable to the practice, or any part of that amount, is worked out by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceeding to which the agreement relates.

**170 Effect of costs agreement
Section 286 (1)**

omit

review

substitute

assessment

171 Section 286 (2)

substitute

- (2) Mediation may be used to resolve a dispute over an amount claimed to be payable to a law practice under a costs agreement.

**172 Certain costs agreements void
Section 287 (2)**

omit

review

substitute

assessment

173 Section 288

substitute

288 Setting aside costs agreements or provisions of costs agreements

- (1) On application by a client who is a party to a costs agreement with a law practice, the Supreme Court may order that the agreement or a provision of the agreement be set aside if satisfied that the agreement or provision is not fair or reasonable.

Note Section 277 (3) also allows a client to apply under this section for an order setting aside a costs agreement if the law practice concerned has failed to disclose to the client anything required by div 3.2.3 to be disclosed.

- (2) The Supreme Court may set aside—
- (a) a provision only of a costs agreement even though the client has applied for the whole agreement to be set aside; or
 - (b) the whole of a costs agreement even though the client has applied only to have a provision of the agreement set aside.
- (3) In deciding whether or not a costs agreement is fair or reasonable, the Supreme Court may have regard to any or all of the following matters:
- (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the practice;
 - (b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;
 - (c) whether the law practice failed to make any of the disclosures required under division 3.2.3 (Costs disclosure);

-
- (d) the circumstances and conduct of the parties before and when the agreement was made;
 - (e) the circumstances and conduct of the parties in the matter after the agreement was made;
 - (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;
 - (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement;
 - (h) any other relevant matter.
- (4) The Supreme Court may adjourn the hearing of an application under this section until the completion of any investigation or determination of any information in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.
- (5) If the Supreme Court orders that a costs agreement or a provision of a costs agreement be set aside, it may make an order in relation to the payment of legal costs the subject of the agreement or the provision of the agreement.
- (6) In making an order under subsection (5), the Supreme Court must decide the fair and reasonable legal costs in relation to the work to which the agreement or the provision of the agreement related, taking into account—
- (a) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and
 - (b) whether or not it was reasonable to carry out the work; and
 - (c) whether or not the work was carried out in a reasonable way.

- (7) In making an order under subsection (5), the Supreme Court must not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement or the provision of the costs agreement had not been set aside.
- (8) For subsection (5), the Supreme Court may have regard to any or all of the following matters:
- (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;
Note This Act is defined in the dictionary.
 - (b) any disclosures made by the law practice under division 3.2.3 (Costs disclosure), or the failure to make any disclosures required under that division;
 - (c) any relevant advertisement about—
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
 - (e) the retainer and whether the work done was within the scope of the retainer;
 - (f) the complexity, novelty or difficulty of the matter;
 - (g) the quality of the work done;
 - (h) the place where, and circumstances in which, the work was done;
 - (i) the time within which the work was required to be done;

- (j) any other relevant matter.

Example—par (j)

a scale of costs

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

- (9) The Supreme Court may decide whether or not a costs agreement exists.
- (10) The Supreme Court may order the payment of the costs of and incidental to a hearing under this section.
- (11) In this section:

client means a person to whom or for whom legal services are or have been provided.

Note See also s 282 (6) which extends the application of this section to associated third party payers.

174 Bills
New section 290 (6A)

insert

- (6A) Despite anything in subsections (2) to (6), a bill may be given to a client electronically if the client asks for the bill to be given electronically.

175 Notification of client's rights
Section 291

omit

A bill

substitute

- (1) A bill

176 Section 291 (a) (i)

substitute

- (i) costs assessment under division 3.2.7;

177 New section 291 (2) and (3)

insert

- (2) Subsection (1) does not apply in relation to a sophisticated client.
- (3) A law practice may provide the written statement mentioned in subsection (1) in a form approved by the licensing body under section 587 and if it does so the practice is taken to have complied with this section in relation to the statement.

178 Section 292

substitute

292 Request for itemised bill

- (1) This section applies if a lump sum bill is given by a law practice for legal costs exceeding the threshold amount.
- (2) Any person who is entitled to apply for an assessment of the legal costs to which the bill relates may ask the law practice for an itemised bill.
- (3) A request under subsection (2) must be made not later than 90 days after the day the lump sum bill is given to the client.
- (4) The law practice must comply with the request as soon as practicable.
- (5) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to the costs that the person is liable to pay.

-
- (6) A law practice must not start any proceeding to recover legal costs from a person who has been given a lump sum bill until at least 90 days after the day the person is given the bill.
- (7) However, if the person asks for an itemised bill under this section, the law practice must not start any proceeding to recover the legal costs from the person until at least 30 days after the day the person is given an itemised bill.
- (8) A law practice is not entitled to charge a person for the preparation of an itemised bill under this section.
- (9) Section 290 (2) and (5) apply to the giving of an itemised bill under this section.
- (10) In this section:
- threshold amount* means—
- (a) \$1 500 (excluding disbursements); or
- (b) if a higher amount is prescribed by regulation—the higher amount.

