

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Profession Bill 2006

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2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Profession Bill 2006

A Bill for

An Act about the legal profession and legal services

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

1 **Chapter 1 Introduction**

2 **Part 1.1 Preliminary—ch 1**

3 **1 Name of Act**

4 This Act is the *Legal Profession Act 2006*.

5 **2 Commencement**

6 This Act commences on 1 July 2006.

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

9 **3 Dictionary**

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

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

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

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

21 **4 Notes**

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

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

- 1 **5 Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1 Criminal Code*
- 4 The Criminal Code, ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg *conduct*, *intention*,
- 9 *recklessness* and *strict liability*).
- 10 *Note 2 Penalty units*
- 11 The Legislation Act, s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.
- 13 **6 Purposes of Act**
- 14 The purposes of this Act are as follows:
- 15 (a) to provide for the regulation of legal practice in the ACT in the
- 16 interests of the administration of justice and for the protection
- 17 of consumers of the services of the legal profession and the
- 18 public generally;
- 19 (b) to facilitate the regulation of legal practice on a national basis
- 20 across State and Territory borders.

1 **Part 1.2** **Important terms**

2 **7** **Terms relating to lawyers**

3 In this Act:

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

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

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

11 **8** **Terms relating to legal practitioners**

12 In this Act:

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

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

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

1 **9 Terms relating to associates and principals of law**
2 **practices**

3 In this Act:

4 *associate*, of a law practice, means—

- 5 (a) an Australian legal practitioner who is—
- 6 (i) for a law practice constituted by a sole practitioner—the
- 7 sole practitioner; or
- 8 (ii) for a law practice that is a law firm—a partner in the law
- 9 practice; or
- 10 (iii) for a law practice that is an incorporated legal practice—a
- 11 legal practitioner director in the practice; or
- 12 (iv) for a multidisciplinary partnership—a legal practitioner
- 13 partner in the practice; or
- 14 (v) an employee of the law practice; or
- 15 (b) an agent of the law practice who is not an Australian legal
- 16 practitioner; or
- 17 (c) an employee of, or a person paid in connection with, the law
- 18 practice who is not an Australian legal practitioner; or
- 19 (d) an Australian-registered foreign lawyer who is a partner in the
- 20 law practice; or
- 21 (e) a person (other than an Australian legal practitioner) who is a
- 22 partner in a business that includes the law practice; or
- 23 (f) a person (other than an Australian legal practitioner) who
- 24 shares the receipts, revenue or other income arising from the
- 25 legal practice; or
- 26 (g) an Australian-registered foreign lawyer who has a relationship
- 27 with the law practice of a kind prescribed by regulation.

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

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

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

- (a) for a law practice constituted by a sole practitioner—the sole practitioner; or
- (b) for a law practice that is a law firm—a partner in the law practice; or
- (c) for a law practice that is an incorporated legal practice—a legal practitioner director in the practice; or
- (d) for a multidisciplinary partnership—a legal practitioner partner in the practice.

10 What is the *home jurisdiction*?

- (1) This section has effect for this Act.
- (2) The ***home jurisdiction*** of an Australian legal practitioner is the jurisdiction in which the practitioner's only or most recent Australian practising certificate was granted.
- (3) The ***home jurisdiction*** of an Australian-registered foreign lawyer is the jurisdiction in which the lawyer's only or most recent registration was granted.
- (4) The ***home jurisdiction*** of an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer is—
 - (a) if only 1 jurisdiction is the home jurisdiction of the only associate of the practice who is an Australian legal practitioner

- 1 or for all the associates of the practice who are Australian legal
2 practitioners—that jurisdiction; or
- 3 (b) if no 1 jurisdiction is the home jurisdiction of all the associates
4 of the practice who are Australian legal practitioners—
- 5 (i) the jurisdiction in which the office is situated where the
6 associate performs most of the associate’s duties for the
7 law practice; or
- 8 (ii) if a jurisdiction cannot be decided under
9 subparagraph (i)—the jurisdiction in which the associate
10 is enrolled under a law of the jurisdiction to vote at
11 elections for the jurisdiction; or
- 12 (iii) if a jurisdiction can be decided under neither
13 subparagraph (i) nor subparagraph (ii)—the jurisdiction
14 decided in accordance with criteria prescribed by
15 regulation.

16 **11 Suitability matters**

- 17 (1) Each of the following is a *suitability matter* for an individual:
- 18 (a) whether the person is currently of good fame and character;
- 19 (b) whether the person is or has been an insolvent under
20 administration;
- 21 (c) whether the person has been convicted of an offence in
22 Australia or a foreign country, and if so—
- 23 (i) the nature of the offence; and
- 24 (ii) how long ago the offence was committed; and

Section 11

- 1 (iii) the person's age when the offence was committed;
- 2 *Note 1* The admission rules may make provision for the convictions that
- 3 must be disclosed by an applicant and those that need not be
- 4 disclosed.
- 5 *Note 2* Section 13 (References to *conviction* and *quashing* of conviction)
- 6 provides that reference to a conviction includes a finding of guilt,
- 7 or the acceptance of a guilty plea, whether or not a conviction is
- 8 recorded.
- 9 (d) whether the person engaged in legal practice in Australia—
- 10 (i) when not admitted, or not holding a practising certificate,
- 11 as required under this Act or a previous territory law that
- 12 corresponds to this Act or under a corresponding law; or
- 13 (ii) if the person was admitted—in contravention of a
- 14 condition of admission; or
- 15 (iii) if the person held an Australian practising certificate— in
- 16 contravention of a condition of the certificate or while the
- 17 certificate was suspended;
- 18 (e) whether the person has practised law in a foreign country—
- 19 (i) when not permitted under a law of that country to do so;
- 20 or
- 21 (ii) if permitted to do so, in contravention of a condition of
- 22 the permission;
- 23 (f) whether the person is currently subject to an unresolved
- 24 complaint, investigation, charge or order under any of the
- 25 following:
- 26 (i) this Act or a previous territory law that corresponds to
- 27 this Act;
- 28 (ii) a corresponding law or corresponding foreign law;

- 1 (g) whether the person—
- 2 (i) is the subject of current disciplinary action, however
- 3 expressed, in another profession or occupation in
- 4 Australia or a foreign country; or
- 5 (ii) has been the subject of disciplinary action, however
- 6 expressed, relating to another profession or occupation
- 7 that involved a finding of guilt;
- 8 (h) whether the person's name has been removed from—
- 9 (i) a local roll, and has not since been restored to or entered
- 10 on a local roll; or
- 11 (ii) an interstate roll, and has not since been restored to or
- 12 entered on an interstate roll; or
- 13 (iii) a foreign roll;
- 14 (i) whether the person's right to engage in legal practice has been
- 15 suspended or cancelled in Australia or a foreign country;
- 16 (j) whether the person has contravened, in Australia or a foreign
- 17 country, a law about trust money or trust accounts;
- 18 (k) whether, under this Act, a law of the Commonwealth or a
- 19 corresponding law, a supervisor, manager or receiver, however
- 20 described, is or has been appointed in relation to any legal
- 21 practice engaged in by the person;
- 22 (l) whether the person is or has been subject to an order, under
- 23 this Act, a law of the Commonwealth or a corresponding law,
- 24 disqualifying the person from being employed by, or a partner
- 25 of, an Australian legal practitioner or from managing a
- 26 corporation that is an incorporated legal practice;
- 27 (m) whether the person currently is unable to satisfactorily carry
- 28 out the inherent requirements of practice as an Australian legal
- 29 practitioner.

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

3 **12 Information notices**

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

- 6 (a) the decision; and
7 (b) the reasons for the decision; and
8 (c) the rights of appeal or review available to the person in relation
9 to the decision and the period within which an appeal or review
10 must be made or applied for.

11 **13 References to *conviction* and *quashing* of conviction**

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

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

- 16 (2) Without limiting subsection (1), a reference in this Act to the
17 *quashing* of a conviction for an offence includes a reference to the
18 quashing of—

- 19 (a) a finding of guilt in relation to the offence; or
20 (b) the acceptance of a guilty plea in relation to the offence.

- 21 (3) However, a reference in this Act to the *quashing* of a conviction for
22 an offence does not include a reference to the quashing of a
23 conviction if—

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

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

1 **Chapter 2** **General requirements for**
2 **engaging in legal practice**

3 **Part 2.1** **Preliminary—ch 2**

4 **14** **Simplified outline—ch 2**

- 5 (1) This chapter sets out general requirements for engaging in legal
6 practice in the ACT.
- 7 (2) The following is a general outline of the contents of this chapter:
- 8 (a) part 2.2 provides for the reservation of legal work and legal
9 titles to properly qualified entities;
- 10 (b) part 2.3 sets out the qualifications and procedure for admission
11 to legal practice in the ACT;
- 12 (c) part 2.4 provides for the grant, renewal, amendment,
13 suspension and cancellation of practising certificates in the
14 ACT and sets out the entitlements of holders of interstate
15 practising certificates to engage in legal practice in the ACT;
- 16 (d) part 2.5 provides a scheme for notification of and response to
17 action taken by courts and other authorities in the ACT and
18 other jurisdictions regarding admission to the legal profession
19 and the right to engage in legal practice;
- 20 (e) part 2.6 regulates the provision of legal services in the ACT by
21 corporations and by partnerships that provide legal services
22 and nonlegal services;
- 23 (f) part 2.7 regulates the practice of the law of a foreign country in
24 the ACT;

Chapter 2
Part 2.1

General requirements for engaging in legal practice
Preliminary—ch 2

Section 14

- 1 (g) part 2.8 regulates the provision of legal services in the ACT by
2 community legal centres.
- 3 (3) Subsection (2) is intended only as a guide to the general scheme of
4 this chapter.

**Part 2.2 Reservation of legal work and
 legal titles**

15 Purposes—pt 2.2

The purposes of this part are as follows:

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

16 Prohibition on engaging in legal practice if not entitled

(1) A person commits an offence if—

- (a) the person engages in legal practice in the ACT; and
- (b) the person is not an Australian legal practitioner.

Maximum penalty: 100 penalty units.

Examples of engaging in legal practice

- 1 preparing a will or other testamentary instrument
- 2 preparing an instrument creating or regulating rights between people
- 3 preparing an instrument relating to property or a legal proceeding
- 4 acting as advocate for someone in a proceeding before a court or tribunal
- 5 preparing papers to be used in support of, or opposition to, an application for the grant of probate or letters of administration

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

- 1 (2) It is a defence to a prosecution for an offence against subsection (1)
2 if the defendant proves that the defendant did not engage in the legal
3 practice for fee, gain or reward.
- 4 (3) Subsection (1) does not apply to engaging in legal practice of the
5 following kinds:
- 6 (a) legal practice engaged in under a territory law or a law of the
7 Commonwealth;
- 8 (b) legal practice engaged in by an incorporated legal practice in
9 accordance with part 2.6 (Incorporated legal practices and
10 multidisciplinary partnerships);
- 11 (c) the practice of foreign law by an Australian-registered foreign
12 lawyer in accordance with part 2.7 (Legal practice—foreign
13 lawyers);
- 14 (d) legal practice engaged in by a complying community legal
15 centre;
- 16 *Note* For the meaning of **complying community legal centre**, see s 208.
- 17 (e) legal practice prescribed by regulation.
- 18 (4) Subsection (1) also does not apply to—
- 19 (a) an employee providing legal services to his or her employer or
20 a related entity if the employee—
- 21 (i) acts in the ordinary course of his or her employment; and
22 (ii) receives no fee, gain or reward for acting other than his or
23 her ordinary remuneration as an employee; or
- 24 (b) an agent or salesperson under the *Agents Act 2003* inserting
25 details mentioned in that Act, section 89B (1) (a) or (b) into a
26 proposed contract to which that subsection applies; or
- 27 (c) a public employee, a member of the Australian Public Service
28 or a member of the defence force preparing an instrument, or

- 1 carrying out any other activity, in the course of his or her
2 duties; or
- 3 (d) an employee of a trustee company under the *Trustee*
4 *Companies Act 1947* preparing a will, or carrying out any other
5 activity, in the course of his or her duties; or
- 6 (e) a person declared exempt from subsection (1) under a
7 regulation.
- 8 (5) Subsection (1) has effect subject to any territory law or law of the
9 Commonwealth that authorises a person to engage in conduct that is
10 engaging in legal practice.
- 11 (6) A person is not entitled to recover any amount in relation to
12 anything the person did in contravention of subsection (1).
- 13 (7) A person may recover from someone else, as a debt owing to the
14 person, any amount the person paid to the other person in relation to
15 anything the other person did in contravention of subsection (1).
- 16 (8) A regulation may make provision in relation to the application (with
17 or without change) of provisions of this Act to people engaged in
18 legal practice of a kind mentioned in subsection (3) (other than
19 paragraphs (a) and (b)) or people mentioned in subsection (4).
- 20 (9) In this section:
- 21 *fee, gain or reward* means any form of, and any expectation of, a
22 fee, gain or reward.
- 23 **17 Prohibition on representing or advertising entitlement to**
24 **engage in legal practice if not entitled**
- 25 (1) A person commits an offence if—
- 26 (a) the person represents or advertises that the person is entitled to
27 engage in legal practice; and

- 1 (b) the person is not an Australian legal practitioner.
2 Maximum penalty: 50 penalty units.
- 3 (2) A person commits an offence if—
4 (a) the person is a director, officer, employee or agent of a
5 corporation; and
6 (b) the person represents or advertises that the corporation is
7 entitled to engage in legal practice; and
8 (c) the corporation is not an incorporated legal practice.
9 Maximum penalty: 50 penalty units.
- 10 (3) Subsections (1) and (2) do not apply to a representation or
11 advertisement about being entitled to engage in legal practice of a
12 kind mentioned in section 16 (3) (Prohibition on engaging in legal
13 practice if not entitled).
- 14 (4) A reference in this section to—
15 (a) a person representing or advertising that the person is entitled
16 to engage in legal practice; or
17 (b) a person representing or advertising that a corporation is
18 entitled to engage in legal practice;
19 includes a reference to the person doing anything that states or
20 implies that the person or the corporation is entitled to engage in
21 legal practice.
- 22 **18 Presumptions about taking or using certain names, titles**
23 **or descriptions**
- 24 (1) This section applies to the following names, titles and descriptions:
25 • • lawyer
26 • • legal practitioner
27 • • barrister or counsel

- 1 • • solicitor or attorney
2 • • Queen’s Counsel, King’s Counsel, Her Majesty’s
3 Counsel, His Majesty’s Counsel or Senior Counsel.
- 4 (2) A regulation may prescribe the kind of people who are entitled, and
5 the circumstances in which they are entitled, to take or use a name,
6 title or description to which this section applies.
- 7 (3) For section 17 (1) (Prohibition on representing or advertising
8 entitlement to engage in legal practice if not entitled), the taking or
9 using of a name, title or description to which this section applies by
10 someone who is not entitled to take or use it, or in circumstances in
11 which someone is not entitled to take or use it, gives rise to a
12 rebuttable presumption that the person represented that the person is
13 entitled to engage in legal practice.
- 14 **19 Contravention of pt 2.2 by Australian lawyers who are not**
15 **legal practitioners**
- 16 (1) A contravention of this part by an Australian lawyer who is not an
17 Australian legal practitioner can be unsatisfactory professional
18 conduct or professional misconduct.
- 19 (2) This part does not affect any liability that a person who is an
20 Australian lawyer but not an Australian legal practitioner may have
21 under chapter 4 (Complaints and discipline), and the person may be
22 punished for an offence against this part as well as being dealt with
23 under chapter 4 in relation to the same matter.

-
- 1 (2) The admission rules must not require a person to satisfactorily
2 complete before admission a period of supervised training that
3 exceeds in length a period or periods equivalent to 1 full-time year
4 (as decided in accordance with the admission rules).
- 5 (3) The Supreme Court or admissions board may exempt a person from
6 the requirements of subsection (1) (a) or (b) if satisfied that the
7 person has, to an extent sufficient to be eligible for admission—
- 8 (a) academic qualifications; or
- 9 (b) relevant experience in legal practice or relevant service with a
10 government agency.
- 11 (4) An exemption under subsection (4) may be made subject to a
12 condition that the person is to obtain further qualifications or
13 training.
- 14 (5) In this section:
- 15 ***approved academic qualifications*** means academic qualifications
16 that are approved, under the admission rules, for admission to the
17 legal profession in the ACT.
- 18 ***approved practical legal training requirements*** means legal training
19 requirements that are approved, under the admission rules, for
20 admission to the legal profession in the ACT.
- 21 ***corresponding academic qualifications*** means academic
22 qualifications that would qualify the person for admission to the
23 legal profession in another jurisdiction if the admissions board is
24 satisfied that substantially the same minimum criteria apply for the
25 approval of academic qualifications for admission in the other
26 jurisdiction as apply in the ACT.
- 27 ***corresponding practical legal training requirements*** means legal
28 training requirements that would qualify the person for admission to
29 the legal profession in another jurisdiction if the admissions board is
30 satisfied that substantially the same minimum criteria apply for the

1 approval of legal training requirements for admission in the other
2 jurisdiction as apply in the ACT.

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

6 **22 Suitability for admission**

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

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

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

17 **23 Early consideration of suitability for admission**

18 (1) In this section:

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

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

24 **relevant person** means—

25 (a) an applicant for admission; or

26 (b) a prospective applicant for admission; or

- 1 (c) anyone else who has a sufficient interest in applying for a
2 declaration under this section.
- 3 (2) A relevant person may apply to the admissions board for a
4 declaration that a matter (for example, a suitability matter) disclosed
5 either in—
- 6 (a) the application for the declaration; or
- 7 (b) an undecided application for admission to the legal profession
8 under this Act;
- 9 will not, without more, adversely affect an assessment by the board
10 about whether the person is a fit and proper person to be admitted.
- 11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).
- 14 (3) The admissions board must consider each application under this
15 section and, subject to section 24, make the declaration sought or
16 refuse to make it.
- 17 (4) A declaration under subsection (3) is binding on the admissions
18 board unless the applicant failed to make a full and fair disclosure of
19 all matters relevant to the declaration.

20 **24 Referral of matters to Supreme Court**

- 21 (1) The admissions board may refer to the Supreme Court an
22 application under section 23 if, in the board's opinion, it would be
23 appropriate for the court to consider the application having regard to
24 the seriousness of matters disclosed by or found out about the
25 applicant.
- 26 (2) The Supreme Court has the same powers as the admissions board to
27 deal with the application and its decision on the application is taken
28 to be a decision of the board.

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

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

6 **25 Appeal to Supreme Court on refusal of declaration**

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

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

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

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

18 **Division 2.3.3 Admission to legal profession**

19 **26 Admission**

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

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

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

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

- 1 (3) The Supreme Court may refuse—
2 (a) to consider the application if it is not made in accordance with
3 the admission rules; or
4 (b) to admit the person if the person has not complied with the
5 admission rules.
6 (4) In making a decision under this section in relation to the application,
7 the Supreme Court must consider, and may rely on, the admissions
8 board's advice in relation to the application.
9 (5) The advice of the admissions board may be contained in a
10 compliance certificate.

11 **27 Roll of people admitted to legal profession**

- 12 (1) The Supreme Court must keep a roll of people admitted to the legal
13 profession under this Act (the *local roll*).
14 (2) When a person is admitted under this Act, the person's name must
15 be entered on the local roll in accordance with the admission rules.
16 (3) A person admitted under this Act must sign the local roll.
17 (4) The admission of a person under this Act is effective from the time
18 the person signs the local roll.
19 (5) The registrar must forward to the admissions board the name, date
20 of birth and date of admission of each person admitted under this
21 Act as soon as practicable after the person has signed the local roll.

22 **28 Local lawyer is officer of Supreme Court**

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

29 Admissions board to advise on application for admission

- (1) The role of the admissions board is to advise the Supreme Court whether or not the admissions board considers—
 - (a) an applicant for admission to the legal profession is—
 - (i) eligible for admission; and
 - (ii) a fit and proper person to be admitted, including having regard to all suitability matters in relation to the applicant to the extent appropriate; and
 - (b) the application is in accordance with the admission rules.
- (2) This section does not limit any other functions of the admissions board under a territory law.

- (1) Subsection (2) applies if, after considering an application for admission to the legal profession, the admissions board considers—
 - (a) the applicant is—
 - (i) eligible for admission; and
 - (ii) a fit and proper person to be admitted; and
 - (b) the application is in accordance with the admission rules; and
 - (c) there are no grounds for refusing to give a certificate of the matters mentioned in paragraphs (a) and (b) (a ***compliance certificate***).

- 1 (2) The admissions board must, within the time required by the
2 admission rules—
- 3 (a) tell the Supreme Court its decision by filing a compliance
4 certificate; and
- 5 (b) give a copy of the compliance certificate to the bar council and
6 law society council.
- 7 (3) If the admissions board refuses to give a compliance certificate to an
8 applicant for admission to the legal profession, the board must—
- 9 (a) tell the Supreme Court its decision by filing a statement about
10 the decision and the reasons for the decision; and
- 11 (b) give a copy of the statement to the bar council and law society
12 council; and
- 13 (c) give an information notice to the applicant.

14 **31 Consideration of applicant's eligibility and suitability for**
15 **admission**

- 16 (1) To help it consider whether or not an applicant is eligible for
17 admission to the legal profession under this Act or is a fit and proper
18 person to be admitted under this Act, the admissions board may, by
19 written notice to the applicant, require the applicant—
- 20 (a) to give it stated documents or information; or
- 21 (b) to cooperate with any inquiries by the board that it considers
22 appropriate.
- 23 (2) An applicant's failure to comply with a notice under subsection (1)
24 within the reasonable period, and in the reasonable way, (if any)
25 required by the notice is a ground for refusing to give a compliance
26 certificate for the applicant.
- 27 (3) The admissions board may refer a matter to the Supreme Court for
28 directions.

1 **Division 2.3.5 Miscellaneous—pt 2.3**

2 **32 Admissions board is respondent to applications under**
3 **pt 2.3**

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

1 **Part 2.4** **Legal practice by Australian legal**
2 **practitioners**

3 **Division 2.4.1** **Preliminary—pt 2.4**

4 **33** **Purposes and application—pt 2.4**

5 (1) The purposes of this part are as follows:

6 (a) to facilitate the national practice of law by ensuring that
7 Australian legal practitioners can engage in legal practice in
8 the ACT and to provide for the certification of Australian
9 lawyers whether or not admitted in the ACT;

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

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

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

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

18 (3) In this section:

19 *in-house lawyer* means an Australian lawyer who—

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

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

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

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

35 Local practising certificates

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

- (a) unrestricted practising certificates;
- (b) restricted practising certificates;
- (c) barrister practising certificates.

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

- (2) A regulation may prescribe—

- (a) criteria for granting or renewing practising certificates; or
- (b) procedures in relation to applications for practising certificates.

- (3) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the firstmentioned certificate.

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

36 Suitability to hold local practising certificate

- (1) This section applies for section 44 (Grant or renewal of unrestricted or restricted practising certificate) and any other provision of this Act for which the question of whether a person is a fit and proper person to hold a local practising certificate is relevant.
- (2) In considering whether or not a person is a fit and proper person to hold a local practising certificate, the relevant council may take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section:
- (a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;
 - (b) whether the person has contravened a condition of an Australian practising certificate held by the person;
 - (c) whether the person has contravened this Act or a corresponding law;
 - (d) whether the person has contravened—
 - (i) an order of the disciplinary tribunal; or
 - (ii) an order of a corresponding disciplinary body or of another court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
 - (e) without limiting any other paragraph—
 - (i) whether the person has failed to pay a required contribution or levy to the fidelity fund; or
 - (ii) whether the person has contravened a requirement of this Act, or imposed by the council, about professional indemnity insurance; or

- 1 (iii) whether the person has failed to pay other costs or
2 expenses for which the person is liable under this Act;
- 3 (f) other relevant matters the council considers appropriate.
- 4 *Note 1* A reference to an Act includes a reference to the statutory instruments
5 made or in force under the Act, including regulations (see Legislation
6 Act, s 104).
- 7 *Note 2* The **relevant council** includes the law society council when it is
8 exercising its functions as the licensing body (see dict, def **relevant**
9 **council**).
- 10 (3) The relevant council may decide that a person is a fit and proper
11 person to hold a local practising certificate despite anything
12 mentioned in subsection (1) applying in relation to the person if the
13 council considers that the circumstances justify that decision.
- 14 (4) If a matter was—
- 15 (a) disclosed in an application by a person for admission to the
16 legal profession in the ACT or another jurisdiction; and
- 17 (b) a Supreme court, the admissions board or a corresponding
18 authority decided that the matter was not to be sufficient for
19 refusing admission;
- 20 the matter cannot be taken into account as a ground for refusing to
21 grant or renew or for suspending or cancelling a local practising
22 certificate, but the matter may be taken into account when
23 considering other matters in relation to the person.
- 24 *Note* Section 44 (Grant or renewal of unrestricted or restricted practising
25 certificate) provides that a local practising certificate must not be
26 granted unless the licensing body is satisfied that the applicant is a fit
27 and proper person to hold the certificate, and must not be renewed if it
28 is satisfied that the applicant is not a fit and proper person to continue to
29 hold the certificate.

37 Duration of local practising certificate

- (1) A local practising certificate granted under this Act is in force from the date stated in it until the end of the financial year in which it is granted, unless the certificate is sooner suspended or cancelled.
- (2) A local practising certificate renewed under this Act is in force until the end of the financial year after its previous period of currency, unless the certificate is sooner suspended or cancelled.
- (3) If an application for the renewal of a local practising certificate has not been decided by the following 1 July, the certificate—
- (a) continues in force on and from that 1 July until the licensing body renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner cancelled or suspended; and
 - (b) if renewed, is taken to have been renewed on and from that 1 July.

38 Professional indemnity insurance for local practising certificate etc

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

- 1 (2) The licensing body must not grant or renew a local practising
2 certificate unless the licensing body —
- 3 (a) for an application by an Australian lawyer mentioned in
4 subsection (1) (a)—imposes a condition on the certificate that
5 the lawyer must not engage in legal practice otherwise than as
6 a government legal officer engaged in government work; or
- 7 (b) for an application by an Australian lawyer mentioned in
8 subsection (1) (b)—imposes a condition on the certificate that
9 the lawyer must not engage in legal practice otherwise than by
10 providing in-house legal services for a corporation by which
11 the lawyer is employed; or
- 12 (c) for an application for grant or renewal of an unrestricted
13 practising certificate by an Australian lawyer mentioned in
14 subsection (1) (c) who, as the holder of the certificate, would
15 be required under this Act to be covered by an approved policy
16 of indemnity insurance—is satisfied that the lawyer will, and
17 imposes a condition on the certificate that the lawyer must, be
18 covered by an approved policy of indemnity insurance during
19 the currency of the practicing certificate; or
- 20 (d) for an application for grant or renewal of a barrister practising
21 certificate by an Australian lawyer mentioned in
22 subsection (1) (c) who, as the holder of the certificate, would
23 be required under this Act to be covered by an approved policy
24 of indemnity insurance—
- 25 (i) has received a report from the bar council stating that the
26 bar council is satisfied that the lawyer will be covered by
27 an approved policy of indemnity insurance during the
28 currency of the practising certificate; and
- 29 (ii) imposes a condition on the certificate that the lawyer must
30 be covered by an approved policy of indemnity insurance
31 during the currency of the practising certificate.

(3) In this section:

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

39 Continuing obligation for professional indemnity insurance for local practising certificate

(1) A person commits an offence if—

- (a) the person is a local legal practitioner; and
- (b) the person engages in legal practice in the ACT; and
- (c) the person fails to comply with a condition imposed under section 38 (2) on the person's practising certificate.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

- (a) the person must, under a condition imposed under section 38 (2) on the person's practising certificate, have an approved policy of indemnity insurance; and
- (b) the person becomes aware that the person will not be covered by an approved policy of indemnity insurance; and
- (c) the person fails to tell the relevant council in writing of that fact as soon as possible, but no later than 7 days after the day the person becomes aware of that fact.

Maximum penalty: 50 penalty units.

Note If a form is approved by the relevant council under s 583 for this provision, the form must be used.

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

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

- 1 (5) In this section:
2 *approved*, for a policy of indemnity insurance—see section 312.

3 **40 Local legal practitioner is officer of Supreme Court**

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

7 **Division 2.4.4 Grant or renewal of local practising**
8 **certificates**

9 **41 Application for grant or renewal of local practising**
10 **certificate**

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

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

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

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

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

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

26 (ii) if it is not reasonably practicable to establish whether
27 subparagraph (i) applies—the lawyer's place of residence

- 1 in Australia is in the ACT or the lawyer does not have a
2 place of residence in Australia; or
- 3 (b) if the lawyer is an Australian legal practitioner at the time of
4 making the application—
- 5 (i) the jurisdiction in which the lawyer engages in legal
6 practice principally is the ACT; or
- 7 (ii) the lawyer holds a local practising certificate and engages
8 in legal practice in another jurisdiction under an
9 arrangement that is of a temporary nature; or
- 10 (iii) the lawyer reasonably expects to be engaged in legal
11 practice principally in the ACT during the currency of the
12 certificate applied for; or
- 13 (iv) the lawyer's place of residence in Australia is the ACT; or
- 14 (v) if it is not reasonably practicable to establish whether
15 subparagraph (i), (ii) or (iii) applies—the lawyer's place
16 of residence in Australia is in the ACT or the lawyer does
17 not have a place of residence in Australia; or
- 18 (c) if the lawyer is an Australian legal practitioner prescribed by
19 regulation for this paragraph.
- 20 (3) For subsection (2) (b), the jurisdiction in which an Australian lawyer
21 engages in legal practice principally is to be decided by reference to
22 the lawyer's legal practice during the certificate period current at the
23 time—
- 24 (a) the application is made; or
- 25 (b) for a late application—the application should have been made.
- 26 (4) Without limiting subsection (2), an Australian lawyer is not eligible
27 to apply for the grant or renewal of a local practising certificate in
28 relation to a financial year if the lawyer would also be the holder of
29 another Australian practising certificate for the year.
-

- 1 (5) An Australian lawyer must not apply for the grant or renewal of a
2 local practising certificate if the lawyer is not eligible to make the
3 application.
- 4 (6) An Australian legal practitioner who engages in legal practice
5 principally in the ACT during a financial year and reasonably
6 expects to engage in legal practice in the next financial year must
7 apply for the grant or renewal of a local practising certificate in
8 relation to the next financial year.
- 9 (7) A reference in this section to engaging in legal practice principally
10 in a jurisdiction applies only to legal practice in Australia.
- 11 **Example**
- 12 An Australia lawyer who engages or expects to engage in legal practice
13 principally in a foreign country may be eligible to apply for grant or renewal of a
14 local practising certificate if other requirements for eligibility are met.
- 15 *Note* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 Legislation Act, s 126 and s 132).
- 18 (8) A regulation under subsection (2) (c) may limit the kind of
19 practising certificate for which a lawyer prescribed for that
20 paragraph may apply for grant or renewal.

21 **42 Approved form for grant or renewal application for**
22 **practising certificates**

- 23 (1) An application for grant or renewal of a practising certificate must
24 be in a form (an *approved form*) approved under section 583 by—
- 25 (a) for a barrister practising certificate—the bar council; or
- 26 (b) for an unrestricted practising certificate or restricted practising
27 certificate—the law society council.
- 28 (2) To remove any doubt, an approved form may require the applicant
29 to disclose matters that may affect the applicant's eligibility for the
30 grant or renewal of a local practising certificate or the question

1 whether the applicant is a fit or proper person to hold a local
2 practising certificate.

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

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

8 **43 Timing of application for renewal of local practising**
9 **certificate**

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

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

14 **44 Grant or renewal of unrestricted or restricted practising**
15 **certificate**

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

19 (a) grant or renew the practising certificate; or

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

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

23 (2) However, the licensing body —

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

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

- 1 (ii) the required fees have not been paid; and
- 2 (b) may refuse to grant or renew the practising certificate if the
- 3 applicant has not complied with the criteria prescribed by
- 4 regulation and the legal profession rules for the grant or
- 5 renewal.
- 6 *Note* ***This Act*** is defined in the dictionary.
- 7 (3) The licensing body must not grant an unrestricted practising
- 8 certificate or restricted practising certificate unless satisfied that the
- 9 applicant—
- 10 (a) was eligible to apply for the grant when the application was
- 11 made; and
- 12 (b) is a fit and proper person to hold the certificate.
- 13 (4) The licensing body must not renew an unrestricted practising
- 14 certificate or restricted practising certificate if satisfied that the
- 15 applicant—
- 16 (a) was not eligible to apply for the renewal when the application
- 17 was made; or
- 18 (b) is not a fit and proper person to continue to hold the certificate.
- 19 (5) The licensing body must not grant or renew an unrestricted
- 20 practising certificate or restricted practising certificate if—
- 21 (a) it considers the applicant's circumstances have changed since
- 22 the application was made; and
- 23 (b) the applicant would (having regard to information that has
- 24 come to the licensing body's attention) not have been eligible
- 25 to make the application when the application is being
- 26 considered.

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

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

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

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

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

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

45 Grant or renewal of barrister practising certificate

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

(a) grant or renew the practising certificate; or

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

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

- 1 (2) However, the licensing body—
- 2 (a) must not consider an application for grant or renewal of a
- 3 barrister practising certificate unless it has received a report
- 4 from the bar council stating that—
- 5 (i) the application has been made in accordance with this
- 6 Act; and
- 7 (ii) the required fees have been paid; and
- 8 (b) must refuse to grant or renew the practising certificate unless it
- 9 has received a report from the bar council stating that the
- 10 applicant has complied with the criteria prescribed by
- 11 regulation and the legal profession rules for the grant or
- 12 renewal.
- 13 (3) The licensing body must not grant a barrister practising certificate
- 14 unless it has received a report from the bar council stating that the
- 15 bar council is satisfied that the applicant—
- 16 (a) was eligible to apply for the grant when the application was
- 17 made; and
- 18 (b) is a fit and proper person to hold the certificate.
- 19 (4) The licensing body must not renew a barrister practising certificate
- 20 if it has received a report from the bar council stating that the bar
- 21 council is satisfied that the applicant—
- 22 (a) was not eligible to apply for the renewal when the application
- 23 was made; or
- 24 (b) is not a fit and proper person to continue to hold the certificate.

- 1 (5) The licensing body must not grant or renew a barrister practising
2 certificate if it has received a report from the bar council stating
3 that—
- 4 (a) the bar council considers the applicant's circumstances have
5 changed since the application was made; and
- 6 (b) the applicant would (having regard to information that has
7 come to the bar council's attention) not have been eligible to
8 make the application when the application is being considered.
- 9 (6) This section does not affect any other provision of this Act that
10 provides for the refusal to grant or renew a barrister practising
11 certificate.
- 12 *Note* Section 38 (2) (d) provides for the refusal to grant or renew a barrister
13 practising certificate unless the bar council provided a report to the
14 licensing body stating that the bar council is satisfied that the applicant
15 will be covered by an approved policy of indemnity insurance. See also
16 s 63 (Refusal to grant or renew barrister practising certificate—failure
17 to show cause etc).
- 18 (7) If the licensing body grants or renews a barrister practising
19 certificate, the licensing body must give the applicant—
- 20 (a) for the grant of a certificate—the practising certificate granted;
21 or
- 22 (b) for the renewal of a certificate—the new practising certificate.
- 23 (8) If the licensing body refuses to grant or renew a barrister practising
24 certificate, the licensing body must give the applicant an
25 information notice.

1 **Division 2.4.5** **Conditions on local practising**
2 **certificates**

3 **46** **Conditions on local practising certificates generally**

- 4 (1) A local practising certificate is subject to—
5 (a) any conditions imposed by the licensing body; and
6 (b) any statutory conditions imposed under this Act or any other
7 Act; and

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

- 9 (c) any conditions imposed or amended by the disciplinary
10 tribunal under section 69 (Imposition of conditions on local
11 practising certificate pending criminal proceedings etc); and
12 (d) any conditions imposed under chapter 4 (Complaints and
13 discipline) or under provisions of a corresponding law that
14 correspond to chapter 4.

- 15 (2) If a condition is imposed, amended or revoked under this Act (other
16 than a statutory condition) during the currency of the local
17 practising certificate concerned, the certificate must be amended by
18 the licensing body, or a new certificate must be issued by the
19 licensing body, to reflect on its face the imposition, amendment or
20 revocation.

21 **47** **Conditions imposed on local practising certificate by**
22 **licensing body or relevant council**

- 23 (1) The licensing body may impose conditions on a local practising
24 certificate when it is granted or renewed.
25 (2) The licensing body may impose a condition on a local practising
26 certificate—
27 (a) on the application of the applicant for grant or renewal of the
28 practising certificate; or

- 1 (b) for a barrister practising certificate—on the recommendation of
2 the bar council; or
- 3 (c) for an unrestricted practising certificate or restricted practising
4 certificate—on its own initiative.
- 5 (3) However, the licensing body must not impose a condition on a
6 barrister practising certificate unless the bar council has agreed to or
7 recommended the condition.
- 8 (4) The relevant council may impose conditions on a local practising
9 certificate during its currency.
- 10 (5) The relevant council may impose conditions on a local practising
11 certificate under subsection (4)—
- 12 (a) on the application of the holder of the practising certificate; or
13 (b) on its own initiative.
- 14 (6) A regulation may make provision in relation to an application for
15 the imposition of a condition on a practising certificate.
- 16 (7) A condition imposed under this section must be reasonable and
17 relevant.
- 18 (8) A condition imposed under this section may be about any of the
19 following:
- 20 (a) requiring the holder of the practising certificate to undertake
21 and complete—
- 22 (i) continuing legal education; or
23 (ii) an academic or training course; or
24 (iii) a period of supervised legal practice;
- 25 (b) restricting the areas of law practised;
- 26 (c) controlling, restricting or prohibiting the operation of a trust
27 account;
-

- 1 (d) restricting the holder to particular conditions concerning
2 employment or supervision;
- 3 (e) a matter agreed to by the holder.
- 4 (9) Subsection (8) does not limit the matters about which a condition
5 may be imposed under this section.
- 6 (10) The relevant council must not impose a condition, or recommend
7 that a condition be imposed, that requires the holder to undertake
8 and complete an academic or training course unless—
- 9 (a) the council is satisfied, having regard to the holder's previous
10 academic studies, legal training, experience or conduct, that the
11 holder falls short of the standard of competence and diligence
12 that a member of the public is entitled to expect of a reasonably
13 competent Australian legal practitioner; or
- 14 (b) the condition is one that is imposed generally on holders of
15 local practising certificates or any class of holders of local
16 practising certificates.
- 17 *Note 1* A class of holders might comprise newly qualified lawyers, or
18 lawyers returning to legal practice after suspension or an extended
19 break.
- 20 *Note 2* The **relevant council** includes the law society council when it is
21 exercising its functions as the licensing body (see dict, def
22 **relevant council**).
- 23 (11) The relevant council may amend or revoke a condition of imposed
24 by it on a local practising certificate under subsection (1) or (4).
- 25 (12) If the relevant council imposes a condition on, or amends or revokes
26 a condition of, a local practising certificate (the **action**)—
- 27 (a) the council must give the applicant for, or holder of, the
28 certificate an information notice about the action, unless the
29 action was taken on the application of the applicant or holder;
30 and

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

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

8 **48 Statutory condition about conditions imposed on**
9 **interstate admission**

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

15 **49 Barristers—restrictions on engaging in legal practice etc**

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

- 19 (a) engaging in legal practice—

20 (i) otherwise than as a sole practitioner; or

21 (ii) in partnership with anyone; or

22 (iii) as the employee of anyone;

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

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

- 27 (a) engage in legal practice—

- 1 (i) otherwise than as a sole practitioner; or
2 (ii) in partnership with anyone; or
3 (iii) as the employee of anyone; or
4 (b) hold office as a legal practitioner director of an incorporated
5 legal practice.

6 **50 Statutory condition about practice as a solicitor**

- 7 (1) It is a statutory condition of a local practising certificate that the
8 holder must not engage in unsupervised legal practice as a solicitor,
9 until the holder has completed a period of supervised legal practice
10 prescribed by regulation.
11 (2) Subsection (1) has effect subject to any other conditions that relate
12 to engaging in supervised legal practice as a solicitor after any
13 period prescribed for that subsection.

14 **51 Statutory condition on local practising certificate about**
15 **notification of offence**

- 16 (1) It is a statutory condition of a local practising certificate that the
17 holder of the certificate—
18 (a) must notify the relevant council that the holder has been—
19 (i) convicted of an offence that would have to be disclosed
20 under the admission rules in relation to an application for
21 admission to the legal profession under this Act; or
22 (ii) charged with a serious offence; and
23 (b) must do so not later than 7 days after the event happens and by
24 a written notice.

25 *Note* If a form is approved by the relevant council under s 583 for this
26 provision, the form must be used.

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

4 **52 Conditions imposed by legal profession rules**

5 The legal profession rules may—

- 6 (a) impose conditions on local practising certificates; or
7 (b) authorise conditions to be imposed on local practising
8 certificates.

9 **53 Compliance with conditions of local practising certificate**

- 10 (1) The holder of a local practising certificate must not contravene (in
11 the ACT or elsewhere) a condition to which the certificate is
12 subject.
13 (2) A contravention of this section can be unsatisfactory professional
14 conduct or professional misconduct.

15 **Division 2.4.6 Amendment, suspension or**
16 **cancellation of local practising**
17 **certificates**

18 **54 Application—div 2.4.6**

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

- 1 **55** **Grounds for amending, suspending or cancelling local**
2 **practising certificate**
- 3 (1) Each of the following is a ground for amending, suspending or
4 cancelling a local practising certificate:
- 5 (a) the holder is no longer a fit and proper person to hold the
6 certificate;
- 7 (b) the holder does not have, or no longer has, an approved policy
8 of indemnity insurance;
- 9 (c) if a condition of the certificate is that the holder is limited to
10 legal practice stated in the certificate—the holder is engaging
11 in legal practice that the holder is not entitled to engage in
12 under this Act.
- 13 (2) A regulation may prescribe additional grounds for amending,
14 suspending or cancelling a local practising certificate.
- 15 **56** **Amending, suspending or cancelling local practising**
16 **certificate**
- 17 (1) If the relevant council believes a ground exists to amend, suspend or
18 cancel a local practising certificate (the *proposed action*), the
19 council must give the holder a notice (the *show-cause notice*) that—
- 20 (a) states the proposed action, and—
- 21 (i) if the proposed action is to amend the certificate—states
22 the proposed amendment; and
- 23 (ii) if the proposed action is to suspend the certificate—states
24 the proposed suspension period; and
- 25 (b) states the grounds for proposing to take the proposed action;
26 and
- 27 (c) outlines the facts and circumstances that form the basis for the
28 council’s belief; and

-
- 1 (d) invites the holder to make written representations to the
2 council, not later than the end of a stated period of not less than
3 7 days and not more than 28 days after the day the holder is
4 given the notice, about why the proposed action should not be
5 taken.
- 6 (2) If, after considering all written representations made not later than
7 the end of the stated period and, in its discretion, written
8 representations made after the end of the stated period, the relevant
9 council still believes a ground exists to take the proposed action, the
10 council may—
- 11 (a) if the show-cause notice stated the proposed action was to
12 amend the practising certificate—amend the certificate in the
13 way stated or in a less onerous way the council considers
14 appropriate because of the representations; or
- 15 (b) if the show-cause notice stated the proposed action was to
16 suspend the practising certificate for a stated period—
- 17 (i) suspend the certificate for a period no longer than the
18 stated period; or
- 19 (ii) amend the certificate in a less onerous way the council
20 considers appropriate because of the representations; or
- 21 (c) if the show-cause notice stated the proposed action was to
22 cancel the practising certificate—
- 23 (i) cancel the certificate; or
- 24 (ii) suspend the certificate for a stated period.
- 25 (3) If the relevant council decides to amend, suspend or cancel the
26 practising certificate, the council must give the holder an
27 information notice about the decision.

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

4 **57 Operation of amendment, suspension or cancellation of**
5 **local practising certificate**

- 6 (1) This section applies if a decision is made to amend, suspend or
7 cancel a local practising certificate under section 56.

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

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

12 (b) the day stated in the notice.

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

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

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

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

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

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

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

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

4 **58 Other ways of amending or cancelling local practising**
5 **certificate**

- 6 (1) This section applies if—
7 (a) the holder of a local practising certificate asks the relevant
8 council to amend or cancel the certificate and the council
9 proposes to give effect to the request; or
10 (b) the council proposes to amend a local practising certificate
11 only—
12 (i) for a formal or clerical reason; or
13 (ii) in another way that does not adversely affect the holder's
14 interests; or
15 (c) the council considers cancellation of a local practising
16 certificate is appropriate because the holder's name has been
17 removed from the local roll.
18 (2) The relevant council may amend or cancel the local practising
19 certificate by written notice given to the holder.
20 (3) To remove any doubt, section 56 (Amending, suspending or
21 cancelling local practising certificate) does not apply to the
22 amendment or cancellation of a local practising certificate under this
23 section.

24 **59 Relationship of div 2.4.6 with ch 4**

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

- 1 **Division 2.4.7** **Special powers in relation to local**
2 **practising certificates—show-cause**
3 **events**
- 4 **60** **Applicant for local practising certificate—show-cause**
5 **event**
- 6 (1) This section applies if—
- 7 (a) a person is applying for the grant or renewal of a local
8 practising certificate; and
- 9 (b) a show-cause event in relation to the person happened after the
10 person was first admitted to the legal profession in the ACT or
11 another jurisdiction, however the admission was expressed at
12 the time of the admission.
- 13 (2) As part of the application, the person must give the relevant council
14 a written statement, in accordance with the regulations—
- 15 (a) about the show-cause event; and
- 16 (b) explaining why, despite the show-cause event, the applicant
17 considers himself or herself to be a fit and proper person to
18 hold a local practising certificate.
- 19 (3) However, the person need not give a statement under subsection (2)
20 if the person (as a previous applicant for a local practising certificate
21 or as the holder of a local practising certificate previously in force)
22 has previously given to the relevant council a statement under this
23 section, or a notice and statement under section 61, explaining why,
24 despite the show-cause event, the person considers himself or
25 herself to be a fit and proper person to hold a local practising
26 certificate.
- 27 (4) A contravention of subsection (2) can be unsatisfactory professional
28 conduct or professional misconduct.

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

3 **61 Holder of local practising certificate—show-cause event**

- 4 (1) This section applies to a show-cause event that happens in relation
5 to the holder of a local practising certificate.

- 6 (2) The holder must give to the relevant council both of the following:

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

9 *Note* If a form is approved by the relevant council under s 583 for this
10 provision, the form must be used.

- 11 (b) not later than 28 days after the day the event happens, a written
12 statement explaining why, despite the show-cause event, the
13 person considers himself or herself to be a fit and proper
14 person to hold a local practising certificate.

- 15 (3) If a written statement is given to the relevant council after the end of
16 the 28-day period, the council may accept the statement and take it
17 into consideration.

18 **62 Refusal to grant or renew unrestricted or restricted**
19 **practising certificate—failure to show cause etc**

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

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

- 28 (b) has given a written statement in accordance with section 60 but
29 the licensing body does not consider that the applicant has

- 1 shown in the statement that, despite the show-cause event
2 concerned, the applicant is a fit and proper person to hold a
3 local practising certificate.
- 4 (2) The licensing body must give the applicant or holder an information
5 notice about the decision to refuse to grant or renew the certificate.
- 6 (3) However, if the licensing body considers that the applicant or holder
7 has shown in the statement mentioned in subsection (1) (b) that,
8 despite the show-cause event concerned, the applicant is a fit and
9 proper person to hold a local practising certificate, the licensing
10 body must, by written notice, tell the applicant or holder about its
11 decision.
- 12 **63 Refusal to grant or renew barrister practising certificate—**
13 **failure to show cause etc**
- 14 (1) The licensing body may refuse to grant or renew a barrister
15 practising certificate if—
- 16 (a) the applicant is required by section 60 (Applicant for local
17 practising certificate—show-cause event) to give the bar
18 council, as the relevant council for the applicant, a written
19 statement or notice relating to a matter and has failed to give a
20 written statement or notice in accordance with that
21 requirement; or
- 22 (b) the applicant has given a written statement in accordance with
23 section 60, but the licensing body has received a report from
24 the bar council stating that the council does not consider that
25 the applicant has shown in the statement that, despite the show-
26 cause event concerned, the applicant is a fit and proper person
27 to hold a local practising certificate.
- 28 (2) The licensing body must give the applicant or holder an information
29 notice about the decision to refuse to grant or renew the certificate.

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

8 **64 Amendment, suspension or cancellation of local**
9 **practising certificate—failure to show cause etc**

- 10 (1) The relevant council may amend, suspend or cancel a local
11 practising certificate if the holder—
12 (a) is required by section 61 (Holder of local practising
13 certificate—show-cause event) to give the council a written
14 statement or notice relating to a matter and has failed to give a
15 written statement or notice in accordance with that
16 requirement; or
17 (b) has given a written statement in accordance or section 61 but
18 the council does not consider that the holder has shown in the
19 statement that, despite the show-cause event concerned, the
20 holder is a fit and proper person to hold a local practising
21 certificate.
22 (2) For this section only, a written statement accepted by the relevant
23 council under section 61 (3) is taken to have been given in
24 accordance with section 61.
25 (3) The relevant council must give the holder an information notice
26 about the decision to amend, suspend or cancel the certificate.
27 (4) However, if the relevant council considers that the holder has shown
28 in the statement mentioned in subsection (1) (b) that, despite the
29 show-cause event concerned, the holder is a fit and proper person to
30 hold a local practising certificate, the council must, by written
31 notice, tell the holder about its decision.

- 1 **65 Restriction on further applications for local practising**
2 **certificate after refusal to grant or renew**
- 3 (1) This section applies if the licensing body decides under section 62
4 (Refusal to grant or renew unrestricted or restricted practising
5 certificate—failure to show cause etc) or section 63 (Refusal to
6 grant or renew barrister practising certificate—failure to show cause
7 etc) to refuse to grant or renew a local practising certificate to a
8 person.
- 9 (2) The licensing body may also decide that the person is not entitled to
10 apply for the grant of a local practising certificate for a stated period
11 of not longer than 5 years.
- 12 (3) In making a decision under subsection (2) in relation to a person
13 refused the grant or renewal of a barrister practising certificate, the
14 licensing body must act on the recommendation of the bar council.
- 15 (4) If the licensing body makes a decision under subsection (2), the
16 licensing body must include the decision in the information notice
17 required under section 62 (2) or section 63 (2).
- 18 (5) A person in relation to whom a decision has been made under this
19 section, or under a provision of a corresponding law that
20 corresponds to this section, is not entitled to apply for the grant of a
21 local practising certificate during the period stated in the decision.
- 22 **66 Restriction on further applications for local practising**
23 **certificate after cancellation**
- 24 (1) This section applies if the relevant council decides under section 64
25 (Amendment, suspension or cancellation of local practising
26 certificate—failure to show cause etc) to cancel a person's local
27 practising certificate.
- 28 (2) The relevant council may also decide that the person is not entitled
29 to apply for the grant of a local practising certificate for a stated
30 period of not longer than 5 years.
-

- 1 (3) If the relevant council makes a decision under subsection (2), the
2 council must include the decision in the information notice required
3 under section 64 (3).
- 4 (4) A person in relation to whom a decision has been made under this
5 section, or under a provision of a corresponding law that
6 corresponds to this section, is not entitled to apply for the grant of a
7 local practising certificate during the period stated in the decision.

8 **67 Relationship of div 2.4.7 with pt 4.4 and ch 6**

- 9 (1) The relevant council has and may exercise powers under part 4.4
10 (Investigation of complaints) and chapter 6 (Investigations), in
11 relation to a matter under this division, as if the matter were the
12 subject of a complaint under chapter 4.
- 13 (2) Accordingly, the provisions of part 4.4 and chapter 6 apply in
14 relation to a matter under this division with any necessary changes.
- 15 (3) This division does not prevent the relevant council from making a
16 complaint under chapter 4 about a matter to which this division
17 relates.