179 **Interim bills**
Section 293 (2)

omit

reviewed

substitute

assessed

180 Division 3.2.7 heading

substitute

Division 3.2.7 Costs assessment

181 Section 294

substitute

294 Definition—div 3.2.7

In this division:

client means a person to whom or for whom legal services are or have been provided.

294A Application by client or third party payer for costs assessment

- (1) A client may apply to the Supreme Court for an assessment of all or any part of legal costs.
- (2) A third party payer may apply to the Supreme Court for an assessment of all or any part of legal costs payable by the third party payer.
- (3) An application for a costs assessment may be made even if the legal costs have been completely or partly paid.
- (4) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for a costs assessment.
- (5) An application by a client or third party payer for a costs assessment under this section must be made not later than 12 months after—
 - (a) the day the bill was given or the request for payment was made to the client or third party payer; or
 - (b) the day the costs were paid if neither a bill was given nor a request was made.

-
- (6) However, an application that is made out of time may be dealt with if the Supreme Court, on its own initiative or on application by the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.
- (7) Subsection (6) does not apply to an application by—
- (a) a sophisticated client; or
 - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned.
- (8) If the third party payer is a non-associated third party payer, the law practice must give the third party payer, on the written request of the third party payer, sufficient information to allow the third party payer to consider making, and to make, an application for a costs assessment under this section.
- (9) If there is an associated third party payer for a client of a law practice—
- (a) this section does not prevent—
 - (i) the client from applying for assessment under this section in relation to costs for which the client is solely liable; and
 - (ii) the associated third party payer from applying for assessment under this section in relation to costs for which the associated third party is solely liable; and
 - (b) applications mentioned in paragraph (a) (i) and (ii) may be made at the same time or at different times and may be dealt with jointly or separately; and

- (c) the client or the associated third party payer—
 - (i) if the other of them makes an application for assessment under this section in relation to costs for which they are both liable—may participate in the costs assessment process; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment; and
 - (d) the law practice—
 - (i) if an application is made under this section by the associated third party payer—must participate in the costs assessment process in the same way as the practice must participate in the process if an application is made under this section by a client; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment.
- (10) If there is a non-associated third party payer for a client of a law practice—
- (a) this section does not prevent—
 - (i) the client from applying for assessment under this section in relation to costs for which the client is liable; and
 - (ii) the non-associated third party payer from applying for assessment under this section in relation to costs for which the non-associated third party is liable; and
 - (b) applications mentioned in paragraph (a) (i) and (ii) may be made at the same time or at different times but must be dealt with separately; and

- (c) the client—
 - (i) if the non-associated third party payer makes an application under this section in relation to the legal costs for which the non-associated third party payer is liable—may participate in the costs assessment process; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment; and
 - (d) the law practice—
 - (i) must participate in the costs assessment; and
 - (ii) is taken to be a party to the assessment; and
 - (e) despite any provision of this division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.
- (11) In this section:
- client* includes the following:
- (a) an executor or administrator of a client;
 - (b) a trustee of the estate of a client.
- third party payer* includes the following:
- (a) an executor or administrator of a third party payer;
 - (b) a trustee of the estate of a third party payer.

182 Section 295 heading

substitute

295 Application for costs assessment by law practice retaining another law practice

183 Section 295 (1)

omit

a review

substitute

an assessment

184 Section 295 (2) and (3)

substitute

- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been completely or partly paid.
- (3A) An application under this section must be made not later than 60 days after—
 - (a) the day the bill was given or the request for payment was made; or
 - (b) the day the costs were paid if neither a bill was given nor a request was made.

185 Section 296

substitute

296 Application for costs assessment by law practice giving bill

- (1) A law practice that has given a bill in accordance with division 3.2.6 (Billing) may apply to the Supreme Court for an assessment of all or any part of the legal costs to which the bill relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.

-
- (3) An application for a costs assessment may be made even if the legal costs have been completely or partly paid.
- (4) An application must not be made under this section unless at least 30 days have passed since—
- (a) the day the bill was given or the request for payment was made; or
 - (b) the day the costs were paid if neither a bill was given nor a request was made; or
 - (c) an application has been made under this division by someone else in relation to the legal costs.

186 Sections 297, 298 and 299

omit

review

substitute

assessment

187 Section 300 heading

substitute

300 Criteria for costs assessment**188 Section 300 (1)**

omit

a review

substitute

an assessment

189 Section 300 (1) (c)

substitute

- (c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 300A (Assessment of costs by reference to costs agreement) or section 300B (Assessment of costs by reference to scale of costs etc) applies to any disputed costs; and
- (d) if the costs agreement contained provision for an uplift fee under section 284 (Conditional costs agreements involving uplift fees), whether the uplift fee was justified in the circumstances.

190 Section 300 (2) (b)

substitute

- (b) any disclosures made by the law practice under division 3.2.3 (Costs disclosure);

191 Section 300 (2) (d)

omit

192 New sections 300A, 300B and 300C

insert

300A Assessment of costs by reference to costs agreement

- (1) The Supreme Court must assess the amount of any disputed legal costs that are subject to a costs agreement by reference to the provisions of the costs agreement if—
 - (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means of working out the amount, of the costs; and

- (b) the agreement has not been set aside under section 288 (Setting aside costs agreements);

unless the Supreme Court is satisfied—

- (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of division 3.2.3 (Costs disclosure); or
- (d) that division 3.2.5 (Costs agreements) prevents the law practice concerned from recovering the amount of the costs; or
- (e) that the parties otherwise agree.

- (2) The Supreme Court is not required to initiate an examination of the matters mentioned in subsection (1) (c) and (d).

300B Assessment of costs by reference to scale of costs etc

The Supreme Court may assess the amount of any disputed legal costs that are not subject to a costs agreement by reference to anything it considers appropriate, including a scale of costs.

300C Recovery of assessed costs

- (1) This section applies if the Supreme Court assesses an amount of legal costs.
- (2) If an amount of the legal costs has been paid before the assessment was made, any amount by which the amount paid exceeds the amount assessed may be recovered as a debt in a court of competent jurisdiction.
- (3) If an amount of the legal costs has not been paid—
 - (a) the assessment is taken to be a judgment of the Supreme Court for the amount of the unpaid legal costs and may be enforced accordingly; and

- (b) the rate of interest payable on the amount is the rate applying under the *Court Procedures Rules 2006*, schedule 2, part 2.2 (Interest after judgment).

193 Section 302

substitute

302 Costs of costs assessment

- (1) The Supreme Court must determine the costs of a costs assessment.
- (2) Unless the Supreme Court otherwise orders, the law practice to which the costs are payable or were paid must pay the costs of the costs assessment if—
 - (a) on the assessment the legal costs are reduced by 15% or more;
or
 - (b) the court is satisfied that the law practice failed to comply with division 3.2.3 (Costs disclosure).
- (3) Unless the Supreme Court otherwise orders, if the law practice is not, under subsection (2), liable to pay the costs of the costs assessment, the costs must be paid by the party ordered by the Supreme Court to pay the costs.

**194 Referral for disciplinary action
Section 303 (1) and (2)**

omit

review

substitute

assessment

195 Section 304 heading

substitute

304 Legal costs subject to consumer dispute not assessable**196 Section 304 (1)**

omit

review

substitute

assessment

197 Section 304 (2)

omit

cost review

substitute

costs assessment

198 New section 304A

in division 3.2.7, insert

304A Contracting out of div 3.2.7 by sophisticated clients

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice, may contract out of this division.

199 Division 3.3.1 heading

omit

**200 Professional indemnity insurance for insurable legal practitioners
Section 311 (2) (b)**

omit

that premium

insert

the premium

201 New section 312A

insert

312A Continuing indemnity insurance

- (1) An insurable legal practitioner who is issued with a practising certificate on the basis that the practitioner is, or will be, the holder of an approved indemnity insurance policy for the period of the practising certificate must—
 - (a) take all reasonable steps to ensure that the policy continues in force during the period; and
 - (b) if the policy stops being in force for part of the period, obtain a replacement policy for that part of the period.
- (2) A failure of a legal practitioner to comply with subsection (1) can be unsatisfactory professional conduct or professional misconduct.
- (3) The relevant council may suspend the legal practitioner's local practising certificate while the failure by the practitioner to comply with the requirement continues.

202 **Definitions—pt 3.4**
Section 316, definition of *concerted interstate default*

omit

that arises from

substitute

arising from or constituted by

203 **Section 316, definition of *default***

substitute

default, in relation to a law practice, means—

- (a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, if the failure arises from an act or omission of an associate that involves dishonesty; or
- (b) a fraudulent dealing with trust property that was received by the practice in the course of legal practice by the practice, if the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty.

204 **Purpose—pt 3.4**
Section 318

after

arising from

insert

or constituted by

205 **Meaning of *relevant jurisdiction*—pt 3.4**
Section 327 (1)

after

gives rise to

insert

or constitutes

206 **Defaults to which pt 3.4 applies**
Section 328 (1)

after

arising from

insert

or constituted by

207 **Section 328 (3)**

after

giving rise to

insert

or constituting

208 **Claims not affected by certain matters**
Section 335 (1)

omit

from which the default arose

substitute

giving rise to or constituting the default

**209 Claims by law practices or associates about defaults
Section 350 (1)**

after

arising from

insert

or constituted by

**210 Claims by law practices or associates about notional
defaults
Section 351 (1)**

after

arising from

insert

or constituted by

**211 Defaults involving interstate elements if committed by
1 associate only
Section 353 (1)**

omit

that arises from

substitute

arising from or constituted by

212 Section 367 heading

substitute

**367 Application of pt 3.4 to sole practitioners whose
practising certificates lapse**

213 Section 367 (1)

substitute

- (1) This section applies if—
- (a) an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed; and
 - (b) the lawyer was a sole practitioner immediately before the certificate lapsed.
- (1A) However, this section does not apply if—
- (a) the practising certificate has been suspended or cancelled under this Act or a corresponding law; or
 - (b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted or renewed.