18 **Division 2.4.8 Further provisions about local**
19 **practising certificates**

20 **68 Immediate suspension of local practising certificate**

- 21 (1) This section applies, despite division 2.4.6 (Amendment, suspension
22 or cancellation of local practising certificates) and division 2.4.7
23 (Special powers in relation to local practising certificates—show-
24 cause events), if the relevant council considers it necessary in the
25 public interest to immediately suspend a local practising certificate
26 on—
- 27 (a) any of the grounds on which the certificate could be suspended
28 or cancelled under division 2.4.6; or

- 1 (b) the ground of the happening of a show-cause event in relation
2 to the holder; or
- 3 (c) any other ground that the council considers justifies immediate
4 suspension of the certificate in the public interest;
- 5 whether or not any action has been taken or started under
6 division 2.4.6 or division 2.4.7 in relation to the holder.
- 7 (2) The relevant council may, by written notice given to the holder,
8 immediately suspend the practising certificate until the earlier of the
9 following:
- 10 (a) the council gives the holder an information notice under
11 section 56 (3) (Amending, suspending or cancelling local
12 practising certificate);
- 13 (b) the council gives the holder written notice under section 56 (4);
- 14 (c) the council gives the holder an information notice under
15 section 64 (3) (Amendment, suspension or cancellation of local
16 practising certificate—failure to show cause etc);
- 17 (d) the council gives the holder written notice under section 64 (4);
- 18 (e) the period of 56 days after the day the notice is given to the
19 holder under this section ends.
- 20 (3) The notice under this section must—
- 21 (a) include an information notice about the suspension; and
- 22 (b) state that the practitioner may make written representations to
23 the relevant council about the suspension.
- 24 (4) The holder may make written representations to the relevant council
25 about the suspension, and the council must consider the
26 representations.

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

4 **69 Imposition of conditions on local practising certificate**
5 **pending criminal proceedings etc**

- 6 (1) If a local legal practitioner has been charged with a serious offence
7 but the charge has not been decided, the relevant council may, if it
8 considers it appropriate having regard to the seriousness of the
9 offence and to the public interest, by written notice given to the
10 practitioner—
11 (a) amend the conditions of the practitioner's local practising
12 certificate; or
13 (b) impose further conditions on the practitioner's local practising
14 certificate.
15 (2) The amendment or imposition of a condition under subsection (1)
16 has effect until the earlier of the following:
17 (a) the end of the period stated by the relevant council in the
18 notice;
19 (b) if the local legal practitioner is convicted of the offence—28
20 days after the day of the conviction;
21 (c) if the charge is dismissed—the day of the dismissal.
22 (3) The notice under this section must—
23 (a) include an information notice about the amendment or
24 imposition of the condition; and
25 (b) state that the local legal practitioner may make written
26 representations to the relevant council about the amendment or
27 imposition of the condition.

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

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

7 **70 Surrender and cancellation of local practising certificate**

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

10 (2) The relevant council may cancel the certificate.

11 **71 Return of local practising certificate**

12 (1) This section applies if a local practising certificate granted to an
13 Australian legal practitioner—

14 (a) is amended, suspended or cancelled by the relevant council or
15 because of an order of the disciplinary tribunal under
16 section 430 (Decisions of disciplinary tribunal); or

17 (b) is replaced by another certificate.

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

22 (3) The practitioner must comply with the notice.

23 Maximum penalty: 50 penalty units.

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

26 (a) if the certificate is amended—after amending it; or

- 1 (b) if the certificate is suspended and is still current at the end of
2 the suspension period—at the end of the suspension period.

3 **Division 2.4.9 Interstate legal practitioners**

4 **72 Professional indemnity insurance—interstate legal**
5 **practitioners**

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

- 8 (a) either—

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

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

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

- 14 (i) covers legal practice in the ACT; and

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

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

20 Maximum penalty: 100 penalty units.

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

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

- 26 (a) is a government employee; and

- 1 (b) is engaged in legal practice in the ACT only to the extent that
2 the practitioner is exercising official functions as a government
3 employee; and
- 4 (c) has indemnity or immunity that is provided by law and applies
5 to the legal practice.
- 6 (4) In this section:
- 7 *fee, gain or reward* means any form of, and any expectation of, a
8 fee, gain or reward.
- 9 *government agency* means a government department (however
10 described) of the ACT or any other jurisdiction or of the
11 Commonwealth, and includes an entity prescribed by regulation.
- 12 *government employee* means a person employed in a government
13 agency.
- 14 *relevant amount* means—
- 15 (a) if an amount is prescribed by regulation—that amount; or
16 (b) if an amount is not prescribed by regulation—\$1.5 million.
- 17 **73 Extent of entitlement of interstate legal practitioner to**
18 **practise in ACT**
- 19 (1) This part does not authorise an interstate legal practitioner to engage
20 in legal practice in the ACT to a greater extent than a local legal
21 practitioner could be authorised under a local practising certificate.
- 22 (2) Also, an interstate legal practitioner's right to engage in legal
23 practice in the ACT—
- 24 (a) is subject to any conditions imposed by the relevant council
25 under section 74; and

- 1 (b) is, to the greatest practicable extent and with all necessary
2 changes—
- 3 (i) the same as the practitioner's right to engage in legal
4 practice in the practitioner's home jurisdiction; and
- 5 (ii) subject to any condition on the practitioner's right to
6 engage in legal practice in that jurisdiction, including any
7 conditions imposed on the practitioner's admission to the
8 legal profession in the ACT or another jurisdiction.
- 9 (3) If there is an inconsistency between conditions mentioned in
10 subsection (2) (a) and conditions mentioned in subsection (2) (b),
11 the conditions that are, in the relevant council's opinion, more
12 onerous prevail to the extent of the inconsistency.
- 13 (4) An interstate lawyer must not engage in legal practice in the ACT in
14 a way not authorised by this Act or in contravention of any
15 condition mentioned in this section.

16 **74 Additional conditions on practice of interstate legal**
17 **practitioners**

- 18 (1) The relevant council may, by written notice to an interstate legal
19 practitioner engaged in legal practice in the ACT, impose any
20 condition on the practitioner's practice that it may impose under this
21 Act on a local practising certificate.
- 22 (2) Also, an interstate legal practitioner's right to engage in legal
23 practice in the ACT is subject to any condition imposed under the
24 legal profession rules.
- 25 (3) Conditions imposed under or mentioned in this section must not be
26 more onerous than conditions applying to local legal practitioners.
- 27 (4) A notice under this section must include an information notice about
28 the decision to impose a condition.

- 1 **75** **Special provisions about interstate legal practitioner**
2 **engaging in unsupervised legal practice in ACT**
- 3 An interstate legal practitioner must not engage in unsupervised
4 legal practice as a solicitor in the ACT unless—
- 5 (a) if the practitioner completed practical legal training principally
6 under the supervision of an Australian lawyer, whether
7 involving articles of clerkship or otherwise, to qualify for
8 admission to the legal profession in the ACT or another
9 jurisdiction—the practitioner has undertaken a period or
10 periods equivalent to 18 months supervised legal practice,
11 worked out under the regulations, after the day the
12 practitioner’s first practising certificate was granted; or
- 13 (b) if the practitioner completed other practical legal training to
14 qualify for admission to the legal profession in the ACT or
15 another jurisdiction—the practitioner has undertaken a period
16 or periods equivalent to 2 years supervised legal practice,
17 worked out under the regulations, after the day the
18 practitioner’s first practising certificate was granted.
- 19 **76** **Interstate legal practitioner is officer of Supreme Court**
- 20 An interstate legal practitioner engaged in legal practice in the ACT
21 has all the duties and obligations of an officer of the Supreme Court,
22 and is subject to the jurisdiction and powers of the Supreme Court in
23 relation to those duties and obligations.

Division 2.4.10 Miscellaneous—pt 2.4

77 Protocols with regulatory authorities

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

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

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

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

(ii) stops being of a temporary nature; or

(c) the circumstances in which an Australian legal practitioner can reasonably expect to engage in legal practice principally in a jurisdiction during the currency of an Australian practising certificate.

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

(3) A protocol is a notifiable instrument.

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

- 1 **78 Investigation of practising certificate applicants or**
2 **holders etc**
- 3 (1) To help it consider whether or not to grant, renew, amend, suspend
4 or cancel a local practising certificate, or impose conditions on a
5 local practising certificate, the relevant council may, by written
6 notice to the applicant or holder, require the applicant or holder—
- 7 (a) to give it stated documents or information; or
- 8 (b) to cooperate with any inquiries by the council that it considers
9 appropriate.
- 10 *Note* The **relevant council** includes the law society council when it is
11 exercising its functions as the licensing body (see dict, def **relevant**
12 **council**).
- 13 (2) A person's failure to comply with a notice under subsection (1)
14 within the reasonable period, and in the reasonable way, (if any)
15 required by the notice is a ground for making an adverse decision in
16 relation to the person in relation to the action being considered by
17 the relevant council.
- 18 **79 Register of local practising certificates**
- 19 (1) The licensing body must keep a register of the names of Australian
20 lawyers to whom it grants local practising certificates.
- 21 (2) The register must—
- 22 (a) state the conditions (if any) imposed on a local practising
23 certificate in relation to engaging in legal practice; and
- 24 (b) include other particulars prescribed by regulation.
- 25 (3) The register may be kept in the way the licensing body decides.
- 26 (4) The register must be available for inspection, without charge, at the
27 licensing body's office during normal business hours.

80 Supreme Court orders about conditions under pt 2.4

- (1) The relevant council may apply to the Supreme Court for an order that an Australian lawyer not contravene a condition imposed under this part.
- (2) The Supreme Court may make any order it considers appropriate on the application.

81 Appeals against decisions of licensing body or relevant council

- (1) A person may appeal to the Supreme Court against—
- (a) a decision of the licensing body to refuse to grant or renew a local practising certificate; or
 - (b) a decision by the bar council to give or not to give the licensing body a report for section 45 (Grant or renewal of barrister practising certificate) in relation to an application for the grant or renewal of a barrister practising certificate; or
 - (c) a decision of the relevant council to amend, suspend or cancel a local practising certificate; or
 - (d) a decision of the licensing body under section 47 (1) (Conditions imposed on local practising certificate by licensing body or relevant council) to impose a condition on local practising certificate on its own initiative; or
 - (e) a decision of the bar council under section 47 (3) to recommend or agree to the imposition by the licensing body of a condition on barrister practising certificate; or
 - (f) a decision of the relevant council under section 47 (4) to impose a condition on a local practising certificate; or
 - (g) a decision of the relevant council under section 47 (11) to amend or revoke a condition of a local practising certificate; or

- 1 (h) a decision of the licensing body under section 65 (2)
2 (Restriction on making further applications for practising
3 certificate after refusal to grant or renew) or 66 (2) (Restriction
4 on further applications for local practising certificate after
5 cancellation) that the person is not entitled to apply for the
6 grant of a local practising certificate for a stated period; or
- 7 (i) a decision by the bar council to make a recommendation for
8 section 65 (3) (Restriction on further applications for local
9 practising certificate after refusal to grant or renew) in relation
10 to the licensing body's refusal to grant or renew a barrister
11 practising certificate; or
- 12 (j) a decision of the relevant council to impose a condition on a
13 local practising certificate under section 69 (Imposition of
14 conditions on local practising certificate pending criminal
15 proceedings etc); or
- 16 (k) a decision of the licensing body under section 74 (Additional
17 conditions on practice of interstate legal practitioners) to
18 impose a condition on the interstate legal practitioner's
19 practice.
- 20 (2) The relevant council may appear as a party to the appeal.
- 21 (3) The Supreme Court may make any order it considers appropriate on
22 the appeal.

23 **82 Government lawyers generally**

- 24 (1) A government lawyer is not subject to—
- 25 (a) any prohibition under this Act about—
- 26 (i) engaging in legal practice in the ACT; or
- 27 (ii) making representations about engaging in legal practice in
28 the ACT; or

- 1 (b) any provision of this Act about professional indemnity
2 insurance;
3 in relation to the exercise of his or her official functions as a
4 government lawyer.
- 5 (2) Contributions and levies are not payable to the fidelity fund by or in
6 relation to a government lawyer in his or her capacity as a
7 government employee.
- 8 (3) A regulation may provide that a government lawyer is not subject
9 to—
10 (a) any provision of this Act about professional discipline; or
11 (b) any provision of this Act (other than section 38 (2) (a)) about
12 conditions imposed on a local practising certificate; or
13 (c) any requirements of the legal profession rules;
14 in relation to the exercise of his or her official functions as a
15 government lawyer.
- 16 (4) This section does not prevent a government lawyer from being
17 granted or holding a local practising certificate.
- 18 (5) In this section:
19 ***jurisdiction*** means a State, a Territory or the Commonwealth.
20 ***government agency*** means a government department (however
21 described) of the ACT or another jurisdiction, and includes an entity
22 prescribed by regulation.
23 ***government lawyer*** means an Australian lawyer, or a person eligible
24 to be admitted as an Australian lawyer, employed by the Territory,
25 another jurisdiction or a government agency.

1 **83 Government lawyers of other jurisdictions**

- 2 (1) A government lawyer of another jurisdiction is not subject to—
- 3 (a) any prohibition under this Act about—
- 4 (i) engaging in legal practice in the ACT; or
- 5 (ii) making representations about engaging in legal practice in
- 6 the ACT; or
- 7 (b) conditions imposed on a local practising certificate; or
- 8 (c) requirements of legal profession rules; or
- 9 (d) professional discipline;
- 10 in relation to the exercise of his or her official functions as a
- 11 government lawyer of the other jurisdiction to the extent that the
- 12 government employee is exempt from the matters mentioned in
- 13 paragraph (a) to (d) as a government lawyer of the other jurisdiction.
- 14 (2) Contributions and levies are not payable to the fidelity fund by or in
- 15 relation to a government lawyer of another jurisdiction in his or her
- 16 capacity as a government employee.
- 17 (3) Without limiting subsection (1), that subsection extends to a
- 18 prohibition relating to professional indemnity insurance for
- 19 interstate legal practitioners.
- 20 (4) Without affecting subsections (1), (2) and (3), this section does not
- 21 prevent a government lawyer of another jurisdiction from being
- 22 granted or holding a local practising certificate.
- 23 (5) In this section:
- 24 ***jurisdiction*** means a State or Territory or the Commonwealth.
- 25 ***government agency*** means a government department (however
- 26 described).

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

84 Determination of fees by law society council and bar council

- (1) The law society council may determine fees for this Act in relation to—
 - (a) applications for the grant or renewal of unrestricted practising certificates and restricted practising certificates; and
 - (b) the services that it provides as the licensing body in relation to an application for the grant or renewal of barrister practising certificates; and
 - (c) the other services that it provides under this Act, whether as the licensing body or otherwise.
- (2) The bar council may determine fees for this Act in relation to—
 - (a) applications for the grant or renewal of barrister practising certificates; and
 - (b) the services that it provides in relation to an application for the grant or renewal of barrister practising certificates; and
 - (c) the other services that it provides under this Act.
- (3) A fee determined in relation to an application for the grant or renewal of a practising certificate may include an amount required for the purpose of recovering costs in relation to the grant or renewal of a practising certificate.

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

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

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

Part 2.5 **Inter-jurisdictional provisions
about admission and practising
certificates**

Division 2.5.1 **Preliminary—pt 2.5**

85 **Purpose—pt 2.5**

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

86 **Powers under ch 4 not affected by pt 2.5**

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

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

87 **Official notice to other jurisdictions of applications for
admission and associated matters**

- (1) This section applies if an application for admission to the legal profession is made under this Act.
- (2) The admissions board may give the corresponding authority for another jurisdiction written notice of any of the following (as relevant):
 - (a) the making of the application;
 - (b) the withdrawal of the application after an inquiry is proposed or started in relation to the application;

- 1 (c) the refusal of the Supreme Court to admit the applicant to the
2 legal profession under this Act.
- 3 (3) The notice must state the applicant's name and address as last-
4 known to the admissions board.
- 5 (4) The notice may contain other relevant information.
- 6 **88 Official notice to other jurisdictions of removals from**
7 **local roll**
- 8 (1) This section applies if a local lawyer's name is removed from the
9 local roll, except if the removal happens under section 94
10 (Peremptory removal of local lawyer's name from local roll
11 following removal in another jurisdiction).
- 12 (2) The registrar must give written notice of the removal to—
13 (a) the corresponding authority of every other jurisdiction; and
14 (b) the registrar or other proper officer of the High Court.
- 15 (3) The notice must state—
16 (a) the lawyer's name and address as last-known to the registrar;
17 and
18 (b) the date the lawyer's name was removed from the roll; and
19 (c) the reason for removing the lawyer's name.
- 20 (4) The notice may contain other relevant information.
- 21 **89 Licensing body to give notice to other jurisdictions of**
22 **certain matters**
- 23 (1) This section applies if—
24 (a) the licensing body refuses to grant or renew an Australian
25 lawyer a local practising certificate; or
26 (b) the lawyer successfully appeals against the action taken.
-

-
- 1 (2) The licensing body must give the corresponding bodies of other
2 jurisdictions written notice of the action taken or the result of the
3 appeal.
- 4 (3) The notice must state—
- 5 (a) the lawyer's name and address as last-known to the licensing
6 body; and
- 7 (b) particulars of—
- 8 (i) the action taken and the reasons for it; or
- 9 (ii) the result of the appeal.
- 10 (4) The notice may contain other relevant information.
- 11 (5) The licensing body may give corresponding authorities written
12 notice of a condition imposed by it on an Australian lawyer's local
13 practising certificate.
- 14 **90 Relevant council to give notice to other jurisdictions of**
15 **certain matters**
- 16 (1) This section applies if—
- 17 (a) the relevant council suspends or cancels an Australian lawyer's
18 local practising certificate; or
- 19 (b) the lawyer successfully appeals against the action taken.
- 20 (2) The relevant council must give the corresponding bodies of other
21 jurisdictions written notice of the action taken or the result of the
22 appeal.
- 23 (3) The notice must state—
- 24 (a) the lawyer's name and address as last-known to the relevant
25 council; and

- 1 (b) particulars of—
2 (i) the action taken and the reasons for it; or
3 (ii) the result of the appeal.
4 (4) The notice may contain other relevant information.
5 (5) The relevant council may give corresponding authorities written
6 notice of a condition imposed by it on an Australian lawyer's local
7 practising certificate.

8 **Division 2.5.3 Notices to be given by lawyers to**
9 **local authorities**

10 **91 Lawyer to give notice of removal in another jurisdiction**
11 **or foreign country**

- 12 (1) A person commits an offence if—
13 (a) the person is a local lawyer (other than a local legal
14 practitioner); and
15 (b) the person's name is removed from an interstate roll or foreign
16 roll; and
17 (c) the person fails to give the registrar written notice of the
18 removal in accordance with section 93 (1) (Provisions applying
19 to notices under s 91) not later than 7 days after the day the
20 person receives notice of the removal.

21 Maximum penalty: 50 penalty units.

- 22 (2) A person commits an offence if—
23 (a) the person is a local legal practitioner; and
24 (b) the person's name is removed from an interstate roll or foreign
25 roll; and

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

5 Maximum penalty: 50 penalty units.

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

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

11 **92 Lawyer to give notice of interstate orders**

- 12 (1) A person commits an offence if—

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

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

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

20 Maximum penalty: 50 penalty units.

- 21 (2) A person commits an offence if—

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

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

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

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

- 1 (iii) that conditions be imposed on the person's local
2 practising certificate; and
- 3 (c) the person fails to give the registrar or the relevant council
4 written notice of the order or decision in accordance with
5 section 93 (2) not later than 7 days after the day the person
6 receives notice of the order.

7 Maximum penalty: 50 penalty units.

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

9 **93 Provisions applying to notices under s 91**

- 10 (1) A notice to be given under section 91 by a person must—
- 11 (a) state the person's name and address; and
- 12 (b) identify the roll from which the person's name has been
13 removed; and
- 14 (c) state the date of the removal; and
- 15 (d) be accompanied by a copy of any official notification given to
16 the person in relation to the removal.
- 17 (2) A notice to be given under section 92 by a person must—
- 18 (a) state the person's name and address; and
- 19 (b) state the terms of the order or decision made under the
20 corresponding law; and
- 21 (c) be accompanied by a copy of any official notification given to
22 the person in relation to the order or decision.

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

**94 Peremptory removal of local lawyer's name from local roll
 following removal in another jurisdiction**

- (1) This section applies if the registrar is satisfied that—
- (a) a local lawyer's name has been removed from an interstate roll;
and
 - (b) no order mentioned in section 96 (1) (a) (Order for non-removal
of name or non-cancellation of local practising certificate) is, at
the time of the removal, in force in relation to it.
- (2) The registrar must remove the lawyer's name from the local roll.
- (3) The registrar may give the lawyer notice of the date the registrar
proposes to remove the name from the local roll.
- (4) The registrar must give the former local lawyer notice of the
removal of the name from the local roll, unless notice of the date of
the proposed removal was previously given.
- (5) The name of the former local lawyer is, on his or her application to
the registrar or on the registrar's own initiative, to be restored to the
local roll if the name is restored to the interstate roll.
- (6) This section does not prevent the former local lawyer from
afterwards applying for admission under part 2.3 (Admission of
local lawyers).

**95 Peremptory cancellation of local practising certificate
 following removal of name from interstate roll**

- (1) This section applies if—
- (a) a person's name is removed from an interstate roll; and
 - (b) the person is the holder of a local practising certificate; and

- 1 (c) no order mentioned in section 96 (1) (b) is, at the time of the
2 removal, in force in relation to it.
- 3 (2) The relevant council must cancel the local practising certificate after
4 receiving written notice of the removal.
- 5 (3) The relevant council may give the person notice of the date the
6 council proposes to cancel the local practising certificate.
- 7 (4) The relevant council must give the person notice of the cancellation,
8 unless notice of the date of the proposed cancellation was previously
9 given.
- 10 (5) This section does not prevent the former local lawyer from later
11 applying for a local practising certificate.
- 12 **96 Order for non-removal of name or non-cancellation of**
13 **local practising certificate**
- 14 (1) If an Australian lawyer reasonably expects that his or her name will
15 be removed from an interstate roll, the lawyer may apply to the
16 Supreme Court for either or both of the following orders:
- 17 (a) an order that his or her name not be removed from the local
18 roll under section 94 (Peremptory removal of local lawyer's
19 name from local roll following removal in another
20 jurisdiction);
- 21 (b) an order that his or her local practising certificate not be
22 cancelled under section 95 (Peremptory cancellation of local
23 practising certificate following removal of name from
24 interstate roll).
- 25 (2) The Supreme Court may make an order if satisfied that—
- 26 (a) the lawyer's name is likely to be removed from the interstate
27 roll; and

- 1 (b) the reason for its removal from the interstate roll will not
2 involve disciplinary action or the possibility of disciplinary
3 action.
- 4 (3) An order under this section may be made subject to any conditions
5 the Supreme Court considers appropriate and remains in force for
6 the period stated in it.
- 7 (4) The Supreme Court may revoke an order made under this section,
8 and either or both of section 94 and section 95 (as relevant) then
9 apply as if the lawyer's name were removed from the interstate roll
10 when the revocation takes effect.
- 11 (5) This section does not affect action being taken in relation to the
12 lawyer under other provisions of this Act.

13 **97 Show-cause procedure for removal of lawyer's name**
14 **from local roll following removal in foreign country**

- 15 (1) This section applies if a local lawyer's name has been removed from
16 a foreign roll and the name has not been restored.
- 17 (2) The relevant council may serve on the lawyer a written notice
18 stating that the council will apply to the Supreme Court for an order
19 that the lawyer's name be removed from the local roll unless the
20 lawyer shows cause to the council why his or her name should not
21 be removed.
- 22 (3) If the lawyer does not satisfy the relevant council that his or her
23 name should not be removed from the local roll, the council may
24 apply to the Supreme Court for an order that the lawyer's name be
25 removed from the local roll.
- 26 (4) Before applying for an order that the lawyer's name be removed, the
27 relevant council must give the lawyer a reasonable opportunity to
28 show cause why his or her name should not be removed.
- 29 (5) The Supreme Court may, on application made under this section,
30 order that the lawyer's name be removed from the local roll.

- 1 (6) The lawyer is entitled to appear before and be heard by the Supreme
2 Court at a hearing in relation to an application under this section.
- 3 (7) In this section:
- 4 *relevant council* means—
- 5 (a) if the lawyer holds a local practising certificate that is a
6 barrister practising certificate—the bar council; or
- 7 (b) if the lawyer holds a local practising certificate that is an
8 unrestricted practising certificate or restricted practising
9 certificate—the law society council; or
- 10 (c) if the lawyer holds an interstate practising certificate—the bar
11 council or law society council; or
- 12 (d) if the lawyer does not hold a local practising certificate—the
13 law society council.

14 **98 Local authority may give information to other local**
15 **authorities**

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

Part 2.6 Incorporated legal practices and multidisciplinary partnerships

Division 2.6.1 Preliminary—pt 2.6

99 Definitions—pt 2.6

(1) In this Act:

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

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

(2) In this part:

corporation means—

- (a) a company within the meaning of the Corporations Act; or
- (b) any other corporation prescribed by regulation.

director—

- (a) of a company within the meaning of the Corporations Act—means a director as defined in that Act, section 9; or
- (b) of any other corporation prescribed by regulation—means a person prescribed by regulation.

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

- (a) a person whose name has (whether or not at the person's own request) been removed from an Australian roll and who has not

- 1 subsequently been admitted or readmitted to the legal
2 profession under this Act or a corresponding law;
- 3 (b) a person whose Australian practising certificate has been
4 suspended or cancelled under this Act or a corresponding law
5 and who, because of the cancellation, is not an Australian legal
6 practitioner or in relation to whom the suspension has not
7 finished;
- 8 (c) a person who has been refused a renewal of an Australian
9 practising certificate under this Act or a corresponding law,
10 and to whom an Australian practising certificate has not been
11 granted at a later time;
- 12 (d) a person who is the subject of an order under this Act or a
13 corresponding law prohibiting a law practice from employing
14 or paying the person in connection with the relevant practice;
- 15 (e) a person who is the subject of an order under this Act or a
16 corresponding Act prohibiting an Australian legal practitioner
17 from being a partner of the person in a business that includes
18 the provision of legal services;
- 19 (f) a person who is the subject of an order under section 123
20 (Disqualification from managing incorporated legal practice)
21 or section 148 (Prohibition on multidisciplinary partnerships
22 with certain partners who are not Australian legal practitioners)
23 or under provisions of a corresponding law that correspond to
24 section 123 or section 148.
- 25 *officer—*
- 26 (a) of a company within the meaning of the Corporations Act—
27 means an officer as defined in that Act, section 9; or
- 28 (b) of any other corporation prescribed by regulation—means a
29 person prescribed by regulation.

professional obligations, of an Australian legal practitioner,
include—

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

related body corporate means—

- (a) for a company within the meaning of the Corporations Act—a related body corporate within the meaning of that Act, section 50; or
- (b) for any other corporation prescribed by regulation—a person prescribed by regulation.

100 Purposes—pt 2.6

The purposes of this part are—

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

Division 2.6.2 Incorporated legal practices

101 Nature of incorporated legal practice

- (1) An *incorporated legal practice* is a corporation that engages in legal practice in the ACT, whether or not it also provides services that are not legal services.
- (2) However, a corporation is not an *incorporated legal practice* if—

- 1 (a) the corporation does not receive any fee, gain or reward for the
2 legal services it provides; or
- 3 (b) the only legal services that the corporation provides are any or
4 all of the following services:
- 5 (i) in-house legal services, namely, legal services provided to
6 the corporation in relation to a proceeding or transaction
7 to which the corporation (or a related body corporate) is a
8 party;
- 9 (ii) services that are not legally required to be provided by an
10 Australian legal practitioner and that are provided by an
11 officer or employee who is not an Australian legal
12 practitioner; or
- 13 (c) the corporation is a complying community legal centre; or
- 14 (d) the corporation is a trustee company under the *Trustee*
15 *Companies Act 1947*; or
- 16 (e) the corporation is the public trustee; or
- 17 (f) this part or a regulation provides that the corporation is not an
18 incorporated legal practice.
- 19 (3) A regulation may make provision in relation to the application (with
20 or without prescribed changes) of provisions of this Act to
21 corporations that are not incorporated legal practices because of the
22 operation of subsection (2).
- 23 (4) This part does not affect or apply to the provision by an
24 incorporated legal practice of legal services in 1 or more other
25 jurisdictions.
- 26 (5) In this section:
- 27 ***fee, gain or reward*** means any form of, and any expectation of, a
28 fee, gain or reward.

-
- 1 **102 Nonlegal services and businesses of incorporated legal**
2 **practices**
- 3 (1) An incorporated legal practice may provide any service and conduct
4 any business that the corporation may lawfully provide or conduct,
5 except as provided by this section.
- 6 (2) An incorporated legal practice (or a related body corporate) must
7 not conduct a managed investment scheme.
- 8 (3) A regulation may prohibit an incorporated legal practice (or a
9 related body corporate) from providing a prescribed service or
10 conducting a prescribed business.
- 11 **103 Corporations eligible to be incorporated legal practices**
- 12 (1) Any corporation is, subject to this part, eligible to be an
13 incorporated legal practice.
- 14 (2) This section does not authorise a corporation to provide legal
15 services if the corporation is prohibited from doing so by any Act or
16 law (whether of the Territory, the Commonwealth or any other
17 jurisdiction) under which it is incorporated or its affairs are
18 regulated.
- 19 (3) An incorporated legal practice is not itself required to hold an
20 Australian practising certificate.
- 21 **104 Notice of intention of corporation to start providing legal**
22 **services**
- 23 (1) Before a corporation starts to engage in legal practice in the ACT,
24 the corporation must give the law society council written notice of
25 its intention to engage in legal practice in the ACT.
- 26 *Note* If a form is approved by the law society council under s 583 for this
27 provision, the form must be used.

- 1 (2) A corporation commits an offence if—
- 2 (a) it engages in legal practice in the ACT; and
- 3 (b) it is in default of this section under subsection (3).
- 4 Maximum penalty: 50 penalty units.
- 5 (3) A corporation that fails to comply with subsection (1) is in default
- 6 of this section until it gives the law society council written notice of
- 7 the failure to comply with that subsection and the fact that it has
- 8 started to engage in legal practice.
- 9 *Note* If a form is approved by the law society council under s 583 for this
- 10 provision, the form must be used.
- 11 (4) The giving of a notice under subsection (3) does not affect a
- 12 corporation's liability under subsection (1) or (2).
- 13 (5) A corporation is not entitled to recover any amount for anything the
- 14 corporation did in contravention of subsection (2).
- 15 (6) A person may recover from a corporation, as a debt owing to the
- 16 person, any amount the person paid to or at the direction of the
- 17 corporation for anything the corporation did in contravention of
- 18 subsection (2).
- 19 (7) An offence against subsection (2) is a strict liability offence.
- 20 (8) This section does not apply to a corporation that is not an
- 21 incorporated legal practice because of section 101 (2) (a), (b) or (d)
- 22 (Nature of incorporated legal practice).
- 23 **105 Prohibition on representations that corporation is**
- 24 **incorporated legal practice etc**
- 25 (1) A corporation commits an offence if—
- 26 (a) the corporation represents or advertises that the corporation is
- 27 an incorporated legal practice in the ACT; and

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

4 Maximum penalty: 50 penalty units.

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

6 (3) A person commits an offence if—

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

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

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

12 Maximum penalty: 50 penalty units.

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

14 (5) A reference in this section to—

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

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

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

22 **106 Notice of corporation ceasing to engage in legal practice**
23 **etc**

24 (1) A corporation commits an offence if—

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

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

5 Maximum penalty: 50 penalty units.

6 *Note* If a form is approved by the law society council under s 583 for this
7 provision, the form must be used.

- 8 (2) An offence against this section is a strict liability offence.
9 (3) A regulation may make provision in relation to deciding whether
10 and when a corporation ceases to engage in legal practice in the
11 ACT as an incorporated legal practice.

12 **107 Incorporated legal practice must have legal practitioner**
13 **director etc**

- 14 (1) An incorporated legal practice must have at least 1 legal practitioner
15 director.
16 (2) Each legal practitioner director of an incorporated legal practice is,
17 for this Act only, responsible for the management of the legal
18 services provided in the ACT by the incorporated legal practice.
19 (3) Each legal practitioner director of an incorporated legal practice
20 must ensure that appropriate management systems are implemented
21 and maintained to enable the provision of legal services by the
22 incorporated legal practice—
23 (a) in accordance with the professional obligations of Australian
24 legal practitioners and other obligations imposed under this
25 Act; and

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

- 27 (b) so that those obligations of Australian legal practitioners who
28 are officers or employees of the practice are not affected by
29 other officers or employees of the practice.

- 1 (4) If it ought reasonably to be apparent to a legal practitioner director
2 of an incorporated legal practice that the provision of legal services
3 by the practice will result in breaches of the professional obligations
4 of Australian legal practitioners or other obligations imposed under
5 this Act, the director must take all reasonable action available to the
6 director to ensure that—
7 (a) the breaches do not happen; and
8 (b) appropriate remedial action is taken in relation to breaches that
9 do happen.
10 (5) A contravention of subsection (3) or (4) by a legal practitioner
11 director can be unsatisfactory professional conduct or professional
12 misconduct.
13 (6) This part does not affect the obligations or liability of a director of
14 an incorporated legal practice under any other law.
15 (7) The reference in subsection (1) to a *legal practitioner director* does
16 not include a reference to a person who is not validly appointed as a
17 director, but this subsection does not affect the meaning of the term
18 *legal practitioner director* in other provisions of this Act.
- 19 **108 Obligations of legal practitioner director relating to**
20 **misconduct—incorporated legal practices**
- 21 (1) Each of the following can be unsatisfactory professional conduct or
22 professional misconduct by a legal practitioner director:
23 (a) unsatisfactory professional conduct or professional misconduct
24 of an Australian legal practitioner employed by the
25 incorporated legal practice;
26 (b) conduct of any other director (other than an Australian legal
27 practitioner) of the incorporated legal practice that adversely
28 affects the provision of legal services by the practice;

1 (c) the unsuitability of any other director (other than an Australian
2 legal practitioner) of the incorporated legal practice to be a
3 director of a corporation that provides legal services.

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

9 **109 Incorporated legal practice without legal practitioner**
10 **director**

11 (1) An incorporated legal practice commits an offence if—
12 (a) it ceases to have any legal practitioner directors; and
13 (b) it fails to tell the law society council as soon as possible, but no
14 later than 7 days after the day it ceases to have any legal
15 practitioner directors.

16 Maximum penalty: 50 penalty units.

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

20 Maximum penalty: 50 penalty units.

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

- 1 (4) An incorporated legal practice commits an offence if it provides
2 legal services in the ACT during any period when, under
3 subsection (5), it is in default of the director requirements under this
4 section.
- 5 Maximum penalty: 50 penalty units.
- 6 (5) An incorporated legal practice that does not have any legal
7 practitioner directors for a period of longer than 7 days is taken to be
8 in default of director requirements under this section for the period
9 from the end of the 7-day period until—
- 10 (a) it has at least 1 legal practitioner director; or
- 11 (b) a person is appointed under this section or a corresponding law
12 in relation to the practice.
- 13 (6) The law society council may appoint an Australian legal practitioner
14 who is an employee of the incorporated legal practice or someone
15 else chosen by the council, in the absence of a legal practitioner
16 director, to exercise the functions of a legal practitioner director
17 under this part.
- 18 (7) An Australian legal practitioner is not eligible to be appointed under
19 this section unless the practitioner holds an unrestricted practising
20 certificate.
- 21 (8) The appointment under this section of a person to exercise functions
22 of a legal practitioner director does not, for any other purpose, give
23 the person any of the other functions of a director of the
24 incorporated legal practice.
- 25 (9) A reference in this section to a ***legal practitioner director*** does not
26 include a reference to a person who is not validly appointed as a
27 director, but this subsection does not affect the meaning of the term
28 ***legal practitioner director*** in other provisions of this Act.

- 1 **110** **Obligations and privileges of practitioners who are**
2 **officers or employees of incorporated legal practices**
- 3 (1) An Australian legal practitioner who provides legal services on
4 behalf of an incorporated legal practice in the capacity of an officer
5 or employee of the practice—
- 6 (a) is not excused from complying with professional obligations as
7 an Australian legal practitioner, or any obligations as an
8 Australian legal practitioner under any law; and
- 9 (b) does not lose the professional privileges of an Australian legal
10 practitioner.
- 11 (2) For subsection (1) only, the professional obligations and
12 professional privileges of a practitioner apply—
- 13 (a) if there are 2 or more legal practitioner directors of an
14 incorporated legal practice—as if the practice were a
15 partnership of the legal practitioner directors and the
16 employees of the practice were employees of the legal
17 practitioner directors; or
- 18 (b) if there is only 1 legal practitioner director of an incorporated
19 legal practice—as if the practice were a sole practitioner and
20 the employees of the practice were employees of the legal
21 practitioner director.
- 22 (3) The law relating to client legal privilege (or other legal professional
23 privilege) is not excluded or otherwise affected because an
24 Australian legal practitioner is acting in the capacity of an officer or
25 employee of an incorporated legal practice.
- 26 (4) The directors of an incorporated legal practice do not breach their
27 duties as directors only because legal services are provided pro bono
28 by an Australian legal practitioner employed by the practice.

111 Professional indemnity insurance—incorporated legal practices

- (1) An incorporated legal practice, and each insurable solicitor who is a legal practitioner director or an officer or employee of the practice, must comply with the obligations of an insurable solicitor under part 3.3 (Professional indemnity insurance) in relation to insurance policies and payments to or on account of an approved indemnity fund.
- (2) A solicitor who is an interstate legal practitioner and a legal practitioner director or an officer or employee of an incorporated legal practice, and who would be an insurable solicitor if the solicitor were a local practitioner, must be covered by professional indemnity insurance that—
- (a) covers legal practice in the ACT; and
 - (b) is for at least the relevant amount inclusive of any legal costs arising from claims under the insurance; and
 - (c) has been approved under, or complies with, any requirement of a corresponding law for the interstate practising certificate held by the practitioner.
- (3) If subsection (1) or (2) is not complied with, the law society council may—
- (a) for a legal practitioner director who holds a local practising certificate—suspend the director's practising certificate while the failure continues; or
 - (b) for a legal practitioner director who is an interstate legal practitioner—
 - (i) suspend the director's entitlement under part 2.4 (Legal practice by Australian legal practitioners) to practise in the ACT while the failure to comply continues; and

- 1 (ii) ask the corresponding authority in the practitioner's home
2 jurisdiction to suspend the director's interstate practising
3 certificate until the law society council tells the
4 corresponding authority that this section has been
5 complied with.
- 6 (4) The insurance premiums or other amounts payable under part 3.3
7 (Professional indemnity insurance) by an incorporated legal practice
8 may be decided by reference to the total number of solicitors
9 employed by the practice and any other relevant matter.
- 10 (5) The law society council may, with the Attorney-General's approval,
11 decide that an amount is payable from an approved indemnity fund
12 for the liability of an incorporated legal practice, and of the
13 solicitors who are officers and employees of the practice, in relation
14 to the provision of legal services.
- 15 (6) The law society council may exempt an incorporated legal practice
16 from this section on the grounds the council considers sufficient.
- 17 (7) In this section:
18 ***approved indemnity fund*** means an indemnity fund approved by the
19 law society council under section 315 (Approval of indemnity fund)
20 in relation to an Australian legal practitioner who is a solicitor.
21 ***insurable solicitor***—see section 308.
22 ***relevant amount*** means—
23 (a) if an amount is prescribed by regulation for section 72
24 (Professional indemnity insurance—interstate legal
25 practitioners)—that amount; or
26 (b) if an amount is not prescribed by regulation—\$1.5 million.

112 Conflicts of interest—incorporated legal practices

(1) For the application of this Act or any other territory law relating to conflicts of interest to the conduct of an Australian legal practitioner who is—

(a) a legal practitioner director of an incorporated legal practice; or

(b) an officer or employee of an incorporated legal practice;

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

(2) The legal profession rules may make provision in relation to additional duties and obligations in relation to conflicts of interest arising out of the conduct of an incorporated legal practice.

Note Under s 110 (Obligations and privileges of practitioners who are officers or employees of incorporated legal practices), an Australian legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other practitioners.

113 Disclosure obligations—incorporated legal practices

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

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

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

(c) the legal practitioner is—

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

- 1 (ii) an employee of the practice who is an Australian legal
2 practitioner and provides the required services on behalf
3 of the practice; and
- 4 (d) the legal practitioner fails to ensure that a disclosure,
5 complying with the requirements of this section, is made to the
6 client in relation to the provision of the required services.
- 7 Maximum penalty: 50 penalty units.
- 8 *Note* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including any regulation (see
10 Legislation Act, s 104).
- 11 (2) The disclosure must be made by giving the client a written notice—
- 12 (a) setting out the services to be provided; and
- 13 (b) stating whether or not all the legal services to be provided will
14 be provided by an Australian legal practitioner; and
- 15 (c) if some or all of the legal services to be provided will not be
16 provided by an Australian legal practitioner—identifying those
17 services and indicating the status or qualifications of the people
18 who will provide the services; and
- 19 (d) stating that this Act applies to the provision of legal services
20 but not to the provision of the nonlegal services.
- 21 (3) A regulation may make provision in relation to the following
22 matters:
- 23 (a) how a disclosure must be made;
- 24 (b) additional matters required to be disclosed in relation to the
25 provision of legal services or nonlegal services by an
26 incorporated legal practice.
- 27 (4) Without limiting subsection (3), the additional matters may include
28 the kind of services provided by the incorporated legal practice and

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

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

6 **114 Effect of nondisclosure on provision of certain services**
7 **by incorporated legal practice**

- 8 (1) This section applies if—
- 9 (a) section 113 applies in relation to a service that is provided to a
10 person who has engaged an incorporated legal practice to
11 provide the service and that the person might reasonably
12 assume to be a legal service; and
- 13 (b) a disclosure has not been made under that section in relation to
14 the service.
- 15 (2) The standard of care owed by the incorporated legal practice in
16 relation to the service is the standard that would apply if the service
17 had been provided by an Australian legal practitioner.

18 **115 Application of legal profession rules to incorporated legal**
19 **practices**

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

116 Advertising requirements—incorporated legal practices

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

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

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

- (3) Any advertisement of the kind mentioned in this section is, for the purposes of disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.

- (4) This section does not apply if the provision by which the restriction is imposed expressly excludes its application to incorporated legal practices.

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

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

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

- (i) received by, or entrusted to, the practice (or to any officer or employee of the practice) in the course of the provision of legal services by the practice; and

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

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

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

11 **118 Sharing of receipts—incorporated legal practices**

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

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

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

19 **119 Disqualified people—incorporated legal practices**

20 (1) An incorporated legal practice commits an offence if a disqualified
21 person—

22 (a) is an officer or employee of the incorporated legal practice
23 (whether or not the person provides legal services) or is an
24 officer or employee of a related body corporate; or

25 (b) is a partner of the incorporated legal practice in a business that
26 includes the provision of legal services; or

27 (c) shares the receipts of the provision of legal services by the
28 incorporated legal practice; or

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

3 Maximum penalty: 50 penalty units.

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

7 **120 Audit of incorporated legal practices**

- 8 (1) The law society council may conduct an audit of—
9 (a) the compliance of an incorporated legal practice (and of its
10 officers and employees) with the requirements of—
11 (i) this part; or
12 (ii) a regulation or the legal profession rules, so far as they
13 relate specifically to incorporated legal practices; and
14 (b) the management of the provision of legal services by the
15 incorporated legal practice (including the supervision of
16 officers and employees providing the services).

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

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

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

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

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

- 1 (4) An audit may be conducted whether or not a complaint has been
2 made against an Australian lawyer in relation to the provision of
3 legal services by the incorporated legal practice.
- 4 (5) A report of an audit of the incorporated legal practice—
5 (a) must be given to the practice; and
6 (b) may be given by the law society council to a corresponding
7 authority; and
8 (c) may be taken into account in relation to any disciplinary
9 proceeding taken against a legal practitioner director or
10 someone else or in relation to the grant, amendment,
11 suspension or cancellation of Australian practising certificates.

12 **121 Application of ch 6 to div 2.6.2 audits**

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

14 **122 Banning of incorporated legal practices**

- 15 (1) On the application of the law society council, the Supreme Court
16 may make an order disqualifying a corporation from providing legal
17 services in the ACT for the period the court considers appropriate if
18 satisfied that—
19 (a) a ground for disqualifying the corporation under this section
20 has been established; and
21 (b) the disqualification is justified.
- 22 (2) An order under this section in relation to a corporation may be
23 made—
24 (a) subject to conditions about the conduct of the corporation; or
25 (b) subject to conditions about when or in what circumstances the
26 order is to take effect; or

- 1 (c) together with orders to safeguard the interests of clients or
2 employees of the corporation.
- 3 (3) Action may be taken against an incorporated legal practice on any of
4 the following grounds:
- 5 (a) that a legal practitioner director or an Australian legal
6 practitioner who is an officer or employee of the practice has
7 been found guilty of professional misconduct under an ACT
8 law or a law of another jurisdiction;
- 9 (b) that the law society council is satisfied, after conducting an
10 audit of the practice, that the practice has failed to implement
11 satisfactory management and supervision of its provision of
12 legal services;
- 13 (c) that the practice (or a related body corporate) has contravened
14 section 102 (Nonlegal services and businesses of incorporated
15 legal practices);
- 16 (d) that the practice has contravened section 119 (Disqualified
17 people—incorporated legal practices);
- 18 (e) that a person who is an officer of the practice, and who is the
19 subject of an order under any of the following provisions, is
20 acting in the management of the practice:
- 21 (i) section 123 (Disqualification from managing incorporated
22 legal practice) or a provision of a corresponding law that
23 corresponds to that section;
- 24 (ii) section 148 (Prohibition on multidisciplinary partnerships
25 with certain partners who are not Australian legal
26 practitioners) or a provision of a corresponding law that
27 corresponds to that section.
- 28 (4) If a corporation is disqualified under this section, the law society
29 council that applied for the order must tell the regulator of every
30 other jurisdiction.

- 1 (5) If a corporation is disqualified from providing legal services in
2 another jurisdiction under a corresponding law, the law society
3 council may decide that the corporation is taken to be disqualified
4 from providing legal services in the ACT for the same period.
- 5 (6) However, subsection (5) does not prevent the law society council
6 from instead applying for an order under this section.
- 7 (7) A corporation commits an offence if it provides legal services in
8 contravention of an order under this section.
- 9 Maximum penalty: 50 penalty units.
- 10 (8) A corporation that is disqualified under this section stops being an
11 incorporated legal practice.
- 12 (9) Conduct of an Australian legal practitioner who provides legal
13 services on behalf of a corporation in the capacity of an officer or
14 employee of the corporation can be unsatisfactory professional
15 conduct or professional misconduct if the practitioner ought
16 reasonably to have known that the corporation is disqualified under
17 this section.
- 18 (10) A regulation may make provision in relation to the publication and
19 notification of orders made under this section, including notification
20 of appropriate authorities of other jurisdictions.
- 21 (11) In this section:
- 22 *regulator*, of another jurisdiction, means the entity that is the
23 regulator of the jurisdiction under the corresponding law of the
24 jurisdiction or, if there is no regulator under that law, the entity
25 corresponding to the law society council under the corresponding
26 law.

- 1 **123 Disqualification from managing incorporated legal**
2 **practice**
- 3 (1) The Supreme Court may, on the application of the law society
4 council, make an order disqualifying a person from managing a
5 corporation that is an incorporated legal practice for the period the
6 court considers appropriate if satisfied that—
- 7 (a) the person is a person who could be disqualified under a
8 relevant Corporations Act provision from managing
9 corporations; and
- 10 (b) the disqualification is justified.
- 11 (2) In subsection (1):
- 12 *relevant Corporations Act provision* means any of the following
13 provisions of the Corporations Act:
- 14 • • section 206C (Court power of disqualification—
15 contravention of civil penalty provision)
- 16 • • section 206D (Court power of disqualification—
17 insolvency and non-payment of debts)
- 18 • • section 206E (Court power of disqualification—repeated
19 contraventions of Act)
- 20 • • section 206F (ASIC's power of disqualification).
- 21 (3) On the application of a person subject to a disqualification order
22 under this section, the Supreme Court may revoke the order.
- 23 (4) A disqualification order made under this section has effect for this
24 Act only and does not affect the application or operation of the
25 Corporations Act.
- 26 (5) A regulation may make provision in relation to the publication and
27 notification of orders made under this section.
- 28 (6) A person who is disqualified from managing a corporation under
29 provisions of a corresponding law that correspond to this section is

1 taken to be disqualified from managing a corporation under this
2 section.

3 **124 Disclosure of information to Australian Securities and**
4 **Investments Commission**

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

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

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

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

15 **125 External administration proceedings under Corporations**
16 **Act**

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

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

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

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

- 1 (3) In exercising its jurisdiction in the proceeding, the court may have
2 regard to the interests of the clients of the corporation who have
3 been or are to be provided with legal services by the corporation.
- 4 (4) Subsection (3) does not authorise the court to make any decision
5 that is contrary to a specific provision of the Corporations Act.
- 6 (5) The provisions of subsections (2) and (3) are declared to be
7 Corporations legislation displacement provisions for the
8 Corporations Act, section 5G (Avoiding direct inconsistency arising
9 between the Corporations legislation and State and Territory laws)
10 in relation to the provisions of that Act, chapter 5.
- 11 *Note* Subsection (5) ensures that that any provision of the Corporations Act
12 or the *Australian Securities and Investment Commission Act 2001*
13 (Cwlth) with which s (2) and (3) would otherwise be inconsistent does
14 not apply to the extent necessary to avoid the inconsistency.

15 **126 External administration proceedings under other**
16 **legislation**

- 17 (1) This section applies to a proceeding for the external administration
18 (however expressed) of a corporation that is or was an incorporated
19 legal practice, but does not apply to a proceeding to which
20 section 125 (External administration proceedings under
21 Corporations Act) applies.
- 22 (2) The law society council is entitled to intervene in the proceeding,
23 unless the court decides that the proceeding does not concern or
24 affect the provision of legal services by the corporation.
- 25 (3) In exercising its jurisdiction in the proceedings, the court may have
26 regard to the interests of the clients of the corporation who have
27 been or are to be provided with legal services by the corporation.
- 28 (4) Subsection (3) does not authorise the court to make any decision
29 that is contrary to a specific provision of any legislation applying to
30 the corporation.

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- 1 **127** **Incorporated legal practice subject to receivership under**
2 **this Act and external administration under Corporations**
3 **Act**
- 4 (1) This section applies if a corporation that is or was an incorporated
5 legal practice is the subject of both—
6 (a) the appointment of a chapter 5 receiver; and
7 (b) the appointment of a Corporations Act administrator.
- 8 (2) The chapter 5 receiver is under a duty to tell the Corporations Act
9 administrator of the appointment of the chapter 5 receiver, whether
10 the appointment precedes, follows or happens at the same time as
11 the appointment of the Corporations Act administrator.
- 12 (3) The chapter 5 receiver or the Corporations Act administrator (or
13 both of them jointly) may apply to the Supreme Court for the
14 resolution of issues arising from or in relation to the dual
15 appointments and their respective powers, except if proceedings
16 mentioned in section 125 (External administration proceedings
17 under Corporations Act) have been started.
- 18 (4) The Supreme Court may make any orders it considers appropriate,
19 and no liability attaches to the chapter 5 receiver or the Corporations
20 Act administrator for any act or omission done by the receiver or
21 administrator honestly for the purpose of carrying out or acting in
22 accordance with the orders.
- 23 (5) The law society council is entitled to intervene in the proceeding,
24 unless the court decides that the proceeding does not concern or
25 affect the provision of legal services by the corporation.

- 1 (6) The provisions of subsections (3) and (4) are declared to be
2 Corporations legislation displacement provisions for the
3 Corporations Act, section 5G (Avoiding direct inconsistency arising
4 between the Corporations legislation and State and Territory laws)
5 in relation to the provisions of that Act, chapter 5.

6 *Note* Subsection (6) ensures that that any provision of the Corporations Act
7 or the *Australian Securities and Investment Commission Act 2001*
8 (Cwlth) with which s (3) and (4) would otherwise be inconsistent does
9 not apply to the extent necessary to avoid the inconsistency.

- 10 (7) In this section:

11 *chapter 5 receiver* means a receiver appointed under chapter 5.

12 *Corporations Act administrator* means—

- 13 (a) a receiver, receiver and manager, liquidator (including a
14 provisional liquidator), controller, administrator or deed
15 administrator appointed under the Corporations Act; or
16 (b) a person who is appointed to exercise powers under that Act
17 and who is prescribed by regulation for this definition.

18 **128 Incorporated legal practice subject to receivership under**
19 **this Act and external administration under other**
20 **legislation**

- 21 (1) This section applies if a corporation that is or was an incorporated
22 legal practice is the subject of both—

- 23 (a) the appointment of a chapter 5 receiver; and
24 (b) the appointment of an external administrator.

- 25 (2) The chapter 5 receiver is under a duty to tell the external
26 administrator of the appointment of the chapter 5 receiver, whether
27 the appointment precedes, follows or happens at the same time as
28 the appointment of the external administrator.