214 New section 367 (3) (aa)

before paragraph (a), insert

- (aa) a manager or receiver is appointed under this Act for the law practice that is the lawyer as a sole practitioner;

**215 Conduct capable of being unsatisfactory professional conduct or professional misconduct
Section 389 (e)**

substitute

- (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;

- (f) conduct of an Australian legal practitioner in failing to comply with an order of the disciplinary tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay all or part of a fine imposed under this Act or a corresponding law);
- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

**216 Person to be told about complaint
Section 397 (2)**

omit

not later than 14 days

substitute

as soon as practicable

217 New section 397 (6)

insert

- (6) This section does not require the relevant council to give written notice under this section to a person about whom a complaint is made until the relevant council has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint and properly prepare the notice.

**218 Summary dismissal of complaints
Section 399 (1) (f)**

omit

each

substitute

any

219 Section 409 heading

substitute

**409 Referral of matters for costs assessment—complaint
investigation**

220 Section 409 (1)

omit

review

substitute

an assessment

221 Section 409 (2)

substitute

- (2) The referral may be made outside the 12-month period mentioned in section 294A (5) (Application by client or third party payer for costs assessment).

222 Section 409 (3)

omit

review of costs

substitute

a costs assessment

223 Section 409 (3)

omit

a review

substitute

an assessment

224 Section 409 (4)

omit

(Costs review) applies to the review of costs

substitute

(Costs assessment) applies to the costs assessment

**225 Council to give reasons to complainant and practitioner
Section 415 (c)**

omit

cost review

substitute

costs assessment

226 New section 416 (2A)

insert

- (2A) An appeal under subsection (1) or (2) must be made not later than—
- (a) 28 days after the day the relevant council gave the person making the appeal a statement of reasons under section 415; or
 - (b) any further time allowed by the disciplinary tribunal.

**227 Complainant and person complained about to be told about action taken
Section 418 (2) (c)**

omit

cost review

substitute

costs assessment

228 Section 418 (3)

substitute

- (3) For a decision by the relevant council to dismiss a complaint, the right of the complainant, under section 416 (1) (a), to appeal to the disciplinary tribunal against a decision of the relevant council to dismiss the complaint must be included in the notice to the complainant.

229 New section 420A

insert

420A Decisions without hearing

- (1) This section applies if—
 - (a) the disciplinary tribunal is satisfied that a proceeding in the tribunal may be decided on the material filed with the tribunal without hearing the parties; and
 - (b) the parties consent to the proceeding being decided without a hearing.
- (2) The disciplinary tribunal may decide the proceeding without a hearing.

230 New section 426A

insert

426A Restriction on publication of certain identifying material from proceedings

- (1) A person must not publish an account or report of a proceeding in the disciplinary tribunal if the account or report—
 - (a) discloses the identity of the person who is the subject of the complaint to which the proceeding relates (the *person concerned*); or
 - (b) allows the identity of the person concerned to be worked out.
- (2) However, the identity of the person concerned may be disclosed in an account or report of the proceeding if—
 - (a) the disciplinary tribunal has made a final decision that the person concerned is guilty of the conduct complained of; and

- (b) either—
- (i) the appeal period has ended and no appeal has been made; or
 - (ii) any appeal has been decided against the person concerned.

(3) In this section:

appeal, in relation to a decision of the disciplinary tribunal, means an appeal to the Supreme Court under section 437 against the decision.

appeal period means the period within which an appeal may be made.

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

231 Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct Section 430 (5) (b)

substitute

- (b) an order recommending that the practitioner's interstate practising certificate be suspended for a stated period or cancelled;

232 Section 430 (5) (d)

substitute

- (d) an order recommending—
- (i) that stated conditions be imposed on the practitioner's interstate practising certificate; and
 - (ii) that the conditions be imposed for a stated period; and

- (iii) a stated time (if any) after which the practitioner may apply to the tribunal for the conditions to be amended or removed.

**233 Compliance with decisions and orders of disciplinary tribunal
Section 433 (3)**

substitute

- (3) If the disciplinary tribunal makes an order recommending that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll—
- (a) a copy of the order may be filed in the Supreme Court; and
- (b) the Supreme Court may order the removal of the name from the roll.