- 1 (3) The chapter 5 receiver or the external administrator (or both of them
2 jointly) may apply to the Supreme Court for the resolution of issues
3 arising from or in relation to the dual appointments and their
4 respective powers.
- 5 (4) The Supreme Court may make any orders it considers appropriate,
6 and no liability attaches to the chapter 5 receiver or the external
7 administrator for any act or omission done by the receiver or
8 administrator in honestly for the purpose of carrying out or acting in
9 accordance with the orders.
- 10 (5) The law society council is entitled to intervene in the proceeding,
11 unless the court decides that the proceeding does not concern or
12 affect the provision of legal services by the corporation.
- 13 (6) In this section:
- 14 *chapter 5 receiver* means a receiver appointed under chapter 5.
- 15 *external administrator* means a person who is appointed to exercise
16 powers under other legislation (whether or not ACT legislation) and
17 who is prescribed by regulation for this definition.
- 18 **129 Cooperation between courts—powers under pt 2.6**
- 19 An ACT court may make arrangements for communicating and
20 cooperating with other courts or tribunals in relation to the exercise
21 of powers under this part.
- 22 **130 Relationship of Act to constitution of incorporated legal**
23 **practices**
- 24 The provisions of this Act that apply to a corporation that is or was
25 an incorporated legal practice prevail, to the extent of any
26 inconsistency, over the constitution or other constituent documents
27 of the corporation.
- 28 *Note* ***This Act*** is defined in the dictionary.

1 **131 Relationship of Act to legislation establishing**
2 **incorporated legal practices**

3 (1) This section applies to a corporation that is established under a law
4 (whether or not ACT legislation) and is or was an incorporated legal
5 practice, but is not a company within the meaning of the
6 Corporations Act.

7 (2) The provisions of this Act that apply to a corporation that is or was
8 an incorporated legal practice prevail, to the extent of any
9 inconsistency, over provisions of the legislation under which the
10 corporation is established or regulated that are prescribed by
11 regulation.

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

13 **132 Relationship of Act to Corporations legislation**

14 (1) A regulation may declare any provision of this Act that relates to a
15 corporation that is or was an incorporated legal practice to be a
16 Corporations legislation displacement provision for the
17 Corporations Act, section 5G (Avoiding direct inconsistency arising
18 between the Corporations legislation and State and Territory laws).

19 *Note 1* The declaration of a provision ensures that that any provision of the
20 Corporations Act or the *Australian Securities and Investment*
21 *Commission Act 2001* (Cwlth) with which the provision would
22 otherwise be inconsistent does not apply to the extent necessary to avoid
23 the inconsistency.

24 *Note 2* **This Act** is defined in the dictionary.

25 (2) A regulation may declare any matter relating to a corporation that is
26 or was an incorporated legal practice, and that is prohibited,
27 required, authorised or permitted under this Act, to be an excluded
28 matter for the Corporations Act, section 5F in relation to—

29 (a) all of the Corporations legislation; or

30 (b) a stated provision of the Corporations legislation; or

- (c) the Corporations legislation other than a stated provision; or
- (d) the Corporations legislation otherwise than to a stated extent.

(3) In this section:

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

133 Undue influence—incorporated legal practices

(1) A person commits an offence if—

(a) the person causes or induces someone else to contravene this Act or the person's professional obligations as an Australian legal practitioner; and

(b) the other person is—

(i) a legal practitioner director of an incorporated legal practice; or

(ii) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice.

Maximum penalty: 50 penalty units.

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

(2) This section applies to the person whether or not the person is an officer or employee of the incorporated legal practice.

Division 2.6.3 Multidisciplinary partnerships

134 Nature of multidisciplinary partnership

(1) A *multidisciplinary partnership* is a partnership between 1 or more Australian legal practitioners and 1 or more other people who are not Australian legal practitioners, if the business of the partnership includes the provision of legal services in the ACT as well as other services.

1 (2) However, a partnership consisting only of 1 or more Australian legal
2 practitioners and 1 or more Australian-registered foreign lawyers is
3 not a *multidisciplinary partnership*.

4 (3) This part does not affect or apply to the provision by a
5 multidisciplinary partnership of legal services in 1 or more other
6 jurisdictions.

7 **135 Conduct of multidisciplinary partnerships**

8 (1) An Australian legal practitioner may be in partnership with a person
9 who is not an Australian legal practitioner, if the business of the
10 partnership includes the provision of legal services.

11 (2) Subsection (1) does not prevent an Australian legal practitioner from
12 being in partnership with a person who is not an Australian legal
13 practitioner, if the business of the partnership does not include the
14 provision of legal services.

15 (3) A regulation may prohibit an Australian legal practitioner from
16 being in partnership with a person providing a service or conducting
17 a business of a prescribed kind, if the business of the partnership
18 includes the provision of legal services.

19 *Note* Contravention of a regulation is a ground for making a prohibition order
20 under section 148 (Prohibition on multidisciplinary partnerships with
21 certain partners who are not Australian legal practitioners).

22 **136 Notice of starting practice in multidisciplinary partnership**

23 (1) A person commits an offence if—

24 (a) the person is a legal practitioner partner of a multidisciplinary
25 partnership; and

26 (b) the person starts to provide legal services in the ACT as a
27 member of the partnership; and

- 1 (c) the person has not given written notice to the law society
2 council of the person's intention to start providing the legal
3 services.

4 Maximum penalty: 50 penalty units.

5 *Note* If a form is approved by the law society council under s 583 for this
6 provision, the form must be used.

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

8 **137 General obligations of legal practitioner partners—**
9 **multidisciplinary partnerships**

- 10 (1) Each legal practitioner partner of a multidisciplinary partnership is,
11 for this Act only, responsible for the management of the legal
12 services provided in the ACT by the partnership.

- 13 (2) Each legal practitioner partner must ensure that appropriate
14 management systems are implemented and maintained to enable the
15 provision of legal services by the multidisciplinary partnership—

- 16 (a) in accordance with the professional obligations of Australian
17 legal practitioners and the other obligations imposed by this
18 Act; and

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

- 20 (b) so that the professional obligations of legal practitioner
21 partners and employees who are Australian legal practitioners
22 are not affected by other partners and employees of the
23 partnership.

- 1 **138** **Obligations of legal practitioner partner relating to**
2 **misconduct—multidisciplinary partnerships**
- 3 (1) Each of the following can be unsatisfactory professional conduct or
4 professional misconduct by a legal practitioner partner of a
5 multidisciplinary partnership:
- 6 (a) unsatisfactory professional conduct or professional misconduct
7 of an Australian legal practitioner employed by the partnership;
- 8 (b) conduct of any other partner (other than an Australian legal
9 practitioner) of the partnership that adversely affects the
10 provision of legal services by the partnership;
- 11 (c) the unsuitability of any other partner (other than an Australian
12 legal practitioner) of the partnership to be a member of a
13 partnership that provides legal services.
- 14 (2) A legal practitioner partner of a multidisciplinary partnership must
15 ensure that all reasonable steps available to the partner is taken to
16 deal with any unsatisfactory professional conduct or professional
17 misconduct of an Australian legal practitioner employed by the
18 partnership.
- 19 **139** **Actions of partner of multidisciplinary partnership who is**
20 **not Australian legal practitioner**
- 21 (1) Unless a provision of this Act expressly applies to a partner of a
22 multidisciplinary partnership who is not an Australian legal
23 practitioner, the partner does not contravene the provision only
24 because of any of the following:
- 25 (a) the partner is a member of a partnership, if the business of the
26 partnership includes the provision of legal services;
- 27 (b) the partner receives any fee, gain or reward for business of the
28 partnership that is the business of an Australian legal
29 practitioner;

1 (c) the partner holds out, advertises or represents himself or herself
2 as a member of a partnership, if the business of the partnership
3 includes the provision of legal services;

4 (d) the partner shares with any other partner the receipts of
5 business of the partnership that is the business of an Australian
6 legal practitioner.

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

8 (2) In this section:

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

11 **140 Obligations and privileges of practitioners who are**
12 **partners or employees of multidisciplinary partnership**

13 (1) An Australian legal practitioner who provides legal services in the
14 capacity of a partner or employee of a multidisciplinary
15 partnership—

16 (a) is not excused from complying with professional obligations as
17 an Australian legal practitioner, or any other obligations as an
18 Australian legal practitioner under any law; and

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

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

1 **141 Conflicts of interest—multidisciplinary partnerships**

2 (1) For the application of this Act or any other territory law relating to
3 conflicts of interest to the conduct of an Australian legal practitioner
4 who is—

5 (a) a legal practitioner partner of a multidisciplinary partnership;
6 or

7 (b) an employee of a multidisciplinary partnership;

8 the interests of the partnership or any partner of the partnership are
9 also taken to be interests of the practitioner (in addition to any
10 interests that the practitioner has apart from this subsection).

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

12 (2) The legal profession rules may make provision in relation to
13 additional duties and obligations in relation to conflicts of interest
14 arising out of the conduct of a multidisciplinary partnership.

15 *Note* Under s 140 (Obligations and privileges of practitioners who are
16 partners or employees of multidisciplinary partnerships), an Australian
17 legal practitioner who is a partner or employee of a multidisciplinary
18 partnership must comply with the same professional obligations as other
19 practitioners.

20 **142 Disclosure obligations—multidisciplinary partnerships**

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

22 (a) someone else (the *client*) engages a multidisciplinary
23 partnership to provide services (the *required services*) that the
24 client might reasonably assume to be legal services; and

25 (b) the legal practitioner is—

26 (i) a legal practitioner partner of the partnership; or

27 (ii) an employee of the partnership who is an Australian legal
28 practitioner and provides the required services on behalf
29 of the partnership; and

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

4 Maximum penalty: 50 penalty units.

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

- 8 (2) The disclosure must be made by giving the client a written notice—
9 (a) setting out the services to be provided; and
10 (b) stating whether or not all the legal services to be provided will
11 be provided by an Australian legal practitioner; and
12 (c) if some or all of the legal services to be provided will not be
13 provided by an Australian legal practitioner—identifying those
14 services and indicating the status or qualifications of the people
15 who will provide the services; and
16 (d) stating that this Act applies to the provision of legal services
17 but not to the provision of the nonlegal services.

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

- 19 (3) A regulation may make provision in relation to the following
20 matters:
21 (a) how a disclosure must be made;
22 (b) additional matters required to be disclosed in relation to the
23 provision of legal services or nonlegal services by a
24 multidisciplinary partnership.
25 (4) Without limiting subsection (3), the additional matters may include
26 the kind of services provided by the multidisciplinary partnership
27 and whether or not the services are covered by the insurance or
28 other provisions of this Act.

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

4 **143 Effect of nondisclosure on provision of certain services**
5 **by multidisciplinary partnership**

- 6 (1) This section applies if—
7 (a) section 142 applies in relation to a service that is provided to a
8 person who has engaged a multidisciplinary partnership to
9 provide the service and that the person might reasonably
10 assume to be a legal service; and
11 (b) a disclosure has not been made under that section in relation to
12 the service.
13 (2) The standard of care owed by the multidisciplinary partnership in
14 relation to the service is the standard that would apply if the service
15 had been provided by an Australian legal practitioner.

16 **144 Application of legal profession rules to multidisciplinary**
17 **partnerships**

18 The legal profession rules, so far as they apply to Australian legal
19 practitioners, also apply, with necessary changes, to Australian legal
20 practitioners who are legal practitioner partners or employees of a
21 multidisciplinary partnership, unless the rules otherwise provide.

22 **145 Advertising requirements—multidisciplinary partnerships**

- 23 (1) Any restriction imposed under this Act or any other Act in relation
24 to advertising by Australian legal practitioners applies, with
25 necessary changes, to advertising by a multidisciplinary partnership
26 in relation to the provision of legal services.

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

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

13 **146 Sharing of receipts—multidisciplinary partnerships**

- 14 (1) This Act does not prevent a legal practitioner partner, or an
15 Australian legal practitioner who is an employee, of a
16 multidisciplinary partnership from sharing receipts arising from the
17 provision of legal services by the partner or practitioner with a
18 partner or partners who are not Australian legal practitioners.

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

- 20 (2) This section does not extend to the sharing of receipts in
21 contravention of section 147, and has effect subject to section 49
22 (Barristers—restrictions on engaging in legal practice etc).

23 **147 Disqualified people—multidisciplinary partnerships**

24 A legal practitioner partner of a multidisciplinary partnership
25 commits an offence if—

- 26 (a) a disqualified person is a partner in the partnership; or
27 (b) the partner shares with a disqualified person the receipts of the
28 provision of legal services by the partnership; or

- 1 (c) the partner employs or pays a disqualified person in relation to
2 the provision of legal services by the partnership.

3 Maximum penalty: 100 penalty units.

4 *Note* **Disqualified person** is defined in s 99.

5 **148 Prohibition on multidisciplinary partnerships with certain**
6 **partners who are not Australian legal practitioners**

- 7 (1) This section applies to a person who—
8 (a) is not an Australian legal practitioner; and
9 (b) is or was a partner of an Australian legal practitioner.
10 (2) On application by the law society council, the Supreme Court may
11 make an order prohibiting any Australian legal practitioner from
12 being a partner, in a business that includes the provision of legal
13 services, of a stated person to whom this section applies if the court
14 is satisfied that—
15 (a) the person is not a fit and proper person to be a partner; or
16 (b) the person has been guilty of conduct that, if the person were
17 an Australian legal practitioner, would have been
18 unsatisfactory professional conduct or professional
19 misconduct; or
20 (c) for a corporation—the corporation has been disqualified from
21 providing legal services in the ACT or there are grounds for
22 disqualifying the corporation from providing legal services in
23 the ACT.
24 (3) An order made under this section may be revoked by the Supreme
25 Court on application by the law society council or the person against
26 whom the order was made.

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

6 **149 Undue influence—multidisciplinary partnerships**

- 7 (1) A person commits an offence if—
- 8 (a) the person causes or induces someone else to contravene this
9 Act or the person's obligations as an Australian legal
10 practitioner; and
- 11 (b) the other person is—
- 12 (i) a legal practitioner partner of a multidisciplinary
13 partnership; or
- 14 (ii) another Australian legal practitioner who is an employee
15 of a multidisciplinary partnership and provides legal
16 services.

17 Maximum penalty: 50 penalty units.

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

- 19 (2) This section applies to the person whether or not the person is a
20 partner or employee of the multidisciplinary partnership.

Division 2.6.4 Miscellaneous—pt 2.6

**150 Obligations of individual practitioners not affected by
pt 2.6**

Except as provided by this part, this part does not affect any obligation imposed under this Act or any other Act on—

- (a) a legal practitioner director of an incorporated legal practice, or an Australian legal practitioner who is an employee of an incorporated legal practice, in the person's capacity as an Australian legal practitioner; or
- (b) a legal practitioner partner of a multidisciplinary partnership, or an Australian legal practitioner who is an employee of a multidisciplinary partnership, in the person's capacity as an Australian legal practitioner.

Note This Act is defined in the dictionary.

151 Regulations—pt 2.6

- (1) A regulation may make provision in relation to the following matters:
 - (a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multidisciplinary partnerships;
 - (b) other services provided by incorporated legal practices or legal practitioner partners or employees of multidisciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.
- (2) A regulation prevails over any inconsistent provision of the legal profession rules.

- 1 (3) A regulation may provide that a breach of a regulation can be
2 unsatisfactory professional conduct or professional misconduct—
- 3 (a) for an incorporated legal practice—by a legal practitioner
4 director of the practice, an Australian legal practitioner
5 responsible for the breach, or both; or
- 6 (b) for a multidisciplinary partnership—by a legal practitioner
7 partner of the partnership, an Australian legal practitioner
8 responsible for the breach, or both.

Part 2.7 Legal practice—foreign lawyers

Division 2.7.1 Preliminary—pt 2.7

152 Definitions—pt 2.7

In this part:

Australia includes the external territories.

Australian law means law of the Commonwealth or of a jurisdiction.

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

foreign law means law of a foreign country.

foreign law practice means a partnership or corporate entity that is entitled to engage in legal practice in a foreign country.

foreign licensing body means an entity in a foreign country having the function, given by the law of the foreign country, of registering people to engage in legal practice in the foreign country.

licensing body means the law society council.

local registration certificate means a registration certificate given under this part.

overseas-registered foreign lawyer means an individual who is properly registered to engage in legal practice in a foreign country by the foreign licensing body for the country.

practise foreign law means doing work, or transacting business, in the ACT concerning foreign law, being work or business of a kind that, if it concerned a territory law, would ordinarily be done or transacted by an Australian legal practitioner.

registered, if used in relation to a foreign country, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required under legislation for engaging in legal practice in the country.

153 Purpose—pt 2.7

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

154 Pt 2.7 does not apply to Australian legal practitioners or foreign lawyers engaged by government

- (1) This part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer).
- (2) Accordingly, this part does not require or allow an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer) to be registered as a foreign lawyer under this Act to practise foreign law in the ACT.
- (3) This part does not apply to an overseas-registered foreign lawyer who practices foreign law in the ACT as a public employee, a member of the Australian Public Service or a member of the defence force.

Division 2.7.2 Practice of foreign law

155 Requirement for registration to practice foreign law

- (1) A person commits an offence if—
 - (a) the person practises foreign law in the ACT; and

- 1 (b) the person is not—
2 (i) an Australian-registered foreign lawyer; or
3 (ii) an Australian legal practitioner.
4 Maximum penalty: 50 penalty units.
- 5 (2) This section does not apply to an overseas-registered foreign lawyer
6 who—
7 (a) practises foreign law in the ACT for 1 or more continuous
8 periods that do not, in the aggregate, exceed 12 months in any
9 3-year period; or
10 (b) is subject to a restriction imposed under the *Migration Act*
11 *1958* (Cwlth) that has the effect of limiting the period during
12 which work may be done, or business transacted, in Australia
13 by the person.

14 **156 Entitlement of Australian-registered foreign lawyer to**
15 **practise in ACT**

16 An Australian-registered foreign lawyer is, subject to this Act,
17 entitled to practise foreign law in the ACT.

18 **157 Scope of practice of Australian-registered foreign lawyer**

- 19 (1) An Australian-registered foreign lawyer may provide only the
20 following legal services in the ACT:
21 (a) doing work, or transacting business, concerning the law of a
22 foreign country where the lawyer is registered by the foreign
23 licensing body for the country;
24 (b) legal services (including appearances) in relation to arbitration
25 proceedings of a kind prescribed by regulation;
26 (c) legal services (including appearances) in relation to
27 proceedings before a body (other than a court) in which the

- 1 body is not required to apply the rules of evidence and in
2 which knowledge of the foreign law of a country mentioned in
3 paragraph (a) is essential;
- 4 (d) legal services for conciliation, mediation and other forms of
5 consensual dispute resolution of a kind prescribed by
6 regulation.
- 7 (2) This Act does not authorise an Australian-registered foreign lawyer
8 to appear in any court (except on the lawyer's own behalf) or to
9 practise Australian law in the ACT.
- 10 (3) Despite subsection (2), an Australian-registered foreign lawyer may
11 advise on the effect of an Australian law if—
- 12 (a) the giving of advice on Australian law is necessarily incidental
13 to the practice of foreign law; and
- 14 (b) the advice is expressly based on advice given on the Australian
15 law by an Australian legal practitioner who is not an employee
16 of the foreign lawyer.

17 **158 Form of practice of foreign law**

- 18 (1) An Australian-registered foreign lawyer may (subject to any
19 conditions attaching to the foreign lawyer's registration) practise
20 foreign law—
- 21 (a) on the foreign lawyer's own account; or
- 22 (b) in partnership with 1 or more Australian-registered foreign
23 lawyers or 1 or more Australian legal practitioners, or both, in
24 circumstances where, if the Australian-registered foreign
25 lawyer were an Australian legal practitioner, the partnership
26 would be permitted under an ACT law; or
- 27 (c) as a director or employee of an incorporated legal practice or a
28 partner or employee of a multidisciplinary partnership that is
29 permitted by an ACT law; or

- 1 (d) as an employee of an Australian legal practitioner or law firm
2 in circumstances where, if the Australian-registered foreign
3 lawyer were an Australian legal practitioner, the employment
4 would be permitted under an ACT law; or
- 5 (e) as an employee of an Australian-registered foreign lawyer.
- 6 (2) An affiliation mentioned in subsection (1) (b) to (e) does not entitle
7 the Australian-registered foreign lawyer to practise Australian law
8 in the ACT.
- 9 **159 Application of Australian professional ethical and**
10 **practice standards to practice of foreign law**
- 11 (1) An Australian-registered foreign lawyer must not engage in any
12 conduct in practising foreign law that would, if the conduct were
13 engaged in by an Australian legal practitioner in practising
14 Australian law in the ACT, be professional misconduct or
15 unsatisfactory professional conduct.
- 16 (2) Chapter 4 (Complaints and discipline) applies—
- 17 (a) to a person who—
- 18 (i) is an Australian-registered foreign lawyer; or
- 19 (ii) was an Australian-registered foreign lawyer when the
20 relevant conduct allegedly happened, but is no longer an
21 Australian-registered foreign lawyer (in which case
22 chapter 4 applies as if the person were an Australian-
23 registered foreign lawyer); and
- 24 (b) as if references in chapter 4 to an Australian legal practitioner
25 were references to a person of that kind.
- 26 (3) A regulation may make provision in relation to the application (with
27 or without change) of the provisions of chapter 4 for this section.

- 1 (4) Without limiting the matters that may be taken into account in
2 deciding whether a person should be disciplined for a contravention
3 of subsection (1), the following matters may be taken into account:
- 4 (a) whether the conduct of the person was consistent with the
5 standard of professional conduct of the legal profession in any
6 foreign country where the person is registered;
- 7 (b) whether the person contravened the subsection intentionally or
8 without reasonable excuse.
- 9 (5) Without limiting any other provision of this section or the orders
10 that may be made under chapter 4 as applied by this section, the
11 following orders may be made under that chapter as applied by this
12 section:
- 13 (a) an order that a person's registration under this Act as a foreign
14 lawyer be cancelled;
- 15 (b) an order that a person's registration under a corresponding law
16 as a foreign lawyer be cancelled.

17 **160 Designation of Australian-registered foreign lawyers**

- 18 (1) An Australian-registered foreign lawyer may use only the following
19 designations:
- 20 (a) the lawyer's own name;
- 21 (b) a title or business name the lawyer is authorised by law to use
22 in a foreign country where the lawyer is registered by a foreign
23 licensing body;
- 24 (c) subject to this section, the name of a foreign law practice with
25 which the lawyer is affiliated or associated (whether as a
26 partner, director, employee or otherwise);
- 27 (d) if the lawyer is a principal of any law practice in Australia
28 whose principals include both 1 or more Australian-registered
29 foreign lawyers and 1 or more Australian legal practitioners—a

1 description of the practice that includes reference to both
2 Australian legal practitioners and Australian-registered foreign
3 lawyers (for example, ‘Solicitors and locally-registered foreign
4 lawyers’ or ‘Australian solicitors and US attorneys’).

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

8 (2) An Australian-registered foreign lawyer who is a principal of a
9 foreign law practice may use the practice’s name in or in relation to
10 practising foreign law in the ACT only if—

11 (a) the lawyer indicates, on the lawyer’s letterhead or any other
12 document used in the ACT to identify the lawyer as an
13 overseas-registered foreign lawyer, that the foreign law
14 practice practises only foreign law in the ACT; and

15 (b) the lawyer has given the licensing body acceptable evidence
16 that the lawyer is a principal of the foreign law practice.

17 (3) An Australian-registered foreign lawyer who is a principal of
18 foreign law practice may use the name of the practice in accordance
19 with this section whether or not other principals of the practice are
20 Australian-registered foreign lawyers.

21 (4) This section does not authorise the use of a name or other
22 designation that contravenes any requirements of an ACT law about
23 the use of business names or that is likely to lead to any confusion
24 with the name of any established domestic law practice or foreign
25 law practice in the ACT.

26 **161 Letterhead and other identifying documents of**
27 **Australian-registered foreign lawyers**

28 (1) An Australian-registered foreign lawyer must indicate, in each
29 public document distributed by the lawyer in relation to the lawyer’s
30 practice of foreign law, the fact that the lawyer is an Australian-

- 1 registered foreign lawyer and is restricted to the practice of foreign
2 law.
- 3 (2) Subsection (1) is satisfied if the lawyer includes in the public
4 document the words—
- 5 (a) ‘registered foreign lawyer’ or ‘registered foreign practitioner’;
6 and
- 7 (b) ‘entitled to practise foreign law only’.
- 8 (3) An Australian-registered foreign lawyer may (but need not) include
9 either or both of the following on any public document:
- 10 (a) an indication of all foreign countries in which the lawyer is
11 registered to engage in legal practice;
- 12 (b) a description of the lawyer, and any law practice with which
13 the lawyer is affiliated or associated, in any of the ways
14 designated in section 160.
- 15 (4) In this section:
- 16 *public document* includes any business letter, statement of account,
17 invoice, business card, and promotional and advertising material.
- 18 **162 Advertising by Australian-registered foreign lawyers**
- 19 (1) An Australian-registered foreign lawyer is required to comply with
20 any advertising restrictions imposed by the licensing body or by law
21 on the practice of law by an Australian legal practitioner that are
22 relevant to the practice of law in the ACT.
- 23 (2) Without limiting subsection (1), an Australian-registered foreign
24 lawyer must not advertise (or use any description on the lawyer’s
25 letterhead or any other document used in the ACT to identify the
26 lawyer as a lawyer) in any way that—
- 27 (a) might reasonably be regarded as—
- 28 (i) false, misleading or deceptive; or

1 (ii) suggesting that the Australian-registered foreign lawyer is
2 an Australian legal practitioner; or

3 (b) contravenes a regulation.

4 **163 Foreign lawyer employing Australian legal practitioner**

5 (1) An Australian-registered foreign lawyer may employ 1 or more
6 Australian legal practitioners.

7 (2) Employment of an Australian legal practitioner does not entitle an
8 Australian-registered foreign lawyer to practise Australian law in
9 the ACT.

10 (3) An Australian legal practitioner employed by an
11 Australian-registered foreign lawyer may practise foreign law.

12 (4) An Australian legal practitioner employed by an
13 Australian-registered foreign lawyer must not—

14 (a) provide advice on Australian law to, or for use by, the
15 Australian-registered foreign lawyer; or

16 (b) otherwise practise Australian law in the ACT in the course of
17 the employment.

18 (5) Subsection (4) does not apply to an Australian legal practitioner
19 employed by a law firm a partner of which is an
20 Australian-registered foreign lawyer, if at least 1 other partner is an
21 Australian legal practitioner.

22 (6) Any period of employment of an Australian legal practitioner by an
23 Australian-registered foreign lawyer cannot be used to satisfy a
24 requirement imposed by a condition on a local practising certificate
25 to complete a period of supervised legal practice.

164 Trust money and trust accounts—Australian-registered foreign lawyers

- (1) The provisions of part 3.1 (Trust money and trust accounts), and any other provisions of this Act relating to requirements for trust money and trust accounts, apply (subject to this section) to Australian-registered foreign lawyers in the same way as they apply to Australian legal practitioners.
- (2) A regulation may make provision in relation to the application (with or without change) of the provisions of this Act relating to trust money and trust accounts for this section.
- (3) In this section, a reference to money is not limited to a reference to money in the ACT.

165 Professional indemnity insurance—Australian-registered foreign lawyers

- (1) An Australian-registered foreign lawyer who practises foreign law in the ACT commits an offence if the foreign lawyer fails to comply with subsection (2), (3) or (4).
- Maximum penalty: 50 penalty units.
- (2) The foreign lawyer must be covered by professional indemnity insurance that—
- (a) covers the practice of foreign law in the ACT; and
- (b) is for at least the relevant amount inclusive of any legal costs arising from claims under the insurance; and
- (c) has been approved under, or complies with, the requirements this Act or a corresponding law for a practising certificate held by an Australian legal practitioner in any jurisdiction.

- 1 (3) The foreign lawyer must be covered by professional indemnity
2 insurance from a foreign country that—
- 3 (a) covers the practice of foreign law in the ACT; and
- 4 (b) complies with the relevant requirements of a law of the foreign
5 country or a registration authority of the foreign country; and
- 6 (c) if the insurance is for less than the relevant amount inclusive of
7 any legal costs arising from claims under the insurance—
8 provides a disclosure statement to each client stating the level
9 of cover.
- 10 (4) If the foreign lawyer does not comply with subsection (2) or (3), the
11 lawyer must—
- 12 (a) if the lawyer is covered by professional indemnity insurance—
13 give a disclosure statement to each client stating that the
14 lawyer has professional indemnity insurance but that it does
15 not comply with this Act; or
- 16 (b) if the lawyer is not covered by professional indemnity
17 insurance—give a disclosure statement to each client stating
18 that the lawyer is not covered by professional indemnity
19 insurance.
- 20 (5) A regulation may make provision in relation to the way a disclosure
21 statement must be given and the contents of the statement.
- 22 (6) In this section:
- 23 ***relevant amount*** means—
- 24 (a) if an amount is prescribed by regulation for section 72
25 (Professional indemnity insurance—interstate legal
26 practitioners)—that amount; or
- 27 (b) if an amount is not prescribed by regulation—\$1.5 million.

1 **166 Fidelity cover—Australian-registered foreign lawyers**

2 A regulation may provide that provisions of part 3.4 (Fidelity cover)
3 apply to Australian-registered foreign lawyers (with or without
4 change).

5 **Division 2.7.3 Local registration of foreign lawyers**
6 **generally**

7 **167 Local registration of foreign lawyers**

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

10 **168 Duration of registration—foreign lawyers**

- 11 (1) Registration as a foreign lawyer granted under this Act is in force
12 from the day stated in the local registration certificate until the end
13 of the financial year in which it is granted, unless the registration is
14 sooner suspended or cancelled.
- 15 (2) Registration as a foreign lawyer renewed under this Act is in force
16 until the end of the financial year after its previous period of
17 currency, unless the registration is sooner suspended or cancelled.
- 18 (3) If an application for the renewal of registration as a foreign lawyer
19 has not been decided by the following 1 July, the registration—
- 20 (a) continues in force on and from that 1 July until the licensing
21 body renews or refuses to renew the registration or the holder
22 withdraws the application for renewal, unless the registration is
23 sooner suspended or cancelled; and
- 24 (b) if renewed, is taken to have been renewed on and from that
25 1 July.

1 **169 Locally-registered foreign lawyer not officer of Supreme**
2 **Court**

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

5 **Division 2.7.4 Applications for grant or renewal of**
6 **local registration as foreign lawyer**

7 **170 Application for grant or renewal of registration as foreign**
8 **lawyer**

9 An overseas-registered foreign lawyer may apply to the licensing
10 body for the grant or renewal of registration as a foreign lawyer
11 under this Act.

12 *Note 1* If a form is approved under s 583 for this provision, the form must be
13 used.

14 *Note 2* A fee may be determined under s 206 for this provision.

15 **171 Approved form for grant or renewal application—foreign**
16 **lawyers**

17 (1) An application for the grant or renewal of registration as a foreign
18 lawyer under this Act must be in the form approved by the licensing
19 body under section 583 (an *approved form*).

20 (2) To remove any doubt, an approved form may require the applicant
21 to disclose—

22 (a) matters that may be relevant to or affect the grant or renewal of
23 registration; and

24 (b) particulars of any offences for which the applicant has been
25 convicted in Australia or a foreign country, whether before or
26 after the commencement of this section.

27 (3) An approved form may indicate that convictions of a particular kind
28 need not be disclosed for the purposes of the current application.

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

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

6 **172 Requirements for applications for grant or renewal of**
7 **registration—foreign lawyers**

8 (1) An application for grant of registration as a foreign lawyer must
9 state the applicant's educational and professional qualifications.

10 (2) An application for grant or renewal of registration as a foreign
11 lawyer must—

12 (a) state that the applicant is registered to engage in legal practice
13 by 1 or more stated foreign registration authorities in 1 or more
14 stated foreign countries; and

15 (b) state that the applicant is not an Australian legal practitioner;
16 and

17 (c) state that the applicant is not the subject of disciplinary
18 proceedings in Australia or a foreign country (including any
19 preliminary investigations or action that might lead to
20 disciplinary proceedings) in the applicant's capacity as—

21 (i) an overseas-registered foreign lawyer; or

22 (ii) an Australian-registered foreign lawyer; or

23 (iii) an Australian lawyer; and

24 (d) state that the applicant is not a party in any pending criminal or
25 civil proceeding in Australia or a foreign country that is likely
26 to result in disciplinary action being taken against the
27 applicant; and

- 1 (e) state that the applicant's registration is not cancelled or
2 currently suspended in any place because of any disciplinary
3 action in Australia or a foreign country; and
- 4 (f) state that the applicant is—
- 5 (i) not otherwise personally prohibited from carrying on the
6 practice of law in any place or bound by any undertaking
7 not to carry out the practice of law in any place; and
- 8 (ii) not subject to any special conditions in carrying on any
9 practice of law in any place;
- 10 because of any criminal, civil or disciplinary proceeding in
11 Australia or a foreign country; and
- 12 (g) state any special conditions imposed in Australia or a foreign
13 country as a restriction on the practice of law by the applicant
14 or any undertaking given by the applicant restricting the
15 applicant's practice of law; and
- 16 (h) give consent to the making of inquiries of, and the exchange of
17 information with, any foreign registration authorities the
18 licensing body considers appropriate about the applicant's
19 activities in engaging in legal practice in the places concerned
20 or otherwise about matters relevant to the application; and
- 21 (i) state whether section 165 (2), (3) or (4) (Professional
22 indemnity insurance—Australian-registered foreign lawyers)
23 applies to the applicant; and
- 24 (j) provide the information or be accompanied by the other
25 information or documents (or both) that is stated in the
26 application form or in material accompanying the application
27 form as provided by the licensing body.

-
- 1 (3) The application must (if the licensing body requires) be
2 accompanied by an original instrument, or a copy of an original
3 instrument, from each foreign licensing body stated in the
4 application that—
- 5 (a) verifies the applicant’s educational and professional
6 qualifications; and
- 7 (b) verifies the applicant’s registration by the foreign licensing
8 body to practise law in the foreign country concerned, and the
9 date of registration; and
- 10 (c) describes anything done by the applicant in engaging in legal
11 practice in the foreign country of which the foreign licensing
12 body is aware and that, in the body’s opinion, has had or is
13 likely to have had an adverse effect on the applicant’s
14 professional standing within the legal profession of that place.
- 15 (4) The applicant must (if the licensing body requires) certify in the
16 application that the accompanying instrument is the original or a
17 complete and accurate copy of the original.
- 18 (5) The licensing body may require the applicant to verify the
19 statements in the application by statutory declaration or by other
20 proof acceptable to the licensing body.
- 21 (6) If the accompanying instrument is not in English, it must be
22 accompanied by a translation in English that is authenticated or
23 certified to the satisfaction of the licensing body.
- 24 (7) This section does not limit the Legislation Act, section 255 (Forms).

1 **Division 2.7.5** **Grant or renewal of registration as**
2 **foreign lawyer**

3 **173** **Grant or renewal of registration as foreign lawyer**

4 (1) The licensing body must consider an application that has been made
5 for the grant or renewal of registration as a foreign lawyer and
6 may—

7 (a) grant or refuse to grant the registration; or

8 (b) renew or refuse to renew the registration.

9 *Note* When granting or renewing registration as a foreign lawyer, the
10 licensing body may impose conditions on the registration under
11 s 192 (2).

12 (2) If the licensing body grants or renews registration, the licensing
13 body must give the applicant a registration certificate or a notice of
14 renewal.

15 (3) A notice of renewal may be in the form of a new registration
16 certificate or any other form the licensing body considers
17 appropriate.

18 (4) If the licensing body refuses to grant or renew registration, the
19 licensing body must give the applicant an information notice.

20 (5) The licensing body is taken to have refused to grant or renew
21 registration if registration has not been granted at the end of 28 days
22 after the day the application for grant or renewal is made.

174 Requirement to grant or renew registration as foreign lawyer if criteria satisfied

- (1) The licensing body must grant an application for registration as a foreign lawyer if the licensing body—
- (a) is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and
 - (b) considers an effective system exists for regulating the practice of law in 1 or more of the foreign countries; and
 - (c) considers the applicant is not, because of any criminal, civil or disciplinary proceeding in any of the foreign countries, subject to—
 - (i) any special conditions in carrying on the practice of law in any of the foreign countries that would make it inappropriate to register the person; or
 - (ii) any undertakings about the practice of law in any of the foreign countries that would make it inappropriate to register the person; and
 - (d) is satisfied the applicant demonstrates an intention—
 - (i) to practise foreign law in the ACT; and
 - (ii) to establish an office or a commercial legal presence in the ACT within a reasonable period after grant of registration for practice;
- unless the licensing body refuses the application under this part.
- (2) The licensing body must grant an application for renewal of a person's registration, unless the licensing body refuses renewal under this part.

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

3 **175 Refusal to grant or renew registration as foreign lawyer**

- 4 (1) The licensing body may refuse to consider an application for
5 registration as a foreign lawyer if it is not made in accordance with
6 this Act.

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

- 8 (2) The licensing body may refuse to grant or renew registration as a
9 foreign lawyer if—

- 10 (a) the application is not accompanied by, or does not contain, the
11 information required by this part or a regulation; or
12 (b) the applicant has contravened this Act or a corresponding law;
13 or
14 (c) the applicant has contravened an order of the disciplinary
15 tribunal or a corresponding disciplinary body, including (for
16 example) an order to pay any fine or costs; or
17 (d) the applicant has contravened an order of a regulatory authority
18 of any jurisdiction to pay any fine or costs; or
19 (e) the applicant has failed to comply with a requirement under
20 this Act to pay a contribution to, or levy for, the fidelity fund;
21 or
22 (f) the applicant has contravened a requirement of or made under
23 this Act about professional indemnity insurance; or
24 (g) the applicant has failed to pay any expenses of receivership
25 payable under this Act.

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

- 1 (3) The licensing body may refuse to grant or renew registration if an
2 authority of another jurisdiction has under a corresponding law—
3 (a) refused to grant or renew registration for the applicant; or
4 (b) suspended or cancelled the applicant's registration.
- 5 (4) The licensing body may refuse to grant registration if satisfied that
6 the applicant is not a fit and proper person to be registered after
7 considering—
8 (a) the nature of any offence for which the applicant has been
9 convicted in Australia or a foreign country, whether before or
10 after the commencement of this section; and
11 (b) how long ago the offence was committed; and
12 (c) the person's age when the offence was committed.
- 13 (5) The licensing body may refuse to renew registration if satisfied that
14 the applicant is not a fit and proper person to continue to be
15 registered after considering—
16 (a) the nature of any offence for which the applicant has been
17 convicted in Australia or a foreign country, whether before or
18 after the commencement of this section, other than an offence
19 disclosed in a previous application to the licensing body; and
20 (b) how long ago the offence was committed; and
21 (c) the person's age when the offence was committed.
- 22 (6) The licensing body may refuse to grant or renew registration on any
23 ground on which registration could be suspended or cancelled.
- 24 (7) If the licensing body refuses to grant or renew registration, the
25 licensing body must, as soon as practicable, give the applicant an
26 information notice.
- 27 (8) This section does not affect the operation of division 2.7.7 (Special
28 powers in relation to local registration—show-cause events).
-

- 1 **Division 2.7.6** **Amendment, suspension or**
2 **cancellation of local registration of**
3 **foreign lawyer**
- 4 **176** **Application—div 2.7.6**
- 5 This division does not apply to matters mentioned in division 2.7.7
6 (Special powers in relation to local registration—show-cause
7 events).
- 8 **177** **Grounds for amending, suspending or cancelling**
9 **registration of foreign lawyer**
- 10 (1) Each of the following is a ground for amending, suspending or
11 cancelling a person's registration as a foreign lawyer:
- 12 (a) the registration was obtained because of incorrect or
13 misleading information;
- 14 (b) the person otherwise contravened any of the requirements
15 mentioned in section 172 (Requirements for applications for
16 grant or renewal of registration—foreign lawyers);
- 17 (c) the disciplinary tribunal or a corresponding disciplinary body
18 has ordered the amendment, suspension or cancellation of the
19 person's registration;
- 20 (d) a foreign licensing body has suspended or cancelled the
21 person's registration in a foreign country because of criminal,
22 civil or disciplinary proceedings against the person;
- 23 (e) the person's registration in a foreign country has lapsed;
- 24 (f) the person has not established an office to practise foreign law
25 or a commercial legal presence in the ACT within the period
26 prescribed by regulation after being granted registration;
- 27 (g) the person, having ceased to have an office or commercial
28 legal presence in the ACT after being granted registration, has

- 1 not had an office or a commercial legal presence in the ACT
2 for a period prescribed by regulation;
- 3 (h) the person has become an insolvent under administration;
- 4 (i) another ground the licensing body considers sufficient.
- 5 **178 Amending, suspending or cancelling registration of**
6 **foreign lawyer**
- 7 (1) If the licensing body believes a ground exists to amend, suspend or
8 cancel a person's registration by it as a foreign lawyer (the *proposed*
9 *action*), the licensing body must give the person a notice (the *show-*
10 *cause notice*) that—
- 11 (a) states the action proposed and—
- 12 (i) if the proposed action is to amend the registration—states
13 the proposed amendment; and
- 14 (ii) if the proposed action is to suspend the registration—
15 states the proposed suspension period; and
- 16 (b) states the grounds for proposing to take the proposed action;
17 and
- 18 (c) outlines the facts and circumstances that form the basis for the
19 licensing body's belief; and
- 20 (d) invites the person to make written representations to the
21 licensing body, not later than the end of a stated period of not
22 less than 7 days and not more than 28 days after the day the
23 holder is given the notice, about why the proposed action
24 should not be taken.

- 1 (2) If, after considering all written representations made not later than
2 the end of the stated period and, in its discretion, written
3 representations made after the end of the stated period, the licensing
4 body still believes a ground exists to take the proposed action, the
5 licensing body may—
- 6 (a) if the show-cause notice stated the proposed action was to
7 amend the registration—amend the registration in the way
8 stated or in a less onerous way the licensing body considers
9 appropriate because of the representations; or
- 10 (b) if the show-cause notice stated the proposed action was to
11 suspend the registration for a stated period—
- 12 (i) suspend the registration for a period no longer than the
13 stated period; or
- 14 (ii) amend the registration in a less onerous way the licensing
15 body considers appropriate because of the
16 representations; or
- 17 (c) if the show-cause notice stated the proposed action was to
18 cancel the registration—
- 19 (i) cancel the registration; or
- 20 (ii) suspend the registration for a period.
- 21 (3) If the licensing body decides to amend, suspend or cancel the
22 person's registration, the licensing body must give the person an
23 information notice about the decision.
- 24 (4) If the licensing body decides not to amend, suspend or cancel the
25 person's registration, the licensing body must tell the person in
26 writing about the decision.

**179 Operation of amendment, suspension or cancellation of
registration of foreign lawyer**

- (1) This section applies if the licensing body decides to amend, suspend or cancel a person's registration under section 178.
- (2) The amendment, suspension or cancellation of the registration takes effect on the later of the following:
- (a) the day written notice of the decision is given to the person;
 - (b) the day stated in the notice.
- (3) However, if the licensing body amends, suspends or cancels the registration because the person has been convicted of an offence—
- (a) the Supreme Court may, on the person's application, order that the operation of the amendment, suspension or cancellation of the registration be stayed until—
 - (i) the end of the time to appeal against the conviction; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and
 - (b) the amendment, suspension or cancellation does not have effect during any period in relation to which the stay is in force.
- (4) Also, if the registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed—
- (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
 - (b) the cancellation ceases to have effect when the conviction is quashed and the registration is restored as if it had only been suspended.

- 1 **180 Other ways of amending or cancelling registration of**
2 **foreign lawyer**
- 3 (1) This section applies if—
- 4 (a) a locally-registered foreign lawyer asks the licensing body to
5 amend or cancel the registration and the licensing body
6 proposes to give effect to the request; or
- 7 (b) the licensing body proposes to amend a locally-registered
8 foreign lawyer's registration only—
- 9 (i) for a formal or clerical reason; or
- 10 (ii) in another way that does not adversely affect the lawyer's
11 interests.
- 12 (2) The licensing body may amend or cancel the registration by written
13 notice given to the lawyer.
- 14 (3) To remove any doubt, section 178 (Amending, suspending or
15 cancelling registration of foreign lawyer) does not apply to
16 amendment or cancellation of registration as a foreign lawyer under
17 this section.
- 18 **181 Relationship of div 2.7.6 with ch 4**
- 19 This division does not prevent the licensing body from making a
20 complaint under chapter 4 (Complaints and discipline) about a
21 matter to which this division relates.

**Division 2.7.7 Special powers in relation to local
registration of foreign lawyer—show-
cause events**

**182 Applicant for local registration as foreign lawyer—show-
cause event**

- (1) This section applies if—
- (a) a person is applying for registration as a foreign lawyer under this Act; and
 - (b) a show-cause event in relation to the person happened after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must give the licensing body a written statement, in accordance with the regulations—
- (a) about the show-cause event; and
 - (b) explaining why, despite the show-cause event, the applicant considers himself or herself to be a fit and proper person to be a locally-registered foreign lawyer.
- (3) However, the person need not give the licensing body a statement under subsection (2) if the person has previously given to the licensing body a statement under this section, or a notice and statement under section 183, explaining why, despite the show-cause event, the person considers himself or herself to be a fit and proper person to be a locally-registered foreign lawyer.
- (4) This section applies to a show-cause event whether the event happened before or happens after the commencement of this section.

- 1 **183 Locally-registered foreign lawyer—show-cause event**
- 2 (1) This section applies to a show-cause event that happens in relation
- 3 to a locally-registered foreign lawyer.
- 4 (2) The locally-registered foreign lawyer must give the licensing body
- 5 both of the following:
- 6 (a) not later than 7 days after the day the event happened, a written
- 7 notice that the event happened;
- 8 *Note* If a form is approved by the licensing body under s 583 for this
- 9 provision, the form must be used.
- 10 (b) not later than 28 days after the day the event happened, a
- 11 written statement explaining why, despite the show-cause
- 12 event, the person considers himself or herself to be a fit and
- 13 proper person to be a locally-registered foreign lawyer.
- 14 (3) If a written statement is given to the licensing body after the end of
- 15 the 28-day period, the licensing body may accept the statement and
- 16 take it into consideration.
- 17 **184 Refusal, amendment, suspension or cancellation of local**
- 18 **registration as foreign lawyer—failure to show cause etc**
- 19 (1) The licensing body may refuse to grant or renew, or may amend,
- 20 suspend or cancel, local registration if the applicant for registration
- 21 or the locally-registered foreign lawyer—
- 22 (a) is required by section 182 (Applicant for local registration of
- 23 foreign lawyer—show-cause event) or section 183 (Locally-
- 24 registered foreign lawyer—show-cause event) to give the
- 25 licensing body a written statement or notice relating to a matter
- 26 and has failed to provide a written statement or notice in
- 27 accordance with the requirement; or
- 28 (b) has given a written statement in accordance with section 182 or
- 29 section 183 but the licensing body does not consider that the

- 1 applicant or foreign lawyer has shown in the statement that,
2 despite the show-cause event concerned, the applicant or
3 foreign lawyer is a fit and proper person to be a locally-
4 registered foreign lawyer.
- 5 (2) For this section only, a written statement accepted by the licensing
6 body under section 182 (3) is taken to have been given in
7 accordance with section 182.
- 8 (3) The licensing body must give the applicant or foreign lawyer an
9 information notice about the decision to refuse to grant or renew, or
10 to amend, suspend or cancel, the registration.
- 11 (4) However, if the licensing body considers that the applicant or
12 foreign lawyer has shown in the statement mentioned in
13 subsection (1) (b) that, despite the show-cause event concerned, the
14 applicant or foreign lawyer is a fit and proper person to be a locally-
15 registered foreign lawyer, the licensing body must, by written
16 notice, tell the applicant or foreign lawyer about its decision.
- 17 **185 Restriction on making further applications for registration**
18 **as foreign lawyer**
- 19 (1) This section applies if the licensing body decides under section 184
20 to refuse to grant or renew, or cancel, local registration.
- 21 (2) The licensing body may also decide that the applicant for
22 registration or the locally-registered foreign lawyer is not entitled to
23 apply for registration under this part for a stated period of not longer
24 than 5 years.
- 25 (3) If the licensing body makes a decision under subsection (2), the
26 licensing body must include the decision in the information notice
27 required under section 184 (3).
- 28 (4) A person in relation to whom a decision has been made under this
29 section, or under a provision of a corresponding law that

1 corresponds to this section, is not entitled to apply for registration
2 under this part during the period stated in the decision.

3 **186 Relationship of div 2.7.7 with pt 4.4 and ch 6**

- 4 (1) The licensing body has and may exercise powers under part 4.4
5 (Investigation of complaints), and chapter 6 (Investigations), in
6 relation to a matter under this division as if the matter were the
7 subject of a complaint under chapter 4.
- 8 (2) Accordingly, the provisions of part 4.4, and chapter 6, apply, with
9 necessary changes, in relation to a matter under this division.
- 10 (3) This division does not prevent a complaint being made under
11 chapter 6 about a matter to which this division relates.

12 **Division 2.7.8 Further provisions about local**
13 **registration of foreign lawyers**

14 **187 Immediate suspension of registration as foreign lawyer**

- 15 (1) This section applies, despite division 2.7.6 (Amendment, suspension
16 or cancellation of local registration of foreign lawyer) and
17 division 2.7.7 (Special powers in relation to local registration of
18 foreign layer—show-cause events), if the licensing body considers it
19 necessary in the public interest to immediately suspend a person's
20 local registration as a foreign lawyer on—
- 21 (a) any of the grounds on which the registration could be
22 suspended or cancelled under division 2.7.6; or
- 23 (b) the ground of the happening of a show-cause event in relation
24 to the person; or
- 25 (c) any other ground the licensing body considers justifies
26 immediate suspension of the registration in the public interest;

- 1 whether or not any action has been taken or started under
2 division 2.7.6 or division 2.7.7 in relation to the person.
- 3 (2) The licensing body may, by written notice given to the person,
4 immediately suspend the registration until the earlier of the
5 following:
- 6 (a) the licensing body gives the person an information notice
7 under section 178 (3) (Amending, suspending or cancelling
8 registration of foreign lawyer);
- 9 (b) the licensing body gives the person written notice under
10 section 178 (4);
- 11 (c) the licensing body gives the person an information notice
12 under section 184 (3) (Refusal, amendment, suspension or
13 cancellation of local registration as foreign lawyer—failure to
14 show cause etc);
- 15 (d) the licensing body gives the person written notice under
16 section 184 (4);
- 17 (e) the period of 56 days after the day the notice is given to the
18 person under this section ends.
- 19 (3) The notice must—
- 20 (a) include an information notice about the suspension; and
- 21 (b) state that the person may make written representations to the
22 licensing body about the suspension.
- 23 (4) The person may make written representations to the licensing body
24 about the suspension, and the licensing body must consider the
25 representations.
- 26 (5) The licensing body may revoke the suspension at any time, whether
27 or not in response to any written representations made to it by the
28 person.
-

- 1 **188** **Surrender of local registration certificate and cancellation**
2 **of registration as foreign lawyer**
- 3 (1) A person registered as a foreign lawyer under this part may
4 surrender the local registration certificate to the licensing body.
- 5 (2) The licensing body may cancel the registration.
- 6 **189** **Automatic cancellation of registration of foreign lawyer**
7 **on grant of practising certificate**
- 8 A person's registration as a foreign lawyer under this part is taken to
9 be cancelled if the person becomes an Australian legal practitioner.
- 10 **190** **Suspension or cancellation of registration of foreign**
11 **lawyer not to affect disciplinary processes**
- 12 The suspension or cancellation of a person's registration as a foreign
13 lawyer under this part does not affect any disciplinary processes in
14 relation to matters arising before the suspension or cancellation.
- 15 **191** **Return of local registration certificate**
- 16 (1) This section applies if a person's registration under this part as a
17 foreign lawyer is amended, suspended or cancelled.
- 18 (2) The licensing body may give the person a written notice requiring
19 the person to return the person's local registration certificate to the
20 licensing body in the way (if any) stated in the notice within a stated
21 period of not less than 14 days after the day the person is given the
22 notice.
- 23 (3) The person must comply with the notice.
- 24 Maximum penalty: 50 penalty units.
- 25 (4) An offence against this section is a strict liability offence.

(5) The licensing body must return the person's local registration certificate to the person—

(a) if the certificate is amended—after amending it; or

(b) if the registration is suspended and is still current at the end of the suspension period—at the end of the suspension period.

Division 2.7.9 Conditions on registration of foreign lawyers

192 Conditions on local registration generally

(1) Registration as a foreign lawyer under this Act is subject to—

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

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

Note This Act is defined in the dictionary.

(c) any conditions imposed or amended by the disciplinary tribunal under section 194 (Imposition and amendment of conditions on local registration pending criminal proceedings); and

(d) any conditions imposed under chapter 4 (Complaints and discipline) or under provisions of a corresponding law that correspond to chapter 4.