**234 Definitions—pt 4.9
Section 447, definition of disciplinary action,
paragraph (b) (iii)**

substitute

- (iii) the refusal to grant or renew an Australian practising certificate applied for by the practitioner;

**235 Register of disciplinary action
Section 448 (3)**

omit

236 **Disciplinary action taken because of infirmity, injury or illness**
Section 452 (2) (b)

substitute

- (b) a refusal to grant or renew an Australian practising certificate applied for by the person; or

237 **Sections 458 and 459**

substitute

458 **Sharing of information with corresponding authorities**

The councils may, separately or jointly, enter into arrangements with a corresponding authority for providing information to the corresponding authority about—

- (a) complaints and investigations under this chapter; and
(b) any action taken in relation to any complaints made or investigations conducted under this chapter, including decisions of the disciplinary tribunal under this chapter.

459 **Cooperation with corresponding authorities**

- (1) In dealing with a complaint or conducting an investigation, the councils may, separately or jointly, consult and cooperate with another entity (whether in or of Australia or another country) that has or may have relevant information or powers in relation to the person against whom the complaint was made or in relation to whom the investigation is conducted.
- (2) For subsection (1), the councils and the other entity may exchange information about the complaint or investigation.

**238 Protection for things done in administration of ch 4
Section 468 (2), definition of protected person,
paragraphs (e), (f), (g) and (h)**

substitute

- (e) the disciplinary tribunal, any member of the disciplinary tribunal, or anyone exercising the functions of registrar of the disciplinary tribunal; or
- (f) a mediator to whom a matter is referred under this chapter; or
- (g) any member of the staff of any entity mentioned in paragraph (a) to (e).

**239 Definitions—ch 5
Section 473 (1), definition of regulated property**

substitute

regulated property, for a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a);
- (c) documents or records of any description relating to anything mentioned in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which a record mentioned in paragraph (c) may be produced or reproduced in visible form.

**240 Purpose—ch 5
Section 474 (1)**

substitute

- (1) The purpose of this chapter is to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers for the purpose of protecting the interests of—
- (a) the general public; and
 - (b) clients; and
 - (c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with the interests of the general public and clients.

**241 Application of ch 5 to barristers
Section 476 (1)**

omit

Supervisors

substitute

Supervisors of trust money

**242 Application of ch 5 to Australian-registered foreign
lawyers
Section 477**

after

foreign lawyers

insert

and former Australian-registered foreign lawyers

**243 Decision about external intervention
Section 480 (1)**

omit

clients, owners and employees of the practice

substitute

clients of the practice

244 Section 480 (2) (b)

substitute

- (b) to appoint a manager for the law practice, if the relevant council is of the opinion—
- (i) that external intervention is required because of issues relating to the practice's trust records; or
 - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (iii) that, for this to happen, there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

245 Part 5.3 heading

substitute

Part 5.3 Supervisors of trust money

**246 Appointment of supervisor
Section 481 (1)**

omit

for a law practice

substitute

of a law practice

247 Section 481 (2)

after

supervisor

insert

of trust money

248 Section 481 (3) (a)

substitute

(a) an Australian legal practitioner who holds an unrestricted practising certificate; or

249 Section 481 (5) (b)

after

a supervisor

insert

of trust money

**250 Notice of appointment of supervisor
Section 482 (1) and (2) (b)**

after

a supervisor

insert

of trust money

**251 Effect of service of notice of appointment of supervisor
Section 483 (1)**

omit

a supervisor for a law practice

substitute

a supervisor of trust money of a law practice

252 Section 483 (1) (a), (b) and (c)

after

by the supervisor

insert

or a nominee of the supervisor

253 Section 483 (2) (a)

omit

a supervisor for a law practice

substitute

a supervisor of trust money of a law practice

254 Section 483 (3)

omit

the supervisor for the law practice

substitute

the supervisor of trust money of the law practice

255 Section 483 (5)

omit

The supervisor for a law practice

substitute

The supervisor of trust money of a law practice

256 Section 484 heading

substitute

484 Role of supervisor of trust money

257 Section 484 (1) (a)

substitute

(a) to receive trust money entrusted to the practice; and

258 Section 484 (2) (b)

substitute

(b) require the practice, an associate or former associate of the practice, or anyone else who has, or has had, control of documents relating to trust money received by the practice, to give the supervisor either or both of the following:

(i) access to the files and documents the supervisor reasonably requires;

- (ii) information relating to the trust money the supervisor reasonably requires;

259 **Ending of supervisor's appointment**
Section 486 (1)

omit

a supervisor for a law practice

substitute

a supervisor of trust money of a law practice

260 **New section 486 (1) (aa)**

insert

- (aa) the appointment is set aside under section 514 (Appeal against appointment of supervisor or manager);

261 **Effect of service of notice of appointment of manager**
Section 489 (3) (a), (b) and (c)

substitute

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on the account signed by—
- (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or
- (b) the withdrawal or transfer is made by means of electronic or internet banking facilities by—
- (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or

- (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by—
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver.