(2) If a condition is imposed, amended or revoked under this Act (other than a statutory condition) during the currency of a person's registration as a foreign lawyer, the registration certificate must be amended by the licensing body, or a new registration certificate must be issued by the licensing body, to reflect on its face the imposition, amendment or revocation.

- 1 **193** **Conditions imposed on local registration by licensing**
2 **body**
- 3 (1) The licensing body may impose conditions on registration as a
4 foreign lawyer—
- 5 (a) when it is granted or renewed; or
6 (b) during its currency.
- 7 (2) The licensing body may impose conditions on registration as a
8 foreign lawyer—
- 9 (a) on the application of the applicant for registration or renewal of
10 registration as a foreign lawyer; or
11 (b) on its own initiative.
- 12 (3) A regulation may make provision in relation to an application for
13 the imposition of a condition of registration.
- 14 (4) A condition imposed under this section must be reasonable and
15 relevant.
- 16 (5) A condition imposed under this section may be about any of the
17 following:
- 18 (a) any matter in relation to which a condition could be imposed
19 on a local practising certificate;
20 (b) a matter agreed to by the foreign lawyer.
- 21 (6) The licensing body must not impose a condition under
22 subsection (5) (a) that is more onerous than a condition that would
23 be imposed on a local practising certificate of a local legal
24 practitioner in the same or similar circumstances.
- 25 (7) The licensing body may amend or revoke conditions imposed under
26 this section.

- 1 (8) If the licensing body imposes a condition on, or amends or revokes a
2 condition of, registration as a foreign lawyer (the *action*)—
- 3 (a) the licensing body must give the applicant for the registration,
4 or the foreign lawyer, an information notice about the action,
5 unless the action was taken on the application of the applicant
6 or foreign lawyer; and
- 7 (b) if the action was taken during the currency of the registration—
8 the action takes effect when the foreign lawyer is given an
9 information notice or other written notice by the licensing body
10 about the action or, if the notice states a later time of effect, at
11 that time.
- 12 (9) This section has effect subject to section 178 (Amending,
13 suspending or cancelling registration of foreign lawyer) in relation
14 to the imposition of a condition on a registration as a foreign lawyer
15 during its currency.
- 16 **194 Imposition and amendment of conditions on local**
17 **registration pending criminal proceedings**
- 18 (1) If a locally-registered foreign lawyer has been charged with an
19 offence but the charge has not been decided, the licensing body may
20 apply to the disciplinary tribunal for an order under this section.
- 21 (2) On an application under subsection (1), the disciplinary tribunal
22 may, if it considers it appropriate having regard to the seriousness of
23 the offence and to the public interest, make either or both of the
24 following orders:
- 25 (a) an order amending the conditions of the foreign lawyer's local
26 registration;
- 27 (b) an order imposing further conditions on the foreign lawyer's
28 local registration.

Section 195

- 1 (3) An order under this section has effect until the sooner of—
2 (a) the end of the period stated by the disciplinary tribunal; or
3 (b) if the foreign lawyer is convicted of the offence—28 days after
4 the day of the conviction; or
5 (c) if the charge is dismissed—the day of the dismissal.
6 (4) The disciplinary tribunal may, on application by any party, amend
7 or revoke an order under this section at any time.

8 **195 Statutory condition on local registration about**
9 **notification of offence**

- 10 (1) It is a statutory condition of registration as a foreign lawyer that the
11 lawyer—
12 (a) must notify the licensing body that the lawyer has been—
13 (i) convicted of an offence that would have to be disclosed in
14 relation to an application for registration as a foreign
15 lawyer under this Act; or
16 (ii) charged with a serious offence; and
17 (b) must do so in writing not later than 7 days after the day the
18 event happens.

19 *Note* If a form is approved by the licensing body under s 583 for this
20 provision, the form must be used.

- 21 (2) This section does not apply to an offence to which division 2.7.7
22 (Special powers in relation to local registration of foreign lawyer—
23 show-cause events) applies.

24 **196 Conditions imposed by legal profession rules on local**
25 **registration**

26 The legal profession rules may—

- 1 (a) impose conditions on the registration of foreign lawyers; or
- 2 (b) authorise conditions to be imposed on the registration of
- 3 foreign lawyers.

4 **197 Compliance with conditions of local registration**

5 A locally-registered foreign lawyer must not contravene a condition

6 to which the registration is subject.

7 Maximum penalty: 50 penalty units.

8 **Division 2.7.10 Interstate-registered foreign lawyers**

9 **198 Extent of entitlement of interstate-registered foreign**

10 **lawyer to practise in ACT**

- 11 (1) This part does not authorise an interstate-registered foreign lawyer
- 12 to practise foreign law in the ACT to a greater extent than a locally-
- 13 registered foreign lawyer could be authorised under a local
- 14 registration certificate.
- 15 (2) Also, an interstate-registered foreign lawyer's right to practise
- 16 foreign law in the ACT—
- 17 (a) is subject to—
- 18 (i) any conditions imposed by the licensing body under
- 19 section 199; and
- 20 (ii) any conditions imposed under the legal profession rules
- 21 made under that section; and
- 22 (b) is, to the greatest practicable extent and with all necessary
- 23 changes—
- 24 (i) the same as the interstate-registered foreign lawyer's right
- 25 to practise foreign law in the lawyer's home jurisdiction;
- 26 and

Section 199

- 1 (ii) subject to any condition on the interstate-registered
2 foreign lawyer's right to practise foreign law in that
3 jurisdiction.
- 4 (3) If there is an inconsistency between conditions mentioned in
5 subsection (2) (a) and conditions mentioned in subsection (2) (b),
6 the conditions that are, in the licensing body's opinion, more
7 onerous prevail to the extent of the inconsistency.
- 8 (4) An interstate-registered foreign lawyer must not practise foreign law
9 in the ACT in a way not authorised by this Act or in contravention
10 of any condition mentioned in this section.
- 11 **199 Additional conditions on practice of interstate-registered**
12 **foreign lawyers**
- 13 (1) The licensing body may, by written notice given to an interstate-
14 registered foreign lawyer practising foreign law in the ACT, impose
15 any condition on the interstate-registered foreign lawyer's practice
16 that it may impose under this Act in relation to a locally-registered
17 foreign lawyer.
- 18 (2) Also, an interstate-registered foreign lawyer's right to practise
19 foreign law in the ACT is subject to any condition imposed under
20 the legal profession rules.
- 21 (3) Conditions imposed under or mentioned in this section must not be
22 more onerous than conditions applying to locally-registered foreign
23 lawyers in the same or similar circumstances.
- 24 (4) A notice under this section must include an information notice about
25 the decision to impose a condition.

Division 2.7.11 Miscellaneous—pt 2.7

200 Investigation of applicants and locally-registered foreign lawyers etc

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

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

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

(2) A person's failure to comply with a notice under subsection (1) within the reasonable period, and in the reasonable way, (if any) required by the notice is a ground for refusing to grant or renew registration or to amend, suspend, cancel or impose conditions on registration under this part.

(3) The licensing body may refer a matter to the Supreme Court for directions.

201 Register of locally-registered foreign lawyers

(1) The licensing body must keep a register of the names of locally-registered foreign lawyers.

(2) The register must—

(a) state the conditions (if any) imposed on a foreign lawyer's registration; and

(b) include other particulars prescribed by regulation.

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

Section 202

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

3 **202 Publication of information about locally-registered**
4 **foreign lawyers**

5 The licensing body may publish, in circumstances that it considers
6 appropriate, the names of people registered by it as foreign lawyers
7 under this part and any relevant particulars about them.

8 **203 Supreme Court orders about conditions—**
9 **Australian-registered foreign lawyers**

10 (1) The licensing body may apply to the Supreme Court for an order
11 that an Australian-registered foreign lawyer not contravene a
12 condition imposed under this part.

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

15 **204 Exemption of Australian-registered foreign lawyers by**
16 **licensing body**

17 (1) The licensing body may exempt an Australian-registered foreign
18 lawyer from complying with a stated provision of this Act that
19 would otherwise apply to the foreign lawyer.

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

21 (2) An exemption may be given unconditionally or subject to conditions
22 stated in writing.

23 (3) The licensing body may amend or revoke any conditions imposed
24 under this section or impose new conditions.

**205 Membership of professional association by
Australian-registered foreign lawyers**

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

206 Determination of fees by licensing body

(1) The licensing body may determine fees for this Act in relation to applications for grant or renewal of registration as a foreign lawyer.

(2) The fees determined for the grant or renewal of registration as a foreign lawyer must not be greater than the maximum fees for the grant or renewal of an unrestricted practising certificate.

(3) The licensing body may also require the applicant to pay any reasonable costs and expenses incurred by the body in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.

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

(4) The fees and costs must not include any component for compulsory membership of any professional association.

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

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

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

- 1 **207 Appeals or reviews**
- 2 (1) A person may appeal to the Supreme Court against—
- 3 (a) a decision of the licensing body to refuse to grant or renew
- 4 registration of an overseas-registered foreign lawyer as a
- 5 foreign lawyer under this Act; or
- 6 (b) a decision of the licensing body to amend, suspend or cancel a
- 7 person’s registration as a foreign lawyer under this Act; or
- 8 (c) a decision of the licensing body under section 192 (Conditions
- 9 on local registration generally) to impose a condition on, or
- 10 amend or revoke a condition on registration as a foreign lawyer
- 11 under this Act; or
- 12 (d) a decision of the licensing body under section 199 (Additional
- 13 conditions on practice of interstate-registered foreign lawyers)
- 14 to impose a condition on the interstate-registered foreign
- 15 lawyer’s practice.
- 16 (2) The licensing body may appear as a party to the appeal.
- 17 (3) The Supreme Court may make any order it considers appropriate on
- 18 the appeal.
- 19 (4) In an appeal under this section, the parties to the appeal bear their
- 20 own costs unless the Supreme Court otherwise orders.

Part 2.8 Community legal centres

208 What is a *complying community legal centre*?

- (1) For this Act, an entity is a *complying community legal centre* if—
- (a) it is held out, or holds itself out, as being a community legal centre (however described); and
 - (b) it provides legal services—
 - (i) that are directed generally to people or entities that lack the financial means to obtain privately funded legal services or whose cases are expected to raise issues of public interest or are of general concern to disadvantaged groups in the community; and
 - (ii) that are made available to people or entities that have a special need arising from their location or the nature of the legal matter to be addressed or have a significant physical or social disability; and
 - (iii) that are not intended, or likely, to be provided at a profit to the entity and the income (if any) from which cannot or will not be distributed to any member or employee of the entity otherwise than by way of reasonable remuneration under a contract of service or for services; and
 - (iv) that are funded or expected to be funded to a significant level by donations or by grants from government, charitable entities or other entities; and

- 1 (c) at least 1 of the people employed or otherwise used by the
2 entity and who is generally responsible for provision of the
3 legal services by the entity is an Australian legal practitioner
4 who—
5 (i) holds an unrestricted practising certificate; or
6 (ii) is authorised by the licensing body for this section.

7 **209 Provision of legal services etc by complying community**
8 **centre**

- 9 (1) A complying community legal centre does not contravene this Act
10 only because—
11 (a) it employs, or otherwise uses the services of, Australian legal
12 practitioners to provide legal services to members of the
13 public; or
14 (b) it has a contractual relationship with a member of the public to
15 whom the legal services are provided or receives any fee, gain
16 or reward for providing the legal services; or
17 (c) it shares with an Australian legal practitioner employed or
18 otherwise used by it to provide the legal services receipts,
19 revenue or other income arising from the business of the centre
20 of a kind usually conducted by an Australian legal practitioner;
21 or
22 (d) it adopts or uses the word ‘legal’ or a name, title or description
23 to which section 18 (Presumptions about taking or using
24 certain names, titles or descriptions) applies (or a related term)
25 in its name or any registered business name under which it
26 provides legal services to members of the public.
27 (2) Subsection (1) has effect despite anything to the contrary in this Act.

- 1 (3) A regulation may make provision in relation to—
2 (a) the application (with any prescribed changes) of a provision of
3 this Act to a complying community legal centre; and
4 (b) the legal services provided by a complying community legal
5 centre.
6 (4) A regulation may provide that a breach of a regulation in relation to
7 a complying community legal centre can be unsatisfactory
8 professional conduct or professional misconduct by an Australian
9 legal practitioner responsible for the breach.
10 (5) A provision of the legal profession rules that applies to an
11 Australian legal practitioner also applies to an Australian legal
12 practitioner who is an officer or employee of, or whose services are
13 used by, a complying community legal centre, unless the rules
14 otherwise provide.
15 (6) In this section:
16 *fee, gain or reward* means any form of, and any expectation of, a
17 fee, gain or reward.

Chapter 3 Conduct of legal practice

Part 3.1 Trust money and trust accounts

Division 3.1.1 Preliminary—pt 3.1

210 Definitions—pt 3.1

(1) In this Act:

controlled money means trust money received by a law practice with a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control.

Note See s 224 (6) (Controlled money), which prevents pooling of controlled money.

transit money means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

Note ***Trust money*** is defined in the dictionary.

(2) In this part:

approved ADI means an ADI approved under section 250 (Approval of ADIs for pt 3.1) by the licensing body.

controlled money account means an account kept by a law practice with an approved ADI for the holding of controlled money received by the practice.

external examination means an external examination under subdivision 3.1.3.2 of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under subdivision 3.1.3.2.

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

investigation means an investigation under subdivision 3.1.3.1 of the affairs of a law practice.

investigator means a person holding an appointment as an investigator under subdivision 3.1.3.1.

law practice—see section 218 (2).

permanent form, in relation to a trust record, means printed (or, on request, capable of being printed) in English on paper or other material.

trust account means an account kept by a law practice with an approved ADI to hold trust money.

trust records includes the following documents:

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) duplicate deposit slips;
- (e) trust account ADI statements;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;
- (i) records of monthly reconciliations;
- (j) trust transfer journals;
- (k) statements of account as required to be provided under a regulation;

- 1 (l) registers required to be kept under a regulation;
- 2 (m) monthly statements required to be kept under a regulation;
- 3 (n) files relating to trust transactions or bills of costs, or both;
- 4 (o) written directions, authorities or other documents required to
- 5 be kept under this Act;
- 6 (p) supporting information required to be kept under a regulation
- 7 in relation to powers to deal with trust money.

8 *Note 1* **This Act** is defined in the dictionary.

9 *Note 2* **Trust records** includes a reference to the affairs of a law practice
10 that may be examined under s 245 (Examination of affairs in
11 relation to examination of trust records etc)—see s 245 (3).

- 12 (3) A reference in this part to a law practice's trust account or trust
- 13 records includes a reference to an associate's trust account or trust
- 14 records.

15 **211 Purposes—pt 3.1**

16 The purposes of this part are as follows:

- 17 (a) to ensure trust money is held by law practices in a way that
- 18 protects the interests of people for or on whose behalf money is
- 19 held, both inside and outside the ACT;
- 20 (b) to minimise compliance requirements for law practices that
- 21 provide legal services within and outside the ACT;
- 22 (c) to ensure the licensing body can work effectively with
- 23 corresponding authorities in other jurisdictions in relation to
- 24 the regulation of trust money and trust accounts.

212 Money involved in financial services or investments

- (1) Money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held for or in relation to—
- (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time); or
 - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of someone else who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).
- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held in relation to—
- (a) a managed investment scheme undertaken by the practice; or
 - (b) mortgage financing undertaken by the practice.
- (3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for this Act, unless—
- (a) the money or property was entrusted to or held by the practice—
 - (i) in the ordinary course of legal practice; and
 - (ii) primarily in relation to the provision of legal services to or at the direction of the client; and

- 1 (b) the investment is or is to be made—
2 (i) in the ordinary course of legal practice; and
3 (ii) for the ancillary purpose of maintaining or enhancing the
4 value of the money or property pending completion of the
5 matter or further stages of the matter or pending payment
6 or delivery of the money or property to or at the direction
7 of the client.
- 8 (4) In this section:
9 *Australian financial services licence*—see the Corporations Act,
10 section 761A.
11 *authorised representative*—see the Corporations Act, section 761A.
12 *financial service*—see the Corporations Act, section 761A.
13 *financial services business*—see the Corporations Act,
14 section 761A.
- 15 **213 Determinations about status of money**
- 16 (1) This section applies to money received by a law practice if the
17 licensing body considers that there is doubt or a dispute as to
18 whether the money is trust money.
- 19 (2) The licensing body may determine, in writing, that the money is or
20 is not trust money.
- 21 *Note* A provision of a law that gives an entity power to make a statutory
22 instrument also gives the entity the power to amend or repeal the
23 instrument (see Legislation Act, s 46).
- 24 (3) While a determination under this section is in force that money is
25 trust money, the money is taken to be trust money for this Act.
- 26 (4) While a determination under this section is in force that money is
27 not trust money, the money is taken not to be trust money for this
28 Act.

- 1 (5) This section has effect subject to a decision of a court or
2 administrative review body made in relation to the money
3 concerned.

4 **214 Application of pt 3.1 to law practices and trust money**

- 5 (1) This part applies to the following law practices in relation to trust
6 money received by them in the ACT:

- 7 (a) a law practice that has an office in the ACT, whether or not the
8 practice has an office in another jurisdiction;
9 (b) a law practice that does not have an office in any jurisdiction at
10 all.

- 11 (2) To remove any doubt, it is intended that a law practice that receives
12 trust money in the ACT, that does not have an office in the ACT,
13 but that has an office in another jurisdiction, must deal with the
14 money in accordance with the corresponding law of the other
15 jurisdiction.

- 16 (3) This part applies to the following law practices in relation to trust
17 money received by them in another jurisdiction:

- 18 (a) a law practice that has an office in the ACT and in no other
19 jurisdiction;
20 (b) a law practice that has an office in the ACT and in 1 or more
21 other jurisdictions but not in the jurisdiction in which the trust
22 money was received, unless the money is dealt with in
23 accordance with the corresponding law of another jurisdiction.

- 24 (4) However, this part does not apply to law practices, or kinds of trust
25 money, prescribed by regulation for this subsection.

- 1 (5) A reference in this section to having an office in a jurisdiction is a
2 reference to having, or engaging in legal practice from, an office or
3 business address in the jurisdiction.

4 *Note* Section 164 (Trust money and trust accounts—Australian-registered
5 foreign lawyers) applies this part to Australian-registered foreign
6 lawyers.

7 **215 Protocols for deciding where trust money is received**

- 8 (1) The licensing body may enter into arrangements (the *protocols*) with
9 corresponding authorities about any or all of the following:

10 (a) deciding the jurisdiction where a law practice receives trust
11 money;

12 (b) sharing information about whether, and (if so) how, trust
13 money is being dealt with under this Act or a corresponding
14 law.

- 15 (2) For this Act, to the extent that the protocols are relevant, the
16 jurisdiction where a law practice receives trust money is to be
17 decided in accordance with the protocols.

- 18 (3) A protocol is a notifiable instrument.

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

20 **216 When money is received by law practice**

- 21 (1) For this Act, a law practice receives money when—

22 (a) the practice obtains possession or control of it directly; or

23 (b) the practice obtains possession or control of it indirectly
24 because of its delivery to an associate; or

25 (c) the practice is given a power enabling the practice to deal with
26 it, whether alone or with an associate; or

1 (d) an associate is given a power enabling the associate to deal
2 with it, on behalf of the practice, whether alone or with another
3 associate.

4 (2) For this Act, a law practice or associate is taken to have received
5 money if the money is available to the practice or associate by
6 means of an instrument or other way of authorising an ADI to credit
7 or debit an amount to an account with the ADI, including, for
8 example, an electronic funds transfer, credit card transaction or
9 telegraphic transfer.

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

13 **217 Discharge by legal practitioner associate of obligations of**
14 **law practice**

15 (1) The following actions, if taken by a legal practitioner associate of a
16 law practice on behalf of the practice in relation to trust money
17 received by the practice, discharge the corresponding obligations of
18 the practice in relation to the money:

19 (a) the establishment of a trust account;

20 (b) the keeping of a trust account;

21 (c) the payment of trust money into and out of a trust account and
22 other dealings with trust money;

23 (d) the keeping of trust records;

24 (e) engaging an external examiner to examine trust records;

25 (f) the payment of an amount into an ADI account in accordance
26 with section 253 (Statutory deposits);

27 (g) an action of a kind prescribed by regulation.

- 1 (2) If the legal practitioner associate keeps a trust account in relation to
2 trust money received by the law practice, this part applies to the
3 associate in the same way as it applies to a law practice.

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

- 7 (3) Subsection (1) does not apply to the extent that the associate is
8 prevented by a regulation from taking any action mentioned in that
9 subsection.

10 **218 Liability of principals of law practices under pt 3.1**

- 11 (1) A provision of this part expressed as imposing an obligation on a
12 law practice imposes the same obligation on the principals of the
13 law practice jointly and severally, but discharge of the practice's
14 obligation also discharges the corresponding obligation imposed on
15 the principals.

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

- 19 (2) A reference in this part to a *law practice* includes a reference to the
20 principals of the law practice.

21 **219 Application of pt 3.1 to former practices, principals and** 22 **associates**

23 This part applies in relation to former law practices and former
24 principals and associates of law practices in relation to conduct
25 happening while they were respectively law practices, principals and
26 associates in the same way as it applies to law practices, principals
27 and associates, but with any necessary changes.

220 Barristers not to receive trust money

A barrister commits an offence if—

- (a) the barrister receives money on behalf of someone else; and
- (b) the money is received in the course of the barrister's practice as a barrister.

Maximum penalty: 50 penalty units.

Division 3.1.2 Trust money and trust accounts

221 Keeping of general trust account

- (1) A law practice that receives trust money to which this part applies must keep a general trust account in the ACT.
- (2) A law practice that is required to keep a general trust account in the ACT must establish and keep the account as required by regulation.
- (3) Subsection (1) does not apply to a law practice in relation to any period during which the practice receives only controlled money or transit money (or both), except if it is received in the form of cash.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

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

- 1 (6) An offence against subsection (4) or (5) is a strict liability offence.
- 2 (7) Subject to any regulation, a requirement of this section for a law
3 practice to keep, or establish and keep, a general trust account in the
4 ACT does not prevent the practice from keeping, or establishing and
5 keeping, more than 1 general trust account in the ACT, whether
6 during the same period or during different periods.
- 7 (8) Without limiting this section, a regulation may provide that a law
8 practice must not close a general trust account except as permitted
9 by regulation.
- 10 **222 Certain trust money to be deposited in general trust**
11 **account**
- 12 (1) As soon as practicable after receiving trust money, a law practice
13 must deposit the money in a general trust account of the practice.
- 14 (2) Subsection (1) does not apply if—
- 15 (a) the practice has a written direction by an appropriate person to
16 deal with the money otherwise than by depositing it in the
17 account; or
- 18 (b) the money is controlled money; or
- 19 (c) the money is transit money; or
- 20 (d) the money is to be dealt with under a power to receive or
21 disburse money for or on behalf of someone else exercisable
22 jointly and severally with the other person or a nominee of the
23 other person.
- 24 (3) A law practice that has received money that is the subject of a
25 written direction mentioned in subsection (2) (a) must deal with the
26 money in accordance with the direction—
- 27 (a) within the period (if any) stated in the direction; or

- 1 (b) subject to paragraph (a), as soon as practicable after it is
2 received.
- 3 (4) The law practice must keep a written direction mentioned in
4 subsection (2) (a) for the period prescribed by regulation.
- 5 (5) Subsection (2) (a) to (d) do not apply to cash.
- 6 (6) If a law practice that is an Australian legal practitioner who is a sole
7 practitioner, or an incorporated legal practice, contravenes
8 subsection (1), (3) or (4), the practitioner or practice commits an
9 offence.
- 10 Maximum penalty: 50 penalty units.
- 11 (7) If a law practice that is a law firm, or a multidisciplinary
12 partnership, contravenes subsection (1), (3) or (4), each principal of
13 the practice commits an offence.
- 14 Maximum penalty: 50 penalty units.
- 15 *Note* For this part, a reference to a **law practice** includes the principals of the
16 law practice (see s 218 (Liability of principals of law practices under
17 pt 3.1)).
- 18 (8) An offence against subsection (6) or (7) is a strict liability offence.
- 19 (9) For this section, a person is an **appropriate person** in relation to
20 trust money received by a law practice if the person is legally
21 entitled to give the practice directions about dealings with the
22 money.
- 23 **223 Holding, disbursing and accounting for trust money**
- 24 (1) A law practice must—
- 25 (a) hold trust money deposited in a general trust account of the
26 practice exclusively for the person on whose behalf it is
27 received; and

- 1 (b) disburse the trust money only in accordance with a direction
2 given by the person.
- 3 (2) Subsection (1) applies subject to an order of a court of competent
4 jurisdiction or as authorised by law.
- 5 (3) The law practice must account for the trust money as required by
6 regulation.
- 7 (4) If a law practice that is an Australian legal practitioner who is a sole
8 practitioner, or an incorporated legal practice, contravenes
9 subsection (1) or (3), the practitioner or practice commits an
10 offence.
- 11 Maximum penalty: 50 penalty units.
- 12 (5) If a law practice that is a law firm, or a multidisciplinary
13 partnership, contravenes subsection (1) or (3), each principal of the
14 practice commits an offence
- 15 Maximum penalty: 50 penalty units.
- 16 *Note* For this part, a reference to a **law practice** includes the principals of the
17 law practice (see s 218 (Liability of principals of law practices under
18 pt 3.1)).
- 19 (6) An offence against subsection (4) or (5) is a strict liability offence.

20 **224 Controlled money**

- 21 (1) As soon as practicable after receiving controlled money, a law
22 practice must deposit the money in the account stated in the written
23 direction relating to the money.
- 24 (2) The law practice must hold controlled money deposited in a
25 controlled money account in accordance with subsection (1)
26 exclusively for the person on whose behalf it was received.
- 27 (3) The law practice that holds controlled money deposited in a
28 controlled money account in accordance with subsection (1) must
29 not disburse the money except in accordance with—

-
- 1 (a) the written direction mentioned in that subsection; or
- 2 (b) a later written direction given by or on behalf of the person on
- 3 whose behalf the money was received.
- 4 (4) The law practice must keep the controlled money account, and
- 5 account for the controlled money, as required by regulation.
- 6 (5) The law practice must keep a written direction mentioned in this
- 7 section for the period prescribed by regulation.
- 8 (6) The law practice must ensure that the controlled money account is
- 9 used for the deposit of controlled money received on behalf of the
- 10 person mentioned in subsection (2), and not for the deposit of
- 11 controlled money received on behalf of anyone else, except to the
- 12 extent that a regulation otherwise allows.
- 13 (7) Subsection (3) applies subject to an order of a court of competent
- 14 jurisdiction or as authorised by law.
- 15 (8) If a law practice that is an Australian legal practitioner who is a sole
- 16 practitioner, or an incorporated legal practice, contravenes
- 17 subsection (1), (2), (3), (4), (5) or (6), the practitioner or practice
- 18 commits an offence.
- 19 Maximum penalty: 50 penalty units.
- 20 (9) If a law practice that is a law firm, or a multidisciplinary
- 21 partnership, contravenes subsection (1), (2), (3), (4), (5) or (6), each
- 22 principal of the practice commits an offence
- 23 Maximum penalty: 50 penalty units.
- 24 *Note* For this part, a reference to a **law practice** includes the principals of the
- 25 law practice (see s 218 (Liability of principals of law practices under
- 26 pt 3.1)).
- 27 (10) An offence against subsection (8) or (9) is a strict liability offence.
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- 1 **225 Transit money**
- 2 (1) A law practice that has received transit money must pay or deliver
- 3 the money as required by the instructions relating to the money—
- 4 (a) within the period (if any) stated in the instructions; or
- 5 (b) subject to paragraph (a), as soon as practicable after it is
- 6 received.
- 7 (2) The law practice must account for the money as required by
- 8 regulation.
- 9 (3) If a law practice that is an Australian legal practitioner who is a sole
- 10 practitioner, or an incorporated legal practice, contravenes
- 11 subsection (1) or (2), the practitioner or practice commits an
- 12 offence.
- 13 Maximum penalty: 50 penalty units.
- 14 (4) If a law practice that is a law firm, or a multidisciplinary
- 15 partnership, contravenes subsection (1) or (2), each principal of the
- 16 practice commits an offence.
- 17 Maximum penalty: 50 penalty units.
- 18 *Note* For this part, a reference to a **law practice** includes the principals of the
- 19 law practice (see s 218 (Liability of principals of law practices under
- 20 pt 3.1)).
- 21 (5) An offence against subsection (3) or (4) is a strict liability offence.
- 22 **226 Trust money subject to specific powers**
- 23 (1) A law practice that exercises a power to deal with trust money must
- 24 deal with the money only in accordance with the power relating to
- 25 the money.
- 26 (2) The law practice must account for the money as required by
- 27 regulation.

- 1 (3) If a law practice that is an Australian legal practitioner who is a sole
2 practitioner, or an incorporated legal practice, contravenes
3 subsection (1) or (2), the practitioner or practice commits an
4 offence.

5 Maximum penalty: 50 penalty units.

- 6 (4) If a law practice that is a law firm, or a multidisciplinary
7 partnership, contravenes subsection (1) or (2), each principal of the
8 practice commits an offence.

9 Maximum penalty: 50 penalty units.

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

- 13 (5) An offence against subsection (3) or (4) is a strict liability offence.

14 **227 Protection of trust money**

- 15 (1) Money standing to the credit of a trust account kept by a law
16 practice is not available for the payment of debts of the practice or
17 any of its associates.

- 18 (2) Money standing to the credit of a trust account kept by a law
19 practice is not liable to be attached or taken in execution for
20 satisfying a judgment against the practice or any of its associates.

- 21 (3) This section does not apply to money to which a law practice or
22 associate is entitled.

23 **228 Intermixing money**

- 24 (1) A law practice must not mix trust money with other money.

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

4 Maximum penalty: 50 penalty units.

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

8 Maximum penalty: 50 penalty units.

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

12 (4) This section does not apply in relation to the mixing of trust money
13 with other money if—

14 (a) the licensing body has authorised the mixing of the trust money
15 with other money to the extent to which it is mixed; and

16 (b) the law practice has complied with any conditions put on the
17 authorisation by the licensing body.

18 (5) An offence against subsection (2) or (3) is a strict liability offence.

19 **229 Dealing with trust money—legal costs and unclaimed** 20 **money**

21 (1) A law practice may do any of the following, in relation to trust
22 money held in a general trust account or controlled money account
23 of the practice for a person:

24 (a) exercise a lien, including a general retaining lien, for the
25 amount of legal costs reasonably owing by the person to the
26 practitioner;

27 (b) withdraw money for payment to the practice's account for
28 legal costs owing to the practice if the procedure prescribed by
29 regulation is complied with;

1 (c) after deducting any legal costs properly owing to the practice,
2 deal with the balance as unclaimed money under section 259
3 (Unclaimed trust money).

4 (2) Subsection (1) applies despite any other provision of this part but
5 has effect subject to part 3.2 (Costs disclosure and review).

6 **230 Deficiency in trust account**

7 (1) An Australian legal practitioner commits an offence if the
8 practitioner causes—

9 (a) a deficiency in any trust account or trust ledger account; or

10 (b) a failure to pay or deliver any trust money.

11 Maximum penalty: 50 penalty units.

12 (2) Subsection (1) does not apply if the Australian legal practitioner has
13 a reasonable excuse.

14 (3) In this section:

15 *account*, in relation to an Australian legal practitioner, includes an
16 account of the practitioner or of the law practice of which the
17 practitioner is an associate.

18 *cause* a deficiency or failure—a person's conduct *causes* a
19 deficiency or failure if it is responsible for the deficiency or failure.

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

23 **231 Reporting certain irregularities etc**

24 (1) A legal practitioner commits an offence if—

25 (a) the practitioner is an associate of a law practice; and

- 1 (b) the practitioner becomes aware that there is an irregularity in
2 any of the practice's trust accounts or trust ledger accounts;
3 and
- 4 (c) the practitioner fails, as soon as practicable after becoming
5 aware of the irregularity, to give written notice of the
6 irregularity to—
- 7 (i) the licensing body; and
- 8 (ii) if a corresponding authority is responsible for the
9 regulation of the accounts—the corresponding authority.
- 10 Maximum penalty: 50 penalty units.
- 11 (2) An Australian legal practitioner commits an offence if—
- 12 (a) the practitioner believes, on reasonable grounds, that there is
13 an irregularity in relation to the receipt, recording or
14 disbursement of any trust money received by a law practice;
15 and
- 16 (b) the practitioner is not an associate of the practice; and
- 17 (c) the practitioner fails, as soon as practicable after forming the
18 belief, to give written notice of it to—
- 19 (i) the licensing body; and
- 20 (ii) if a corresponding authority is responsible for the
21 regulation of the accounts relating to the trust money—
22 the corresponding authority.
- 23 Maximum penalty: 50 penalty units.

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

6 *Note* Section 593 (Professional privilege or duty of confidence does not
7 affect validity of certain requirements etc) contains a similar provision
8 in relation to client legal privilege and duties of confidence.

- 9 (4) An Australian legal practitioner is not liable for any loss or damage
10 suffered by someone else because of the practitioner's compliance
11 with subsection (1) or (2).

12 **232 Keeping trust records**

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

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

- 16 (a) in accordance with the regulations; and
17 (b) in a way that at all times discloses the true position in relation
18 to trust money received for or on behalf of any person; and
19 (c) in a way that enables the trust records to be conveniently and
20 properly investigated or externally examined; and
21 (d) for a period prescribed by regulation.

- 22 (3) If a law practice that is an Australian legal practitioner who is a sole
23 practitioner, or an incorporated legal practice, contravenes
24 subsection (1) or (2), the practitioner or practice commits an
25 offence.

26 Maximum penalty: 50 penalty units.

- 1 (4) If a law practice that is a law firm, or a multidisciplinary
2 partnership, contravenes subsection (1) or (2), each principal of the
3 practice commits an offence

4 Maximum penalty: 50 penalty units.

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

- 8 (5) An offence against subsection (3) or (4) is a strict liability offence.

9 **233 False names in trust records etc**

- 10 (1) A law practice must not knowingly receive money or record receipt
11 of money in the practice's trust records under a false name.

- 12 (2) If a person on whose behalf trust money is received by a law
13 practice is commonly known by 2 or more names, the practice must
14 ensure that the practice's trust records record all names by which the
15 person is known.

- 16 (3) If a law practice that is an Australian legal practitioner who is a sole
17 practitioner, or an incorporated legal practice, contravenes
18 subsection (1) or (2), the practitioner or practice commits an
19 offence.

20 Maximum penalty: 50 penalty units.

- 21 (4) If a law practice that is a law firm, or a multidisciplinary
22 partnership, contravenes subsection (1) or (2), each principal of the
23 practice commits an offence.

24 Maximum penalty: 50 penalty units.

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

**Division 3.1.3 Investigations and external
examinations**

Subdivision 3.1.3.1 Investigations

234 Appointment of investigators

- (1) The licensing body may appoint a suitably qualified person to investigate the affairs or stated affairs of a law practice.

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

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

- (2) The appointment may be made generally or for the law practice stated in the instrument of, or evidencing the, appointment.

235 Investigations

- (1) The instrument of, or evidencing the, appointment may authorise the investigator to conduct either or both of the following in relation to a law practice:

- (a) routine investigations on a regular or other basis;
- (b) investigations in relation to particular allegations or suspicions in relation to trust money, trust property trust accounts or any other aspect of the affairs of the law practice.

- (2) The main purposes of an investigation are to find out whether the law practice has complied with or is complying with the requirements of this part and to detect and prevent fraud or defalcation, but this subsection does not limit the scope of the investigation or the powers of the investigator.

- 1 **236 Application of ch 6 to investigations**
- 2 Chapter 6 (Investigations) applies to an investigation under this
- 3 subdivision.
- 4 **237 Investigator's report**
- 5 As soon as practicable after completing an investigation, the
- 6 investigator must give a written report of the investigation to the
- 7 licensing body.
- 8 **238 Confidentiality by investigator etc**
- 9 (1) In this section:
- 10 *court* includes any entity with power to require the production of
- 11 documents or the answering of questions.
- 12 *divulge* includes communicate.
- 13 *person to whom this section applies* means anyone who is, or has
- 14 been—
- 15 (a) an investigator; or
- 16 (b) acting under the direction or authority of an investigator; or
- 17 (c) providing advice, expertise or assistance to an investigator.
- 18 *produce* includes allow access to.
- 19 *protected information* means information about a law practice or
- 20 another person that is disclosed to, or obtained by, a person to whom
- 21 this section applies (the *relevant person*) because of the exercise of
- 22 a function under this Act by the relevant person or someone else.
- 23 (2) A person to whom this section applies commits an offence if—
- 24 (a) the person—
- 25 (i) makes a record of protected information about a law
- 26 practice or another person; and

-
- 1 (ii) is reckless about whether the information is protected
2 information about a law practice or another person; or
3 (b) the person—
4 (i) does something that divulges protected information about
5 a law practice or another person; and
6 (ii) is reckless about whether—
7 (A) the information is protected information about a law
8 practice or another person; and
9 (B) doing the thing would result in the information being
10 divulged.
11 Maximum penalty: 50 penalty units, imprisonment for 6 months or
12 both.
13 (3) This section does not apply if the record is made, or the information
14 is divulged—
15 (a) under this Act or another territory law; or
16 (b) in relation to the exercise of a function, as a person to whom
17 this section applies, under this Act or another territory law.
18 (4) Subsection (2) does not apply to the divulging of protected
19 information about a law practice or another person—
20 (a) to the practice or person; or
21 (b) if relevant, to an associate of the practice; or
22 (c) with the consent of the practice or person; or
23 (d) if divulging the information is necessary for properly
24 conducting an investigation and making the report of the
25 investigation; or
26 (e) as provided in section 553 (Permitted disclosure of confidential
27 information—ch 6).
-

- 1 (5) A person to whom this section applies need not divulge protected
2 information to a court, or produce a document containing protected
3 information to a court, unless it is necessary to do so for this Act or
4 another territory law.

5 **239 Costs of investigation**

- 6 (1) The costs of an investigation are payable out of the fidelity fund.
- 7 (2) However, the licensing body may decide that all or part of the costs
8 of the investigation is payable to the licensing body, and decide the
9 amount payable, if—
- 10 (a) the investigator states in his or her report that there is evidence
11 a breach of this Act has been committed or that fraud or
12 defalcation has been detected; and
- 13 (b) the licensing body is satisfied the breach is intentional or of a
14 substantial nature.
- 15 *Note* **This Act** is defined in the dictionary.
- 16 (3) An amount decided by the licensing body under subsection (2) is a
17 debt owing to the licensing body by the law practice whose affairs
18 were investigated.
- 19 (4) Before seeking to recover the amount payable, the licensing body
20 must give the law practice an information notice about the licensing
21 body's decision (including the amount decided by it as being
22 payable).
- 23 (5) A person may appeal to the Supreme Court against a decision of the
24 licensing body under subsection (2).
- 25 (6) On appeal, the Supreme Court may make any order it considers
26 appropriate.

Subdivision 3.1.3.2 External examinations

240 Designation of external examiners

- (1) The licensing body may, in writing, designate a person (a *designated person*) as being eligible to be appointed as external examiners.
- (2) Only designated people may be appointed as external examiners.
- (3) An employee or agent of the licensing body may be a designated person.

241 Appointment of external examiners by law practices

- (1) If a regulation requires a law practice to appoint an external examiner to examine the practice's trust accounts, the practice must make the appointment as required by the regulation.

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

- (4) An offence against subsection (2) or (3) is a strict liability offence.

242 Appointment of external examiners by licensing body

- (1) The licensing body must ensure each law practice's trust records are externally examined as required by regulation.

1 (2) If the licensing body is satisfied a law practice has not had the
2 practice's trust records externally examined as required by
3 regulation, the licensing body may appoint an external examiner to
4 examine the practice's trust records.

5 (3) If a law practice is not required by regulation to have trust records
6 externally examined, the licensing body may appoint an external
7 examiner to examine the practice's trust records at least annually.

8 **243 Designation and appointment of associates as external**
9 **examiners**

10 (1) The licensing body may designate an associate of a law practice
11 under this subdivision only if the licensing body is satisfied that it is
12 appropriate to designate the associate.

13 (2) However, an associate of a law practice cannot be appointed as an
14 external examiner under this subdivision to examine the practice's
15 trust records.

16 **244 Final examination of trust records**

17 (1) This section applies if a law practice—

18 (a) stops being authorised to receive trust money; or

19 (b) stops engaging in legal practice in the ACT.

20 (2) The law practice must appoint an external examiner to examine the
21 practice's trust records—

22 (a) for the period since an external examination was last
23 conducted; and

24 (b) for each period after that, consisting of a completed period of
25 12 months or any remaining partly completed period, during
26 which the practice continued to hold trust money.

- 1 (3) The law practice must give the licensing body—
2 (a) a report of each examination under subsection (2) not later than
3 60 days after the end of the period to which the examination
4 relates; and
5 (b) a written notice not later than 60 days after the day it stops
6 holding trust money.
7 *Note* If a form is approved by the licensing body under s 583 for this
8 provision, the form must be used.
9 (4) If a law practice that is an Australian legal practitioner who is a sole
10 practitioner, or an incorporated legal practice, contravenes
11 subsection (2) or (3), the practitioner or practice commits an
12 offence.
13 Maximum penalty: 100 penalty units.
14 (5) If a law practice that is a law firm, or a multidisciplinary
15 partnership, contravenes subsection (2) or (3), each principal of the
16 practice commits an offence.
17 Maximum penalty: 100 penalty units.
18 *Note* For this part, a reference to a **law practice** includes the principals of the
19 law practice (see s 218 (Liability of principals of law practices under
20 pt 3.1)).
21 (6) If an Australian legal practitioner dies, the practitioner's legal
22 personal representative must comply with this section as if the
23 representative were the practitioner.
24 (7) This section does not affect any other requirements under this part.
25 **245 Examination of affairs in relation to examination of trust**
26 **records etc**
27 (1) An external examiner appointed to examine a law practice's trust
28 records may examine the affairs of the practice for the purposes of
29 and in relation to an examination of the trust records.

- 1 (2) If the law practice is an incorporated legal practice or
2 multidisciplinary partnership, the reference in subsection (1) to the
3 affairs of the practice includes the affairs of the legal practice or
4 partnership or of an associate, so far as they are relevant to trust
5 money, trust records and associated matters.
- 6 (3) A reference in this subdivision and chapter 6 (Investigations) to
7 *trust records* includes a reference to the affairs of a law practice that
8 may be examined under this section in an examination of the
9 practice's trust records.

10 **246 Carrying out examinations**

- 11 (1) Chapter 6 (Investigations) applies to an external examination under
12 this subdivision.
- 13 (2) Subject to chapter 6, an external examination of trust records is to be
14 carried out in accordance with the regulations.
- 15 (3) Without limiting subsection (2), a regulation may provide for the
16 following:
- 17 (a) the standards to be adopted and the procedures to be followed
18 by external examiners;
- 19 (b) the form and content of an external examiner's report on an
20 examination.

21 **247 External examiner's report**

22 As soon as practicable after completing an external examination, an
23 external examiner must give a written report of the examination to
24 the licensing body.

248 Confidentiality by external examiner

(1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means anyone who is, or has been—

(a) an external examiner; or

(b) acting under the direction or authority of an external examiner; or

(c) providing advice, expertise or assistance to an external examiner.

produce includes allow access to.

protected information means information about a law practice or another person that is disclosed to, or obtained by, a person to whom this section applies (the *relevant person*) because of the exercise of a function under this Act by the relevant person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about a law practice or another person; and

(ii) is reckless about whether the information is protected information about a law practice or another person; or

(b) the person—

(i) does something that divulges protected information about a law practice or another person; and

- 1 (ii) is reckless about whether—
- 2 (A) the information is protected information about a law
- 3 practice or another person; and
- 4 (B) doing the thing would result in the information being
- 5 divulged.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (3) This section does not apply if the record is made, or the information
- 9 is divulged—
- 10 (a) under this Act or another territory law; or
- 11 (b) in relation to the exercise of a function, as a person to whom
- 12 this section applies, under this Act or another territory law.
- 13 (4) Subsection (2) does not apply to the divulging of protected
- 14 information about a law practice or another person—
- 15 (a) to the practice or person; or
- 16 (b) if relevant, to an associate of the practice; or
- 17 (c) with the consent of the practice or person; or
- 18 (d) if divulging the information is necessary for properly
- 19 conducting an examination and making the report of an
- 20 examination; or
- 21 (e) to an investigator or a supervisor, manager or receiver
- 22 appointed under this Act; or
- 23 (f) as provided in section 553 (Permitted disclosure of confidential
- 24 information—ch 6).
- 25 (5) A person to whom this section applies need not divulge protected
- 26 information to a court, or produce a document containing protected

information to a court, unless it is necessary to do so for this Act or another territory law.

249 Costs of examination

- (1) The costs of an examination are payable out of the fidelity fund.
- (2) However, the licensing body may decide that all or part of the costs of the examination is payable to the licensing body, and decide the amount payable, if the licensing body appointed the external examiner to carry out the examination.

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

- (3) An amount decided by the licensing body under subsection (2) is a debt owing to the licensing body by the law practice whose affairs were examined.
- (4) Before seeking to recover the amount payable, the licensing body must give the law practice an information notice about the licensing body's decision (including the amount decided by it as being payable).
- (5) A person may appeal to the Supreme Court against a decision of the licensing body under subsection (2).
- (6) On appeal, the Supreme Court may make any order it considers appropriate.

Division 3.1.4 Provisions relating to ADIs and statutory deposits

250 Approval of ADIs for pt 3.1

- (1) The licensing body may approve ADIs at which trust accounts to hold trust money may be kept.
- (2) The licensing body may impose conditions, of the kinds prescribed by regulation, on an approval under this section, when the approval

1 is given or during the currency of the approval, and may amend or
2 revoke any conditions imposed.

3 (3) The licensing body may revoke an approval given under this
4 section.

5 **251 ADI not subject to certain obligations and liabilities**

6 (1) An ADI at which a trust account is kept by a law practice—

7 (a) is not under any obligation to control or supervise transactions
8 in relation to the account or to see to the application of
9 amounts disbursed from the account; and

10 (b) does not have, in relation to any liability of the law practice to
11 the ADI, any recourse or right (whether by way of set-off
12 counterclaim, charge or otherwise) against amounts in the
13 account.

14 (2) Subsection (1) does not relieve an ADI from any liability to which it
15 is subject apart from this Act.

16 **252 Reports, records and information by ADIs**

17 (1) An ADI commits an offence if—

18 (a) a trust account is kept with the ADI; and

19 (b) the ADI becomes aware of a deficiency in the account; and

20 (c) the ADI fails to report the deficiency to the licensing body as
21 soon as practicable after becoming aware of the deficiency.

22 Maximum penalty: 50 penalty units.

23 (2) An ADI commits an offence if—

24 (a) a trust account is kept with the ADI; and

25 (b) the ADI has reason to believe that an offence has been
26 committed in relation to the account; and

- 1 (c) the ADI fails to report the belief to the licensing body as soon
2 as practicable after forming it.
- 3 Maximum penalty: 50 penalty units.
- 4 (3) An ADI commits an offence if it fails to give the licensing body a
5 report required by regulation about a trust account as required by the
6 regulation.
- 7 Maximum penalty: 50 penalty units.
- 8 (4) An ADI commits an offence if—
- 9 (a) a trust account is kept with the ADI by a law practice; and
- 10 (b) an investigator or external examiner produces to the ADI
11 evidence of the appointment of the investigator or external
12 examiner in relation to the practice; or
- 13 (c) the investigator or external examiner requires the ADI—
- 14 (i) to produce for inspection or copying by the investigator or
15 external examiner any records relating to the trust account
16 or trust money deposited in the trust account; or
- 17 (ii) to give the investigator or external examiner details of any
18 transactions relating to the trust account or trust money;
19 and
- 20 (d) the ADI fails to comply with the requirement.
- 21 Maximum penalty: 50 penalty units.
- 22 (5) An offence against subsection (3) or (4) is a strict liability offence.
- 23 (6) Subsections (1) to (4) apply despite any duty of confidence to the
24 contrary.
- 25 (7) An ADI or an officer or employee of an ADI is not liable for any
26 loss or damage suffered by someone else because of—
- 27 (a) the reporting of a deficiency under subsection (1); or
-

- 1 (b) the making or giving of a report under subsection (2) or (3); or
2 (c) the producing of records, or the giving of details, under
3 subsection (4).

4 **253 Statutory deposits**

- 5 (1) A regulation may require a law practice to pay amounts out of a
6 general trust account of the practice into an ADI account kept by the
7 law society (a *statutory interest account*).
- 8 (2) A regulation may make provision in relation to the following:
9 (a) the type of account to be kept by the law society;
10 (b) payments to be made to the account;
11 (c) the use of money in the account;
12 (d) the person entitled to interest on the money in the account.
- 13 (3) For subsection (2) (d), a regulation may require the ADI to pay
14 interest to the law society.
- 15 (4) Subject to any regulation made under subsection (2) (c) or (d), the
16 law society may, with the Attorney-General's written consent given
17 either generally or in a particular case, use money in a statutory
18 interest account—
19 (a) to supplement from time to time the fidelity fund; and
20 (b) to assist in the conduct of a scheme for the provision of legal
21 aid and to provide funds to the legal aid commission; and
22 (c) to pay or reimburse the amount of any costs and disbursements
23 incurred by the law society council or bar council in relation
24 to—
25 (i) an investigation or proceeding under chapter 4 (including
26 deciding whether an investigation should be made or a
27 proceeding should be started); or

-
- 1 (ii) any other proceeding taken in the Supreme Court in
2 relation to a legal practitioner or an unqualified person
3 practising as a legal practitioner (including deciding
4 whether such a proceeding should be started); and
- 5 (d) to pay or reimburse the amount of any costs and disbursements
6 incurred by the law society council or bar council in relation
7 to—
- 8 (i) making an objection to an application for admission
9 (including deciding whether an objection should be
10 made); or
- 11 (ii) assisting the Supreme Court in relation to an application
12 for admission; and
- 13 (e) to assist the law society council or bar council to facilitate a
14 mediation under part 4.3; and
- 15 (f) to assist in the conduct and maintenance of a course of training
16 for the practice of law; and
- 17 (g) to pay the amount of any costs incurred by the law society in
18 administering amounts deposited with the law society under
19 this part; and
- 20 (h) to meet the costs of administering the account.
- 21 (5) Subject to any regulation made under subsection (2) (c) or (d), the
22 law society must, in accordance with the Attorney-General's written
23 request, pay an amount from the account to the disciplinary tribunal
24 trust account.
- 25 (6) This section applies despite any other provision of this part.

Division 3.1.5 Miscellaneous—pt 3.1

254 Restrictions on receipt of trust money

(1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

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

(a) the practice receives trust money; and

(b) none of the following subparagraphs applies:

(i) at least 1 legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money;

(ii) a person is holding an appointment under section 109 (Incorporated legal practice without legal practitioner director) in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money;

(iii) the money is received during a period during which the practice—

(A) does not have a legal practitioner director; and

(B) is not in default of director requirements under section 109;

but there was, immediately before the start of the period, at least 1 legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (2), (3) or (4) is a strict liability offence.

255 Application of pt 3.1 to incorporated legal practices and multidisciplinary partnerships

(1) A regulation may provide that prescribed provisions of this part, and any other provisions of this Act relating to trust money and trust accounts, do not apply to incorporated legal practices or multidisciplinary partnerships or apply to them with prescribed changes.

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

(2) For the application of a provision of this part, or any other provision of this Act relating to trust money and trust accounts, to an incorporated legal practice or multidisciplinary partnership—

(a) the obligations and rights of a law practice under the provision extend to an incorporated legal practice or multidisciplinary partnership, but only in relation to legal services provided by the practice or partnership; and

- 1 (b) money received by a law practice on behalf of someone else
2 includes money received by any officer or employee of the
3 incorporated legal practice or multidisciplinary partnership on
4 behalf of someone else in the course of providing legal
5 services.

6 **256 Application of pt 3.1 to community legal centres**

- 7 (1) A regulation may provide that a provision of this part, or any other
8 provision of this Act relating to trust money and trust accounts, does
9 not apply to a complying community legal centre or applies with
10 prescribed changes.
- 11 (2) For the application of a provision of this part, or any other provision
12 of this Act relating to trust money and trust accounts, to a complying
13 community legal centre—
- 14 (a) the obligations and rights of an Australian legal practitioner
15 under the provision extends to a complying community legal
16 centre that is a corporation, but only in relation to legal
17 services provided by the centre; and
- 18 (b) money received by an Australian legal practitioner on behalf of
19 someone else in the course of practising as an Australian legal
20 practitioner includes money received by anyone who is an
21 officer or employee of, or whose services are used by, a
22 complying community legal centre on behalf of someone else
23 in the course of providing legal services.

257 Disclosure—money not received as trust money

(1) If money entrusted to a law practice by a person is not trust money because it is money to which section 212 (Money involved in financial services or investments) applies or because of a determination under section 213 (Determinations about status of money), the law practice must give the person notice in accordance with subsection (2) that—

(a) the money is not trust money for this Act and is not subject to any supervision, investigation or audit requirements of this Act; and

(b) a claim against the fidelity fund under this Act cannot be made in relation to the money.

Maximum penalty: 50 penalty units.

(2) Notice under subsection (1) must be given—

(a) when the money is entrusted to the law practice; or

(b) if a determination under section 213 that the money is not trust money is made after the money is entrusted to the law practice—not later than 7 days after the day the determination is made.

(3) The legal profession rules may make provision in relation to the way notice must be given and the contents of the notice.

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

Maximum penalty: 50 penalty units.

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

4 Maximum penalty: 50 penalty units.

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

6 **258 Disclosure of accounts used to hold money entrusted to**
7 **legal practitioners**

- 8 (1) If a law practice or any legal practitioner associate of the law
9 practice holds money entrusted to the law practice or legal
10 practitioner associate, the law practice must give the licensing body
11 the details required by regulation for each account of the law
12 practice kept at an ADI in which the money is held.

13 Maximum penalty: 50 penalty units.

- 14 (2) This section applies whether or not the money is trust money and
15 whether or not section 212 (Money involved in financial services or
16 investments) applies or a determination under section 213
17 (Determinations about status of money) has been made in relation to
18 the money.

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

22 Maximum penalty: 50 penalty units.

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

26 Maximum penalty: 50 penalty units.

- 27 (5) An offence against subsection (3) or (4) is a strict liability offence.

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- 1 **259** **Unclaimed trust money**
- 2 (1) If an amount of trust money held by a law practice becomes an
- 3 unclaimed amount, the practice must pay the amount to the
- 4 Territory, by paying it to the public trustee, not later than 1 month
- 5 after the day the amount becomes an unclaimed amount.
- 6 (2) An amount of trust money held by a law practice becomes an
- 7 *unclaimed amount* if—
- 8 (a) the amount has been held by the practice for a period of 6 years
- 9 during which the practice has had no knowledge of the
- 10 existence or address of the person on whose behalf the amount
- 11 is held; or
- 12 (b) the person on whose behalf the amount is held failed to accept
- 13 payment of the amount when tendered.
- 14 (3) A person who claims to be entitled to an unclaimed amount that has
- 15 been paid to the public trustee may apply to a court for an order
- 16 declaring that the person is entitled to the amount.
- 17 (4) The public trustee must pay a person an amount that was paid to the
- 18 public trustee under subsection (1) if—
- 19 (a) the public trustee is satisfied that the person is entitled to the
- 20 amount; or
- 21 (b) a court has declared that the person is entitled to the amount.
- 22 **260** **Regulations—pt 3.1**
- 23 A regulation may make provision for or in relation to—
- 24 (a) requiring legal practitioners to tell the licensing body about
- 25 trust account details, including details about trust account
- 26 balances; or

- 1 (b) providing exemptions, or the giving of exemptions, from all or
2 any requirements of this part in relation to trust money that is
3 regulated by a corresponding law; or
4 (c) the creation and exercise of liens over trust money.

Part 3.2 Costs disclosure and review

Division 3.2.1 Preliminary—pt 3.2

261 Definitions—pt 3.2

In this part:

client means a person to or for whom legal services are provided, and includes a prospective client.

conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate, as mentioned in section 283, but does not include a costs agreement to the extent to which section 285 (1) (Contingency fees prohibited) applies.

costs agreement means an agreement about the payment of legal costs.

costs review means a review of legal costs under division 3.2.7.

disbursements includes outlays.

itemised bill means a bill that states in detail how the legal costs are made up in a way that would allow them to be reviewed under division 3.2.7.

litigious matter means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal, and includes a matter at any time after—

- (a) proceedings have been started in a court or tribunal; or
- (b) if proceedings have not been started in a court or tribunal—proceedings in a court or tribunal have become likely.

1 ***lump sum bill*** means a bill that describes the legal services to which
2 it relates and states the total amount of the legal costs.

3 ***scale of costs*** means the scale of costs prescribed by rules made
4 under the *Court Procedures Act 2004*.

5 ***uplift fee*** means a premium payable on the legal costs (excluding
6 disbursements) otherwise payable under a costs agreement on the
7 successful outcome of the matter to which those costs relate, as
8 mentioned in section 284 (Conditional costs agreements involving
9 uplift fees).

10 **262 Purposes—pt 3.2**

11 The purposes of this part are as follows:

- 12 (a) to provide for law practices to make disclosures to clients
13 about legal costs;
- 14 (b) to regulate the making of costs agreements in relation to legal
15 services, including conditional costs agreements;
- 16 (c) to regulate the billing of costs for legal services;
- 17 (d) to provide a mechanism for the review of legal costs and the
18 setting aside of certain costs agreements.

19 **Division 3.2.2 Application—pt 3.2**

20 **263 Application of pt 3.2—first instructions rule**

21 This part applies to a matter if the client first instructs the law
22 practice in relation to the matter in the ACT.

264 Pt 3.2 also applies by agreement or at client's election

(1) This part applies to a matter if—

(a) either—

(i) this part does not currently apply to the matter; or

(ii) it is not possible to decide the jurisdiction in which the client first instructs the law practice in relation to the matter; and

(b) either—

(i) the legal services are or will be provided completely or primarily in the ACT; or

(ii) the matter has a substantial connection with the ACT; or both; and

(c) either—

(i) the client signs an agreement under subsection (2) (a) in relation to the matter; or

(ii) the client gives a notification under subsection (2) (b) in relation to the matter.

(2) For subsection (1) (c), the client may—

(a) sign a written agreement with the law practice that this part is to apply to the matter; or

(b) notify the law practice in writing that the client requires this part to apply to the matter.

(3) A notification has no effect for subsection (2) (b) if it is given after the period of 28 days after the day the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind, but nothing in this

1 subsection prevents an agreement mentioned in subsection (2) (a)
2 from coming into effect at any time.

3 **265 Displacement of pt 3.2**

4 (1) This section applies if this part applies to a matter because of
5 section 263 (Application of pt 3.2—first instructions rule) or
6 section 264 (Pt 3.2 also applies by agreement or at client's election).

7 (2) This part ceases to apply to the matter if—

8 (a) either—

9 (i) the legal services are or will be provided completely or
10 primarily in another jurisdiction; or

11 (ii) the matter has a substantial connection with another
12 jurisdiction;

13 or both; and

14 (b) either—

15 (i) the client signs under the corresponding law of the other
16 jurisdiction a written agreement with the law practice that
17 the corresponding provisions of the corresponding law
18 apply to the matter; or

19 (ii) the client notifies under the corresponding law of the
20 other jurisdiction (and within the time allowed by the
21 corresponding law) the law practice in writing that the
22 client requires the corresponding provisions of the
23 corresponding law to apply to the matter.

24 (3) This section does not prevent the application of this part to the
25 matter by means of a later agreement or notification under
26 section 264.

- 1 **266** **How and where does a client first instruct a law practice?**
- 2 A client first instructs a law practice in relation to a matter in a
3 particular jurisdiction if the client first provides instructions to the
4 law practice in relation to the matter at an office of the law practice
5 in that jurisdiction, whether in person or by post, telephone, fax,
6 email or other form of communication.
- 7 **267** **When does a matter have a substantial connection with**
8 **the ACT?**
- 9 A regulation may prescribe the circumstances in which, or the rules
10 to be used to decide whether, a matter has or does not have a
11 substantial connection with the ACT for this part.
- 12 **268** **What happens when different laws apply to a matter?**
- 13 (1) This section applies if this part applies to a matter for a period and a
14 corresponding law applies for another period.
- 15 (2) If this part applied to a matter for a period and a corresponding law
16 applies to the matter afterwards, this part continues to apply in
17 relation to legal costs (if any) incurred while this part applied to the
18 matter.
- 19 (3) If a corresponding law applied to a matter for a period and this part
20 applies to the matter afterwards, this part does not apply in relation
21 to legal costs (if any) incurred while the corresponding law applied
22 to the matter, so long as the corresponding law continues to apply in
23 relation to the costs.
- 24 (4) However—
- 25 (a) the client may sign a written agreement with the law practice
26 that the cost review provisions of this part are to apply in
27 relation to all legal costs incurred in relation to the matter, and
28 division 3.2.7 (Costs review) accordingly applies in relation to
29 the costs; or

1 (b) the client may sign a written agreement with the law practice
2 that the cost review provisions of a corresponding law are to
3 apply in relation to all legal costs incurred in relation to the
4 matter, and division 3.2.7 accordingly does not apply in
5 relation to the costs.

6 (5) This section has effect despite any other provisions of this part.

7 **Division 3.2.3 Costs disclosure**

8 **269 Disclosure of costs to clients**

9 (1) A law practice must disclose to a client in accordance with this
10 division—

11 (a) the basis on which legal costs will be worked out, including
12 whether a scale of costs applies to any of the legal costs; and

13 (b) the client's right to—

14 (i) negotiate a costs agreement with the law practice; and

15 (ii) receive a bill from the law practice; and

16 (iii) request an itemised bill not later than 30 days after the
17 day the client receives a lump sum bill; and

18 (iv) be notified under section 276 (Ongoing obligation to
19 disclose etc) of any substantial change to the matters
20 disclosed under this section; and

21 (c) an estimate of the total legal costs, if reasonably practicable or,
22 if it is not reasonably practicable to estimate the total legal
23 costs, a range of estimates of the total legal costs and an
24 explanation of the major variables that will affect the working
25 out of the costs; and

26 (d) details of the intervals (if any) at which the client will be
27 billed; and

-
- 1 (e) the rate of interest (if any) that the law practice charges on
2 overdue legal costs; and
- 3 (f) if the matter is a litigious matter, an estimate of—
- 4 (i) the range of costs that may be recovered if the client is
5 successful in the litigation; and
- 6 (ii) the range of costs the client may be ordered to pay if the
7 client is unsuccessful; and
- 8 (g) the client's right to progress reports in accordance with
9 section 278 (Progress reports); and
- 10 (h) details of the person whom the client may contact to discuss
11 the legal costs; and
- 12 (i) the following avenues that are open to the client if there is a
13 dispute in relation to legal costs:
- 14 (i) costs review under division 3.2.7;
- 15 (ii) the setting aside of a costs agreement under section 288
16 (Setting aside costs agreements); and
- 17 (j) any time limits that apply to the taking of any action mentioned
18 in paragraph (i); and
- 19 (k) that ACT law applies to legal costs in relation to the matter;
20 and
- 21 (l) information about the client's right—
- 22 (i) to sign under a corresponding law a written agreement
23 with the law practice that the corresponding provisions of
24 the corresponding law apply to the matter; or

- 1 (ii) to notify under a corresponding law (and within the time
2 allowed by the corresponding law) the law practice in
3 writing that the client requires the corresponding
4 provisions of the corresponding law to apply to the
5 matter.

6 *Note* The client's right to sign an agreement or give a notification as
7 mentioned in par (1) will be under provisions of the law of the other
8 jurisdiction that correspond to s 264 (Pt 3.2 also applies by agreement or
9 at client's election).

10 (2) For subsection (1) (f), the disclosure must include—

- 11 (a) a statement that an order by a court for the payment of costs in
12 favour of the client will not necessarily cover all of the client's
13 legal costs; and
14 (b) if applicable, a statement that disbursements may be payable
15 by the client even if the client enters a conditional costs
16 agreement.

17 **270 Disclosure if another law practice is to be retained**

- 18 (1) If a law practice intends to retain another law practice on behalf of
19 the client, the first law practice must disclose to the client the details
20 mentioned in section 269 (1) (a), (c), and (d) (Disclosure of costs to
21 clients) in relation to the other law practice, in addition to any
22 information required to be disclosed to the client under section 269.

- 1 (2) A law practice retained or to be retained on behalf of a client by
2 another law practice is not required to make disclosure to the client
3 under section 269, but must disclose to the other law practice the
4 information necessary for the other law practice to comply with
5 subsection (1).

6 **Example**

7 A barrister is retained by a law firm on behalf of a client of the firm. The barrister
8 must disclose to the firm details of the barrister's legal costs and billing
9 arrangements and the firm must disclose the details to the client. However, the
10 barrister is not required to make a disclosure directly to the client.

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

- 14 (3) This section does not apply if the first law practice ceases to act for
15 the client in the matter when the other law practice is retained.

16 **271 How and when must disclosure be made?**

- 17 (1) Disclosure under section 269 (Disclosure of costs to clients) must be
18 made in writing before, or as soon as practicable after, the law
19 practice is retained in the matter.
- 20 (2) Disclosure under section 270 (1) (Disclosure if another law practice
21 is to be retained) must be made in writing before the other law
22 practice is retained except in urgent circumstances.
- 23 (3) If the disclosure under section 270 (1) is to be made orally in urgent
24 circumstances, it must be made before the law practice is retained
25 and confirmed in writing as soon as practicable afterwards.

272 Exceptions to requirement for disclosure

(1) Disclosure under section 269 (Disclosure of costs to clients) or section 270 (1) (Disclosure if another law practice is to be retained) is not required to be made in any of the following circumstances:

(a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1 500 or, if a higher amount is prescribed by regulation, the higher amount;

(b) if—

(i) the client has received 1 or more disclosures under section 269 or section 270 (1) from the law practice in the previous 12 months; and

(ii) the client has agreed in writing to waive the right to disclosure; and

(iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not justified;

(c) if the client is—

(i) a law practice or an Australian legal practitioner; or

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

(iii) a financial services licensee (within the meaning of the Corporations Act); or

(iv) a Minister of a jurisdiction or the Commonwealth acting in the Minister's official capacity, or a government department or public authority of a jurisdiction or the Commonwealth;

(d) if the legal costs or the basis on which they will be worked out has been agreed following a tender process;

(e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

(f) in any circumstances prescribed by regulation.

Example for par (e)

a law practice acting in a matter on a pro bono basis

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

(2) Despite subsection (1) (a), if a law practice becomes aware that the total legal costs are likely to exceed \$1 500 or, if a higher amount is prescribed by regulation, the higher amount, the law practice must disclose the matters in section 269 or section 270 (1) to the client as soon as practicable.

(3) A law practice must ensure that a written record of a principal's decision that further disclosure in a matter is not justified as mentioned in subsection (1) (b) is made and kept with the files relating to the matter.

(4) The reaching of a decision mentioned in subsection (3) otherwise than on reasonable grounds can be unsatisfactory professional conduct or professional misconduct on the part of the principal.

(5) This section does not affect or take away from a client's right—

(a) to progress reports in accordance with section 278 or section 270 (1); or

(b) to obtain reasonable information from the law practice in relation to any of the matters mentioned in section 269 or section 270 (1); or

(c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

- 1 **273 Additional disclosure—settlement of litigious matters**
- 2 (1) If a law practice negotiates the settlement of a litigious matter on
- 3 behalf of a client, the practice must disclose to the client, before the
- 4 settlement is executed—
- 5 (a) a reasonable estimate of the amount of legal costs payable by
- 6 the client if the matter is settled (including any legal costs of
- 7 another party that the client is to pay); and
- 8 (b) a reasonable estimate of any contributions towards the costs
- 9 likely to be received from another party.
- 10 (2) A law practice retained on behalf of a client by another law practice
- 11 is not required to make a disclosure to the client under
- 12 subsection (1), if the other law practice makes the disclosure to the
- 13 client before the settlement is executed.
- 14 **274 Additional disclosure—uplift fees**
- 15 If a costs agreement involves an uplift fee, the law practice must
- 16 disclose to the client in writing, before entering the agreement, the
- 17 practice’s usual fees, the uplift fee (expressed as a percentage of the
- 18 usual fees) and reasons why the uplift fee is justified.
- 19 **275 Form of disclosure**
- 20 (1) Written disclosures under this division—
- 21 (a) must be expressed in clear plain language; and
- 22 (b) may be in a language other than English if the client is more
- 23 familiar with that language.
- 24 (2) If the law practice is aware that the client cannot read, the practice
- 25 must arrange for the information required to be given to a client
- 26 under this division to be given orally to the client in addition to
- 27 giving the written disclosure.

276 Ongoing obligation to disclose etc

- (1) A law practice must tell the client in writing of any substantial change to anything included in a disclosure under this division as soon as is reasonably practicable after the practice becomes aware of the change.
- (2) The legal profession rules may require a law practice to make other disclosures to a client.

277 Effect of failure to disclose

- (1) If a law practice does not disclose to a client anything required by this division to be disclosed, the client need not pay the legal costs unless they have been reviewed under division 3.2.7.

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

- (2) In addition, if the client has entered a costs agreement with the law practice, the client may apply under section 288 for the costs agreement to be set aside.
- (3) A law practice that does not disclose to a client anything required by this division to be disclosed may not bring a proceeding for the recovery of legal costs unless the costs have been reviewed under division 3.2.7.
- (4) Failure by a law practice to comply with this division can be unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner or Australian-registered foreign lawyer involved in the failure.

278 Progress reports

- (1) A law practice must give a client, on reasonable request—
- (a) a written report of the progress of the matter in which the law practice is retained; and

- 1 (b) a written report of the legal costs incurred by the client to date,
2 or since the last bill (if any), in the matter.
- 3 (2) A law practice may charge a client a reasonable amount for a report
4 under subsection (1) (a) but must not charge a client for a report
5 under subsection (1) (b).
- 6 (3) A law practice retained on behalf of a client by another law practice
7 is not required to give a report to the client under subsection (1), but
8 must disclose to the other law practice any information necessary
9 for the other law practice to comply with that subsection.
- 10 (4) Subsection (3) does not apply if the other law practice stops acting
11 for the client in the matter when the law practice is retained.

12 **Division 3.2.4 Legal costs generally**

13 **279 On what basis are legal costs recoverable?**

14 Subject to division 3.2.2 (Application—pt 3.2), legal costs are
15 recoverable—

- 16 (a) under a costs agreement made in accordance with
17 division 3.2.5 or the corresponding provisions of a
18 corresponding law; or
- 19 (b) if paragraph (a) does not apply—in accordance with an
20 applicable scale of costs; or
- 21 (c) if neither paragraph (a) nor (b) applies—according to the fair
22 and reasonable value of the legal services provided.

23 *Note* See s 300 (2) for the criteria that are to be applied on a costs review to
24 decide whether legal costs are fair and reasonable.

280 Security for legal costs

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs), and may refuse to act or stop acting for a client who does not provide reasonable security.

281 Interest on unpaid legal costs

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid for 30 days or longer after the day the practice gave a bill for the costs in accordance with this part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest on unpaid legal costs under subsection (1) or (2) unless the bill for the costs states—
 - (a) that interest is payable on unpaid costs; and
 - (b) the rate of interest; and
 - (c) for interest payable in accordance with a costs agreement—that the interest is payable under the agreement.
- (4) Interest charged under subsection (1) or (2) must not exceed—
 - (a) if a rate is prescribed by regulation—that rate; or
 - (b) if a rate is not prescribed by regulation—the rate prescribed by rules under the *Court Procedures Act 2004* for interest on judgments.

Division 3.2.5 Costs agreements

282 Making costs agreements

- (1) A costs agreement may be made—
 - (a) between a client and a law practice retained by the client; or

- 1 (b) between a client and a law practice retained on behalf of the
2 client by another law practice; or
- 3 (c) between a law practice and another law practice that retained
4 that law practice on behalf of a client.
- 5 (2) A costs agreement must be written or evidenced in writing.
- 6 (3) A costs agreement may consist of a written offer in accordance with
7 subsection (4) that is accepted in writing or by other conduct.
- 8 *Note* Acceptance by other conduct is not permitted for conditional costs
9 agreements (see s 283 (3) (c) (i)).
- 10 (4) The offer must clearly state—
- 11 (a) that it is an offer to enter a costs agreement; and
- 12 (b) that the client may accept it in writing or by other conduct; and
- 13 (c) the kind of conduct that will be acceptance.
- 14 **Example for par (c)**
- 15 continuing to instruct the law practice in the matter after receiving the offer
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).
- 19 (5) A costs agreement cannot provide that the legal costs to which it
20 relates are not subject to costs review under division 3.2.7.
- 21 *Note* If it attempts to do so, the costs agreement will be void (see s 287 (1)).

283 Conditional costs agreements

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate.

Note 1 This is a **conditional costs agreement** (see s 261, def **conditional costs agreement**).

Note 2 The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) and pt 14.2 (Costs in damages claims if no reasonable prospects of success) contain limitations on legal costs.

- (2) A conditional costs agreement may relate to any matter, except a matter that involves a criminal proceeding or a proceeding under the *Family Law Act 1975* (Cwlth).

- (3) A conditional costs agreement—

- (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and
- (b) may provide for disbursements to be paid irrespective of the outcome of the matter; and
- (c) must be—
 - (i) in writing; and
 - (ii) in clear plain language; and
 - (iii) signed by the client; and
- (d) must contain a statement that the client has been told of the client's right to seek independent legal advice before entering into the agreement; and
- (e) must contain a cooling-off period of not less than 5 business days during which the client may, by written notice, terminate the agreement.

1 (4) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional
2 costs agreement made under section 282 (1) (c) (which are costs
3 agreements between law practices).

4 (5) If a client terminates an agreement within the period mentioned in
5 subsection (3) (e), the law practice may recover only the legal costs
6 in relation to legal services performed for the client before the
7 termination that were reasonably necessary to preserve the client's
8 rights.

9 **284 Conditional costs agreements involving uplift fees**

10 (1) A conditional costs agreement may provide for the payment of a
11 reasonable premium on the legal costs (excluding disbursements)
12 otherwise payable under the agreement on the successful outcome of
13 the matter to which those costs relate.

14 *Note 1* Section 274 requires a law practice to make certain disclosures to a
15 client before entering a costs agreement that provides for an uplift fee.

16 *Note 2* The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain
17 personal injury damages claims) and pt 14.2 (Costs in damages claims if
18 no reasonable prospects of success) contain limitations on legal costs.

19 (2) The premium must be a stated percentage of the legal costs
20 (excluding disbursements) otherwise payable and must be separately
21 identified in the agreement.

22 (3) If a conditional costs agreement relates to a litigious matter, the
23 premium must not exceed 25% of the legal costs (excluding
24 disbursements) otherwise payable.

25 (4) A law practice must not enter a conditional costs agreement that
26 provides for the payment of a premium on the legal costs otherwise
27 payable unless the law practice has a reasonable belief that there is a
28 significant risk that the matter will not have a successful outcome.

29 (5) A law practice must not enter into a costs agreement in
30 contravention of this section.

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

4 Maximum penalty: 50 penalty units.

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

8 Maximum penalty: 50 penalty units.

9 *Note* For this part, a reference to a **law practice** includes the principals of the
10 law practice (see s 307 (Liability of principals of law practices under
11 pt 3.2)).

12 **285 Contingency fees prohibited**

- 13 (1) A law practice must not enter into a costs agreement under which
14 the amount payable to the practice, or any part of that amount, is
15 worked out by reference to—

16 (a) the value of any property or of any transaction involved in the
17 matter to which the agreement relates; or

18 (b) the amount of any award or settlement or the value of any
19 property that may be recovered in any proceeding to which the
20 agreement relates.

- 21 (2) Subsection (1) does not apply to the extent that the costs agreement
22 adopts an applicable scale of costs.

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

4 Maximum penalty: 50 penalty units.

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

8 Maximum penalty: 50 penalty units.

9 *Note* For this part, a reference to a **law practice** includes the principals of the
10 law practice (see s 307 (Liability of principals of law practices under
11 pt 3.2)).

12 **286 Effect of costs agreement**

- 13 (1) Subject to this division and division 3.2.7 (Costs review), a costs
14 agreement may be enforced in the same way as any other contract.
- 15 (2) Mediation may be used to resolve a dispute over an amount claimed
16 to be payable to a law practice under a costs agreement unless the
17 law practice has started a proceeding for recovery of the disputed
18 amount.

19 **287 Certain costs agreements void**

- 20 (1) A costs agreement that contravenes, or is entered into in
21 contravention of, any provision of this division is void.
- 22 (2) Subject to this section and division 3.2.7 (Costs review), legal costs
23 under a void costs agreement are recoverable as set out in
24 section 279 (b) or (c) (On what basis are legal costs recoverable?).
- 25 (3) However, a law practice is not entitled to recover any amount in
26 excess of the amount that the practice would have been entitled to
27 recover if the costs agreement had not been void and must repay any
28 excess amount received.

(4) A law practice that has entered into a costs agreement in contravention of section 284 (Conditional costs agreements involving uplift fees) is not entitled to recover the uplift fee or any part of it and must repay any amount received in relation to the uplift fee to the person from whom it was received.

(5) A law practice that has entered into a costs agreement in contravention of section 285 (Contingency fees prohibited) is not entitled to recover any amount in relation to the provision of legal services in the matter to which the costs agreement related and must repay any amount received in relation to the services to the person from whom it was received.

Note An amount that is required to be repaid under s (3), (4) or (5) may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

288 Setting aside costs agreements

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

(2) In deciding whether or not a costs agreement is fair, just or reasonable, the Supreme Court may have regard to any or all of the following matters:

(a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the practice;

(b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;

(c) whether the law practice failed to make any of the disclosures required under division 3.2.3 (Costs disclosure);

- 1 (d) when the agreement was made.
- 2 (3) The Supreme Court may adjourn the hearing of an application under
3 this section pending the completion of any investigation or the
4 deciding of any charge in relation to the conduct of any Australian
5 legal practitioner or Australian-registered foreign lawyer.
- 6 (4) If the Supreme Court orders that a costs agreement be set aside, it
7 may make an order in relation to the payment of legal costs the
8 subject of the agreement.
- 9 (5) In making an order under subsection (4)—
- 10 (a) the Supreme Court must apply the applicable scale of costs (if
11 any); or
- 12 (b) if there is no applicable scale of costs—the Supreme Court
13 may decide the fair and reasonable legal costs in relation to the
14 work to which the agreement related, taking into account—
- 15 (i) the seriousness of the conduct of the law practice or any
16 Australian legal practitioner or Australian-registered
17 foreign lawyer acting on its behalf; and
- 18 (ii) whether or not it was reasonable to carry out the work;
19 and
- 20 (iii) whether or not the work was carried out in a reasonable
21 way.
- 22 (6) In making an order under subsection (4), the Supreme Court must
23 not order the payment of an amount in excess of the amount that the
24 law practice would have been entitled to recover if the costs
25 agreement had not been set aside.

-
- 1 (7) For subsection (5) (b), the Supreme Court may have regard to any or
2 all of the following matters:
- 3 (a) whether the law practice and any Australian legal practitioner
4 or Australian-registered foreign lawyer acting on its behalf
5 complied with this Act;
- 6 *Note* ***This Act*** is defined in the dictionary.
- 7 (b) any disclosures made by the law practice under division 3.2.3
8 (Costs disclosure), or the failure to make any disclosures
9 required under that division;
- 10 (c) any relevant advertisement about—
- 11 (i) the law practice's costs; or
- 12 (ii) the skills of the law practice or of any Australian legal
13 practitioner or Australian-registered foreign lawyer acting
14 on its behalf;
- 15 (d) the skill, labour and responsibility displayed on the part of the
16 Australian legal practitioner or Australian-registered foreign
17 lawyer responsible for the matter;
- 18 (e) the retainer and whether the work done was within the scope of
19 the retainer;
- 20 (f) the complexity, novelty or difficulty of the matter;
- 21 (g) the quality of the work done;
- 22 (h) the place where, and circumstances in which, the work was
23 done;
- 24 (i) the time within which the work was required to be done;
- 25 (j) any other relevant matter.
- 26 (8) The Supreme Court may decide whether or not a costs agreement
27 exists.
-

- 1 (9) The Supreme Court may order the payment of the costs of and
2 incidental to a hearing under this section.

3 **Division 3.2.6 Billing**

4 **289 Legal costs cannot be recovered unless bill has been**
5 **given**

- 6 (1) A law practice must not start a legal proceeding to recover legal
7 costs from a person until at least 30 days after the day the practice
8 has given a bill to the person in accordance with section 290 (Bills)
9 and section 291 (Notification of client's rights).
- 10 (2) A court of competent jurisdiction may make an order authorising a
11 law practice to start a legal proceeding against a person sooner if
12 satisfied that—
- 13 (a) the practice has given a bill to the person in accordance with
14 section 290 and section 291; and
- 15 (b) the person is about to leave the ACT.
- 16 (3) A court or tribunal before which any proceeding is brought in
17 contravention of subsection (1) must stay the proceeding on the
18 application of a party, or on its own initiative.
- 19 (4) This section applies whether or not the legal costs are the subject of
20 a costs agreement.

21 **290 Bills**

- 22 (1) A bill may be in the form of a lump sum bill or itemised bill.
- 23 (2) A bill must be signed on behalf of a law practice by an Australian
24 legal practitioner or an employee of the law practice.

- 1 (3) It is sufficient compliance with subsection (2) if a letter signed on
2 behalf of a law practice by an Australian legal practitioner or an
3 employee of the law practice is attached to, or enclosed with, the
4 bill.
- 5 (4) A bill or letter is taken to have been signed by a law practice that is
6 an incorporated legal practice if it has the practice's seal attached to
7 it or is signed by a legal practitioner director of the practice or an
8 officer or employee of the practice who is an Australian legal
9 practitioner.
- 10 (5) A bill is to be given to a person—
- 11 (a) by giving it personally to the person or to an agent of the
12 person; or
- 13 (b) by sending it by prepaid post to the person or agent at—
- 14 (i) the usual or last-known business or residential address of
15 the person or agent; or
- 16 (ii) an address nominated for the purpose by the person or
17 agent; or
- 18 (c) by leaving it for the person or agent at—
- 19 (i) the usual or last-known business or residential address of
20 the person or agent; or
- 21 (ii) an address nominated for the purpose by the person or
22 agent;
- 23 with a person at the premises who is apparently at least
24 16 years old and apparently employed or living there.

- 1 (6) A reference in subsection (5) to any method of giving a bill to a
2 person includes a reference to arranging for the bill to be given to
3 that person by that method (for example, by delivery by courier).

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

- 7 (7) In this section:

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

11 **291 Notification of client's rights**

12 A bill must include or be accompanied by a written statement setting
13 out—

- 14 (a) the following avenues that are open to the client if there is a
15 dispute in relation to legal costs:

16 (i) costs review under division 3.2.7;

17 (ii) the setting aside of a costs agreement under section 288
18 (Setting aside costs agreements); and

- 19 (b) any time limits that apply to the taking of any action mentioned
20 in paragraph (a).

21 *Note* These matters will already have been disclosed under s 269 (1)
22 (Disclosure of costs to clients).

23 **292 Person may ask for itemised bill**

- 24 (1) Not later than 30 days after the day a person receives a lump sum
25 bill, the person may ask the law practice for an itemised bill.

- 26 (2) If a person makes a request under subsection (1), the law practice
27 must not start any proceeding to recover the costs until at least
28 30 days after the day the person is given an itemised bill.

1 (3) A law practice is not entitled to charge a person for the preparation
2 of an itemised bill requested under this section.

3 (4) Section 290 (2) and (5) apply to the giving of an itemised bill under
4 this section.

5 **293 Interim bills**

6 (1) A law practice may give a person an interim bill covering part only
7 of the legal services the practice was retained to provide.

8 (2) Legal costs that are the subject of an interim bill may be reviewed
9 under division 3.2.7, either at the time of the interim bill or at the
10 time of the final bill, whether or not the interim bill has previously
11 been paid.

12 **Division 3.2.7 Costs review**

13 **294 Application by client for costs review**

14 (1) A client may apply to the Supreme Court for a review of all or any
15 part of legal costs.

16 (2) An application for a costs review may be made even if the legal
17 costs have been completely or partly paid.

18 (3) If any legal costs have been paid without a bill, the client may
19 nevertheless apply for a costs review and, for that purpose, the
20 request for payment is taken to be a bill.

21 (4) An application under this section must be made not later than
22 60 days after the day the bill was given or the request was made or
23 after the costs were paid (whichever is earlier or earliest).

24 (5) However, the Supreme Court must deal with an application made
25 out of time, unless the court considers that the law practice has
26 established that to deal with the application out of time would, in all
27 the circumstances, cause unfair prejudice to the law practice.

(6) In this section:

client includes the following:

- (a) a person who has been given a bill by a law practice (other than a person who is acting only in the capacity of agent or a similar capacity, for example, a courier);
- (b) a person who has paid legal costs;
- (c) a person (other than a person who was given a bill) who is liable to pay legal costs;
- (d) an executor, administrator or assignee of a person mentioned in paragraph (a), (b) or (c);
- (e) a trustee of the estate of a person mentioned in paragraph (a), (b) or (c);
- (f) a person interested in any property out of which a trustee, executor or administrator who is liable to pay legal costs has paid, or is entitled to pay, the costs.

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

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

- (1) A law practice that retains another law practice to act on behalf of a client may apply to the Supreme Court for a review of all or any part of the legal costs to which a bill given by the other law practice in accordance with division 3.2.6 (Billing) applies.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs review and, for that purpose, the request for payment is taken to be a bill.

1 (3) An application under this section must be made not later than
2 60 days after the day the bill was given or the request for payment
3 was made, and may be made even if the legal costs have been
4 completely or partly paid.

5 (4) An application cannot be made under this section if there is a costs
6 agreement between the client and the other law practice.

7 **296 Application for costs review by law practice giving bill**

8 (1) A law practice that has given a bill in accordance with division 3.2.6
9 (Billing) may apply to the Supreme Court for a review of all or any
10 part of the legal costs to which the bill relates.

11 (2) If any legal costs have been paid without a bill, the law practice may
12 nevertheless apply for a costs review and, for that purpose, the
13 request for payment is taken to be a bill.

14 (3) An application must not be made unless at least 30 days have passed
15 since the day the bill was given or the request for payment was
16 made or since an application has been made under this division by
17 someone else in relation to the legal costs.

18 **297 Form of application for costs review**

19 An application for a costs review must contain a statement by the
20 applicant that there is no reasonable prospect of settlement of the
21 matter by mediation.

22 *Note 1* If a form is approved under the *Court Procedures Act 2004*, s 8 for this
23 provision, the form must be used.

24 *Note 2* A fee may be determined under the *Court Procedures Act 2004*, s 13 for
25 this provision.

298 Consequences of application for costs review

If an application for a costs review is made in accordance with this division—

- (a) the costs review must take place without any money being paid into court on account of the legal costs the subject of the application; and
- (b) the law practice must not start a proceeding to recover the legal costs until the costs review has been completed.

299 Procedure on costs review

If, after proper notice that a costs review will take place, a party to the review does not attend, the Supreme Court may proceed with the review in the absence of that party.

300 Criteria for costs review

- (1) In conducting a review of legal costs, the Supreme Court must consider—
 - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
 - (b) whether or not the work was carried out in a reasonable way; and
 - (c) the fairness and reasonableness of the amount of legal costs in relation to the work.

Note The *Civil Law (Wrongs) Act 2002*, pt 14.1 (Maximum costs for certain personal injury damages claims) contains limitations on legal costs.

-
- 1 (2) In considering what is a fair and reasonable amount of legal costs,
2 the Supreme Court may have regard to any or all of the following
3 matters:
- 4 (a) whether the law practice and any Australian legal practitioner
5 or Australian-registered foreign lawyer acting on its behalf
6 complied with this Act;
- 7 *Note* ***This Act*** is defined in the dictionary.
- 8 (b) any disclosures made by the law practice under division 3.2.3
9 (Costs disclosure), or the failure to make any disclosures
10 required under that division;
- 11 (c) any relevant advertisement about—
- 12 (i) the law practice's costs; or
- 13 (ii) the skills of the law practice or of any Australian legal
14 practitioner or Australian-registered foreign lawyer acting
15 on its behalf;
- 16 (d) any relevant costs agreement;
- 17 (e) the skill, labour and responsibility displayed on the part of the
18 Australian legal practitioner or Australian-registered foreign
19 lawyer responsible for the matter;
- 20 (f) the retainer and whether the work done was within the scope of
21 the retainer;
- 22 (g) the complexity, novelty or difficulty of the matter;
- 23 (h) the quality of the work done;
- 24 (i) the place where, and circumstances in which, the legal services
25 were provided;
- 26 (j) the time within which the work was required to be done;

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

(1) This section applies if a law practice gives a bill in the form of a lump sum bill for legal services and later gives an itemised bill for the legal services.

21 (b) if not, the other party must pay them.

(1) If, on a costs review, the Supreme Court considers that the legal costs charged by a law practice are grossly excessive, the court must refer the matter to the disciplinary tribunal to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved.

- (2) If the Supreme Court considers that a costs review raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the court may refer the matter to the disciplinary tribunal to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

304 Legal costs subject to consumer dispute not reviewable

- (1) Despite anything to the contrary in this part, legal costs that are or have been the subject of a consumer dispute under chapter 4 (Complaints and discipline) must not be the subject of a costs review under this division.
- (2) This section is subject to section 409 (Referral of matters for cost review—complaint investigation).

Division 3.2.8 Miscellaneous—pt 3.2

305 Application of pt 3.2 to incorporated legal practices and multidisciplinary partnerships

A regulation may provide that prescribed provisions of this part do not apply to incorporated legal practices or multidisciplinary partnerships or apply to them with prescribed changes.

306 Imputed acts, omission or knowledge for pt 3.2

For this part—

- (a) anything done or omitted by, to or in relation to—
- (i) an Australian legal practitioner; or

- 1 (ii) an Australian-registered foreign lawyer (except for
2 section 284 (4) (Conditional costs agreements involving
3 uplift fees) or for any provision of this part prescribed by
4 regulation for this section);
- 5 in the course of acting on behalf of a law practice is taken to
6 have been done or omitted by, to or in relation to the practice;
7 and
- 8 (b) without limiting paragraph (a), the law practice is taken to
9 become or be aware of, or to have a belief about, any matter
10 if—
- 11 (i) an Australian legal practitioner; or
- 12 (ii) an Australian-registered foreign lawyer (except for
13 section 284 (4) or for any provision of this part prescribed
14 by regulation for this section);
- 15 becomes or is aware of, or has a belief as to, the matter in the
16 course of acting on behalf of the practice.

17 **307 Liability of principals of law practice under pt 3.2**

- 18 (1) A provision of this part expressed as imposing an obligation on a
19 law practice imposes the same obligation on the principals of the
20 practice jointly and severally, but discharge of the practice's
21 obligation also discharges the corresponding obligation imposed on
22 the principals.

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

- 26 (2) Accordingly, a reference in this part to a law practice includes a
27 reference to the principals of the practice.

Part 3.3 Professional indemnity insurance

Division 3.3.1 Preliminary—pt 3.3

308 Definitions—pt 3.3

In this part:

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

insurable barrister means a local legal practitioner who is a barrister, other than a practitioner who is exempted by the relevant council from the requirement to be insured under this Act.

insurable legal practitioner means an insurable barrister or insurable solicitor.

insurable solicitor means a solicitor who holds an unrestricted practising certificate, other than a solicitor—

- (a) who has given a written undertaking to the relevant council that the solicitor will not practise during the period to which the practising certificate relates otherwise than in the course of the solicitor's employment by an entity (other than an incorporated legal practice) stated in the undertaking; or
- (b) who is exempted by the relevant council from the requirement to be insured under this Act.

309 Purpose—pt 3.3

The purpose of this part is to provide for a scheme for professional indemnity insurance to protect clients of law practices from professional negligence.

- 1 **310 Exemptions from pt 3.3**
- 2 The relevant council may exempt an Australian legal practitioner
- 3 from the requirement to be insured under this Act on the grounds the
- 4 council considers sufficient.
- 5 **311 Professional indemnity insurance for insurable legal**
- 6 **practitioners**
- 7 (1) The licensing body must not grant or renew a practising certificate
- 8 for an insurable legal practitioner unless satisfied that there is, or
- 9 will be, in force in relation to the practitioner an approved indemnity
- 10 insurance policy.
- 11 (2) For this section, the licensing body is entitled to accept any of the
- 12 following as evidence that there is, or will be, an approved
- 13 indemnity insurance policy in force in relation to an insurable legal
- 14 practitioner:
- 15 (a) written advice from an insurer or insurance broker that an
- 16 insurer has agreed to issue the policy;
- 17 (b) evidence that that premium for the policy has been received
- 18 and accepted by the insurer for the issue of the policy;
- 19 (c) evidence prescribed by regulation for this section.
- 20 **312 Approval of indemnity insurance policy**
- 21 (1) For this Act, a policy of indemnity insurance is *approved* if—
- 22 (a) the policy is not to expire before the expiration of the
- 23 practitioner's practising certificate; and
- 24 (b) the policy is approved—
- 25 (i) in writing by the relevant council; or
- 26 (ii) under a regulation or the legal profession rules; and

1 (c) the conditions (if any) of the approval have been complied
2 with.

3 (2) If an indemnity fund has been approved under section 315
4 (Approval of indemnity fund) and the rules or conditions applying
5 to the contributors to the fund require a contributor to hold a policy
6 of professional indemnity insurance, the policy is taken to be
7 *approved* for this Act.

8 **313 Agreements for insurance for solicitors**

9 (1) The law society may negotiate with insurers or anyone else for the
10 provision of indemnity insurance to a person who is, or has been, an
11 insurable solicitor in relation to civil liability that may arise in
12 relation to—

13 (a) the practice or any former practice of the solicitor; or

14 (b) the administration of any trust or deceased estate of which the
15 solicitor or former solicitor is, or was, a trustee or executor.

16 (2) The law society may make—

17 (a) agreements for the provision of insurance mentioned in
18 subsection (1); and

19 (b) arrangements for establishing and keeping an account into
20 which any amount received by the law society as a premium
21 for the insurance is to be paid.

22 (3) The law society may make an agreement for the provision of
23 indemnity insurance for insurable solicitors only if the agreement
24 provides for professional indemnity insurance to be provided to each
25 person who—

26 (a) would, subject to compliance with any requirement about
27 indemnity insurance, be entitled to have an unrestricted
28 practising certificate granted to the person; and

- 1 (b) applies under the agreement to be granted indemnity insurance
2 that is—
- 3 (i) available under the agreement; and
- 4 (ii) in relation to a period for which insurance is available
5 under the agreement.
- 6 (4) An amount paid into an account kept under subsection (2) may,
7 before its application for the provision of insurance under this
8 section, be invested by the law society in any way trust funds may
9 be invested under the *Trustee Act 1925*.
- 10 (5) In this section:
- 11 *agreement* includes arrangement.
- 12 **314 Giving information to council for insurance**
- 13 (1) The relevant council for a person who is, or has been, an insurable
14 barrister or insurable solicitor may ask the person, in writing, to give
15 the relevant council stated information, within a stated reasonable
16 time, about—
- 17 (a) the number of people employed, or formerly employed, in the
18 person's practice, or any former practice; or
- 19 (b) the duties performed by anyone mentioned in paragraph (a); or
- 20 (c) the gross income received by the person from fees in a stated
21 period; or
- 22 (d) any claims made against the person in relation to any alleged
23 civil liability arising from—
- 24 (i) the practice or any former practice of the person; or
- 25 (ii) the administration of any trust or deceased estate of which
26 the solicitor or former solicitor is, or was, a trustee or
27 executor; or

1 (e) anything else prescribed by regulation or the legal profession
2 rules.

3 (2) A person commits an offence if the person fails to comply with a
4 request under subsection (1).

5 Maximum penalty 100 penalty units.

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

7 **315 Approval of indemnity fund**

8 (1) The relevant council for an Australian legal practitioner may, in
9 writing, approve an indemnity fund to be a fund to which the
10 practitioner may make contributions.

11 (2) Without limiting subsection (1), an approval may be given in
12 relation to a fund established under a corresponding law.

13 (3) An approval is a notifiable instrument.

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

15 (4) In this section:

16 *indemnity fund* means a fund established to assist in meeting claims
17 against Australian legal practitioners in relation to the conduct of the
18 practitioner's practice other than claims involving a dishonest act or
19 omission.

1 **Part 3.4 Fidelity cover**

2 **Division 3.4.1 Preliminary—pt 3.4**

3 **316 Definitions—pt 3.4**

4 In this part:

5 *capping and sufficiency provisions* means:

- 6 (a) for the ACT—section 348 (Caps on payments from fidelity
7 fund) and section 349 (Sufficiency of fidelity fund); or
- 8 (b) for another jurisdiction—the provisions of the corresponding
9 law of that jurisdiction that correspond to those sections.

10 *claim* means a claim under this part.

11 *claimant* means a person who makes a claim under this part.

12 *concerted interstate default* means a default of a law practice that
13 arises from an act or omission—

- 14 (a) that was committed jointly by 2 or more associates of the
15 practice; or
- 16 (b) parts of which were committed by different associates of the
17 practice or different combinations of associates of the practice;

18 if the ACT is the relevant jurisdiction of at least 1 of the associates
19 and another jurisdiction is the relevant jurisdiction of at least 1 of
20 the associates.

default, in relation to a law practice, means—

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

dishonesty includes fraud.

pecuniary loss, in relation to a default, means—

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, because of a fraudulent dealing.

relevant jurisdiction—see section 327.

317 Time of default—pt 3.4

- (1) This section applies for the purpose of deciding which jurisdiction's law applies in relation to a default.
- (2) The default is taken to have happened when the act or omission giving rise to or constituting the default happened.
- (3) An omission is taken to have happened on the day on or by which the act not performed ought reasonably to have been performed or on another day decided in accordance with the regulations.

1 **318 Purpose—pt 3.4**

2 The purpose of this part is to establish and maintain a fund to
3 provide a source of compensation for defaults by law practices
4 arising from acts or omissions of associates.

5 **319 Application—pt 3.4**

6 This part does not apply to a default of the law practice of a
7 barrister.

8 **Division 3.4.2 Fidelity fund**

9 **320 Establishment etc of fidelity fund**

10 (1) The Solicitors' Fidelity Fund of the Australian Capital Territory (the
11 *fidelity fund*) is established.

12 *Note* The Legislation Act, dict, pt 1, defines *establish* as including continue
13 in existence.

14 (2) The fidelity fund consists of—

- 15 (a) contributions and levies paid under this part; and
16 (b) income from the investment of money of the fund; and
17 (c) amounts paid into the fund from a statutory interest account;
18 and
19 (d) amounts recovered by the law society under this part; and
20 (e) any other amounts that may lawfully be paid into the fund.

21 (3) The law society must pay all moneys of the fidelity fund into a
22 separate account for the fund kept at an ADI.

23 (4) The assets of the fidelity fund, and the accounts in relation to it,
24 must be kept separate from other assets and accounts of the law
25 society.

1 (5) The costs of exercising the functions of the law society under this
2 part and the costs of enforcing a right given to the law society or the
3 law society council under this part must be paid out of the fidelity
4 fund.

5 (6) In this section:
6 *statutory interest account*—see section 253 (Statutory deposits).

7 **321 Investment of fidelity fund**

8 The money of the fidelity fund must, as far as practicable, be
9 invested by the law society in any way trust funds may be invested
10 under the *Trustee Act 1925*.

11 **322 Audit of fidelity fund**

12 (1) The law society must have the accounts of the fidelity fund audited
13 annually by a registered company auditor within the meaning of the
14 Corporations Act.

15 (2) The law society must give a copy of the report of each audit to the
16 Attorney-General.

17 **323 Contributions to fidelity fund**

18 (1) A solicitor must, not later than each 30 June, pay to the law society
19 the contribution to the fidelity fund decided by the law society
20 council for the period of 12 months beginning on the following
21 1 July.

22 (2) However, if a solicitor applies for a practising certificate for a
23 period of less than 12 months, the solicitor must, in relation to the
24 period, pay to the law society a contribution that bears to the
25 contribution decided under subsection (1) the same proportion as the
26 period bears to a year.

- 1 **324 Levy to supplement fidelity fund**
- 2 (1) If, at any time, the law society council considers that the fidelity
- 3 fund is not sufficient to satisfy the law society's liabilities in relation
- 4 to the fund, the council may impose a levy of the amount that it
- 5 considers appropriate for payment into the fund.
- 6 (2) The levy is payable to the law society, on the day fixed by the law
- 7 society council, by each local legal practitioner who holds a current
- 8 unrestricted practising certificate on that day.
- 9 (3) However, the law society council may extend the time for payment
- 10 of a levy by a local legal practitioner.
- 11 **325 Insurance of fidelity fund**
- 12 (1) The law society may arrange with an insurer for the insurance of the
- 13 fidelity fund.
- 14 (2) Without limiting subsection (1), the law society may arrange for the
- 15 insurance of the fidelity fund against particular claims.
- 16 (3) The proceeds paid under a policy of insurance against particular
- 17 claims are to be paid into the fidelity fund, and a claimant is not
- 18 entitled to have direct recourse to the proceeds or any part of them.
- 19 (4) No liability (including liability in defamation) is incurred by a
- 20 protected person in relation to anything done or omitted to be done
- 21 honestly for the purpose of arranging for the insurance of the fidelity
- 22 fund.
- 23 (5) In this section:
- 24 *protected person* means—
- 25 (a) the law society; or
- 26 (b) a member of the law society council; or
- 27 (c) any member of the staff of the law society; or

- 1 (d) anyone acting at the direction of the law society or the law
2 society council.

3 **326 Borrowing for fidelity fund**

- 4 The law society cannot borrow money for the purposes of the
5 fidelity fund.

6 **Division 3.4.3 Defaults to which pt 3.4 applies**

7 **327 Meaning of *relevant jurisdiction*—pt 3.4**

- 8 (1) The *relevant jurisdiction* of an associate of a law practice whose act
9 or omission (whether alone or with 1 or more other associates of the
10 practice) gives rise to a default of the practice is decided under this
11 section.

12 *Note* The concept of an associate's *relevant jurisdiction* is used to decide the
13 jurisdiction whose fidelity fund is liable for a default of a law practice
14 arising from an act or omission committed by the associate. The
15 relevant jurisdiction for an associate is in some cases the associate's
16 home jurisdiction.

- 17 (2) For a default involving trust money received in Australia (whether
18 or not it was paid into an Australian trust account), the *relevant*
19 *jurisdiction* of the associate is—

20 (a) if the trust money was paid into an Australian trust account and
21 if the associate (whether alone or with a cosignatory) was
22 authorised to withdraw any or all of the trust money from the
23 only or last Australian trust account in which the trust money
24 was held before the default—the jurisdiction under whose law
25 that trust account was kept; or

26 (b) in any other case—the associate's home jurisdiction.

- 1 (3) For a default involving trust money received outside Australia and
2 paid into an Australian trust account, the ***relevant jurisdiction*** of the
3 associate is—
- 4 (a) if the associate (whether alone or with a cosignatory) was
5 authorised to withdraw any or all of the trust money from the
6 only or last Australian trust account in which the trust money
7 was held before the default—the jurisdiction under whose law
8 that trust account was kept; or
- 9 (b) in any other case—the associate’s home jurisdiction.
- 10 (4) For a default involving trust property received in Australia, or
11 received outside Australia and brought to Australia, the ***relevant***
12 ***jurisdiction*** of the associate is the associate’s home jurisdiction.
- 13 *Note* Section 353 (Defaults involving interstate elements if committed by
14 1 associate only) provides that the law society council may treat the
15 default as consisting of 2 or more defaults for the purpose of deciding
16 the liability of the fidelity fund.

17 **328 Defaults to which pt 3.4 applies**

- 18 (1) This part applies to a default of a law practice arising from an act or
19 omission of 1 or more associates of the practice, if the ACT is the
20 relevant jurisdiction of the only associate or 1 or more of associates
21 involved.
- 22 (2) It is immaterial where the default happens.
- 23 (3) It is immaterial that the act or omission giving rise to a default is not
24 an offence against a territory law or the law of another jurisdiction
25 or the Commonwealth or that a proceeding has not been started or
26 finished in relation to an offence of that kind.