262 Section 489 (9)

after

the practice

insert

or another trust account nominated by the manager or receiver

**263 Role of manager
Section 490 (2) (b)**

substitute

- (b) require the practice, an associate or former associate of the practice, or anyone else who has, or has had, control of client files and associated documents (including documents relating to trust money received by the practice), to give the manager either or both of the following:
 - (i) access to the files and documents the manager reasonably requires;
 - (ii) information relating to client matters the manager reasonably requires;

264 **Ending of manager's appointment**
New section 493 (1) (aa)

insert

- (aa) the appointment is set aside under section 514 (Appeal against appointment of supervisor or manager);

265 **Appointment of receiver**
Section 494 (7) (a)

substitute

- (a) an Australian legal practitioner who holds an unrestricted practising certificate; or

266 **Notice of appointment of receiver**
New section 495 (2) (fa)

insert

- (fa) state that the law practice may appeal against the appointment of the receiver under section 514 (Appeal against appointment of supervisor or manager); and

267 **Effect of service of notice of appointment of receiver**
Section 496 (3) (a), (b) and (c)

substitute

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on the account signed by—
- (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager; or

- (b) the withdrawal or transfer is made by means of electronic or internet banking facilities by—
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager; or
- (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by—
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager.

268 Section 496 (9)

after

the practice

insert

or another trust account nominated by the manager or receiver

**269 Role of receiver
Section 497 (5) (b)**

omit everything before paragraph (b) (i), insert

- (b) require the practice, an associate or former associate of the practice, or anyone else who has, or has had, control of client files and associated documents (including documents relating to trust money received by the practice), to give the receiver—

270 Section 497 (6), new note

insert

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

**271 Power of receiver to require documents or information
Section 502 (1) (a) and (b)**

substitute

- (a) access to documents relating to the affairs of the practice the receiver reasonably requires;
- (b) information relating to the affairs of the practice the receiver reasonably requires (verified by statutory declaration if stated in the requirement).

272 Section 502 (5) (c)

substitute

- (c) an offence relating to the falsity of the answer; or
- (d) proceedings taken by the receiver for the recovery of regulated property.

273 Section 502 (6)

omit

274 Section 502 (7), definition of relevant person

substitute

relevant person, for a law practice, means—

- (a) an associate or former associate of the practice; or
- (b) anyone who has, or has had, control of documents of the practice; or

- (c) anyone who has information relating to regulated property of the practice or property that the receiver reasonably believes to be regulated property of the practice.

**275 Lien for costs on regulated property
Section 504 (1) (b)**

substitute

- (b) the practice, or a legal practitioner associate of the practice, claims a lien for legal costs on regulated property of the practice.

276 Section 504 (2)

omit everything before paragraph (a), insert

- (2) The receiver may give the law practice or the legal practitioner associate a written notice requiring the practice or associate to give the receiver within a stated period of not less than 1 month—

277 Section 504 (3)

substitute

- (3) If the law practice or legal practitioner associate asks the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs to comply with subsection (2), the time allowed under that subsection does not start to run until the access is provided.

**278 Ending of receiver's appointment
Section 509 (1)**

substitute

- (1) The appointment by the Supreme Court of a receiver for a law practice ends in the following circumstances:
 - (a) the term (if any) of the appointment ends;

- (b) the appointment is set aside under section 514 (Appeal against appointment of supervisor or manager);
- (c) a decision of the Supreme Court that the appointment be ended takes effect.

279 New section 509 (1A) to (1D)

insert

- (1A) The Supreme Court may, on application by the law society council or the receiver made at any time, determine that the appointment be terminated immediately or with effect from a stated date.
- (1B) A receiver for a law practice must apply to the Supreme Court to end the appointment when the affairs of the practice have been wound up and ended, unless the term (if any) of the appointment has already ended.
- (1C) On application under subsection (1B), the Supreme Court may make the order that it considers appropriate.
- (1D) The appointment of a receiver is not stayed by the making of an application for ending the receiver's appointment, and the receiver may continue to exercise his or her functions as a receiver pending the Supreme Court's decision on the application, except to the extent (if any) that the Supreme Court otherwise directs.

280 New section 515A

insert

515A Manager and receiver appointed for law practice

If a manager and receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

281 Section 516

substitute

516 ADI disclosure requirements

- (1) An ADI commits an offence if—
- (a) an external intervener for a law practice produces to the ADI evidence of the appointment of the intervener in relation to the practice; and
 - (b) the external intervener requires the ADI to disclose to the external intervener whether the practice, or an associate of the practice, keeps or has kept an account with the ADI during the period stated by the intervener; and
 - (c) the ADI fails to comply with the requirement.

Maximum penalty: 50 penalty units.

- (2) An ADI commits an offence if—
- (a) an account is kept with the ADI by a law practice, or an associate of a law practice; and
 - (b) an external intervener for a law practice produces to the ADI evidence of the appointment of the intervener in relation to the practice; and
 - (c) the external intervener requires the ADI to give the intervener details of all accounts kept with the ADI by the law practice or the associate; and
 - (d) the ADI fails to comply with the requirement.

Maximum penalty: 50 penalty units.

- (3) An ADI commits an offence if—
- (a) an account is kept with the ADI by a law practice, or an associate of a law practice; and

-
- (b) an external intervener for a law practice produces to the ADI evidence of the appointment of the intervener in relation to the practice; and
 - (c) the external intervener requires the ADI—
 - (i) to produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to the account or money deposited in the account; or
 - (ii) to give the intervener details of any transactions relating to the account or money; and
 - (d) the ADI fails to comply with the requirement.

Maximum penalty: 50 penalty units.

- (4) If an external intervener for a law practice reasonably believes that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the practice, the ADI at which the account is kept must, if asked by the intervener, disclose to the intervener—
 - (a) whether a person stated by the intervener keeps or has kept an account with the ADI during the period stated by the intervener; and
 - (b) if so, details of the account.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any territory law, law of the Commonwealth or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable for any loss or damage suffered by someone else because of the producing of records, or the giving of details, under subsection (3).

282 New sections 519A and 519B

insert

519A Provisions relating to requirements under this part

- (1) This section applies to a requirement imposed on a person under this part to give an external intervener access to documents or information.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document.
- (3) The external intervener imposing the requirement may—
 - (a) inspect a document given to the intervener in compliance with the requirement; and
 - (b) make a copy of the document or part of the document; and
 - (c) keep the document for the period the intervener thinks necessary for the purposes of the external intervention for which it was produced.
- (4) The person is not subject to any liability, claim or demand only because the person complies with the requirement.
- (5) A failure of an Australian lawyer to comply with the requirement can be unsatisfactory professional conduct or professional misconduct.
- (6) The relevant council may, on its own initiative, suspend a local practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

519B Obstruction of external intervener

- (1) A person commits an offence if—
 - (a) the person obstructs, hinders, intimidates or resists an external intervener in the exercise of his or her functions under this Act; and
 - (b) the person knows that the external intervener is an external intervener.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to the circumstance that the external intervener was exercising a function under this Act.
- (3) This section does not apply if the person has a reasonable excuse.

**283 Requirements that may be imposed for investigations, examinations and audits under pt 3.1 and pt 2.6
Section 525 (1)**

substitute

- (1) For carrying out a trust account investigation, trust account examination or ILP compliance audit in relation to a law practice, an investigator may, on production of evidence of the investigator's appointment, require the practice or an associate or former associate of the practice or anyone (including, for example, an ADI, auditor or liquidator) who has, or has had, control of documents relating to the affairs of the practice to give the investigator either or both of the following:
 - (a) access to the documents relating to the affairs of the practice the investigator reasonably requires;

- (b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if stated in the requirement).

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

284 Requirements that may be imposed for investigations under ch 4 Section 526 (2)

substitute

- (2) For carrying out a complaint investigation in relation to an Australian lawyer, the investigator may, on production of evidence of the investigator's appointment and by written notice require an associate or former associate of a law practice of which the lawyer is or was an associate or anyone (including, for example, an ADI, auditor or liquidator but not including the lawyer) who has, or has had, control of documents relating to the affairs of the lawyer to give the investigator either or both of the following:
 - (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;
 - (b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if stated in the requirement).

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

**285 Provisions relating to requirements under pt 6.2
Section 527 (2)**

before

legal practitioner

insert

Australian

286 New section 555A

in part 6.5, insert

555A Obstruction of investigator

- (1) A person commits an offence if—
 - (a) the person obstructs, hinders, intimidates or resists an investigator in the exercise of his or her functions under this Act; and
 - (b) the person knows that the investigator is an investigator.Maximum penalty: 50 penalty units.
- (2) Strict liability applies to the circumstance that the investigator was exercising a function under this Act.
- (3) This section does not apply if the person has a reasonable excuse.

**287 Purpose—pt 8.3
Section 578**

omit

locally-registered foreign lawyers

substitute

Australian-registered foreign lawyers

288 Division 8.3.2 heading

substitute

Division 8.3.2 Rules for Australian legal practitioners and Australian-registered foreign lawyers

**289 Subject matter of legal profession rules
Section 582**

omit

locally-registered foreign lawyers

substitute

Australian-registered foreign lawyers

**290 Rules for incorporated legal practices and multidisciplinary partnerships
Section 584 (3) (a) and (b)**

omit

services,

substitute

services

291 Section 584 (3) (c)

substitute

- (c) regulate any services that a multidisciplinary partnership or partners or employees of a multidisciplinary partnership may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

292 Section 584 (3) (d)

omit

services,

substitute

services

293 New section 587A

insert

587A Protection from liability

- (1) A person is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act was in the exercise of a function under this Act.
- (2) This section does not limit any other provision of this Act about protection of an entity from liability.