329 Defaults relating to financial services or investments

- (1) This part does not apply to a default of a law practice to the extent that the default happens in relation to money or property that is entrusted to or held by the practice for or in relation to—
- (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time); or
 - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).
- (2) Without limiting subsection (1), this part does not apply to a default of a law practice to the extent that the default happens in relation to money or property that is entrusted to or held by the practice for or in relation to—
- (a) a managed investment scheme undertaken by the practice; or
 - (b) mortgage financing undertaken by the practice.
- (3) Without limiting subsections (1) and (2), this part does not apply to a default of a law practice to the extent that the default happens in relation to money or property that is entrusted to or held by the practice for investment purposes, whether on its own account or as an agent, unless—
- (a) the money or property was entrusted to or held by the practice—
 - (i) in the ordinary course of legal practice; and

- 1 (ii) primarily in relation to the provision of legal services to
2 or at the direction of the client; and
- 3 (b) the investment is or is to be made—
- 4 (i) in the ordinary course of legal practice; and
- 5 (ii) for the ancillary purpose of maintaining or enhancing the
6 value of the money or property pending completion of the
7 matter or further stages of the matter or pending payment
8 or delivery of the money or property to or at the direction
9 of the client.
- 10 (4) In this section:
- 11 *Australian financial services licence*—see the Corporations Act,
12 section 761A.
- 13 *authorised representative*—see the Corporations Act, section 761A.
- 14 *financial service*—see the Corporations Act, section 761A.
- 15 *financial services business*—see the Corporations Act,
16 section 761A.

17 **Division 3.4.4 Claims about defaults**

18 **330 Claims about defaults**

- 19 (1) A person who suffers pecuniary loss because of a default to which
20 this part applies may make a claim against the fidelity fund to the
21 law society about the default.
- 22 *Note* If a form is approved under s 331 for this provision, the form must be
23 used.
- 24 (2) The law society council may require the person who makes a claim
25 to do either or both of the following:
- 26 (a) to give further information about the claim or any dispute to
27 which the claim relates;

- 1 (b) to verify the claim, or any further information, by statutory
2 declaration.

3 **331 Approved form for claims**

- 4 (1) The law society council may approve forms for claims against the
5 fidelity fund.

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

- 7 (2) If the law society council approves a form for claims against the
8 fidelity fund, the form must be used.

- 9 (3) A form is a notifiable instrument.

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

11 **332 Time limit for making claims against fidelity fund**

- 12 (1) Subject to section 334 (Time limit for making claims against fidelity
13 fund following advertisement), a claim must not be made against the
14 fidelity fund in relation to a default unless the prospective claimant
15 tells the law society in writing of the default—

16 (a) not later than 6 months after the day the prospective claimant
17 becomes aware of the default; or

18 (b) within a further period allowed by the law society council; or

19 (c) if the Supreme Court allows further time after the law society
20 council refuses to allow a further period—within a period
21 allowed by the Supreme Court.

- 22 (2) The Supreme Court or law society council may allow a further
23 period mentioned in subsection (1) if satisfied that—

24 (a) it would be reasonable to allow the further period after taking
25 into account all ascertained and contingent liabilities of the
26 fidelity fund; and

- 1 (b) it would be appropriate to allow the further period in the
2 particular case having regard to matters the Supreme Court or
3 law society council considers relevant.

4 **333 Advertisements about defaults by law practices**

- 5 (1) If the law society council considers that there has been, or may have
6 been, a default by a law practice, it may publish either or both of the
7 following:

- 8 (a) a notice that seeks information about the default;
9 (b) a notice that invites claims about the default and fixes a final
10 date after which claims relating to the default cannot be made.

- 11 (2) The final date fixed by the notice must be a date that is—

- 12 (a) at least 3 months later than the date of the first or only
13 publication of the notice; and
14 (b) not more than 12 months after the date of the first or only
15 publication of the notice.

- 16 (3) The notice must be published—

- 17 (a) in a newspaper circulating generally throughout Australia; and
18 (b) in a newspaper circulating generally in each jurisdiction where
19 the law practice—

- 20 (i) has an office; or
21 (ii) at any relevant time had an office;
22 if known to the law society council; and

- 23 (c) on the internet site (if any) of the law society.

- 24 (4) The law society council may provide information to anyone making
25 inquiries in response to the notice.

- 1 (5) Apart from extending the period during which claims may be made
2 under this part (if relevant), publication of the notice does not give
3 any entitlements in relation to any claim or the default to which it
4 relates or provide any grounds affecting the deciding of any claim.
- 5 (6) Neither the publication honestly of a notice under this section, nor
6 the provision of information honestly under this section, subjects a
7 protected person to any liability (including liability in defamation).
- 8 (7) In this section:
- 9 *protected person* means—
- 10 (a) the law society; or
- 11 (b) a member of the law society council; or
- 12 (c) the proprietor, editor or publisher of the newspaper; or
- 13 (d) an internet service provider or internet content host; or
- 14 (e) a member of the staff of any entity mentioned in this
15 definition; or
- 16 (f) a person acting at the direction of any entity mentioned in this
17 definition.

18 **334 Time limit for making claims against fidelity fund**
19 **following advertisement**

- 20 (1) This section applies if the law society council publishes a notice
21 under section 333 (Advertisements about defaults by law practices)
22 fixing a final date after which claims relating to a default cannot be
23 made.
- 24 (2) A claim may be made—
- 25 (a) up to and including the final date fixed under the notice; or
- 26 (b) within a further period allowed by the law society council; or

- 1 (c) if the Supreme Court allows further time after the law society
2 council refuses to allow a further period—within a period
3 allowed by the Supreme Court;
4 even though it would have been barred under section 332 (Time
5 limit for making claims against fidelity fund) had the notice not
6 been published.
- 7 (3) The Supreme Court or law society council may allow a further
8 period mentioned in subsection (2) if satisfied that—
- 9 (a) it would be reasonable to allow the further period after taking
10 into account all ascertained and contingent liabilities of the
11 fidelity fund; and
- 12 (b) it would be appropriate to allow the further period in the
13 particular case having regard to matters the Supreme Court or
14 law society council considers relevant.

15 **335 Claims not affected by certain matters**

- 16 (1) A claim may be made about a law practice's default despite a
17 change in the status of the practice or the associate concerned after
18 the act or omission from which the default arose happened.
- 19 (2) A claim that has been made is not affected by a later change in the
20 status of the practice or associate.
- 21 (3) For this section, a change in status includes—
- 22 (a) for a law practice that is or was a partnership—a change in its
23 membership or staffing or its dissolution; and
- 24 (b) for a law practice that is or was an incorporated legal
25 practice—a change in its directorship or staffing or its winding
26 up or dissolution); and
- 27 (c) for an associate of a law practice who is or was an Australian
28 legal practitioner—the fact that the associate has ceased to
29 practise or to hold an Australian practising certificate; and

1 (d) for an associate of a law practice—the associate’s death.

2 **336 Investigation of claims**

3 The law society council may investigate a claim made to it,
4 including the default to which it relates, in any way it considers
5 appropriate.

6 **337 Advance payments for claims**

7 (1) The law society council may, at its absolute discretion, make
8 payments to a claimant in advance of deciding a claim if satisfied
9 that—

10 (a) the claim is likely to be allowed; and

11 (b) payment is justified to alleviate hardship.

12 (2) Any payments made in advance are to be taken into account when
13 the claim is decided.

14 (3) Payments under this section are to be made from the fidelity fund.

15 (4) If the claim is disallowed, the amounts paid under this section are
16 recoverable by the law society as a debt owing to the fidelity fund.

17 (5) If the claim is allowed but the amount payable is less than the
18 amount paid under this section, the excess paid under this section is
19 recoverable by the law society as a debt owing to the fidelity fund.

20 **Division 3.4.5 Deciding claims**

21 **338 Deciding claims generally**

22 (1) The law society council may decide a claim by completely or partly
23 allowing or disallowing it.

24 (2) The law society council must decide a claim by the end of
25 12 months after the day the claim is made.

- 1 (3) The law society council may disallow a claim to the extent that the
2 claim does not relate to a default for which the fidelity fund is liable.
- 3 (4) The law society council may completely or partly disallow a claim,
4 or reduce a claim, to the extent that—
- 5 (a) the claimant knowingly assisted in or contributed towards, or
6 was a party or accessory to, the act or omission giving rise to
7 the claim; or
- 8 (b) the negligence of the claimant contributed to the loss; or
- 9 (c) the conduct of the transaction with the law practice in relation
10 to which the claim is made was illegal, and the claimant knew
11 or ought reasonably to have known of the illegality; or
- 12 (d) proper and usual records were not brought into existence
13 during the conduct of the transaction, or were destroyed, and
14 the claimant knew or ought reasonably to have known that
15 records of that kind would not be kept or would be destroyed;
16 or
- 17 (e) the claimant has, in relation to the investigation of the claim,
18 unreasonably refused to disclose information or documents to,
19 or cooperate with—
- 20 (i) the law society council; or
- 21 (ii) any other authority (including, for example, an
22 investigative or prosecuting authority).
- 23 *Note* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).
- 26 (5) Subsections (2) and (3) do not limit the law society council's power
27 to disallow a claim on any other ground.

- 1 (6) Without limiting subsection (2) or (3), the law society council may
2 reduce the amount otherwise payable on a claim to the extent the
3 council considers appropriate if satisfied—
- 4 (a) that the claimant assisted in or contributed towards, or was a
5 party or accessory to, the act or omission giving rise to the
6 claim; or
- 7 (b) that the claimant unreasonably failed to mitigate losses arising
8 from the act or omission giving rise to the claim; or
- 9 (c) that the claimant has unreasonably hindered the investigation
10 of the claim.
- 11 (7) The law society council must, in allowing a claim, decide the
12 amount payable.

13 **339 Maximum amount allowable for claim**

- 14 (1) The amount payable in relation to a default must not exceed the
15 pecuniary loss resulting from the default.
- 16 (2) This section does not apply to costs payable under section 340
17 (Costs in relation to claims) or to interest payable under section 341
18 (Interest in relation to claims).

19 **340 Costs in relation to claims**

- 20 (1) If the law society council completely or partly allows a claim, the
21 council must order payment of the claimant's reasonable legal costs
22 involved in making and proving the claim, unless the council
23 considers that special circumstances exist justifying a reduction in
24 the amount of costs or justifying a decision that no amount should
25 be paid for costs.
- 26 (2) If the law society council completely disallows a claim, the council
27 may order payment of all or part of the claimant's reasonable legal
28 costs involved in making and attempting to prove the claim, if the
29 council considers it is appropriate to make the order.

- 1 (3) The costs are payable from the fidelity fund.

2 **341 Interest in relation to claims**

- 3 (1) In deciding the amount of pecuniary loss resulting from a default,
4 the law society council must add interest on the amount payable
5 (excluding interest), unless the council considers that special
6 circumstances exist justifying a reduction in the amount of interest
7 or justifying a decision that no amount of interest should be paid.
- 8 (2) The interest must be worked out from the day when the claim was
9 made to the day the law society council tells the claimant that the
10 claim has been allowed.
- 11 (3) The interest must be worked out—
12 (a) at the rate prescribed by regulation; or
13 (b) if no rate is prescribed—at the rate of 5%.
- 14 (4) The interest is payable from the fidelity fund.

15 **342 Reduction of claim because of other benefits**

- 16 (1) A person is not entitled to recover from the fidelity fund any amount
17 equal to amounts or to the value of other benefits—
18 (a) that have already been paid to or received by the person; or
19 (b) that have already been decided and are payable to or receivable
20 by the person; or
21 (c) that (in the opinion of the law society council) are likely to be
22 paid to or received by the person; or
23 (d) that (in the opinion of the law society council) might, but for
24 the person's neglect or failure, have been paid or payable to or
25 received or receivable by the person;
26 from other sources in relation to the pecuniary loss to which a claim
27 relates.

1 (2) The law society council may, at its absolute discretion, pay to a
2 person all or part of an amount mentioned in subsection (1) (c) if
3 satisfied that payment is justified to alleviate hardship.

4 (3) Subsection (2) does not affect section 344 (Repayment of certain
5 amounts paid from fidelity fund).

6 **343 Subrogation on payment of claim**

7 (1) On payment of a claim from the fidelity fund, the law society
8 council is subrogated to the rights and remedies of the claimant
9 against anyone in relation to the default to which the claim relates.

10 (2) Without limiting subsection (1), that subsection extends to a right or
11 remedy against—

12 (a) the associate in relation to whom the claim is made; or

13 (b) the person authorised to administer the estate of the associate
14 in relation to whom the claim is made and who is dead or an
15 insolvent under administration.

16 (3) Subsection (1) does not apply to a right or remedy against an
17 associate if, had the associate been a claimant in relation to the
18 default, the claim would not be disallowable on any of the grounds
19 set out in section 338 (3) (Deciding claims generally).

20 (4) The law society council may exercise its rights and remedies under
21 this section in its own name or in the name of the claimant.

22 (5) If the law society council brings a proceeding under this section in
23 the name of the claimant, it must indemnify the claimant against any
24 costs awarded against the claimant in the proceeding.

25 (6) The law society council may exercise its rights and remedies under
26 this section even though any limitation periods under this part have
27 ended.

28 (7) The law society council must pay into the fidelity fund any amount
29 recovered in exercising its rights and remedies under this section.

- 1 **344 Repayment of certain amounts paid from fidelity fund**
- 2 (1) If—
- 3 (a) a claimant receives a payment from the fidelity fund in relation
- 4 to the claim; and
- 5 (b) the claimant receives or recovers from another source or
- 6 sources a payment on account of the pecuniary loss; and
- 7 (c) there is a surplus after deducting the amount of the pecuniary
- 8 loss from the total amount received or recovered by the
- 9 claimant from both or all sources;
- 10 the amount of the surplus is a debt owing by the claimant to the
- 11 fund.
- 12 (2) However, the amount payable by the claimant cannot exceed the
- 13 amount the claimant received from the fidelity fund in relation to the
- 14 claim.
- 15 **345 Notification of delay in making decision on claim**
- 16 (1) If the law society council considers that a claim is not likely to be
- 17 decided within 12 months after the day the claim was made, the
- 18 council must tell the claimant in writing that the claim is not likely
- 19 to be decided within that period.
- 20 (2) The notification must contain a brief statement of reasons for the
- 21 delay.
- 22 **346 Evidence in court proceedings under s 343 and certain**
- 23 **proceedings for review etc**
- 24 (1) This section applies to the following proceedings:
- 25 (a) a proceeding brought in a court under section 343 (Subrogation
- 26 on payment of claim);

-
- 1 (b) a proceeding for review of any of the following:
- 2 (i) a decision under section 338 (Deciding claims generally)
- 3 completely or partly disallowing a claim;
- 4 (ii) a decision under section 338 (6) reducing the amount
- 5 payable on a claim;
- 6 (iii) failing to have made a decision on a claim under
- 7 division 3.4.4 (Claims about defaults) by the end of
- 8 12 months after the day the claim is made.
- 9 (2) Evidence of any admission or confession by, or other evidence that
- 10 would be admissible against, an Australian legal practitioner or
- 11 anyone else in relation to an act or omission giving rise to a claim is
- 12 admissible to prove the act or omission even though the practitioner
- 13 or other person is not a defendant in, or a party to, the proceeding.
- 14 (3) Any defence that would have been available to the Australian legal
- 15 practitioner or other person is available to the law society council.

16 **Division 3.4.6 Payments from fidelity fund for**

17 **defaults**

18 **347 Payments for defaults**

- 19 (1) The fidelity fund must be applied by the law society council for the
- 20 purpose of compensating claimants in relation to claims allowed
- 21 under this part in relation to defaults to which this part applies.
- 22 (2) An amount payable from the fidelity fund in relation to a claim is
- 23 payable to the claimant or to someone else at the claimant's
- 24 direction.

348 Caps on payments from fidelity fund

- (1) A regulation may fix either or both of the following:
- (a) the maximum amounts, or the method of working out maximum amounts, that may be paid from the fidelity fund in relation to claims;
 - (b) the maximum total amount, or the method of working out the maximum total amount, that may be paid from the fidelity fund in relation to all claims made in relation to law practices.
- (2) Amounts must not be paid from the fidelity fund that exceed the amounts fixed, or worked out by a method fixed, under subsection (1).
- (3) Payments from the fidelity fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the law society council may authorise payment of a larger amount if satisfied that it would be reasonable to authorise payment of the amount after taking into account the position of the fidelity fund and the circumstances of the particular case.
- (5) A proceeding cannot be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the law society council to consider payment of a larger amount.

349 Sufficiency of fidelity fund

- (1) If the law society council is of the opinion that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the council may do any or all of the following:
- (a) postpone all payments relating to all or any class of claims out of the fund;

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- 1 (b) impose a levy under section 324 (Levy to supplement fidelity
2 fund);
- 3 (c) make partial payments of the amounts of 1 or more allowed
4 claims out of the fund with payment of the balance being a
5 charge on the fund;
- 6 (d) make partial payments of the amounts of 2 or more allowed
7 claims out of the fund on a proportionate basis, with payment
8 of the balance ceasing to be a liability of the fund.
- 9 (2) In deciding whether to do any or all of the things mentioned in
10 subsection (1), the law society council—
- 11 (a) must have regard to hardship, if relevant information is known
12 to the council; and
- 13 (b) must endeavour to treat outstanding claims equally and
14 equitably, but may make special adjustments in cases of
15 hardship.
- 16 (3) If the law society council declares that a decision is made under
17 subsection (1) (d)—
- 18 (a) the balance stated in the declaration stops being a liability of
19 the fidelity fund; and
- 20 (b) the council may (but need not) at any time revoke the
21 declaration in relation to either all or a stated part of the
22 balance, and the balance or that part of the balance again
23 becomes a liability of the fund.
- 24 (4) A decision of the law society council made under this section is
25 final and is not subject to appeal or review.

- 1 **Division 3.4.7 Claims by law practices or associates**
- 2 **350 Claims by law practices or associates about defaults**
- 3 (1) This section applies to a default of a law practice arising from an act
- 4 or omission of an associate of the practice.
- 5 (2) A claim may be made under section 330 (Claims about defaults) by
- 6 another associate of the law practice, if the associate suffers
- 7 pecuniary loss because of the default.
- 8 (3) A claim may be made under section 330 by the law practice, if the
- 9 practice is an incorporated legal practice and it suffers pecuniary
- 10 loss because of the default.
- 11 **351 Claims by law practices or associates about notional**
- 12 **defaults**
- 13 (1) This section applies if a default of a law practice arising from an act
- 14 or omission of an associate of the practice was avoided, remedied or
- 15 reduced by a financial contribution made by the practice or by 1 or
- 16 more other associates.
- 17 (2) For this section, the default, to the extent that it was avoided,
- 18 remedied or reduced, is a *notional default*.
- 19 (3) This part applies, with necessary changes, to a notional default in
- 20 the same way as it applies to other defaults of law practices, but
- 21 only the law practice or the other associate or associates concerned
- 22 are eligible to make claims about the notional default.
- 23 *Note* A regulation may fix a maximum amount that may be paid in relation to
- 24 a claim (see s 348).

Division 3.4.8 Defaults involving interstate elements

352 Concerted interstate defaults

- (1) The law society council may treat a concerted interstate default as if the default consisted of 2 or more separate defaults—
- (a) 1 of which is a default to which this part applies, if the ACT is the relevant jurisdiction of 1 or more of the associates involved; and
 - (b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions of 1 or more of the associates involved.
- (2) The law society council may treat a claim about a concerted interstate default as if the claim consisted of—
- (a) 1 or more claims made under this part; and
 - (b) 1 or more claims made under a corresponding law or laws.
- (3) A claim about a concerted interstate default must be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
- (a) in equal shares in relation to the default, irrespective of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or
 - (b) in other shares as agreed by the law society council and the corresponding authority or authorities involved.
- (4) Subsection (3) does not affect the application of the capping and sufficiency requirements of the ACT in relation to the amount payable from the fidelity fund after the claim has been assessed.

353 Defaults involving interstate elements if committed by 1 associate only

- (1) This section applies to a default of a law practice that arises from an act or omission that was committed by only 1 associate of the practice, if the default involves more than 1 of the cases mentioned in section 327 (2) to (4) (Meaning of *relevant jurisdiction* for pt 3.4).
- (2) The law society council may treat the default as if the default consisted of 2 or more separate defaults—
- (a) 1 of which is a default to which this part applies, if the ACT is the relevant jurisdiction; and
 - (b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions.
- (3) The law society council may treat a claim about the default as if the claim consisted of—
- (a) 1 or more claims made under this part; and
 - (b) 1 or more claims made under a corresponding law or laws.
- (4) A claim about a default to which this section applies must be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
- (a) in equal shares in relation to the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or
 - (b) in other shares as agreed by the law society council and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of the capping and sufficiency requirements of the ACT in relation to the amount payable from the fidelity fund after the claim has been assessed.

Division 3.4.9 Inter-jurisdictional provisions—pt 3.4

354 Protocols—pt 3.4

- (1) The law society council may enter into arrangements (the *protocols*) with corresponding authorities in relation to matters to which this part relates.
- (2) Without limiting subsection (1), a regulation may authorise the making of a protocol that provides that the law society council is taken to have—
- (a) requested a corresponding authority to act as agent of the council in stated cases; or
 - (b) agreed to act as agent of a corresponding authority in stated cases.
- (3) A protocol is a notifiable instrument.

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

355 Forwarding of claims

- (1) If a claim is made to the law society council about a default that appears to be a default to which a corresponding law applies, the council must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.
- (2) If a claim is made to a corresponding authority about a default that appears to be a default to which this part applies and the claim or a copy of it is forwarded under a corresponding law to the law society council by the corresponding authority, the claim is taken—
- (a) to have been made under this part; and
 - (b) to have been made under this part when the claim was received by the corresponding authority.

- 1 **356** **Investigation of defaults to which pt 3.4 applies**
- 2 (1) This section applies if a default appears to be a default to which this
- 3 part applies and to have—
- 4 (a) happened solely in another jurisdiction; or
- 5 (b) happened in more than 1 jurisdiction; or
- 6 (c) happened in circumstances in which it cannot be decided
- 7 precisely in which jurisdiction the default happened.
- 8 (2) The law society council may request a corresponding authority or
- 9 corresponding authorities to act as agent or agents for the council for
- 10 the purpose of processing or investigating a claim about the default
- 11 or aspects of the claim.
- 12 **357** **Investigation of defaults to which corresponding law**
- 13 **applies**
- 14 (1) This section applies if a default appears to be a default to which a
- 15 corresponding law applies and to have—
- 16 (a) happened solely in the ACT; or
- 17 (b) happened in more than 1 jurisdiction (including the ACT); or
- 18 (c) happened in circumstances in which it cannot be decided
- 19 precisely in which jurisdiction the default happened.
- 20 (2) The law society council may act as agent of a corresponding
- 21 authority, if requested to do so by the corresponding authority, for
- 22 the purpose of processing or investigating a claim about the default
- 23 or aspects of the claim.
- 24 (3) If the law society council agrees to act as agent of a corresponding
- 25 authority under subsection (2), the council may exercise any of its
- 26 functions in relation to processing or investigating the claim or
- 27 aspects of the claim as if the claim had been made under this part.

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- 1 **358** **Investigation of concerted interstate defaults and other**
2 **defaults involving interstate elements**
- 3 (1) This section applies if—
- 4 (a) a concerted interstate default appears to have happened; or
- 5 (b) a default to which section 353 (Defaults involving interstate
- 6 elements if committed by 1 associate only) appears to have
- 7 happened.
- 8 (2) The law society council may request a corresponding authority or
- 9 corresponding authorities to act as agent or agents for the council for
- 10 the purpose of processing or investigating a claim about the default
- 11 or aspects of the claim.
- 12 (3) The law society council may act as agent of a corresponding
- 13 authority, if requested to do so by the corresponding authority, for
- 14 the purpose of processing or investigating a claim about the default
- 15 or aspects of the claim.
- 16 (4) If the law society council agrees to act as agent of a corresponding
- 17 authority under subsection (3), the council may exercise any of its
- 18 functions in relation to processing or investigating the claim or
- 19 aspects of the claim as if the claim had been made entirely under
- 20 this part.
- 21 **359** **Recommendations by law society council to**
22 **corresponding authorities**
- 23 If the law society council is acting as agent of a corresponding
- 24 authority in relation to a claim made under a corresponding law, the
- 25 council may make recommendations about the decision the
- 26 corresponding authority might make about the claim.

- 1 **360** **Recommendations to law society council by**
2 **corresponding authorities etc**
- 3 (1) If a corresponding authority makes recommendations about the
4 decision the law society council might make about a claim in
5 relation to which the corresponding authority was acting as agent of
6 the council, the council may—
- 7 (a) make its decision about the claim in accordance with the
8 recommendations, whether with or without further
9 consideration, investigation or inquiry; or
- 10 (b) disregard the recommendations.
- 11 (2) A corresponding authority cannot, as agent of the law society
12 council, make a decision about the claim under division 3.4.5
13 (Deciding claims).
- 14 **361** **Request to another jurisdiction to investigate aspects of**
15 **claim**
- 16 (1) The law society council may request a corresponding authority to
17 arrange for the investigation of any aspect of a claim being dealt
18 with by the council and to provide a report on the result of the
19 investigation.
- 20 (2) A report on the result of the investigation received from—
- 21 (a) the corresponding authority; or
- 22 (b) an entity authorised by the corresponding authority to conduct
23 the investigation;
- 24 may be used and taken into consideration by the law society council
25 in the course of dealing with the claim under this part.

362 Request from another jurisdiction to investigate aspects of claim

- (1) This section applies in relation to a request received by the law society council from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.
- (2) The law society council may conduct the investigation.
- (3) The provisions of this part relating to the investigation of a claim apply, with necessary changes, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.
- (4) The law society council must provide a report on the result of the investigation to the corresponding authority.

363 Cooperation with other authorities for pt 3.4

- (1) In dealing with a claim under this part involving a law practice or an Australian legal practitioner, the law society council may consult and cooperate with another entity that has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.
- (2) For subsection (1), the law society council and the other entity may exchange information about the claim.

Division 3.4.10 Miscellaneous—pt 3.4

364 Interstate legal practitioner becoming authorised to withdraw from local trust account

- (1) This section applies to an interstate legal practitioner who (whether alone or with a cosignatory) becomes authorised to withdraw money from a local trust account.

- 1 (2) A regulation may do either or both of the following:
- 2 (a) require the practitioner to tell the law society council of the
- 3 authorisation in accordance with the regulation;
- 4 (b) require the practitioner to make contributions to the fidelity
- 5 fund in accordance with the regulation.
- 6 (3) Without limiting subsection (2), a regulation may decide or provide
- 7 for the deciding of any or all of the following:
- 8 (a) how the notification must be made and the information or
- 9 material that must be included in or to accompany the
- 10 notification;
- 11 (b) the amount of the contributions, their frequency and how they
- 12 must be made.
- 13 (4) The interstate legal practitioner must comply with the applicable
- 14 requirements of a regulation under this section.

15 **365 Application of pt 3.4 to incorporated legal practices**

- 16 (1) A regulation may provide that a provision of this part, or any other
- 17 provision of this Act relating to the fidelity fund, does not apply to
- 18 incorporated legal practices or applies to them with prescribed
- 19 changes.

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

- 21 (2) For the application of a provision of this part, or any other provision
- 22 of this Act relating to the fidelity fund, to an incorporated legal
- 23 practice, a reference in the provision to a default of a law practice
- 24 extends to a default of an incorporated legal practice, but only if it
- 25 happens in relation to the provision of legal services.
- 26 (3) This section does not affect any obligation of an Australian legal
- 27 practitioner who is an officer or employee of an incorporated legal
- 28 practice to comply with the provisions of this part or any other
- 29 provision of this Act relating to the fidelity fund.

- 1 (4) An incorporated legal practice is required to make payments to or on
2 account of the fidelity fund under this Act as if it were an Australian
3 lawyer applying for or holding a local practising certificate.
- 4 (5) The incorporated legal practice must not engage in legal practice in
5 the ACT if any payment is not made by the due date and while the
6 practice remains in default of subsection (4).
- 7 (6) The law society council may suspend the local practising certificate
8 of a legal practitioner director of the practice if any payment is not
9 made by the due date.
- 10 (7) The amounts payable to the fidelity fund by an incorporated legal
11 practice may be decided by reference to the total number of
12 Australian legal practitioners employed by the practice and other
13 relevant matters.

14 **366 Application of pt 3.4 to multidisciplinary partnerships**

- 15 (1) A regulation may provide that a provision of this part, or any other
16 provision of this Act relating to the fidelity fund, does not apply to
17 multidisciplinary partnerships or applies to them with prescribed
18 changes.

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

- 20 (2) For the application of a provision of this part, or any other provision
21 of this Act relating to the fidelity fund, to a multidisciplinary
22 partnership, a reference in the provision to a default of a law
23 practice extends to a default of a multidisciplinary partnership or a
24 partner or employee of a multidisciplinary partnership, whether or
25 not anyone involved is an Australian legal practitioner, but only if it
26 happens in relation to the provision of legal services.
- 27 (3) This section does not affect any obligation of an Australian legal
28 practitioner who is a partner or employee of a multidisciplinary
29 partnership to comply with the provisions of this part or any other
30 provision of this Act relating to the fidelity fund.

- 1 (4) The amounts payable to the fidelity fund by the legal practitioner
2 partners of a multidisciplinary partnership may be decided by
3 reference to the total number of Australian legal practitioners
4 employed by the partnership and other relevant matters.

5 **367 Application of pt 3.4 to Australian lawyers whose**
6 **practising certificates have lapsed**

- 7 (1) This section applies if an Australian lawyer is not an Australian
8 legal practitioner because his or her Australian practising certificate
9 has lapsed, but does not apply if—
10 (a) the certificate has been suspended or cancelled under this Act
11 or a corresponding law; or
12 (b) the lawyer's application for the grant or renewal of an
13 Australian practising certificate has been refused under this Act
14 or a corresponding law and the lawyer would be an Australian
15 legal practitioner had it been granted.
16 (2) For the other provisions of this part, the practising certificate is
17 taken not to have lapsed, and accordingly the lawyer is taken to
18 continue to be an Australian legal practitioner.
19 (3) Subsection (2) ceases to apply to the lawyer when whichever of the
20 following happens first:
21 (a) the period of 6 months after the day the practising certificate
22 actually lapsed ends;
23 (b) the lawyer's application for the grant or renewal of an
24 Australian practising certificate is refused under this Act or a
25 corresponding law.

26 **368 Availability of law society property for claims**

27 The fidelity fund is the only property of the law society available for
28 payment in relation to a successful claim.

Part 3.5 Mortgage practices and managed investment schemes

Division 3.5.1 Preliminary—pt 3.5

369 Definitions—pt 3.5

In this part:

approved policy of fidelity insurance—see section 373 (2) (Solicitor to have fidelity cover for regulated mortgages).

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

associate, of a solicitor, means—

- (a) a partner of the solicitor, whether or not the partner is a solicitor; or
- (b) an employee or agent of the solicitor; or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the solicitor or a person mentioned in paragraph (a) or (b) has a beneficial interest; or
- (d) a co-trustee with the solicitor; or
- (e) a person who is in a prescribed relationship to the solicitor or to a person mentioned in paragraph (a), (b), (c) or (d).

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

client, of a solicitor, means a person who—

- (a) receives the solicitor's advice about investment in a regulated mortgage or managed investment scheme; or

- 1 (b) gives the solicitor instructions to use money for a regulated
2 mortgage or managed investment scheme.

3 **contributor** means a person who lends, or proposes to lend, money
4 that is secured by a contributory mortgage arranged by a solicitor.

5 **contributory mortgage** means a mortgage to secure money lent by 2
6 or more contributors as tenants in common or joint tenants, whether
7 or not the mortgagee is someone who holds the mortgage in trust for
8 the contributors.

9 **financial institution** means—

- 10 (a) an ADI; or
11 (b) a friendly society under the *Life Insurance Act 1995* (Cwlth);
12 or
13 (c) a trustee company under the *Trustee Companies Act 1947*; or
14 (d) a property trust or other corporation established by or in
15 relation to a church that may invest money in accordance with
16 an Act; or
17 (e) an entity prescribed by regulation for this definition.

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

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

22 **prescribed relationship**—a person is in a **prescribed relationship** to
23 another person if the relationship is that of—

- 24 (a) a domestic partner; or
25 (b) a child, grandchild, brother, sister, parent or grandparent
26 (whether derived through a domestic partner or otherwise); or

(c) a kind prescribed by regulation for this subsection.

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

regulated mortgage means a mortgage (including a contributory mortgage) other than—

- (a) a mortgage under which the lender is a financial institution; or
- (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the solicitor who acts for the lender or contributors or by—
 - (i) an associate of the solicitor; or
 - (ii) an agent of the solicitor; or
 - (iii) a person engaged by the solicitor to introduce the borrower to the lender or contributors; or
- (c) a mortgage prescribed by regulation as exempt from this definition.

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

run-out mortgage means a regulated mortgage entered into before 10 September 2002 that is not—

- (a) a territory regulated mortgage; or
- (b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

territory regulated mortgage—a regulated mortgage is a **territory regulated mortgage** in relation to a solicitor if—

- (a) the solicitor's practice is a territory regulated mortgage practice; and

- 1 (b) the regulated mortgage does not form part of a managed
2 investment scheme or, if it does form part of a managed
3 investment scheme, the managed investment scheme is not
4 required to be operated by a responsible entity under the
5 Corporations Act (as modified by any ASIC exemption or a
6 regulation under that Act).

7 *territory regulated mortgage practice* means a solicitor's practice
8 for which a nomination under section 371 (Nomination of practice
9 as territory regulated mortgage practice) is in force.

10 **Division 3.5.2 Mortgage practices**

11 **370 Conduct of mortgage practices**

- 12 (1) A solicitor must not, in the solicitor's capacity as solicitor for a
13 lender or contributor, negotiate the making of or act in relation to a
14 regulated mortgage unless—
15 (a) the mortgage is a territory regulated mortgage; or
16 (b) the mortgage is a run-out mortgage; or
17 (c) the mortgage forms part of a managed investment scheme that
18 is operated by a responsible entity.
19 (2) A solicitor must not, in the solicitor's capacity as solicitor for a
20 lender or contributor, negotiate the making of or act in relation to a
21 regulated mortgage except in accordance with—
22 (a) the Corporations Act, or that Act as modified by any ASIC
23 exemption or the regulations under that Act; and
24 (b) this Act.

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

- 26 (3) A solicitor must not, in the solicitor's capacity as solicitor for a
27 lender or contributor, negotiate the making of or act in relation to a
28 regulated mortgage that forms part of a managed investment scheme

unless the solicitor complies with any ASIC exemption that applies to managed investment schemes that—

- (a) have more than 20 members; and
- (b) are operated under the supervision of the law society in accordance with that exemption.

(4) Subsection (3) applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.

(5) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.

(6) A solicitor who knows that an associate has contravened subsection (1), (2) or (3) must give written notice to the law society council of that fact not later than 21 days after the day the solicitor becomes aware of the contravention.

(7) A contravention of this section can be professional misconduct.

371 Nomination of practice as territory regulated mortgage practice

(1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage, or who proposes to do so, may, by written notice given to the law society council, nominate the solicitor's practice as a territory regulated mortgage practice.

(2) A nomination may, if the law society council approves, be made for a solicitor by another solicitor.

Example

A nomination could be made by a solicitor on behalf of members of a firm of solicitors.

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

- 1 (3) A nomination of a solicitor's practice as a territory regulated
2 mortgage practice takes effect on the day written notice of the
3 nomination is given to the law society council.
- 4 (4) A nomination ceases to be in force in relation to a solicitor if—
5 (a) the solicitor revokes the nomination by written notice given to
6 the law society council; or
7 (b) the solicitor's practising certificate ceases to be in force; or
8 (c) the law society council, by written notice given to the solicitor,
9 rejects the nomination of the solicitor's practice.
- 10 (5) A nomination must include the information (if any) required by
11 regulation and the legal profession rules.

12 **372 Law society council to be notified of territory regulated**
13 **mortgages**

- 14 (1) A solicitor commits an offence if the solicitor—
15 (a) in the solicitor's capacity as solicitor for a lender or
16 contributor, negotiates the making of or acts in relation to a
17 territory regulated mortgage; and
18 (b) fails to give the law society council written notice of that fact
19 in accordance with the regulations or the legal profession rules.

20 Maximum penalty: 20 penalty units.

- 21 (2) A contravention of this section can be professional misconduct.

22 **373 Solicitor to have fidelity cover for regulated mortgages**

- 23 (1) If a solicitor, in the solicitor's capacity as solicitor for a lender or
24 contributor, negotiates the making of or acts in relation to a
25 regulated mortgage, the solicitor must ensure that an approved
26 policy of fidelity insurance is in force in relation to the solicitor for
27 the purpose of compensating people who suffer financial loss

because of any dishonest failure to pay money payable under the mortgage.

(2) A policy of fidelity insurance is an *approved policy of fidelity insurance* if:

(a) the insurer and the terms of the policy have been approved for this division by the Attorney-General by written order given to the law society council; and

(b) any conditions imposed by the order are complied with.

(3) A solicitor commits an offence if—

(a) the solicitor, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage; and

(b) an approved policy of fidelity insurance is not in force in relation to the solicitor in accordance with this section.

Maximum penalty: 20 penalty units.

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

(5) This section does not apply in relation to a regulated mortgage that forms part of a managed investment scheme operated by a responsible entity.

374 Bar on claims against fidelity fund relating to regulated mortgages

(1) A lender or contributor under a regulated mortgage is not entitled to claim against the fidelity fund to obtain compensation for a financial loss if the claim relates to a regulated mortgage for which a solicitor is required to have fidelity insurance under section 373 (Solicitor to have fidelity cover for regulated mortgages).

(2) Subsection (1) does not apply if the solicitor who acts for the lender or contributor contravenes section 373 in relation to the mortgage.

- 1 (3) However, any claim on the fidelity fund by a lender or contributor to
2 whom subsection (2) relates—
- 3 (a) is to be dealt with as if the solicitor had complied with
4 section 373; and
- 5 (b) in particular, is subject to the same restrictions (including the
6 amount of any compensation payable) as would have applied
7 to a claim under an approved policy of fidelity insurance had
8 such a policy been in force in relation to the solicitor in
9 accordance with that section.

10 **375 Notification of insurance arrangements for regulated**
11 **mortgages**

- 12 (1) If a client entrusts money to a solicitor and the money, or part of the
13 money, is proposed to be advanced to a borrower for a regulated
14 mortgage, the solicitor must, not later than 7 days after the day the
15 money is entrusted to the solicitor, give the client written notice
16 that—
- 17 (a) tells the client about the effect of section 374 (Bar on claims
18 against fidelity fund relating to regulated mortgages); and
- 19 (b) includes details of the solicitor's approved policy of fidelity
20 insurance.
- 21 (2) The solicitor must not advance any of the money to a borrower for a
22 regulated mortgage unless—
- 23 (a) the solicitor has given the client notice under subsection (1);
24 and
- 25 (b) after having been given the notice, the client has given the
26 solicitor written authority to advance money for the mortgage.
- 27 (3) A contravention of this section can be professional misconduct.
- 28 (4) A contravention of this section does not limit the operation of
29 section 374.

- 1 (5) This section does not apply in relation to a regulated mortgage that
2 forms part of a managed investment scheme operated by a
3 responsible entity.

4 **376 Failure to obtain fidelity insurance for regulated mortgage**

- 5 (1) The licensing body must not grant or renew a practising certificate
6 for an applicant who is or will be required to comply with
7 section 373 (Solicitor to have fidelity cover for regulated mortgages)
8 unless it is satisfied that—

9 (a) an approved policy of fidelity insurance is, or will be, in force
10 in relation to the applicant; and

11 (b) the policy is, or will be, in force in relation to the applicant
12 while the applicant's practising certificate is in force.

- 13 (2) The law society council must suspend the practising certificate of a
14 solicitor who is required to comply with section 373 unless it is
15 satisfied that—

16 (a) an approved policy of fidelity insurance is in force in relation
17 to the solicitor; and

18 (b) the policy will remain in force in relation to the solicitor while
19 the solicitor's practising certificate is in force.

- 20 (3) The law society council must end the suspension of a solicitor's
21 practising certificate under subsection (2) when it is satisfied of the
22 matters mentioned in subsection (2) (a) and (b) in relation to the
23 solicitor.

- 24 (4) The law society council must suspend the entitlement under part 2.4
25 (Legal practice by Australian legal practitioners) to practise in the
26 ACT of a solicitor who is required to comply with section 373
27 unless it is satisfied that—

28 (a) an approved policy of fidelity insurance is, or will be, in force
29 in relation to the solicitor; and

1 (b) the policy will not expire before the end of the solicitor's
2 entitlement under part 2.4 to practise in the ACT.

3 (5) The law society council must end the suspension of a solicitor's
4 entitlement to practise under subsection (4) when it is satisfied of
5 the matters mentioned in subsection (4) (a) and (b) in relation to the
6 solicitor.

7 **Division 3.5.3 Managed investment schemes**

8 **377 Involvement of solicitors in managed investment** 9 **schemes**

10 (1) This part does not prevent a solicitor from carrying out any legal
11 services in relation to a managed investment scheme operated by a
12 responsible entity, or from having an interest in such a managed
13 investment scheme or in the responsible entity for such a managed
14 investment scheme.

15 (2) However, if a client entrusts, or proposes to entrust, money to a
16 solicitor to be invested in a managed investment scheme operated by
17 a responsible entity, and the solicitor has a relevant interest in the
18 managed investment scheme, the solicitor must give the client
19 written notice telling the client that—

20 (a) the solicitor has an interest in the managed investment scheme;
21 and

22 (b) the operation of the managed investment scheme does not form
23 part of the solicitor's practice; and

24 (c) there is no right to claim against the fidelity fund for a financial
25 loss arising from an investment in the managed investment
26 scheme.

27 (3) The notice must include any other information required by a
28 regulation or the legal profession rules.

- 1 (4) The solicitor must not advance the money entrusted to the solicitor
2 to the responsible entity for the managed investment scheme or to
3 anyone else unless the client has been given the notice.
- 4 (5) A solicitor who knows that an associate has contravened
5 subsection (2), (3) or (4) must give written notice to the law society
6 council of that fact not later than 21 days after the day the solicitor
7 becomes aware of the contravention.
- 8 (6) A contravention of this section can be professional misconduct.
- 9 (7) In this section:
- 10 *relevant interest*—a solicitor has a *relevant interest* in a managed
11 investment scheme if the solicitor, or an associate of the solicitor—
- 12 (a) is a director of, or concerned in, the management of the
13 responsible entity for the managed investment scheme; or
- 14 (b) is a shareholder in the responsible entity; or
- 15 (c) is taken to be an agent of the responsible entity under the
16 Corporations Act, chapter 5C; or
- 17 (d) receives any financial benefit from the managed investment
18 scheme or the responsible entity if a client of the solicitor
19 invests in the managed investment scheme; or
- 20 (e) has an interest prescribed by regulation or the legal profession
21 rules in the managed investment scheme or the responsible
22 entity.

23 **378 Claims against fidelity fund relating to managed**
24 **investment schemes connected with solicitors**

- 25 (1) This section applies to a person who entrusts money to a solicitor to
26 be invested in a managed investment scheme operated by a
27 responsible entity if the solicitor has a relevant interest in the
28 scheme.

1 (2) The person is not entitled to make a claim against the fidelity fund
2 to obtain compensation for any financial loss arising from that
3 investment if the solicitor gave notice to the person in accordance
4 with section 377 (2) and (3) (Involvement of solicitors in managed
5 investment schemes).

6 (3) In this section:
7 *relevant interest*—see section 377 (7).

8 **379 Transfer of mortgages to responsible entity**

9 (1) If a solicitor, in the solicitor's capacity as solicitor for a lender or
10 contributor, is responsible for the administration of a regulated
11 mortgage, the solicitor must not transfer the mortgage to a
12 responsible entity for a managed investment scheme unless the
13 lender or contributor has given the solicitor written authority to
14 transfer the mortgage to the responsible entity.

15 (2) A contravention of this section can be professional misconduct.

16 (3) In this section:
17 *scheme property*—see the Corporations Act, section 9 (Dictionary).
18 *transfer* a regulated mortgage to a responsible entity—a solicitor
19 *transfers* a regulated mortgage to a responsible entity if the solicitor
20 does anything that results in—

21 (a) a responsible entity for a managed investment scheme
22 becoming the holder or custodian of the regulated mortgage; or

23 (b) any money advanced in relation to the mortgage, or the
24 property that is charged or encumbered by the mortgage,
25 becoming scheme property of a managed investment scheme.

Division 3.5.4 Miscellaneous—pt 3.5

380 Law society council may require information about mortgage practices

- (1) The law society council may, by written notice, require a solicitor to provide information to the law society council about any of the following:
- (a) whether the solicitor, an associate of the solicitor or a person engaged by the solicitor negotiates the making of or acts in relation to regulated mortgages or has done so in the past;
 - (b) details of regulated mortgages that continue to have effect;
 - (c) whether the solicitor intends—
 - (i) to nominate the solicitor's practice as a territory regulated mortgage practice; or
 - (ii) to transfer responsibility for any regulated mortgage; or
 - (iii) to take no further action in relation to any regulated mortgage;
 - (d) any other information, relating to regulated mortgages, prescribed by regulation or legal profession rules.
- (2) A solicitor who contravenes a notice under this section commits professional misconduct.

381 Effect of pt 3.5 on indemnity insurance

This part does not affect the terms of any policy of professional indemnity insurance approved under part 3.3 (Professional indemnity insurance).

- 1 **382 Regulations and rules—pt 3.5**
- 2 (1) A regulation or the legal profession rules may make provision in
- 3 relation to—
- 4 (a) regulated mortgages, including run-out mortgages; and
- 5 (b) the involvement of solicitors in managed investment schemes.
- 6 (2) In particular, a regulation or the legal profession rules may make
- 7 provision in relation to the following:
- 8 (a) the making of and acting in relation to regulated mortgages by
- 9 solicitors;
- 10 (b) how the law society council is to be given any notice or other
- 11 information under this part;
- 12 (c) how notices are to be given under this part;
- 13 (d) ensuring that the operation of a managed investment scheme
- 14 by a responsible entity is kept separate from a solicitor's
- 15 practice;
- 16 (e) ensuring that clients of a solicitor are aware that the operation
- 17 of a managed investment scheme does not form part of the
- 18 solicitor's practice.

Chapter 4 Complaints and discipline

**Part 4.1 Preliminary and application—
ch 4**

Division 4.1.1 Preliminary—pt 4.1

383 Definitions—ch 4

(1) In this Act:

professional misconduct—see section 387.

unsatisfactory employment conduct—see section 388.

unsatisfactory professional conduct—see section 386.

(2) In this chapter:

complaint means a complaint under this chapter.

conduct means conduct whether consisting of an act or omission.

official complaint means a complaint made by a council.

384 Purposes—ch 4

The purposes of this chapter are as follows:

(a) to provide a nationally consistent scheme for the discipline of the legal profession in the ACT, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;

(b) to promote and enforce the professional standards, competence and honesty of the legal profession;

(c) to provide a means of redress for complaints about lawyers;

- 1 (d) to enable people who are not lawyers to participate in
2 complaints and disciplinary processes involving lawyers.

3 **385 Application of ch 4 to lawyers, former lawyers and former**
4 **practitioners etc**

- 5 (1) This chapter applies, with necessary changes, to an Australian
6 lawyer or former Australian lawyer in relation to conduct happening
7 while the lawyer or former lawyer was an Australian lawyer, but not
8 an Australian legal practitioner, in the same way as it applies to an
9 Australian legal practitioner or former Australian legal practitioner.
- 10 (2) This chapter applies, with necessary changes, to a former Australian
11 legal practitioner in relation to conduct happening while the former
12 practitioner was an Australian legal practitioner in the same way as
13 it applies to an Australian legal practitioner.
- 14 (3) This chapter applies, with necessary changes, to a former employee
15 of a solicitor in relation to conduct happening while the former
16 employee was an employee of the solicitor in the same way as it
17 applies to an employee of a solicitor.

18 **Division 4.1.2 Key concepts—ch 4**

19 **386 What is *unsatisfactory professional conduct*?**

20 In this Act:

21 *unsatisfactory professional conduct* includes conduct of an
22 Australian legal practitioner happening in connection with the
23 practice of law that falls short of the standard of competence and
24 diligence that a member of the public is entitled to expect of a
25 reasonably competent Australian legal practitioner.

26 *Note* See also s 389 (Conduct capable of being unsatisfactory professional
27 conduct or professional misconduct).

387 What is *professional misconduct*?

(1) In this Act:

professional misconduct includes—

- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

(2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

Note See also s 389.

388 What is *unsatisfactory employment conduct*?

In this Act:

unsatisfactory employment conduct, of an employee of a solicitor, means conduct in relation to the solicitor's practice (whether or not with the knowledge or agreement of the solicitor) that is conduct in relation to which a complaint under part 4.2 (Complaints about Australian legal practitioners and solicitor employees) has been, or could be, made against the solicitor.

389 Conduct capable of being unsatisfactory professional conduct or professional misconduct

Without limiting section 386 or section 387, the following conduct can be unsatisfactory professional conduct or professional misconduct:

- (a) conduct consisting of a contravention of this Act;

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

- (b) charging of excessive legal costs in connection with the practice of law;

- (c) conduct in relation to which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

- (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;

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

Note Various provisions of this Act identify particular conduct as conduct that can be unsatisfactory professional conduct or professional misconduct (see eg s 107 (5) (Incorporated legal practice must have legal practitioner director etc) and s 138 (1) (Obligations of legal practitioner partner relating to misconduct—multidisciplinary partnerships)).

Division 4.1.3 Application of ch 4

390 Practitioners to whom ch 4 applies

- (1) This chapter applies to an Australian legal practitioner in relation to conduct to which this chapter applies.

- 1 (2) This chapter applies—
- 2 (a) whether or not the Australian legal practitioner is a local
- 3 lawyer; and
- 4 (b) whether or not the practitioner holds a local practising
- 5 certificate; and
- 6 (c) whether or not the practitioner holds an interstate practising
- 7 certificate; and
- 8 (d) whether or not the practitioner lives or has an office in the
- 9 ACT; and
- 10 (e) whether or not the person making a complaint about the
- 11 conduct lives, works or has an office in the ACT.
- 12 (3) However, this chapter does not apply to the following people:
- 13 (a) a judicial officer;
- 14 (b) a justice of the High Court;
- 15 (c) a judge of a court created by a Commonwealth Act;
- 16 (d) a judge of a court, or a judicial member of a tribunal, of a State
- 17 or another Territory.
- 18 (4) A provision of this Act or any other Act that protects a person from
- 19 any action, liability, claim or demand in relation to any act or
- 20 omission of the person does not affect the application of this chapter
- 21 to the person in relation to the act or omission.
- 22 (5) For this chapter, conduct of an Australian legal practitioner in the
- 23 exercise of a function as an arbitrator is conduct happening in
- 24 connection with the practice of law.
- 25 (6) However, conduct in relation to any justiciable aspect of decision-
- 26 making by an arbitrator is not conduct happening in connection with
- 27 the practice of law for this chapter.

- 1 (7) For this chapter, conduct of an Australian legal practitioner is not
2 conduct happening in connection with the practice of law to the
3 extent that it is conduct engaged in the exercise of an executive or
4 administrative function under an Act as—
5 (a) a government employee or statutory office-holder; or
6 (b) a council or a member, officer or employee of a council.
7 (8) In this section:
8 **government agency** means a government department (however
9 described) of the ACT or any other jurisdiction or of the
10 Commonwealth, and includes an entity prescribed by regulation.
11 **government employee** means a person employed in a government
12 agency.
13 **judicial officer**—see the *Judicial Commissions Act 1994*, section 3.
14 **391 Conduct to which ch 4 applies—generally**
15 (1) Subject to subsection (3), this part applies to conduct happening in
16 the ACT.
17 (2) This part also applies to conduct happening outside the ACT, but
18 only—
19 (a) if it is part of a course of conduct that has happened partly in
20 the ACT and partly in another jurisdiction, and either—
21 (i) the corresponding authority of each other jurisdiction
22 where the conduct has happened consents to its being
23 dealt with under this Act; or
24 (ii) the complainant and the person about whom the
25 complaint is made consent to its being dealt with under
26 this Act; or

-
- 1 (b) if it happens in Australia but completely outside the ACT and
2 the person about whom the complaint is made is a local lawyer
3 or a local legal practitioner, and either—
- 4 (i) the corresponding authority of each jurisdiction where the
5 conduct has happened consents to its being dealt with
6 under this Act; or
- 7 (ii) the complainant and the practitioner consent to its being
8 dealt with under this Act; or
- 9 (c) if—
- 10 (i) it happens completely or partly outside Australia; and
11 (ii) the person about whom the complaint is made is a local
12 lawyer or a local legal practitioner.
- 13 (3) This part does not apply to conduct happening in the ACT if—
- 14 (a) the relevant council consents to its being dealt with under a
15 corresponding law; or
- 16 (b) the complainant and the person about whom the complaint is
17 made consent to its being dealt with under a corresponding
18 law.
- 19 (4) Subsection (3) does not apply if the conduct cannot be dealt with
20 under the corresponding law.
- 21 (5) The relevant council may give consent for subsection (3) (a), and
22 may do so conditionally or unconditionally.

- 1 **392** **Conduct to which ch 4 applies—insolvency, serious**
2 **offences and tax offences**
- 3 (1) This chapter applies to the following conduct of a local legal
4 practitioner whether happening in Australia or elsewhere:
- 5 (a) conduct of the practitioner in relation to which there is a
6 conviction for—
- 7 (i) a serious offence; or
8 (ii) a tax offence; or
9 (iii) an offence involving dishonesty;
- 10 (b) conduct of the practitioner as or in becoming an insolvent
11 under administration;
- 12 (c) conduct of the practitioner in becoming disqualified from
13 managing or being involved in the management of any
14 corporation under the Corporations Act.
- 15 (2) This section has effect despite anything in section 391.

Part 4.2 **Complaints about Australian
legal practitioners and solicitor
employees**

393 **Complaints generally**

- (1) A complaint may be made under this chapter about conduct to which this chapter applies.
- (2) A complaint may be made under this chapter about conduct happening outside the ACT, but the complaint must not be dealt with under this chapter unless this chapter applies to it.
- (3) A complaint that is properly made must be dealt with in accordance with this chapter.

394 **Making of complaints**

- (1) A complaint may be made about conduct to which this chapter applies by anyone, including a council.
- (2) A complaint must be made to the relevant council.
- (3) A complaint must be in writing.
- (4) A complaint must—
 - (a) identify the complainant; and
 - (b) if possible, identify the person about whom the complaint is made; and
 - (c) describe the alleged conduct the subject of the complaint.
- (5) A council may refer a complaint to the other council, unless it deals with the complaint itself.

1 **395 Complaints made more than 3 years after conduct**

2 (1) A complaint may be made about conduct to which this chapter
3 applies irrespective of when the conduct is alleged to have
4 happened.

5 (2) However, the complaint cannot be dealt with (otherwise than to
6 dismiss it or refer it to mediation) if the complaint is made more
7 than 3 years after the conduct is alleged to have happened, unless
8 the relevant council for the person about whom the complaint is
9 made decides that—

10 (a) it is just and fair to deal with the complaint having regard to
11 the delay and the reasons for the delay; or

12 (b) the complaint involves an allegation of professional
13 misconduct and it is in the public interest to deal with the
14 complaint.

15 **396 Further information and verification—complaints**

16 The relevant council for a person about whom a complaint is made,
17 may by written notice given to the complainant, require the
18 complainant to do either or both of the following within the
19 reasonable period stated in the notice:

20 (a) to give further information about the complaint;

21 (b) to verify the complaint, or any further information, by statutory
22 declaration.

23 **397 Person to be told about complaint**

24 (1) The relevant council for a person about whom a complaint is made
25 must give written notice to the person of the making of a complaint
26 about the person.

27 (2) The person must be given the notice not later than 14 days after the
28 day the complaint is made.

- 1 (3) The notice must also tell the person about—
- 2 (a) the nature of the complaint; and
- 3 (b) the identity of the complainant; and
- 4 (c) any action already taken by the relevant council in relation to
- 5 the complaint; and
- 6 (d) the person's right to make submissions to the council within
- 7 the reasonable period stated in the notice, unless the council
- 8 has told the person that the council has dismissed or intends to
- 9 dismiss the complaint.
- 10 (4) Subsection (1) does not apply if the relevant council considers that
- 11 the giving of the notice will, or is likely to—
- 12 (a) prejudice the investigation of the complaint; or
- 13 (b) prejudice an investigation by the police or other investigatory
- 14 or law enforcement body of anything related to the complaint;
- 15 or
- 16 (c) place the complainant or anyone else at risk of intimidation or
- 17 harassment; or
- 18 (d) prejudice a pending court proceeding.
- 19 (5) In circumstances mentioned in subsection (4), the relevant council
- 20 may—
- 21 (a) postpone giving the person the notice until it considers it is
- 22 appropriate to give the notice; or
- 23 (b) at its discretion—
- 24 (i) given written notice to the person of the general nature of
- 25 the complaint; and
- 26 (ii) if the relevant council considers that the person has
- 27 sufficient information to make submissions—tell the

1 person about the person's right to make submissions
2 within the reasonable period stated in the notice.

3 **398 Submissions by person about whom complaint made**

- 4 (1) The person about whom a complaint is made may, within the period
5 stated in the notice given to the person under section 397 (the
6 *permitted period*), make submissions to the relevant council about
7 the complaint, its subject matter or both.
- 8 (2) The relevant council may at its discretion extend the permitted
9 period.
- 10 (3) The relevant council must consider the submissions made within the
11 permitted period before deciding what action is to be taken in
12 relation to the complaint.

13 **399 Summary dismissal of complaints**

- 14 (1) The relevant council for a person about whom a complaint is made
15 may dismiss a complaint about the person if—
- 16 (a) further information is not given, or the complaint or further
17 information is not verified, as required by the council under
18 section 396 (Further information and verification—
19 complaints); or
- 20 (b) the complaint is vexatious, misconceived, frivolous or lacking
21 in substance; or
- 22 (c) the complaint was made more than 3 years after the conduct
23 complained of is alleged to have happened, unless a decision is
24 made under section 395 (2) (Complaints made more than
25 3 years after conduct) in relation to the complaint; or
- 26 (d) the conduct complained about has been the subject of a
27 previous complaint that has been dismissed; or

- 1 (e) the conduct complained about is the subject of another
2 complaint; or
- 3 (f) for a person who was an Australian legal practitioner—it is not
4 in the public interest to deal with the complaint having regard
5 to the fact that the name of the person has already been
6 removed from each Australian roll in which the person was
7 enrolled as a legal practitioner; or
- 8 (g) the complaint is not a complaint that the council has power to
9 deal with.
- 10 (2) The relevant council may dismiss a complaint under this section
11 without completing an investigation if, having considered the
12 complaint, the council forms the view that the complaint requires no
13 further investigation.
- 14 **400 Withdrawal of complaints**
- 15 (1) A complaint under this chapter may, subject to this section, be
16 withdrawn by the complainant.
- 17 (2) Withdrawal of a complaint may be made by oral or written
18 communication to the relevant council.
- 19 (3) If a complaint is withdrawn orally and the complaint was made by a
20 person other than a council, the relevant council must—
- 21 (a) make a written record of the withdrawal; and
- 22 (b) give the complainant a copy of the record, or send a copy of it
23 addressed to the complainant at the last address of the
24 complainant known to the council.
- 25 (4) Subsection (3) does not apply if the complainant has previously
26 given the relevant council written confirmation of the withdrawal.
- 27 (5) A complaint may be withdrawn even though the relevant council
28 has started or finished an investigation of the complaint, but cannot

- 1 be withdrawn if a proceeding in relation to the complaint has been
2 started in the disciplinary tribunal.
- 3 (6) If a complaint is made by a person other than a council, a further
4 complaint about the matter that is the subject of the withdrawn
5 complaint cannot be made unless the relevant council is satisfied
6 that it is appropriate to make a further complaint in the
7 circumstances.
- 8 (7) If a complaint is properly withdrawn, no further action may be taken
9 under this part in relation to the complaint, unless the relevant
10 council is satisfied that investigation or further investigation of the
11 complaint is justified in the particular circumstances.
- 12 (8) Withdrawal of a complaint does not prevent—
- 13 (a) a council making a complaint or further complaint about the
14 matter that is the subject of the withdrawn complaint (whether
15 or not after investigation or further investigation mentioned in
16 subsection (7)); or
- 17 (b) action being taken on any other complaint properly made in
18 relation to the matter.
- 19 (9) This section extends to the withdrawal of a complaint so far as it
20 relates to some only or part only of the matters that form the subject
21 of the complaint.

Part 4.3 Mediation

401 Mediation of complaints

- (1) If the relevant council for a person about whom a complaint is made considers that the complaint could be resolved by mediation, the council may suggest to the complainant and the person that they enter into a process of mediation.

Note The complaint may be withdrawn under s 400 if the matter is resolved by mediation.

- (2) This section does not apply to a complaint about an Australian legal practitioner if the relevant council considers that the practitioner would be likely to be found guilty of professional misconduct if a proceeding were started in the disciplinary tribunal in relation to the complaint.

- (3) This section extends to a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

- (4) This section does not require the relevant council to suggest a mediation.

402 Facilitation of mediation

- (1) If the complainant to a complaint about a person and the person agree to enter into a process of mediation in relation to the complaint, the relevant council may facilitate the mediation to the extent it considers appropriate.

- (2) This section does not require the relevant council to facilitate a mediation.

- 1 **403 Nature of mediation**
- 2 Mediation is not limited to formal mediation procedures and extends
- 3 to preliminary assistance in dispute resolution.
- 4 **Examples**
- 5 1 giving informal advice to ensure the parties are aware of their rights and
- 6 obligations
- 7 2 facilitating open communication between the parties about the complaint
- 8 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 9 does not limit, the meaning of the provision in which it appears (see
- 10 Legislation Act, s 126 and s 132).
- 11 **404 Admissibility of evidence and documents—mediation**
- 12 (1) The following are not admissible in any proceedings in a court or
- 13 before an entity authorised to hear and receive evidence:
- 14 (a) evidence of anything said or admitted during a mediation or
- 15 attempted mediation under this part of all or a part of the
- 16 matter that is subject of a complaint;
- 17 (b) a document prepared for the mediation or attempted mediation.
- 18 (2) This section does not apply to an agreement reached during
- 19 mediation.
- 20 **405 Protection of mediator from liability**
- 21 A mediator is not civilly liable for anything done or omitted to be
- 22 done honestly for the purpose of a mediation under this part.

Part 4.4 Investigation of complaints

406 Complaints to be investigated

- (1) A council must investigate each complaint properly made to it.
- (2) This section does not apply to—
 - (a) a complaint taken over or referred to the other council; or
 - (b) a complaint that is dismissed or withdrawn under this chapter; or
 - (c) a complaint to the extent that it is the subject of mediation under this chapter.

407 Appointment of investigator for complaint

The relevant council for a person may appoint a suitably qualified person to investigate a complaint about the person.

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

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

Note 3 An appointment may be made generally to apply for all complaints or for all complaints of a stated class or for a stated complaint (see Legislation Act, s 48).

408 Application of ch 6 to complaint investigations

Chapter 6 (Investigations) applies to an investigation under this part.

- 1 **409 Referral of matters for cost review—complaint**
2 **investigation**
- 3 (1) For investigating a complaint, the relevant council for an Australian
4 legal practitioner may refer a matter to the Supreme Court for
5 review of costs charged or claimed by the practitioner.
- 6 (2) The referral may be made outside the 60-day period mentioned in
7 section 294 (4) (Application by client for costs review).
- 8 (3) In deciding whether to refer a matter for review of costs, the
9 relevant council must consider whether the client was aware of the
10 client's right to apply for a review within the 60-day period and, if
11 the client was aware, whether the referral may cause significant
12 injustice to the legal practitioner.
- 13 (4) Subject to this section, division 3.2.7 (Costs review) applies to the
14 review of costs as if the relevant council were a client of the
15 practitioner.

Part 4.5 Decision of council

410 Decision of council after investigation

- (1) After finishing an investigation of a complaint against a person, the relevant council must—
- (a) dismiss the complaint under section 412; or
 - (b) take action under section 413 (Summary conclusion of complaint procedure by fine etc); or
 - (c) start a proceeding in the disciplinary tribunal under part 4.7.
- (2) This section does not affect section 400 (Withdrawal of complaints).

411 Decision of council without investigation

- (1) This section applies to a complaint against an Australian legal practitioner if the relevant council is satisfied that, having regard to the nature of the subject matter of the complaint and the reasonable likelihood that the practitioner will be found guilty by the disciplinary tribunal of either unsatisfactory professional conduct or professional misconduct, action should be taken under this section.
- (2) This section also applies to a complaint against an employee of a solicitor if the relevant council is satisfied that, having regard to the nature of the subject matter of the complaint and the reasonable likelihood that the employee will be found guilty by the disciplinary tribunal of unsatisfactory employee conduct, action should be taken under this section.
- (3) If this section applies to a complaint, the relevant council may start a proceeding in the disciplinary tribunal under part 4.7 in relation to the complaint without starting or finishing an investigation of the complaint.

412 Dismissal of complaint

- (1) After finishing an investigation of a complaint against an Australian legal practitioner, the relevant council may dismiss the complaint if satisfied that—
- (a) there is no reasonable likelihood that the practitioner will be found guilty by the disciplinary tribunal of either unsatisfactory professional conduct or professional misconduct; or
 - (b) it is in the public interest to dismiss the complaint.
- (2) After finishing an investigation of a complaint against an employee of a solicitor, the relevant council may dismiss the complaint if satisfied that there is no reasonable likelihood that the employee will be found guilty by the disciplinary tribunal of unsatisfactory employment conduct.

413 Summary conclusion of complaint procedure by fine etc

- (1) This section applies if the relevant council for an Australian legal practitioner—
- (a) completes an investigation of a complaint against the practitioner; and
 - (b) is satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the disciplinary tribunal of unsatisfactory professional conduct (but not professional misconduct); and
 - (c) is satisfied that the practitioner is generally competent and diligent and that no other material complaints have been made against the practitioner.
- (2) The relevant council may do all or any of the following:
- (a) caution the Australian legal practitioner;

- 1 (b) publicly reprimand the Australian legal practitioner or, if there
2 are special circumstances, privately reprimand the practitioner;
- 3 (c) make a compensation order under part 4.8 if the complainant
4 requested a compensation order in relation to the complaint;
- 5 (d) direct the practitioner to do all or any of the following:
- 6 (i) stop accepting, for a stated time, instructions in relation to
7 stated work;
- 8 (ii) stop employing a stated person in the practitioner's
9 practice;
- 10 (iii) undertake stated further legal education;
- 11 (iv) seek advice in relation to the management of the
12 practitioner's practice from a stated person;
- 13 (e) impose a fine on the practitioner of a stated amount.
- 14 (3) The maximum amount that can be imposed by way of fine is
15 \$1 500.
- 16 (4) A fine is payable to the relevant council in the way and within the
17 reasonable period required by the relevant council.
- 18 (5) If an amount is received by a council as complete or partial payment
19 of a fine imposed under this section, the council must pay the
20 amount into a statutory interest account.
- 21 (6) The Australian legal practitioner must not fail to pay a fine imposed
22 under this section in accordance with the requirements of the
23 relevant council.
- 24 (7) If action is taken under subsection (2), further action must not be
25 taken under this chapter in relation to the complaint.

1 **414 Record of decision of council about complaint**

- 2 (1) A council must make and keep a record of its decision in relation to
3 each complaint dealt with by it under this chapter.
- 4 (2) The record must include its reasons for the decision.

5 **415 Council to give reasons to complainant and practitioner**

6 If a complaint is made about a person, the complainant and the
7 person about whom the complaint is made are entitled to receive a
8 statement of reasons from the relevant council if any of the
9 following decisions are made by it:

- 10 (a) a decision to dismiss the complaint;
- 11 (b) a decision to start a proceeding in the disciplinary tribunal in
12 relation to the complaint;
- 13 (c) a decision to refer a matter to the Supreme Court under
14 section 409 (Referral of matters for cost review—complaint
15 investigation) in relation to the complaint;
- 16 (d) a decision to take action under section 413 (Summary
17 conclusion of complaint procedure by fine etc);
- 18 (e) a decision to omit, from the allegations particularised in an
19 application made by it to the disciplinary tribunal in relation to
20 the complaint, matter that was originally part of the complaint.

21 **416 Appeals to disciplinary tribunal against decisions of**
22 **relevant council**

- 23 (1) A complainant may appeal to the disciplinary tribunal against—
- 24 (a) a decision of the relevant council to dismiss the complaint
25 under section 412; or

- 1 (b) a decision of the relevant council to omit, from the allegations
2 particularised in an application made by it to the disciplinary
3 tribunal in relation to the complaint, matter that was originally
4 part of the complaint.
- 5 (2) A person about whom a complaint is made may appeal to the
6 disciplinary tribunal against a decision of the relevant council to
7 take action under section 413 (Summary conclusion of complaint
8 procedure by fine etc).
- 9 (3) The relevant council may appear as a party to the appeal.
- 10 (4) The disciplinary tribunal may make any order it considers
11 appropriate on the appeal.
- 12 (5) Without limiting subsection (4), the disciplinary tribunal may make
13 1 or more of the orders mentioned in section 430 (4) to (7).

Part 4.6 General procedural matters about complaints

417 Rules of procedural fairness and efficient dealing with complaints

- (1) The rules of procedural fairness, to the extent that they are not inconsistent with this Act, apply in relation to the investigation of complaints and the procedures of the councils under this chapter.

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

- (2) A council must deal with complaints as efficiently and quickly as practicable.

418 Complainant and person complained about to be told about action taken

- (1) If a complaint is made about a person, the relevant council must—
- (a) tell the complainant in writing that is has received the complaint; and
 - (b) tell the complainant and the person in writing about the action it has taken in relation to the complaint.
- (2) Without limiting subsection (1), the relevant council must tell the complainant and the person about whom the complaint is made, in writing, about any of the following decisions made by it:
- (a) a decision to dismiss the complaint;
 - (b) a decision to start a proceeding in the disciplinary tribunal in relation to the complaint;
 - (c) a decision to refer a matter to the Supreme Court under section 409 (Referral of matters for cost review—complaint investigation) in relation to the complaint;

- 1 (d) a decision to take action under section 413 (Summary
2 conclusion of complaint procedure by fine etc);
- 3 (e) a decision to omit, from the allegations particularised in an
4 application made by it to the disciplinary tribunal in relation to
5 the complaint, matter that was originally part of the complaint.
- 6 (3) For a decision by the relevant council to dismiss a complaint, the
7 right of the complainant to apply to the council for a review of the
8 decision must be included in the notice to the complainant.
- 9 (4) This section does not apply in relation to an official complaint.

Part 4.7 Proceedings in disciplinary tribunal

419 Application to disciplinary tribunal

- (1) The relevant council for an Australian legal practitioner may apply to the disciplinary tribunal in relation to a complaint against the practitioner.
- (2) The relevant council for an employee of a solicitor may apply to the disciplinary tribunal in relation to a complaint against the employee.
- (3) The application must include the charges of unsatisfactory professional conduct, professional misconduct or unsatisfactory employee conduct that the relevant council considers arise out of the complaint.

420 Hearings of disciplinary tribunal

- (1) The disciplinary tribunal must conduct a hearing into each allegation particularised in an application made to the tribunal in relation to a complaint.
- (2) The relevant council for the person about whom the complaint is made must tell the complainant in writing about the date set by the disciplinary tribunal to start hearing the application (the *hearing date*).
- (3) The relevant council must tell the complainant about the hearing date not later than 14 days before the hearing date.
- (4) Subsections (2) and (3) do not apply in relation to an official complaint.

1 **421 Joinder of complaint applications**

2 The disciplinary tribunal may, subject to its rules and the rules of
3 procedural fairness, order the joinder of more than 1 application
4 against the same or different people.

5 **422 Amendment of complaint application**

6 (1) The disciplinary tribunal may, on application by the relevant council
7 or on its own initiative, amend an application to omit allegations or
8 to include additional allegations, if satisfied that it is reasonable to
9 make the amendment having regard to all the circumstances.

10 (2) Without limiting subsection (1), in considering whether or not it is
11 reasonable to amend an application, the disciplinary tribunal must
12 have regard to whether amending the application will affect the
13 fairness of the proceeding.

14 (3) The disciplinary tribunal may amend an application to include an
15 additional allegation even though the alleged conduct—

- 16 (a) happened more than 3 years before the amendment is made; or
17 (b) has not been the subject of a complaint or investigation under
18 this chapter.

19 **423 Nature of allegations in complaint applications**

20 (1) An application to the disciplinary tribunal in relation to a complaint
21 cannot be challenged on the ground that the allegations contained in
22 the application do not deal with all of the matters raised in the
23 complaint or deal differently with matters raised in the complaint or
24 deal with additional matters.

25 (2) This section applies whether the allegations were included in the
26 application as made or were included by amendment of the
27 application.

- 1 **424 Application of rules of evidence to disciplinary tribunal**
- 2 The disciplinary tribunal is bound by the rules of evidence in
- 3 conducting a hearing under this part.
- 4 **425 Parties before disciplinary tribunal**
- 5 (1) The parties to a proceeding in the disciplinary tribunal in relation to
- 6 a complaint about an Australian legal practitioner are—
- 7 (a) the practitioner; and
- 8 (b) the relevant council.
- 9 (2) The parties to a proceeding in the disciplinary tribunal in relation to
- 10 a complaint about an employee of a solicitor are—
- 11 (a) the employee; and
- 12 (b) the relevant council.
- 13 (3) The parties are entitled to appear at the hearing in relation to the
- 14 complaint.
- 15 (4) The complainant is entitled to appear at the hearing in relation to—
- 16 (a) the aspects of the hearing that relate to a request by the
- 17 complainant for a compensation order under this chapter; and
- 18 (b) other aspects of the hearing for which the disciplinary tribunal
- 19 gives leave to the complainant to appear.
- 20 (5) The disciplinary tribunal may give leave to anyone else to appear at
- 21 the hearing if satisfied that it is appropriate for the person to appear
- 22 at the hearing.
- 23 (6) A person who is entitled to appear at the hearing or who is given
- 24 leave to appear at the hearing may appear personally or be
- 25 represented by an Australian legal practitioner or (with the
- 26 disciplinary tribunal's leave) by anyone else.

- 1 **426 Hearings of disciplinary tribunal open to public**
- 2 (1) A hearing under this part is to be open to the public, unless the
- 3 disciplinary tribunal directs that the hearing or a part of the hearing
- 4 is closed to the public.
- 5 (2) The disciplinary tribunal must not direct that a hearing or a part of a
- 6 hearing is closed to the public unless satisfied that it is desirable to
- 7 make the direction in the public interest for reasons connected
- 8 with—
- 9 (a) the subject matter of the hearing; or
- 10 (b) the nature of the evidence to be given.
- 11 (3) The disciplinary tribunal may adjourn a proceeding for any reason
- 12 the tribunal considers appropriate.
- 13 **427 Disciplinary tribunal power to disregard procedural**
- 14 **lapses**
- 15 (1) The disciplinary tribunal may order that a failure by the relevant
- 16 council to observe a procedural requirement in relation to a
- 17 complaint is to be disregarded if satisfied that the parties to the
- 18 hearing have not been prejudiced by the failure.
- 19 (2) This section applies to a failure that happened before the proceeding
- 20 was started in the disciplinary tribunal in relation to the complaint as
- 21 well as to a failure happening afterwards.
- 22 **428 Powers of disciplinary tribunal in relation to witnesses**
- 23 (1) The disciplinary tribunal may, by written notice given to a person,
- 24 require the person to appear before the tribunal at a hearing, at a
- 25 stated time and place, to do either or both of the following:
- 26 (a) to give evidence;
- 27 (b) to produce a stated document or other thing relevant to the
- 28 hearing.
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- 1 (2) A judicial member of the tribunal may require a witness appearing
2 before the tribunal at a hearing to give evidence to do 1 or more of
3 the following:
- 4 (a) to take an oath;
- 5 (b) to answer a question relevant to the hearing;
- 6 (c) to produce a stated document or other thing relevant to the
7 hearing.
- 8 *Note 1* **Oath** includes affirmation and **take** an oath includes make an
9 affirmation (see Legislation Act, dict, pt 1).
- 10 *Note 2* The Legislation Act, s 170 and s 171 deal with the application of the
11 privilege against selfincrimination and client legal privilege.
- 12 **429 Member of tribunal unavailable to continue hearing**
- 13 (1) This section applies if, before the disciplinary tribunal constituted
14 by 3 members has finished a hearing, 1 of the members constituting
15 the tribunal stops being a member of the tribunal or stops being
16 available for the hearing.
- 17 (2) If the member is a non-judicial member, the hearing may continue
18 before the disciplinary tribunal constituted by the 2 remaining
19 members if the parties to the proceeding agree.
- 20 (3) If the member is the judicial member, or the parties do not agree to
21 the continuation of the hearing, the proceeding must be reheard by a
22 reconstituted disciplinary tribunal.
- 23 (4) If the proceeding is reheard, the disciplinary tribunal may, for the
24 purposes of the proceeding, have regard to any record of the
25 proceeding before the tribunal as previously constituted, including a
26 record of any evidence taken.

430 Decisions of disciplinary tribunal—unsatisfactory professional conduct or professional misconduct

- (1) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an Australian legal practitioner, the tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the tribunal may make any order it considers appropriate.
- (2) Without limiting subsection (1), the disciplinary tribunal may make 1 or more of the orders mentioned in subsections (4) to (7).
- (3) If, after the disciplinary tribunal has finished a hearing under this part in relation to a complaint against an Australian legal practitioner, the tribunal is not satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the tribunal must dismiss the complaint.
- (4) The disciplinary tribunal may make the following orders in relation to the Australian legal practitioner:
- (a) an order recommending that the name of the practitioner be removed from the local roll;
 - (b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;
 - (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;
 - (d) an order that—
 - (i) stated conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and
 - (ii) the conditions be imposed for a stated period; and

- 1 (iii) states the time (if any) after which the practitioner may
2 apply to the tribunal for the conditions to be amended or
3 removed;
- 4 (e) an order publicly reprimanding the practitioner or, if there are
5 special circumstances, privately reprimanding the practitioner.
- 6 (5) The disciplinary tribunal may make the following orders in relation
7 to the Australian legal practitioner:
- 8 (a) an order recommending that the name of the practitioner be
9 removed from an interstate roll;
- 10 (b) an order that the practitioner's interstate practising certificate
11 be suspended for a stated period or cancelled;
- 12 (c) an order recommending that an interstate practising certificate
13 not be granted to the practitioner before the end of a stated
14 period;
- 15 (d) an order recommending that—
- 16 (i) stated conditions be imposed on the practitioner's
17 interstate practising certificate; and
- 18 (ii) the conditions be imposed for a stated period; and
- 19 (iii) the time (if any) after which the practitioner may apply to
20 the tribunal for the conditions to be amended or removed.
- 21 (6) The disciplinary tribunal may make the following orders in relation
22 to the Australian legal practitioner:
- 23 (a) an order that the practitioner pay a fine of a stated amount of
24 not more than the amount mentioned in subsection (9);
- 25 (b) an order that the practitioner undertake and complete a stated
26 course of further legal education;
- 27 (c) an order that the practitioner undertake a stated period of
28 practice under stated supervision;

- 1 (d) an order that the practitioner do or not do something in relation
2 to the practice of law;
- 3 (e) an order that the practitioner cease to accept instructions as a
4 public notary in relation to notarial services;
- 5 (f) an order that the practitioner's practice be managed for a stated
6 period in a stated way or subject to stated conditions;
- 7 (g) an order that the practitioner's practice be subject to periodic
8 inspection by a stated person for a stated period;
- 9 (h) an order that the practitioner seek advice in relation to the
10 management of the practitioner's practice from a stated person;
- 11 (i) an order that the practitioner not apply for a local practising
12 certificate before the end of a stated period.
- 13 (7) The disciplinary tribunal may make ancillary or other orders,
14 including an order for payment by the Australian legal practitioner
15 of expenses associated with orders under subsection (5), as assessed
16 or reviewed in or in accordance with the order or as agreed.
- 17 (8) The disciplinary tribunal may find a person guilty of unsatisfactory
18 professional conduct even though the complaint or charge alleged
19 professional misconduct.
- 20 (9) The maximum amount that can be imposed by way of fine is—
- 21 (a) for a finding of unsatisfactory professional conduct that does
22 not amount to professional misconduct—\$10 000; and
- 23 (b) for a finding of professional misconduct—\$75,000; and
- 24 (c) for a finding of professional misconduct and unsatisfactory
25 professional conduct not amounting to professional
26 misconduct—\$75,000.
- 27 (10) A fine is payable to the relevant council in the way and within the
28 reasonable period required by the relevant council.
-

- 1 (11) If an amount is received by a council as complete or partial payment
2 of a fine imposed under this section, the council must pay the
3 amount into a statutory interest account.

4 **431 Decisions of disciplinary tribunal—unsatisfactory**
5 **employment conduct**

- 6 (1) If, after the disciplinary tribunal has finished a hearing under this
7 part in relation to a complaint against an employee of a solicitor, the
8 tribunal is satisfied that the employee is guilty of unsatisfactory
9 employment conduct, the tribunal may make 1 or more of the
10 following orders:

11 (a) an order that, after a stated date, no solicitor employ or
12 otherwise remunerate the employee in relation to the solicitor's
13 practice as a solicitor except with the approval of the law
14 society council;

15 (b) an order under section 438 (Compensation orders) against the
16 solicitor who employed the employee;

17 (c) an order publicly reprimanding the solicitor who employed the
18 employee or, if there are special circumstances, privately
19 reprimanding the solicitor.

- 20 (2) If, after the disciplinary tribunal has finished a hearing under this
21 part in relation to a complaint against an employee of a solicitor, the
22 tribunal is not satisfied that the practitioner is guilty of
23 unsatisfactory employment conduct, the tribunal must dismiss the
24 complaint.

25 **432 Interlocutory and interim orders of disciplinary tribunal**

- 26 (1) The disciplinary tribunal may make interlocutory or interim orders
27 that it considers appropriate before making its final decision about a
28 complaint.

- 1 (2) Without limiting subsection (1), orders of the kinds mentioned in
2 section 430 (Decisions of disciplinary tribunal—unsatisfactory
3 professional conduct or professional misconduct) may be made as
4 interlocutory or interim orders.

5 **433 Compliance with decisions and orders of disciplinary**
6 **tribunal**

- 7 (1) Entities with relevant functions under this Act must—

- 8 (a) give effect to the following orders:

- 9 (i) any order of the disciplinary tribunal made under
10 section 430 (4) (Decisions of disciplinary tribunal—
11 unsatisfactory professional conduct or professional
12 misconduct);

13 *Note* Section 430 (4) is about orders requiring official
14 implementation in the ACT.

- 15 (ii) any interlocutory or interim order of the disciplinary
16 tribunal made under section 432 (Interlocutory and
17 interim orders of disciplinary tribunal) so far as it is an
18 order of the kind mentioned in section 430 (4) or
19 otherwise needs to be, or can be, given effect to in the
20 ACT; and

- 21 (b) enforce the following orders (to the extent that they relate to an
22 Australian legal practitioner's practice of law in the ACT):

- 23 (i) any order of the disciplinary tribunal made under
24 section 430 (6);

25 *Note* Section 430 (6) is about orders requiring compliance by
26 practitioners.

- 27 (ii) any interlocutory or interim order of the disciplinary
28 tribunal made under section 432 so far as it is an order of
29 the kind mentioned in section 430 (6) or otherwise needs
30 to be, or can be, enforced in the ACT; and

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- 1 (c) enforce any order (to the extent that it relates to a solicitor's
2 practice as a solicitor in the ACT) of the disciplinary tribunal
3 made under section 431 (1) (a) or (b) (Decisions of disciplinary
4 tribunal—unsatisfactory employment conduct).
- 5 *Note* Section 456 (Compliance with disciplinary recommendations or orders
6 made under corresponding laws) contains provisions relating to
7 compliance in the ACT with orders made under corresponding laws.
- 8 (2) The relevant council for an Australian legal practitioner must ensure
9 that entities with relevant functions under a corresponding law of
10 another jurisdiction are told about the making and contents of—
- 11 (a) the following orders in relation to the practitioner:
- 12 (i) an order of the disciplinary tribunal made under
13 section 430 (5) in relation to the corresponding law;
- 14 *Note* Section 430 (5) is about orders requiring official
15 implementation in another jurisdiction.
- 16 (ii) any interlocutory or interim order of the disciplinary
17 tribunal made under section 431 so far as it is an order of
18 the kind mentioned in section 430 (5) or otherwise needs
19 to be, or can be, given effect to in the other jurisdiction;
20 and
- 21 (b) the following orders (to the extent that they relate to the
22 practitioner's practice of law in the other jurisdiction):
- 23 (i) an order of the disciplinary tribunal made under
24 section 430 (6);
- 25 *Note* Section 430 (6) is about orders requiring compliance by
26 practitioners.
- 27 (ii) any interlocutory or interim order of the disciplinary
28 tribunal made under section 431 so far as it is an order of
29 the kind mentioned in section 430 (6) or otherwise needs
30 to be, or can be, enforced in the other jurisdiction.

- 1 (3) If the disciplinary tribunal makes an order recommending that the
2 name of an Australian legal practitioner who is a local lawyer be
3 removed from the local roll, the Supreme Court may order the
4 removal of the name from the roll.
- 5 (4) If the disciplinary tribunal makes an order that an Australian legal
6 practitioner pay a fine, a copy of the order may be filed in the
7 Supreme Court and the order may be enforced as if it were an order
8 of the court.

9 **434 Costs orders by disciplinary tribunal**

- 10 (1) If the disciplinary tribunal finds an Australian legal practitioner
11 guilty of unsatisfactory professional conduct or professional
12 misconduct, the tribunal must order the practitioner to pay costs
13 (including costs of the relevant council and the complainant), unless
14 the disciplinary tribunal is satisfied that exceptional circumstances
15 exist.
- 16 (2) Even though the disciplinary tribunal does not find an Australian
17 legal practitioner guilty of unsatisfactory professional conduct or
18 professional misconduct, the tribunal may order the practitioner to
19 pay costs (including costs of the relevant council and the
20 complainant), if satisfied that—
- 21 (a) the only or main reason why the proceeding was started in the
22 disciplinary tribunal was a failure of the practitioner to
23 cooperate with a council; or
- 24 (b) there is some other reason justifying the making of an order in
25 the particular circumstances.
- 26 (3) The disciplinary tribunal may make orders requiring the relevant
27 council for an Australian legal practitioner to pay costs, but may do
28 so only if satisfied that the practitioner is not guilty of unsatisfactory
29 professional conduct or professional misconduct and the tribunal
30 considers that special circumstances justify the making of the
31 orders.

- 1 (4) The disciplinary tribunal may make orders requiring an Australian
2 legal practitioner in relation to whom a proceeding is pending before
3 the tribunal to pay costs on a interlocutory or interim basis.

4 *Note* Alternatively, the tribunal could order that costs be payable from a
5 particular fund (eg a public purpose fund) in these circumstances.

- 6 (5) An order for costs—
7 (a) may be for a stated amount; or
8 (b) may be for an unstated amount but must state the basis on
9 which the amount is to be decided.
10 (6) An order for costs may state the terms on which costs must be paid.

11 **435 Notification of result of proceeding before disciplinary**
12 **tribunal**

- 13 (1) The applicant in a disciplinary proceeding before the disciplinary
14 tribunal must tell the complainant in writing about the disciplinary
15 tribunal's decision.
16 (2) This section does not apply in relation to an official complaint.

17 **436 Pt 4.7 does not affect other remedies of complainant**

18 This part does not affect any other remedy available to a
19 complainant.

Part 4.8 Compensation

437 Meaning of *compensation order* for pt 4.8

In this part:

compensation order means an order mentioned in section 438.

438 Compensation orders

- (1) A compensation order is an order, made in relation to a complaint, for an Australian legal practitioner to compensate the complainant for loss suffered because of conduct that is the subject of the complaint.

Note An order may be made against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory employment conduct)).

- (2) A compensation order against an Australian legal practitioner consists of 1 or more of the following:

- (a) an order that the practitioner cannot recover or must repay all or a stated part of the amount charged to the complainant by the practitioner in relation to stated legal services;
- (b) an order discharging a lien of the practitioner in relation to a stated document;
- (c) an order that the practitioner pay a stated amount to the complainant by way of financial compensation for the loss.

- (3) A compensation order under subsection (2) (a) preventing recovery of an amount is effective even if a proceeding to recover the amount (or any part of it) has been started by or on behalf of the Australian legal practitioner.

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- 1 (4) A compensation order under subsection (2) (a) requiring repayment
2 of an amount is effective even if a court has ordered payment of the
3 amount (or an amount of which it is part) in a proceeding brought by
4 or on behalf of the Australian legal practitioner.
- 5 (5) A compensation order under subsection (2) (c) requiring payment of
6 more than \$10 000 by way of financial compensation must not be
7 made unless the complainant and the practitioner both consent to the
8 order.

9 **439 When compensation order can be made**

- 10 (1) Unless the complainant to a complaint and the Australian legal
11 practitioner against whom a compensation order is made in relation
12 to the complaint agree, a compensation order must not be made
13 unless the entity making the order is satisfied that—
- 14 (a) the complainant has suffered loss because of the conduct the
15 subject of the complaint; and
- 16 (b) it is in the interests of justice that the order be made.
- 17 *Note* A compensation order may be made against a solicitor in relation to a
18 complaint about unsatisfactory employment conduct of an employee of
19 the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory
20 employment conduct)).
- 21 (2) A compensation order must not be made in relation to any loss for
22 which the complainant has received or is entitled to receive—
- 23 (a) compensation received or receivable under an order that has
24 been made by a court; or
- 25 (b) compensation paid or payable from a fidelity fund of any
26 jurisdiction, if a relevant claim for payment from the fund has
27 been made or decided.

1 **440 Making of compensation orders**

2 (1) The disciplinary tribunal may make a compensation order if it has
3 found a person guilty of unsatisfactory professional conduct,
4 professional misconduct or unsatisfactory employment conduct in
5 relation to the complaint.

6 (2) A person against whom a compensation order is made must comply
7 with the order.

8 **441 Enforcement of compensation orders**

9 A copy of a compensation order may be filed in the Supreme Court
10 and the order (so far as it relates to any amount payable under the
11 order) may be enforced as if it were an order of the court.

12 **442 Other remedies not affected by compensation order**

13 The recovery of compensation ordered under this part does not
14 affect any other remedy available to a complainant, but any
15 compensation ordered under this part must be taken into account in
16 any other proceeding by or on behalf of the complainant in relation
17 to the same loss.

Part 4.9 Publicising disciplinary action

443 Definitions—pt 4.9

In this part:

disciplinary action means—

- (a) the making of an order by a court or tribunal for or following a finding of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner under this Act or under a corresponding law; or
- (b) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner:
 - (i) removal of the name of the practitioner from an Australian roll;
 - (ii) the suspension or cancellation of the Australian practising certificate of the practitioner;
 - (iii) the refusal to grant an Australian practising certificate to the practitioner;
 - (iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager of the practitioner's practice; or
- (c) the making of an order by a court or tribunal for or following a finding of unsatisfactory employment conduct by an employee of a solicitor under this Act.

register of disciplinary action—see section 444.

444 Register of disciplinary action

- (1) There is to be a register (the *register of disciplinary action*) of—
- (a) disciplinary action taken under this Act against Australian legal practitioners; and
 - (b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in the ACT when the conduct that is the subject of the disciplinary action happened; and
 - (c) disciplinary action taken under this Act against the employee of a solicitor.
- Note* Action may be taken against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 431 (Decisions of disciplinary tribunal—unsatisfactory employment conduct)).
- (2) The register must include—
- (a) the full name of the person against whom the disciplinary action was taken; and
 - (b) the person's business address or former business address; and
 - (c) the person's home jurisdiction or most recent home jurisdiction; and
 - (d) particulars of the disciplinary action taken; and
 - (e) other particulars prescribed by regulation.
- (3) For disciplinary action taken against an Australian legal practitioner, the register may also include the date and jurisdiction of the person's first and any later admission to the legal profession.
- (4) The register may be kept in a form decided by the licensing body and may form part of other registers.

- 1 (5) The register must be available for public inspection on—
2 (a) the internet site of the licensing body; or
3 (b) an internet site identified on the internet site of the licensing
4 body.
5 (6) Information in the register may be provided to members of the
6 public in any other way approved by the licensing body.
7 (7) The licensing body may correct an error or omission in the register.
8 (8) The requirement to keep the register applies only in relation to
9 disciplinary action taken after the commencement of this section,
10 but details relating to earlier disciplinary action may be included in
11 the register.

12 **445 Other ways of publicising disciplinary action**

- 13 (1) The relevant council for an Australian legal practitioner or an
14 employee of a solicitor may publicise disciplinary action taken
15 against the practitioner or employee in any way the council
16 considers appropriate.
17 (2) This section does not affect the provisions of this part about the
18 register of disciplinary action.

19 **446 Quashing of disciplinary action**

- 20 (1) If disciplinary action against a person is quashed (however
21 described) on appeal or review, any reference to the disciplinary
22 action must be removed from the register of disciplinary action.
23 (2) If disciplinary action against a person is quashed (however
24 described) on appeal or review after the action was publicised by the
25 relevant council under section 445, the result of the appeal or review
26 must be publicised with equal prominence by the council.

447 Protection against liability for publicising disciplinary action

- (1) A protected person is not civilly liable for anything done or omitted to be done honestly and without recklessness—
- (a) for the purpose of publicising disciplinary action taken against a person; or
 - (b) for the purpose of keeping, publishing or enabling access to the register of disciplinary action; or
 - (c) in the exercise of a function of the licensing body or relevant council under this part; or
 - (d) in the reasonable belief that the act or omission was in the exercise of a function of the licensing body or relevant council under this part.
- (2) Without limiting subsection (1), a person is not civilly liable for publishing honestly and without recklessness—
- (a) information about disciplinary action—
 - (i) recorded in the register of disciplinary action; or
 - (ii) otherwise publicised by the relevant council under this part; or
 - (b) matter purporting to contain information mentioned in paragraph (a); or
 - (c) a fair report of information mentioned in paragraph (a) or matter mentioned in paragraph (b).
- (3) In this section:
- protected person*** means—
- (a) the Territory; or
 - (b) a council; or

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- 1 (c) a person responsible for keeping the register of disciplinary
2 action or any part of it; or
- 3 (d) an internet service provider or internet content host; or
- 4 (e) a public employee or statutory office-holder or a member of
5 the staff of an entity mentioned in this definition; or
- 6 (f) a person acting at the direction of an entity mentioned in this
7 definition.

8 **448 Disciplinary action taken because of infirmity, injury or**
9 **illness**

- 10 (1) Disciplinary action taken against a person because of infirmity,
11 injury or mental or physical illness must not be recorded in the
12 register of disciplinary action or otherwise publicised under this
13 part.
- 14 (2) Subsection (1) does not apply if the disciplinary action involves—
- 15 (a) the suspension or cancellation of the person's Australian
16 practising certificate; or
- 17 (b) a refusal to grant an Australian practising certificate to the
18 person or to renew the person's Australian practising
19 certificate; or
- 20 (c) a restriction or prohibition on the person's right to engage in
21 legal practice.
- 22 (3) However, if subsection (2) applies to the disciplinary action, the
23 reason for the disciplinary action, and any other information about
24 the infirmity, injury or mental or physical illness, must not be
25 recorded in the register of disciplinary action or otherwise
26 publicised under this part without the person's consent.

449 Pt 4.9 subject to certain confidentiality provisions

This part is subject to the following provisions:

- • section 248 (Confidentiality by external examiners)
- • section 515 (Confidentiality by external interveners)
- • section 553 (Permitted disclosure of confidential information—ch 6)
- • section 592 (Confidentiality of personal information).

Note Section 592 provides that that section does not apply to the disclosure of information under this part.

450 Pt 4.9 subject to court and tribunal orders

(1) This part is subject to any order made by—

- (a) the disciplinary tribunal in relation to disciplinary action taken under this chapter; or
- (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this chapter; or
- (c) a court or tribunal of the ACT or another jurisdiction;

so far as the order prohibits or restricts the disclosure of information.

(2) However, the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the register of disciplinary action in accordance with the requirements of this part and may be otherwise publicised under this part.

Part 4.10 **Inter-jurisdictional provisions—**
ch 4

451 **Protocols for ch 4**

- (1) The councils may, separately or jointly, enter into arrangements (the *protocols*) with corresponding authorities in relation to investigating and dealing with conduct that appears to have happened in more than 1 jurisdiction.
- (2) In particular, the protocols may make provision in relation to—
 - (a) providing principles to assist in deciding where conduct happens; and
 - (b) giving and receiving consent for conduct happening in a jurisdiction to be dealt with under a law of another jurisdiction; and
 - (c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this part.
- (3) A protocol is a notifiable instrument.

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

452 **Request to another jurisdiction to investigate complaint**

- (1) A council may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the council and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from—
 - (a) the corresponding authority; or

- 1 (b) an entity authorised by the corresponding authority to conduct
2 the investigation;
3 may be used and taken into consideration by a council and the
4 disciplinary tribunal in dealing with the complaint under this
5 chapter.

6 **453 Request from another jurisdiction to investigate**
7 **complaint**

- 8 (1) This section applies in relation to a request received by a council
9 from a corresponding authority to arrange for the investigation of
10 any aspect of a complaint being dealt with under a corresponding
11 law.
12 (2) The council may conduct the investigation or authorise another
13 entity to conduct it.
14 (3) The provisions of this part relating to the investigation of a
15 complaint apply, with necessary changes, in relation to the
16 investigation of the relevant aspect of the complaint that is the
17 subject of the request.
18 (4) The council or other entity must provide a report on the result of the
19 investigation to the corresponding authority.

20 **454 Sharing of information with corresponding authorities**

21 A council may enter into arrangements with a corresponding
22 authority for providing information to the corresponding authority
23 about—

- 24 (a) complaints made under this chapter; and
25 (b) any action taken in relation to any complaints made under this
26 chapter, including decisions of the disciplinary tribunal under
27 this chapter in relation to any complaints.

1 **455 Cooperation with corresponding authorities**

- 2 (1) In dealing with a complaint, a council may consult and cooperate
3 with another entity with functions under a corresponding law in
4 relation to the person against whom the complaint was made.
- 5 (2) For subsection (1), the council and the other entity may exchange
6 information about the complaint or complaints.

7 **456 Compliance with disciplinary recommendations or orders**
8 **made under corresponding laws**

- 9 (1) Entities with relevant functions under this Act must—
- 10 (a) give effect to or enforce any recommendation or order of a
11 corresponding disciplinary body or other corresponding
12 authority made under a corresponding law in relation to
13 functions exercisable under this Act; and
- 14 (b) give effect to or enforce any recommendation or order of a
15 corresponding disciplinary body or other corresponding
16 authority made under a corresponding law so far as the
17 recommendation or order relates to the practice of law by an
18 Australian legal practitioner, or the employment of a person by
19 a solicitor, in the ACT.
- 20 (2) If a corresponding disciplinary body makes a recommendation or
21 order that a person's name be removed from the roll of lawyers
22 under this Act, the Supreme Court must order the removal of the
23 name from the local roll.
- 24 (3) If a corresponding disciplinary body makes a recommendation or
25 order that an Australian legal practitioner pay a fine, a copy of the
26 recommendation or order may be filed in the Supreme Court and the
27 recommendation or order may be enforced as if it were an order of
28 the court.

- 1 **457** **Pt 4.10 does not affect other functions**
- 2 This part does not affect any functions that an entity has apart from
- 3 this part.

Part 4.11 Miscellaneous—ch 4

458 Jurisdiction of Supreme Court not affected

The inherent jurisdiction and powers of the Supreme Court in relation to the control and discipline of local lawyers are not affected by anything in this chapter, and extend to—

- (a) local legal practitioners; and
- (b) interstate legal practitioners engaged in legal practice in the ACT.

459 Information about complaints procedure

(1) Each council must—

- (a) produce information about the making of complaints and the procedure for dealing with complaints; and
- (b) ensure that the information is available to members of the public on request.

(2) A council may advise members of the public about the complaints process.

460 Failure to comply with disciplinary orders

- (1) If an order of the disciplinary tribunal is made under this Act against a person, or an order of a corresponding disciplinary body is made under a corresponding law against a person, the person must comply with the order.
- (2) If an Australian legal practitioner fails to comply with an order of the disciplinary tribunal under this Act or an order of a corresponding disciplinary body under a corresponding law, the legal practitioner is not entitled to apply for the grant or renewal of a local practising certificate while the failure continues.

1 **461 Procedures for handling of complaints**

2 Each council must develop and publish procedures and information
3 material relating to the handling of complaints under this chapter.

4 **462 Reports to Minister about handling of complaints**

5 (1) A council must give the Minister, at the times and in relation to the
6 periods required by the Minister, reports on the handling of
7 complaints.

8 (2) A report is to deal with matters required by the Minister and other
9 matters the council considers appropriate to include in the report.

10 (3) The obligations under this section are in addition to any obligations
11 to provide an annual or other report under any other law.

12 **463 Duty of council to report suspected offences**

13 (1) This section applies if a council suspects on reasonable grounds,
14 after investigation or otherwise, that a person has committed a
15 serious offence.

16 (2) The council must—

17 (a) report the suspected offence to the chief police officer or other
18 appropriate prosecuting authority; and

19 (b) make available to the chief police officer or authority the
20 information and documents relevant to the suspected offence in
21 its possession or under its control.

22 (3) The obligation under subsection (2) (b) continues while the council
23 holds the relevant suspicion.

24 (4) In this section:

25 *serious offence* means an offence—

26 (a) for an offence committed in Australia—that is punishable by
27 imprisonment for at least 1 year; or

- 1 (b) for an offence committed outside Australia—that would be, if
2 it had been committed in the ACT, punishable by
3 imprisonment for at least 1 year.

4 **464 Protection for things done in administration of ch 4**

- 5 (1) A protected person is not civilly liable for anything done or omitted
6 to be done honestly and without recklessness—

- 7 (a) for the purposes of the administration of this chapter; or
8 (b) in the exercise of a function under this chapter (other than in
9 the exercise of a function of a council under part 4.9
10 (Publicising disciplinary action)); or

11 *Note* Section 447 provides protection for the exercise of functions
12 under pt 4.9.

- 13 (c) in the reasonable belief that the act or omission was in the
14 exercise of a function under this chapter (other than in the
15 exercise of a function of the licensing body under part 4.9).

- 16 (2) In this section:

17 *protected person* means—

- 18 (a) the bar association or law society; or
19 (b) a council or any member of a council; or
20 (c) a committee or subcommittee of a council or any member of a
21 committee or subcommittee; or
22 (d) anyone involved in the conduct of an investigation under this
23 chapter; or
24 (e) the disciplinary tribunal or any member of the disciplinary
25 tribunal; or
26 (f) the registrar of the disciplinary tribunal; or
27 (g) a mediator to whom a matter is referred under this chapter; or

- 1 (h) any member of the staff of any entity mentioned in
2 paragraph (a) to (f).

3 **465 Non-compellability of certain witnesses**

- 4 (1) A protected person under section 464 is not compellable in any legal
5 proceeding (including a proceeding before the disciplinary tribunal)
6 to give evidence or produce documents in relation to any matter in
7 which the person was involved in the course of the administration of
8 this chapter.
- 9 (2) This section does not apply in relation to—
- 10 (a) an inquiry under the *Inquiries Act 1991*; or
- 11 (b) the investigation of a complaint under the *Ombudsman Act*
12 *1989*; or
- 13 (c) an inquiry under the *Royal Commissions Act 1991*.

14 **466 Confidentiality of client communications for ch 4**

15 An Australian legal practitioner must comply with a requirement
16 under this chapter to answer a question or to produce information or
17 a document, despite any duty of confidentiality in relation to a
18 communication between the practitioner and a client.

19 **467 Selfincrimination and other privileges overridden for ch 4**
20 **proceedings**

- 21 (1) This section applies despite the Legislation Act, part 15.4
22 (Preservation of certain common law privileges) if a person is
23 required by the disciplinary tribunal to disclose anything in a
24 proceeding before the disciplinary tribunal under this chapter.

- 1 (2) The person is not excused from the disclosure because—
- 2 (a) the disclosure might tend to incriminate the person or make the
- 3 person liable to a penalty, or the person's property liable to
- 4 forfeiture, under this Act or another territory law; or
- 5 (b) the disclosure would be in breach of an obligation (whether
- 6 imposed by law or otherwise) of the person not to make the
- 7 disclosure.
- 8 **Example—client legal privilege**
- 9 A person is not excused from disclosing a document because to do so would be in
- 10 breach of an obligation by a lawyer to a client not to disclose the existence or
- 11 contents of the document.
- 12 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 13 does not limit, the meaning of the provision in which it appears (see
- 14 Legislation Act, s 126 and s 132).
- 15 (3) However, the disclosure is inadmissible against the person making
- 16 the disclosure in a civil or criminal proceeding except—
- 17 (a) in a criminal proceeding in relation to giving false or
- 18 misleading documents, information or testimony; or
- 19 (b) in a proceeding on an application under this Act; or
- 20 (c) a proceeding resulting from a report or disclosure under
- 21 section 463 (Duty of council to report suspected offences).
- 22 (d) for a document—in a civil proceeding in relation to a right or
- 23 liability it gives or imposes.
- 24 (4) A proceeding does not lie against a person because of the disclosure
- 25 if it is in breach of an obligation the person would otherwise have
- 26 (whether imposed by law or applying otherwise).