**294 Associates who are disqualified or convicted people
Section 589 (1)**

substitute

- (1) A law practice must not have a person as a lay associate if—
 - (a) a principal, or other legal practitioner associate, of the practice knows that the person—
 - (i) is a disqualified person; or
 - (ii) has been convicted of a serious offence; and
 - (b) the person is not approved by the relevant council under subsection (2).

295 New section 589 (5A)

insert

- (5A) Proceedings for an offence under subsection (4) may only be brought within 6 months after discovery of the offence by the law practice.

296 Section 589 (7), definition of *disqualified person*

omit

297 Section 589 (7), new definition of *lay associate*

insert

lay associate, of a law practice, includes a consultant to the law practice (however described) who—

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

Note *Lay associate* is defined for the Act in s 9 (Terms relating to associates and principals of law practices).

**298 Minister may determine fees
Section 601 (1)**

omit

in relation to the admissions board

substitute

(other than for anything in relation to which a fee may be determined under section 84 (Determination of fees by law society council and bar council))

**299 Regulation-making power
New section 602 (1A)**

insert

- (1A) Without limiting subsection (1), a regulation may make provision about any matter in relation to which a legal profession rule has been made or may be made.

**300 Continuing application of provisions of Legal Practitioners Act about costs
Section 606 (2) (a)**

omit

review

substitute

assessment

**301 Costs disclosure
Section 607 (2) (a) and (3) (a)**

omit

review

substitute

assessment

302 Dictionary, new definition of *associated third party payer*

insert

associated third party payer, for part 3.2—see section 261A (Terms relating to third party payers).

303 Dictionary, definition of *client*

substitute

client—

- (a) for this Act generally—includes a person to whom or for whom legal services are provided; and
- (b) for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

304 Dictionary, definitions of *conditional costs agreement* and *costs agreement*

omit

review

substitute

assessment

305 Dictionary, definition of *commercial legal presence*

omit

306 Dictionary, definition of *costs review*

substitute

costs assessment, for part 3.2 (Costs disclosure and assessment)—see section 261.

307 Dictionary, definition of *disbursements*

omit

review

substitute

assessment

308 Dictionary, definition of *disqualified person*

substitute

disqualified person means any of the following people:

- (a) a person whose name has been removed from an Australian roll (whether or not at the request of the person) and who has not later been admitted to the legal profession under this Act or a corresponding law;
- (b) a person who is not an Australian legal practitioner because the person's Australian practising certificate has been cancelled under this Act or a corresponding law;
- (c) a person whose Australian practising certificate has been suspended under this Act or a corresponding law and in relation to whom the suspension is in force;
- (d) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law and who has not later been granted an Australian practising certificate;
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in relation to the practice;
- (f) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (g) a person who is the subject of an order under section 123 (Disqualification from managing incorporated legal practice) or section 148 (Prohibition on multidisciplinary partnerships with certain partners who are not Australian legal practitioners) or under a provision of a corresponding law that corresponds to section 123 or section 148.

309 Dictionary, new definition of *government lawyer*

insert

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

- (a) the Territory, a State, another Territory or the Commonwealth;
or
- (b) a government department (however described) of the Territory, a State, another Territory or the Commonwealth; or
- (c) an entity prescribed by regulation as a government agency.

310 Dictionary, definitions of *litigious matter* and *lump sum bill*

omit

review

substitute

assessment

311 Dictionary, new definition of *non-associated third party payer*

insert

non-associated third party payer, for part 3.2—see section 261A.

312 Dictionary, definition of *scale of costs*

omit

review

substitute

assessment

313 Dictionary, new definition of *sophisticated client*

insert

sophisticated client, for part 3.2 (Costs disclosure and assessment)—see section 261.

314 Dictionary, definition of *supervised legal practice*, new paragraph (ba)

insert

- (ba) as a government lawyer, if the person engages in legal practice under the supervision of an Australian lawyer who holds, or otherwise meets the criteria for the grant or renewal of, an unrestricted practising certificate; or

315 Dictionary, new definition of *third party payer*

insert

third party payer, for part 3.2—see section 261A.

316 Dictionary, definition of *trust money*

substitute

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

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and
- (d) money received by the practice that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

317 Dictionary, definition of *uplift fee*

omit

review

substitute

assessment

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Court Procedures Rules 2006

[1.1] Rule 6250 (3) (e)

omit

review

substitute

assessment

Part 1.2 Legal Aid Act 1977

[1.2] Section 69 (b)

omit

review

substitute

assessment

[1.3] Dictionary, definition of *practising certificate*

substitute

practising certificate means an unrestricted practising certificate, a restricted practising certificate or a barrister practising certificate under the *Legal Profession Act 2006*.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 August 2007.

2 Notification

Notified under the Legislation Act on 28 September 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Legal Profession Amendment Bill 2007, which was passed by the Legislative Assembly on 25 September 2007.

Clerk of the Legislative Assembly

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