- 1 (5) In this section:
2 *disclosure*, by a person, includes—
3 (a) the person answering a question or giving testimony or
4 information to someone else; and
5 (b) the person giving or producing a statement, document or
6 anything else to someone else.

7 **468 Waiver of privilege or duty of confidentiality**

- 8 (1) If a client of an Australian legal practitioner makes a complaint
9 about the practitioner, or an employee of the practitioner, the
10 complainant is taken to have waived client legal privilege, or the
11 benefit of any duty of confidentiality, to enable the practitioner to
12 disclose to the appropriate authorities any information necessary for
13 investigating and dealing with the complaint.
14 (2) Without limiting subsection (1), any information disclosed under
15 that subsection may be used in or in relation to any procedures or
16 proceedings relating to the complaint.
17 (3) This section has effect despite the Legislation Act, section 171
18 (Client legal privilege).

Chapter 5 External intervention

Part 5.1 Preliminary—ch 5

469 Definitions—ch 5

(1) In this chapter:

external intervener means a supervisor, manager or receiver appointed for a legal practice under this chapter.

external intervention means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under this chapter.

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

- (a) trust money or trust property received, receivable or held by the practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a);
- (c) documents or records of any description relating to anything mentioned in paragraph (a) or (b);
- (d) any means by which any records mentioned in paragraph (c) that are not written may be reproduced in writing.

(2) Other terms used in this chapter have the same meanings as in part 3.1 (Trust money and trust accounts).

1 **470 Purpose—ch 5**

- 2 (1) The purposes of this chapter are as follows:
- 3 (a) to ensure that an appropriate range of options is available for
- 4 intervention in the business and professional affairs of lawyers
- 5 (including foreign lawyers) for the purpose of protecting the
- 6 interests of—
- 7 (i) the general public; and
- 8 (ii) clients; and
- 9 (iii) lawyers, including the owners and employees of law
- 10 practices, so far as their interests are not inconsistent with
- 11 the interests of the general public and clients;
- 12 (b) to ensure that interventions happen in a way that minimises
- 13 adverse consequences for the lawyers concerned and their
- 14 clients.
- 15 (2) It is intended that interventions happen consistently with—
- 16 (a) similar interventions in other jurisdictions, especially if a law
- 17 practice operates in the ACT and 1 or more other jurisdictions;
- 18 and
- 19 (b) other provisions of this Act.

20 **471 Application of ch 5—incorporated law practices etc**

- 21 (1) This chapter applies to all law practices, irrespective of whether they
- 22 are incorporated under the Corporations Act.
- 23 (2) This chapter is intended to apply so that it, rather than the
- 24 Corporations Act or the *Bankruptcy Act 1966* (Cwlth), applies in
- 25 relation to the winding up of trust property and in relation to the
- 26 carrying on of a law practice by external intervention.
- 27 (3) This section is subject to section 472.

1 **472 Application of ch 5 to barristers**

2 (1) Part 5.3 (Supervisors) and part 5.5 (Receivers) do not apply to the
3 law practice of a barrister.

4 (2) This chapter applies to the law practice of a barrister as if the
5 powers of the manager for a law practice of a barrister included
6 power to reallocate or return briefs.

7 **473 Application of ch 5 to Australian-registered foreign**
8 **lawyers**

9 This chapter applies, with necessary changes, to Australian-
10 registered foreign lawyers in the same way as it applies to law
11 practices.

12 **474 Application of ch 5 to other people**

13 This chapter applies to the following, with necessary changes, in the
14 same way as it applies to law practices:

- 15 (a) a former law practice or former Australian legal practitioner;
- 16 (b) the executor (original or by representation) or administrator for
17 the time being of a deceased Australian legal practitioner or of
18 his or her estate;
- 19 (c) the administrator, or receiver, or receiver and manager of the
20 property of an incorporated legal practice;
- 21 (d) the liquidator of an incorporated legal practice that is being or
22 has been wound up.

Part 5.2 Initiation of external intervention

475 Circumstances justifying external intervention

External intervention may take place in relation to a law practice in any of the following circumstances:

- (a) if a legal practitioner associate involved in the practice—
 - (i) has died; or
 - (ii) stops being an Australian legal practitioner; or
 - (iii) has become an insolvent under administration; or
 - (iv) is in prison;
- (b) for a firm—if the partnership has been wound up or dissolved;
- (c) for an incorporated legal practice—if the corporation concerned—
 - (i) stops being an incorporated legal practice; or
 - (ii) is being or has been wound up; or
 - (iii) has been deregistered or dissolved;
- (d) in any case—if the relevant council believes, on reasonable grounds, that the practice or an associate of the practice—
 - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice or an associate of the practice; or
 - (ii) has committed a serious irregularity, or a serious irregularity has happened, in relation to trust money or trust property or the affairs of the practice; or

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- 1 (iii) has failed properly to account in a timely way to anyone
2 for trust money or trust property received by the practice
3 for or on behalf of the person; or
- 4 (iv) has failed properly to make a payment of trust money or a
5 transfer of trust property when required to make the
6 payment or transfer by a person entitled to the money or
7 property or entitled to give a direction for payment or
8 transfer; or
- 9 (v) is in breach of a regulation or the legal profession rules
10 with the result that the record-keeping for the practice's
11 trust account is inadequate; or
- 12 (vi) has been or is likely to be convicted of an offence relating
13 to trust money or trust property; or
- 14 (vii) is the subject of a complaint relating to trust money or
15 trust property received by the practice; or
- 16 (viii) has failed to comply with any requirement of an
17 investigator or external examiner appointed under this
18 Act; or
- 19 (ix) has stopped engaging in legal practice without making
20 provision for properly dealing with trust money or trust
21 property received by the practice or for properly winding
22 up the affairs of the practice;
- 23 (e) if any other proper cause exists in relation to the practice.

24 **476 Decision about external intervention**

- 25 (1) This section applies if the relevant council becomes aware that 1 or
26 more of the circumstances mentioned in section 475 exist in relation
27 to a law practice and decides that external intervention is justified,
28 having regard to the interests of the clients, owners and employees
29 of the practice and to other matters that it considers appropriate.

- 1 (2) The relevant council may decide—
- 2 (a) for a law practice other than the law practice of a barrister—to
- 3 appoint a supervisor for the law practice, if the relevant council
- 4 is of the opinion—
- 5 (i) that external intervention is required because of issues
- 6 relating to the practice's trust accounts; and
- 7 (ii) that it is not appropriate that the provision of legal
- 8 services by the practice be wound up and ended because
- 9 of those issues; or
- 10 (b) to appoint a manager for the law practice, if the relevant
- 11 council is of the opinion—
- 12 (i) that the practice is or may be a viable business concern;
- 13 and
- 14 (ii) that, for this to happen, there is a need for an independent
- 15 person to be appointed to take over professional and
- 16 operational responsibility for the practice; or
- 17 (c) for a law practice other than the law practice of a barrister—to
- 18 apply to the Supreme Court under section 490 for the
- 19 appointment of a receiver for the law practice, if the relevant
- 20 council is of the opinion—
- 21 (i) that the appointment is necessary to protect the interests
- 22 of clients in relation to trust money or trust property; or
- 23 (ii) that it may be appropriate that the provision of legal
- 24 services by the practice be wound up and ended.
- 25 (3) The relevant council may, from time to time, make further decisions
- 26 in relation to the law practice and for that purpose may revoke a
- 27 previous decision with effect from a date or event stated by the
- 28 council.

- 1 (4) If the relevant council decides to revoke a decision to apply to the
2 Supreme Court for the appointment of a receiver, the council must
3 apply to the court for the revocation of the appointment.
- 4 (5) A further decision may be made under subsection (3)—
- 5 (a) whether or not there has been any change in the circumstances
6 in consequence of which the original decision was made; and
- 7 (b) whether or not any further circumstances have come into
8 existence in relation to the law practice after the original
9 decision was made.
- 10 (6) An appointment of a supervisor or manager for a law practice may
11 be made in relation to the law practice generally or may be limited
12 in any way the relevant council considers appropriate, including, for
13 example, to matters in relation to a particular legal practitioner
14 associate or to matters in relation to a particular position or a
15 particular subject matter.
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).

Part 5.3 Supervisors

Note Pt 5.3 does not apply to the law practice of a barrister (see s 472).

477 Appointment of supervisor

(1) This section applies if the law society council decides to appoint a supervisor of trust money for a law practice.

(2) The law society council may appoint a person as supervisor.

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

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(3) The appointee must be either—

(a) an Australian legal practitioner; or

(b) a person holding accounting qualifications with experience in law practice trust accounts.

(4) The appointee may (but need not) be an employee of the law society.

(5) The appointment must—

(a) identify the law practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the law society council when the appointment is made; and

- 1 (e) state any fees payable by way of remuneration to the
2 supervisor specifically for carrying out the supervisor's duties
3 in relation to the external intervention; and

4 *Note* Par (e) is intended to exclude remuneration payable generally, eg as an
5 employee of the law society.

- 6 (f) provide for the legal costs and the expenses that may be
7 incurred by the supervisor in relation to the external
8 intervention.

- 9 (6) The appointment may state any reporting requirements to be
10 observed by the supervisor.

11 **478 Notice of appointment of supervisor**

- 12 (1) As soon as possible after a supervisor is appointed for a law
13 practice, the law society council must give written notice of the
14 appointment to—

15 (a) the practice; and

16 (b) anyone else authorised to operate any trust account of the
17 practice; and

18 (c) any external examiner appointed to examine the practice's trust
19 records; and

20 (d) the ADI with which any trust account of the practice is kept;
21 and

22 (e) anyone whom the council believes, on reasonable grounds,
23 should be given notice of the appointment.

- 24 (2) The notice must—

25 (a) identify the law practice and the supervisor; and

26 (b) indicate that the external intervention is by way of appointment
27 of a supervisor; and

- 1 (c) state the term of the appointment; and
- 2 (d) state any reporting requirements to be observed by the
- 3 supervisor; and
- 4 (e) state any conditions imposed by the law society council when
- 5 the appointment was made; and
- 6 (f) include a statement that the law practice may appeal against the
- 7 appointment of the supervisor under section 510; and
- 8 (g) contain or be accompanied by any other information or
- 9 material prescribed by regulation.

10 **479 Effect of service of notice of appointment of supervisor**

- 11 (1) If an ADI is given notice under section 478 of the appointment of a
- 12 supervisor for a law practice, then, while the appointment is in
- 13 force, the ADI must ensure that no funds are withdrawn or
- 14 transferred from a trust account of the practice unless—
- 15 (a) the withdrawal or transfer is made by cheque or other
- 16 instrument drawn on the account signed by the supervisor; or
- 17 (b) the withdrawal or transfer is made by the supervisor using
- 18 electronic or internet banking facilities; or
- 19 (c) the withdrawal or transfer is made in accordance with an
- 20 authority to withdraw or transfer funds from the account signed
- 21 by the supervisor.
- 22 (2) A person commits an offence if—
- 23 (a) the person is given notice under section 478 of the appointment
- 24 of a supervisor for a law practice; and
- 25 (b) while the appointment is in force, the person does any of the
- 26 following:
- 27 (i) deals with any of the practice's trust money;

- 1 (ii) signs a cheque or other instrument drawn on a trust
2 account of the practice;
- 3 (iii) authorises the withdrawal or transfer of funds from a trust
4 account of the practice.
- 5 Maximum penalty: 50 penalty units.
- 6 (3) Subsection (2) does not apply to an ADI or the supervisor for the
7 law practice.
- 8 (4) An offence against this section is a strict liability offence.
- 9 (5) The supervisor for a law practice may, for subsection (1) (b), enter
10 into arrangements with an ADI for withdrawing funds from a trust
11 account of the practice using electronic or internet banking facilities.
- 12 (6) If an amount is withdrawn or transferred in contravention of
13 subsection (1) from a trust account of a law practice kept with an
14 ADI, the supervisor for the practice may recover the amount from
15 the ADI as a debt in a court of competent jurisdiction.
- 16 (7) The supervisor for the law practice must pay any amount recovered
17 from the ADI under subsection (6) into the trust account of the
18 practice.

19 **480 Role of supervisor**

- 20 (1) A supervisor for a law practice has the powers and duties of the
21 practice in relation to trust money of the practice, including
22 powers—
- 23 (a) to receive trust money on behalf of the practice; and
24 (b) to open and close trust accounts.
- 25 (2) For the purpose of exercising powers or duties under subsection (1),
26 the supervisor may do any or all of the following:
- 27 (a) enter and remain on premises used by the law practice for or in
28 relation to its engaging in legal practice;

- 1 (b) require the practice, an associate or former associate of the
2 practice, or anyone else having control of documents relating
3 to trust money received by the practice, to give the
4 supervisor—
- 5 (i) access to the documents the supervisor reasonably
6 requires; and
- 7 (ii) information relating to the trust money the supervisor
8 reasonably requires;
- 9 (c) operate equipment or facilities on the premises, or to require
10 anyone on the premises to operate equipment or facilities on
11 the premises, for a purpose relevant to the supervisor's
12 appointment;
- 13 (d) take possession of any relevant material and keep it for as long
14 as may be necessary;
- 15 (e) secure any relevant material found on the premises against
16 interference, if the material cannot be conveniently removed;
- 17 (f) take possession of any computer equipment or computer
18 program reasonably required for a purpose relevant to the
19 supervisor's appointment.
- 20 (3) If the supervisor takes anything from the premises, the supervisor
21 must issue a receipt for the thing and—
- 22 (a) if the occupier or a person apparently responsible to the
23 occupier is present at or near the premises—give it to the
24 occupier or person; or
- 25 (b) otherwise, leave it at the premises in an envelope addressed to
26 the occupier.
- 27 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for a
28 receipt, the form must be used.

- 1 (4) If the supervisor is refused access to the premises or the premises
2 are unoccupied, the supervisor may use whatever appropriate force
3 is reasonable and necessary to enter the premises and may be
4 accompanied by a police officer to assist entry.
- 5 (5) This section applies to trust money held by the practice before the
6 supervisor is appointed, as well as to trust money received
7 afterwards.
- 8 (6) The supervisor does not have a role in the management of the affairs
9 of the law practice except as far as the affairs relate to a trust
10 account of the practice.

11 **481 Records of and dealing with trust money of law practice**
12 **under supervision**

- 13 (1) A supervisor for a law practice must keep the records of the
14 supervisor's dealings with trust money of the practice—
- 15 (a) separately from records relating to dealings with trust money
16 before his or her appointment as supervisor; and
- 17 (b) separately from the affairs of any other law practice for which
18 he or she is supervisor; and
- 19 (c) in the way prescribed by regulation.
- 20 (2) Subject to subsection (1), a supervisor for a law practice must deal
21 with the trust money of the practice in the same way as a law
22 practice must deal with trust money.

23 **482 Ending of supervisor's appointment**

- 24 (1) The appointment of a supervisor for a law practice ends in the
25 following circumstances:
- 26 (a) the term of the appointment ends;
- 27 (b) the appointment of a manager for the practice takes effect;

- 1 (c) the appointment of a receiver for the practice takes effect;
- 2 (d) the supervisor has distributed all trust money received by the
- 3 practice and wound up all trust accounts;
- 4 (e) a decision of the law society council that the appointment be
- 5 ended takes effect.
- 6 (2) The law society council may decide that the appointment be ended
- 7 immediately or with effect from a stated date.
- 8 (3) The law society council must give written notice of the ending of
- 9 the appointment to everyone given notice of the appointment.

Part 5.4 Managers

483 Appointment of manager

(1) This section applies if the relevant council decides to appoint a manager for a law practice.

(2) The relevant council may appoint a person as manager.

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

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

(3) The appointee must be an Australian legal practitioner who holds an unrestricted practising certificate, and may (but need not) be an employee of the law society.

(4) However, for the appointment of a manager for the law practice of a barrister, the appointee may (but need not) be an employee of the bar association and need not be an Australian lawyer or the holder of an Australian practising certificate.

(5) The appointment must—

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the relevant council when the appointment is made; and

- 1 (e) state any fees payable by way of remuneration to the manager
2 specifically for carrying out his or her duties in relation to the
3 external intervention; and

4 *Note* Par (e) is intended to exclude remuneration payable generally, eg
5 as an employee of the law society or bar association.

- 6 (f) provide for the legal costs and expenses that may be incurred
7 by the manager in relation to the external intervention.

- 8 (6) The appointment may state any reporting requirements to be
9 observed by the manager.

10 **484 Notice of appointment**

- 11 (1) As soon as possible after a manager is appointed for a law practice,
12 the relevant council must give written notice of the appointment
13 to—

14 (a) the practice; and

15 (b) anyone else authorised to operate any trust account of the
16 practice; and

17 (c) any external examiner appointed to examine the practice's trust
18 records; and

19 (d) the ADI with which any trust account of the practice is kept;
20 and

21 (e) any legal practitioner associate of the practice named under
22 subsection (2) (f); and

23 (f) anyone whom the council believes, on reasonable grounds,
24 should be given notice of the appointment.

- 25 (2) The notice must—

26 (a) identify the law practice and the manager; and

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- 1 (b) indicate that the external intervention is by way of appointment
- 2 of a manager; and
- 3 (c) state the term of the appointment; and
- 4 (d) state any reporting requirements to be observed by the
- 5 manager; and
- 6 (e) state any conditions imposed by the relevant council when the
- 7 appointment was made; and
- 8 (f) name any legal practitioner associate of the practice who must
- 9 not participate in the affairs of the practice except under the
- 10 direct supervision of the manager; and
- 11 (g) include a statement that the law practice may appeal against the
- 12 appointment of the manager under section 510; and
- 13 (h) contain or be accompanied by any other information or
- 14 material prescribed by regulation.

15 **485 Effect of service of notice of appointment of manager**

- 16 (1) A person commits an offence if—
- 17 (a) the person is given notice under section 484 of the appointment
 - 18 of a manager for a law practice; and
 - 19 (b) the person is a legal practitioner associate of the practice who
 - 20 is named in the notice under section 484 (2) (f); and
 - 21 (c) the person participates in the affairs of the practice otherwise
 - 22 than under the direct supervision of the manager.

23 Maximum penalty: 100 penalty units.

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

- 1 (3) If an ADI is given notice under section 484 of the appointment of a
2 manager for a law practice, then, while the appointment is in force,
3 the ADI must ensure that no funds are withdrawn or transferred
4 from a trust account of the practice unless—
- 5 (a) the withdrawal or transfer is made by cheque or other
6 instrument drawn on the account signed by the manager or by a
7 receiver appointed for the practice; or
- 8 (b) the withdrawal or transfer is made by the manager, or by a
9 receiver appointed for the practice, using electronic or internet
10 banking facilities; or
- 11 (c) the withdrawal or transfer is made in accordance with an
12 authority to withdraw or transfer funds from the account signed
13 by the manager or by a receiver appointed for the practice.
- 14 (4) A person commits an offence if—
- 15 (a) the person is given notice under section 484 of the appointment
16 of a manager for a law practice; and
- 17 (b) while the appointment is in force, the person does any of the
18 following:
- 19 (i) deals with any of the practice's trust money;
- 20 (ii) signs a cheque or other instrument drawn on a trust
21 account of the practice;
- 22 (iii) authorises the withdrawal or transfer of funds from a trust
23 account of the practice.
- 24 Maximum penalty: 100 penalty units.
- 25 (5) Strict liability applies to subsection (4) (a).
- 26 (6) Subsection (4) does not apply to an ADI, the manager for the law
27 practice, a receiver for the practice or a legal practitioner associate
28 to whom subsection (1) applies.

- 1 (7) The manager for a law practice may, for subsection (3) (b), enter
2 into arrangements with an ADI for withdrawing funds from a trust
3 account of the practice using electronic or internet banking facilities.
- 4 (8) If an amount is withdrawn or transferred in contravention of
5 subsection (3) from a trust account of the law practice kept with an
6 ADI, the manager for the practice, or a receiver for the practice, may
7 recover the amount from the ADI as a debt in a court of competent
8 jurisdiction.
- 9 (9) The manager or receiver for the law practice must pay any amount
10 recovered from the ADI under subsection (8) into the trust account
11 of the practice.

12 **486 Role of manager**

- 13 (1) A manager for a law practice may carry on the practice and may do
14 everything that the practice or a legal practitioner associate of the
15 practice might lawfully have done, including, for example, the
16 following:
- 17 (a) transacting any urgent business of the practice;
- 18 (b) transacting, with the approval of any or all of the existing
19 clients of the practice, any business on their behalf,
20 including—
- 21 (i) starting, continuing, defending or settling any proceeding;
22 and
- 23 (ii) receiving, retaining and disposing of property;
- 24 (c) accepting instructions from new clients and transacting any
25 business on their behalf, including—
- 26 (i) starting, continuing, defending or settling any proceeding;
27 and
- 28 (ii) receiving, retaining and disposing of regulated property;

- 1 (d) charging and recovering legal costs, including legal costs for
2 work in progress at the time of the manager's appointment;
- 3 (e) entering into, executing or performing any agreement;
- 4 (f) dealing with trust money in accordance with this Act;
- 5 *Note* ***This Act*** is defined in the dictionary.
- 6 (g) winding up the affairs of the practice.
- 7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).
- 10 (2) For the purpose of exercising powers under subsection (1), the
11 manager may do any or all of the following:
- 12 (a) enter and remain on premises used by the law practice for or in
13 relation to its engaging in legal practice;
- 14 (b) require the practice, an associate or former associate of the
15 practitioner, or anyone else having control of client files and
16 associated documents (including documents relating to trust
17 money received by the practice), to give the manager—
- 18 (i) access to the files and documents the manager reasonably
19 requires; and
- 20 (ii) information relating to client matters the manager
21 reasonably requires;
- 22 (c) operate equipment or facilities on the premises, or to require
23 anyone on the premises to operate equipment or facilities on
24 the premises, for a purpose relevant to the manager's
25 appointment;
- 26 (d) take possession of any relevant material and keep it for as long
27 as may be necessary;
- 28 (e) secure any relevant material found on the premises against
29 interference, if the material cannot be conveniently removed;
-

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- 1 (f) take possession of any computer equipment or computer
2 program reasonably required for a purpose relevant to the
3 manager's appointment.
- 4 (3) If the manager takes anything from the premises, the manager must
5 issue a receipt for the thing and—
- 6 (a) if the occupier or a person apparently responsible to the
7 occupier is present at or near the premises—give it to the
8 occupier or person; or
- 9 (b) otherwise, leave it at the premises in an envelope addressed to
10 the occupier.
- 11 (4) If the manager is refused access to the premises or the premises are
12 unoccupied, the manager may use whatever appropriate force is
13 reasonable and necessary to enter the premises and may be
14 accompanied by a police officer to assist entry.
- 15 **487 Records and accounts of law practice under management**
16 **and dealings with trust money**
- 17 (1) A manager for a law practice must keep the records and accounts of
18 the practice that the manager manages—
- 19 (a) separately from the management of the affairs of the practice
20 before his or her appointment as manager; and
- 21 (b) separately from the affairs of any other law practice for which
22 he or she is manager; and
- 23 (c) in the way prescribed by regulation.
- 24 (2) Subject to subsection (1), a manager for a law practice must deal
25 with trust money of the practice in the same way as a law practice
26 must deal with trust money.

- 1 **488 Deceased estates—law practice under management**
- 2 (1) The manager for a law practice must cooperate with the legal
- 3 personal representative of a deceased legal practitioner associate of
- 4 the practice for the orderly winding up of the estate.
- 5 (2) The manager is not, in the exercise of powers and duties as
- 6 manager, a legal personal representative of the deceased legal
- 7 practitioner associate.
- 8 (3) Subsection (2) does not prevent the manager from exercising powers
- 9 or duties as a legal personal representative if otherwise appointed as
- 10 representative.
- 11 (4) Subject to subsections (1) and (2) and to the terms of the manager's
- 12 appointment, if the manager was appointed before the death of the
- 13 legal practitioner associate, the manager's appointment, powers and
- 14 duties are not affected by the death.
- 15 **489 Ending of manager's appointment**
- 16 (1) The appointment of a manager for a law practice ends in the
- 17 following circumstances:
- 18 (a) the term of the appointment ends;
- 19 (b) the appointment of a receiver for the practice takes effect, if the
- 20 terms of the appointment indicate that the receiver is
- 21 authorised to exercise the powers and duties of a manager;
- 22 (c) the manager has wound up the affairs of the practice;
- 23 (d) a decision of the relevant council that the appointment be
- 24 ended takes effect.
- 25 (2) The relevant council may decide that the appointment be ended
- 26 immediately or with effect from a stated date.
- 27 (3) The relevant council must give written notice of the ending of the
- 28 appointment to everyone given notice of the appointment.
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- 1 (4) If the appointment ends in the circumstances mentioned in
2 subsection (1) (a), (b) or (d), the former manager must transfer and
3 give the regulated property and client files of the law practice to—
4 (a) another external intervener appointed for the practice; or
5 (b) the practice, if another external intervener is not appointed for
6 the practice.
- 7 (5) However, the former manager need not transfer regulated property
8 and files to the law practice in compliance with subsection (4)
9 unless the manager's expenses have been paid to the relevant
10 council.

Part 5.5 Receivers

Note Pt 5.4 does not apply to the law practice of a barrister (see s 472).

490 Appointment of receiver

- (1) This section applies if the law society council decides to apply to the Supreme Court for the appointment of a receiver for a law practice.
- (2) On the application of the law society council, the Supreme Court may appoint a person as receiver for the law practice.
- (3) The Supreme Court may make the appointment if the court is of the opinion—
 - (a) that the appointment is necessary to protect the interests of clients of the law practice in relation to trust money or trust property; or
 - (b) that it may be appropriate that the provision of legal services be wound up and ended.
- (4) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice has been given notice of the application and whether or not the practice or principal is a party to the proceeding.
- (5) The Legislation Act, part 19.3 does not apply in relation to the appointment.
- (6) Before starting to hear the application, the Supreme Court must order from the precincts of the court anyone who is not—
 - (a) an officer of the court; or
 - (b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or
 - (c) a principal of the law practice; or

- 1 (d) a person who is about to or is in the course of giving evidence;
2 or
- 3 (e) a person permitted by the court to be present in the interests of
4 justice.
- 5 (7) The appointee must be—
- 6 (a) an Australian legal practitioner; or
- 7 (b) a person holding accounting qualifications with experience in
8 law practice trust accounts.
- 9 (8) The appointee may (but need not) be an employee of the law
10 society.
- 11 (9) The appointment must—
- 12 (a) identify the law practice and the receiver; and
- 13 (b) indicate that the external intervention is by way of appointment
14 of a receiver; and
- 15 (c) state any conditions imposed by the Supreme Court when the
16 appointment is made; and
- 17 (d) state any fees payable by way of remuneration to the receiver
18 specifically for carrying out the receiver's duties in relation to
19 the external intervention; and
- 20 *Note* Par (d) is intended to exclude remuneration payable generally, eg
21 as an employee of the law society.
- 22 (e) provide for the legal costs and the expenses that may be
23 incurred by the receiver in relation to the external intervention.
- 24 (10) The appointment may—
- 25 (a) state the term (if any) of the appointment; and
- 26 (b) state any reporting requirements to be observed by the receiver.

491 Notice of appointment of receiver

(1) As soon as possible after a receiver is appointed for a law practice, the law society council must give written notice of the appointment to—

- (a) the practice; and
- (b) anyone else authorised to operate any trust account of the practice; and
- (c) any external examiner appointed to examine the practice's trust records; and
- (d) the ADI with which any trust account of the practice is kept; and
- (e) any legal practitioner associate of the practice named under subsection (2) (g); and
- (f) anyone whom the Supreme Court directs should be given notice of the appointment; and
- (g) anyone whom the council believes, on reasonable grounds, should be given notice of the appointment.

(2) The notice must—

- (a) identify the law practice and the receiver; and
- (b) indicate that the external intervention is by way of appointment of a receiver; and
- (c) indicate the extent to which the receiver has the powers of a manager for the practice; and
- (d) state the term (if any) of the appointment; and
- (e) state any reporting requirements to be observed by the receiver; and

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- 1 (f) state any conditions imposed by Supreme Court when the
- 2 appointment was made; and
- 3 (g) name any legal practitioner of the practice who must not
- 4 participate in the affairs of the practice; and
- 5 (h) contain or be accompanied by any other information or
- 6 material prescribed by regulation.

7 **492 Effect of service of notice of appointment of receiver**

- 8 (1) A person commits an offence if—
- 9 (a) the person is given notice under section 491 of the appointment
- 10 of a receiver for a law practice; and
- 11 (b) the person is a legal practitioner associate of the practice who
- 12 is named in the notice under section 491 (2) (g); and
- 13 (c) the person participates in the affairs of the practice.
- 14 Maximum penalty: 100 penalty units.
- 15 (2) Strict liability applies to subsection (1) (a) and (b).
- 16 (3) If an ADI is given notice under section 491 of the appointment of a
- 17 receiver for a law practice, then, while the appointment is in force,
- 18 the ADI must ensure that no funds are withdrawn or transferred
- 19 from a trust account of the practice unless—
- 20 (a) the withdrawal or transfer is made by cheque or other
- 21 instrument drawn on that account signed by the receiver or by
- 22 a manager appointed for the practice; or
- 23 (b) the withdrawal or transfer is made by the receiver, or by a
- 24 manager appointed for the practice, using electronic or internet
- 25 banking facilities; or
- 26 (c) the withdrawal or transfer is made in accordance with an
- 27 authority to withdraw or transfer funds from the account signed
- 28 by the receiver or by a manager appointed for the practice.

- 1 (4) A person commits an offence if—
- 2 (a) the person is given notice under section 491 of the appointment
- 3 of a receiver for a law practice; and
- 4 (b) while the appointment is in force, the person does any of the
- 5 following:
- 6 (i) deals with any of the practice's trust money;
- 7 (ii) signs a cheque or other instrument drawn on a trust
- 8 account of the practice;
- 9 (iii) authorises the withdrawal or transfer of funds from a trust
- 10 account of the practice.
- 11 Maximum penalty: 100 penalty units.
- 12 (5) Strict liability applies to subsection (4) (a).
- 13 (6) Subsection (4) does not apply to an ADI, the receiver for the law
- 14 practice or a manager for the practice.
- 15 (7) The receiver for a law practice may, for subsection (3) (b), enter into
- 16 arrangements with an ADI for withdrawing funds from a trust
- 17 account of the practice using electronic or internet banking facilities.
- 18 (8) If an amount is withdrawn or transferred in contravention of
- 19 subsection (2) from a trust account of the law practice kept with an
- 20 ADI, the receiver for the practice, or a manager for the practice, may
- 21 recover the amount from the ADI as a debt in a court of competent
- 22 jurisdiction.
- 23 (9) The receiver or manager for the law practice must pay any amount
- 24 recovered from the ADI under subsection (8) into the trust account
- 25 of the practice.

- 1 **493 Role of receiver**
- 2 (1) The role of a receiver for a law practice is—
- 3 (a) to be the receiver of regulated property of the practice; and
- 4 (b) to wind up and terminate the affairs of the practice.
- 5 (2) For the purpose of winding up the affairs of the law practice and in
- 6 the interests of the practice's clients, the law society council may, in
- 7 writing, authorise—
- 8 (a) the receiver to carry on the legal practice engaged in by the law
- 9 practice, if the receiver is an Australian legal practitioner who
- 10 holds an unrestricted practising certificate; or
- 11 (b) an Australian legal practitioner who holds an unrestricted
- 12 practising certificate, or a law practice whose principals are or
- 13 include 1 or more Australian legal practitioners who hold
- 14 unrestricted practising certificates, stated in the authorisation to
- 15 carry on the legal practice on behalf of the receiver.
- 16 (3) Subject to any written directions given by the law society council,
- 17 the person authorised to carry on the legal practice engaged in by a
- 18 law practice has all the powers of a manager under this chapter and
- 19 is taken have been appointed as manager for the law practice.
- 20 (4) The law society council may end an authorisation to carry on a law
- 21 practice granted under this section.
- 22 (5) For the purpose of exercising powers under subsection (1), the
- 23 receiver may do any or all of the following:
- 24 (a) enter and remain on premises used by the law practice for or in
- 25 relation to its engaging in legal practice;
- 26 (b) require the practice, an associate or former associate of the
- 27 practitioner, or anyone else having control of client files and
- 28 associated documents (including documents relating to trust
- 29 money received by the practice), to give the receiver—

- 1 (i) access to the files and documents the receiver reasonably
2 requires; and
- 3 (ii) information relating to client matters the receiver
4 reasonably requires;
- 5 (c) operate equipment or facilities on the premises, or to require
6 anyone on the premises to operate equipment or facilities on
7 the premises, for a purpose relevant to the receiver's
8 appointment;
- 9 (d) take possession of any relevant material and keep it for as long
10 as may be necessary;
- 11 (e) secure any relevant material found on the premises against
12 interference, if the material cannot be conveniently removed;
- 13 (f) take possession of any computer equipment or computer
14 program reasonably required for a purpose relevant to the
15 receiver's appointment.
- 16 (6) If the receiver takes anything from the premises, the receiver must
17 issue a receipt for the thing and—
- 18 (a) if the occupier or a person apparently responsible to the
19 occupier is present at or near the premises—give it to the
20 occupier or person; or
- 21 (b) otherwise, leave it at the premises in an envelope addressed to
22 the occupier.
- 23 (7) If the receiver is refused access to the premises or the premises are
24 unoccupied, the receiver may use whatever appropriate force is
25 reasonable and necessary to enter the premises and may be
26 accompanied by a police officer to assist entry.

- 1 **494** **Records and accounts of law practice under receivership**
2 **and dealings with trust money**
- 3 (1) A receiver for a law practice must keep the records and accounts of
4 the practice that the receiver manages—
- 5 (a) separately from the management of the affairs of the practice
6 before his or her appointment as receiver; and
- 7 (b) separately from the affairs of any other law practice that the
8 receiver is managing; and
- 9 (c) in the way prescribed by regulation.
- 10 (2) Subject to subsection (1), a receiver for a law practice must deal
11 with trust money of the practice in the same way as a law practice
12 must deal with trust money.
- 13 **495** **Power of receiver to take possession of regulated**
14 **property**
- 15 (1) A receiver for a law practice may take possession of regulated
16 property of the practice.
- 17 (2) A person in possession or having control of regulated property of
18 the law practice must allow the receiver to take possession of the
19 regulated property if the receiver requires the person to allow the
20 receiver to take possession of it.
- 21 (3) If a person contravenes subsection (2) in relation to regulated
22 property, the Supreme Court may, on application by the receiver,
23 order the person to give the property to the receiver.
- 24 (4) If, on application made by the receiver, the Supreme Court is
25 satisfied that an order made under subsection (3) has not been
26 complied with, the court may order the seizure of any regulated
27 property of the law practice on the premises stated in the order and
28 make any further orders it considers appropriate.

- 1 (5) An order under subsection (4) operates to authorise—
2 (a) any police officer; or
3 (b) the receiver or a person authorised by the receiver, together
4 with any police officer;
5 to enter the premises stated in the order and search for, seize and
6 remove anything that appears to be regulated property of the law
7 practice.
8 (6) The receiver must return anything seized under this section that is
9 not regulated property of the law practice.

10 **496 Power of receiver to take delivery of regulated property**

- 11 (1) If a receiver for a law practice believes, on reasonable grounds, that
12 someone is under an obligation, or will later be under an obligation,
13 to give regulated property to the practice, the receiver may by
14 written notice require the other person to give the property to the
15 receiver.
16 (2) A person commits an offence if—
17 (a) the person has notice that a receiver has been appointed for a
18 law practice; and
19 (b) the person has possession or control of regulated property of
20 the practice; and
21 (c) the person is given a notice under subsection (1) in relation to
22 the property or otherwise has notice that the person is under an
23 obligation to give the property to the receiver of the practice;
24 and

- 1 (d) the person fails to give the property to the receiver.
2 Maximum penalty: 50 penalty units.
- 3 (3) A document signed by a receiver acknowledging the receipt of
4 regulated property given to the receiver is as effective as if it had
5 been given by the law practice.
- 6 **497 Power of receiver to deal with regulated property**
- 7 (1) This section applies if a receiver for a law practice acquires or takes
8 possession of regulated property of the practice.
- 9 (2) The receiver may deal with the regulated property in any way in
10 which the law practice could have lawfully dealt with the property.
- 11 **498 Power of receiver to require documents or information**
- 12 (1) A receiver for a law practice may, by written notice, require a
13 relevant person for the practice to give the receiver either or both of
14 the following within the reasonable time stated in the notice:
- 15 (a) access to documents the receiver reasonably requires;
16 (b) information the receiver reasonably requires.
- 17 (2) The relevant person commits an offence if the person contravenes a
18 requirement of a notice given to the person under subsection (1).
- 19 Maximum penalty: 50 penalty units.
- 20 (3) Subsection (2) does not apply if the person has a reasonable excuse.
- 21 (4) The relevant person cannot rely on the common law privileges
22 against selfincrimination or exposure to the imposition of a civil
23 penalty to refuse to comply with the requirement.
- 24 *Note* Section 593 (Professional privilege or duty of confidence does not
25 affect validity of certain requirements etc) applies to the requirement.

- 1 (5) However, any information, document or other thing obtained,
2 directly or indirectly, because of complying with the requirement is
3 not admissible against the person in a civil or criminal proceeding,
4 other than a proceeding for—
- 5 (a) an offence in relation to the falsity or misleading nature of a
6 document or information; or
- 7 (b) an offence against this Act; or
- 8 (c) any other offence relating to the keeping of trust accounts or
9 the receipt of trust money.
- 10 (6) The person is not subject to any liability, claim or demand only
11 because the person complies with the requirement.
- 12 (7) In this section:
- 13 *relevant person*, for a law practice, means—
- 14 (a) an associate or former associate of the practice; or
- 15 (b) anyone who has, or has had, control of documents of the
16 practice.

17 **499 Examinations for receivership**

- 18 (1) On the application of a receiver for a law practice, the Supreme
19 Court may make an order directing that an associate or former
20 associate of the practice or any other person appear before the court
21 for examination on oath in relation to the regulated property of the
22 practice.

23 *Note* *Oath* includes affirmation (see Legislation Act, dict, pt 1).

- 24 (2) On an examination of a person under this section, the person must
25 answer all questions that the court allows to be put to the person.

26 *Note* The Criminal Code, s 722 provides an offence for failing to answer a
27 question.

- 1 (3) A person cannot rely on the common law privileges against
2 selfincrimination and exposure to the imposition of a civil penalty to
3 refuse to answer a question.
- 4 (4) However, any information, document or other thing obtained,
5 directly or indirectly, because of answering a question is not
6 admissible against the person in a civil or criminal proceeding, other
7 than a proceeding for—
- 8 (a) an offence in relation to the falsity or misleading nature of the
9 answer; or
- 10 (b) an offence against this Act.
- 11 **500 Lien for costs on regulated property**
- 12 (1) This section applies if—
- 13 (a) a receiver has been appointed for a law practice; and
- 14 (b) a legal practitioner associate of the practice claims a lien for
15 legal costs on regulated property of the practice.
- 16 (2) The receiver may give the legal practitioner associate a written
17 notice requiring the associate to give the receiver within a stated
18 period of not less than 1 month—
- 19 (a) particulars sufficient to identify the regulated property; and
- 20 (b) a detailed bill of costs.
- 21 (3) If the legal practitioner associate asks the receiver in writing to give
22 access to the regulated property that is reasonably necessary to
23 enable the associate to prepare a bill of costs to comply with
24 subsection (2), the time allowed under that subsection does not start
25 to run until the access is provided.

- 1 (4) If a requirement of a notice under subsection (2) is not complied
2 with, the receiver may disregard the legal practitioner associate's
3 claim in dealing with the regulated property claimed to be subject to
4 the lien.

5 **501 Regulated property not to be attached**

- 6 (1) Regulated property of a law practice for which a receiver has been
7 appointed (including regulated property held by the receiver) is not
8 liable to be taken, levied on or attached under any judgment, order
9 or process of any court or any other process.

- 10 (2) This section is declared to be a Corporations legislation
11 displacement provision for the Corporations Act, section 5G
12 (Avoiding direct inconsistency arising between the Corporations
13 legislation and State and Territory laws) in relation to the provisions
14 of that Act, chapter 5.

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

19 **502 Recovery of regulated property—breach of trust etc**

- 20 (1) Subsection (2) applies if regulated property of or under the control
21 of a law practice has, before or after the appointment of a receiver
22 for the practice, been taken by, paid to, or transferred to, a person
23 (the *transferee*) in breach of trust, improperly or unlawfully and the
24 transferee—

25 (a) knew or believed at the time of the taking, payment or transfer
26 that it was done in breach of trust, improperly or unlawfully; or

27 (b) did not provide to the practice or anyone else any or any
28 adequate consideration for the taking, payment or transfer; or

- 1 (c) because of the taking, payment or transfer, became indebted or
2 otherwise liable to the practice or to a client of the practice in
3 the amount of the payment or in another amount.
- 4 (2) The receiver is entitled to recover from the transferee—
- 5 (a) if subsection (1) (a) applies—the amount of the payment or the
6 value of the regulated property taken or transferred; or
- 7 (b) if subsection (1) (b) applies—the amount of the inadequacy of
8 the consideration or, if there was no consideration, the amount
9 of the payment or the value of the regulated property taken or
10 transferred; or
- 11 (c) if subsection (1) (c) applies—the amount of the debt or
12 liability.
- 13 (3) On the recovery of the amount from the transferee, the transferee
14 stops being liable for it to anyone else.
- 15 (4) If any money of or under the control of a law practice has, before or
16 after the appointment of a receiver for the practice, been paid in
17 breach of trust, improperly or unlawfully to a person (the
18 *prospective plaintiff*) in relation to a cause of action that the
19 prospective plaintiff had, or claimed to have, against a third party—
- 20 (a) the receiver may prosecute the cause of action against the third
21 party in the name of the prospective plaintiff; or
- 22 (b) if the prospective plaintiff did not have at the time the payment
23 was made a cause of action against the third party—the
24 receiver may recover the money from the prospective plaintiff.
- 25 (5) If any regulated property of or under the control of a law practice
26 has, before or after the appointment of a receiver for the practice,
27 been used in breach of trust, improperly or unlawfully to discharge a
28 debt or liability of a person (the *debtor*), the receiver may recover
29 from the debtor the amount of the debt or liability discharged less
30 the consideration (if any) provided by the debtor for the discharge.

- 1 (6) A person authorised by the law society council may give a
2 certificate in relation to all or any of the following facts in relation
3 to a law practice:
- 4 (a) the receipt of regulated property by the practice from anyone,
5 the nature and value of the property, the date of receipt, and the
6 identity of the person from whom it was received;
- 7 (b) the taking, payment or transfer of regulated property for the
8 practice, the nature and value of the property, the date of the
9 taking, payment or transfer, and the identity of the person by
10 whom it was taken or to whom it was paid or transferred;
- 11 (c) the entries made in the trust account and in any other ledgers,
12 books of account, vouchers or records of the practice and the
13 truth or falsity of the entries;
- 14 (d) the money and securities held by the practice at a stated time.
- 15 (7) If the receiver brings a proceeding under subsection (2), (4) or (5), a
16 certificate given under subsection (6) is evidence and, in the absence
17 of evidence to the contrary, is proof of the facts stated in it.

18 **503 Improperly destroying property**

- 19 (1) A person commits an offence if—
- 20 (a) the person does any of the following (the *action*) in relation to
21 regulated property of a law practice:
- 22 (i) destroys the property;
- 23 (ii) conceals the property;
- 24 (iii) moves the property from a place to another place;
- 25 (iv) delivers the property into someone else's possession;
- 26 (v) places the property under someone else's control; and

1 (b) a receiver has been appointed, or is likely to be appointed, for
2 the practice; and

3 (c) the person does the action with intent to defeat the operation of
4 this part.

5 Maximum penalty: 100 penalty units.

6 (2) This section applies whether the person does the action before or
7 after the appointment of a receiver for the law practice.

8 **504 Deceased estates—law practice under receivership**

9 (1) The receiver for a law practice must cooperate with the legal
10 personal representative of a deceased legal practitioner associate of
11 the practice for the orderly winding up of the estate.

12 (2) The receiver is not, in the exercise of powers and duties as receiver,
13 a legal personal representative of the deceased legal practitioner
14 associate.

15 (3) Subsection (2) does not prevent the receiver from exercising powers
16 or duties as a legal personal representative if otherwise appointed as
17 representative.

18 (4) Subject to subsections (1) and (2) and to the terms of the receiver's
19 appointment, if the receiver was appointed before the death of the
20 legal practitioner associate, the receiver's appointment, powers and
21 duties are not affected by the death.

22 **505 Ending of receiver's appointment**

23 (1) The appointment of a receiver for a law practice ends in the
24 following circumstances:

25 (a) the term (if any) of the appointment ends;

26 (b) a decision of the Supreme Court that the appointment be ended
27 takes effect.

- 1 (2) The former receiver must transfer and give the regulated property
2 of the law practice to—
- 3 (a) another external intervener appointed for the practice, if
4 another external intervener is appointed for the practice not
5 later than 14 days after the day the former receiver's
6 appointment ends; or
- 7 (b) someone else in accordance with arrangements approved by
8 the law society council, if it is not practicable to transfer and
9 give the regulated property to the practice; or
- 10 (c) the practice, if paragraphs (a) and (b) do not apply.
- 11 (3) However, the former receiver need not transfer and give regulated
12 property to the law practice in accordance with subsection (2) unless
13 the expenses of receivership have been paid.

Part 5.6 General—ch 5

506 Conditions on appointment of supervisor or manager

- (1) An appointment of an supervisor or manager for a legal practice is subject to—
 - (a) any conditions imposed by the relevant council; and
 - (b) any conditions imposed by regulation.
- (2) The relevant council may impose conditions—
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The relevant council may revoke or amend conditions imposed under subsection (2).

507 Conditions on appointment of receiver

- (1) An appointment of a receiver for a legal practice is subject to—
 - (a) any conditions imposed by the Supreme Court; and
 - (b) any conditions imposed by regulation.
- (2) The Supreme Court may impose conditions—
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The Supreme Court may revoke or amend conditions imposed under subsection (2).

508 Status of acts of external intervener

- (1) An act done or omitted to be done by an external intervener for a law practice is taken to have been done or omitted to be done by the practice for the purposes of—
- (a) any proceeding; or
 - (b) any transaction that relies on the act or omission.
- (2) This section does not subject an associate of the law practice to any personal liability.

509 Eligibility for reappointment or authorisation

A person who has been appointed as an external intervener for a law practice is eligible for reappointment as an external intervener for the practice, whether the later appointment is made in relation to the same kind of external intervention or is of a different kind.

510 Appeal against appointment of supervisor or manager

- (1) The following people may appeal to the Supreme Court against the appointment of a supervisor or manager for a law practice:
- (a) the practice;
 - (b) an associate of the practice;
 - (c) anyone authorised to operate a trust account of the practice;
 - (d) anyone else whose interests may be adversely affected by the appointment.
- (2) The appeal must be filed not later than 7 days after the day notice of the appointment is given to—
- (a) the person who proposes to appeal; or
 - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal.

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

3 (4) The appointment of a supervisor or manager for a law practice is not
4 stayed by the filing of an appeal, and the supervisor or manager may
5 continue to exercise his or her functions as a supervisor or manager
6 during the appeal proceeding except to the extent that the Supreme
7 Court otherwise directs.

8 **511 Directions of Supreme Court about external intervention**

9 (1) This section applies if a supervisor, manager or receiver is appointed
10 for a law practice.

11 (2) On application by—

12 (a) the supervisor, manager or receiver; or

13 (b) a principal of the practice; or

14 (c) anyone affected by the external intervention;

15 the Supreme Court may give directions in relation to anything
16 affecting the intervention or the intervener's functions under this
17 Act.

18 **512 Requirement for ADI to disclose and permit access to**
19 **accounts**

20 Despite any rule of law to the contrary, an external intervener for a
21 law practice may require an ADI in the which the practice has or has
22 had an account—

23 (a) to disclose every account of the practice that, in the
24 intervener's opinion, may be relevant to the affairs of the
25 practice; and

26 (b) to permit the making of a copy or the taking of extracts from
27 any account of that kind.

- 1 **513 Fees, legal costs and expenses of external intervener**
- 2 (1) An external intervener for a law practice is entitled to be paid, in
- 3 accordance with the intervener's appointment—
- 4 (a) fees by way of remuneration; and
- 5 (b) the legal costs and the expenses incurred in relation to the
- 6 external intervention.
- 7 (2) An account of the external intervener for fees, costs and expenses
- 8 may be assessed on the relevant council's application.
- 9 (3) The fees, costs and expenses are payable by and recoverable from
- 10 the law practice.
- 11 (4) Fees, costs and expenses not paid to the external intervener by the
- 12 law practice are payable from the fidelity fund.
- 13 (5) The relevant council may recover any unpaid fees, costs and
- 14 expenses from the law practice.
- 15 (6) Fees, costs and expenses paid by or recovered from the law practice
- 16 after they have been paid from the fidelity fund are to be paid to the
- 17 fund.
- 18 **514 Reports by external intervener**
- 19 (1) An external intervener for a law practice must provide written
- 20 reports in accordance with any reporting requirements to be
- 21 observed by the intervener as stated in the intervener's appointment.
- 22 (2) If the appointment of the external intervener does not state any
- 23 reporting requirements, the intervener must give—
- 24 (a) written reports as required from time to time by the relevant
- 25 council; and
- 26 (b) a written report to the council at the end of the appointment.

1 (3) The external intervener must also keep the relevant council
2 informed of the progress of the external intervention, including by
3 giving reports to the council about any significant events happening
4 or state of affairs existing in relation to the intervention or any of the
5 matters to which the intervention relates.

6 (4) This section does not affect any other reporting obligations that may
7 exist in relation to the law practice.

8 **515 Confidentiality by external interveners**

9 (1) An external intervener for a law practice must not disclose
10 information obtained because of the intervener's appointment
11 except—

12 (a) so far as is necessary for exercising the intervener's functions;
13 and

14 (b) as provided in subsection (2).

15 (2) The external intervener may disclose information to any of the
16 following:

17 (a) any court, tribunal or other person acting judicially;

18 (b) a regulatory authority of any jurisdiction;

19 (c) any officer of, or Australian legal practitioner instructed by—

20 (i) a regulatory authority of any jurisdiction; or

21 (ii) any jurisdiction or the Commonwealth; or

22 (iii) an authority of any jurisdiction or the Commonwealth;

23 in relation to any proceeding, inquiry or other matter pending
24 or contemplated arising out of the investigation or
25 examination;

26 (d) a police officer of any jurisdiction or the Commonwealth if the
27 relevant council, investigator or external intervener believes,

- 1 on reasonable grounds, that the information relates to an
2 offence that may have been committed by the law practice or
3 an associate of the law practice;
- 4 (e) the law practice or a principal of the law practice or, if the
5 practice is an incorporated legal practice, a shareholder in the
6 practice;
- 7 (f) a client or former client of the law practice concerned, if the
8 information relates to the client or former client;
- 9 (g) another external intervener appointed in relation to the law
10 practice or any Australian legal practitioner or accountant
11 employed by the other external intervener;
- 12 (h) any other external examiner carrying out an external
13 examination of the trust records of the law practice.

14 **516 Protection from liability—ch 5**

- 15 (1) A protected person is not civilly liable for anything done or omitted
16 to be done honestly and without recklessness—
- 17 (a) in the exercise of a function under this chapter; or
- 18 (b) in the reasonable belief that the act or omission was in the
19 exercise of a function under this chapter.
- 20 (2) In this section:
- 21 *protected person* means—
- 22 (a) the bar association or law society; or
- 23 (b) a council or any member of a council; or
- 24 (c) an external intervener for a law practice; or
- 25 (d) any member of the staff of an entity mentioned in this
26 definition.

Chapter 6 Investigations

Part 6.1 Preliminary—ch 6

517 Definitions—pt 6.1

In this part:

complaint investigation means the investigation of a complaint under chapter 4 (Complaints and discipline).

ILP compliance audit means the conduct of an audit under division 2.6.2 (Incorporated legal practices) in relation to an incorporated legal practice.

investigator means—

- (a) an investigator under subdivision 3.1.3.1; or
- (b) an external examiner under subdivision 3.1.3.2; or
- (c) an investigator under part 4.4; or
- (d) in relation to an audit under division 2.6.2—the law society or a person appointed by the law society council to conduct the audit.

trust account examination means the external examination of the trust records of a law practice under subdivision 3.1.3.2 (External examinations).

trust account investigation means the investigation of the affairs of a law practice under subdivision 3.1.3.1 (Investigations).

1 **518 Main purpose—ch 6**

2 The main purpose of this chapter is to provide powers that are
3 exercisable in relation to—

- 4 (a) trust account investigations; and
5 (b) trust account examinations; and
6 (c) complaint investigations; and
7 (d) ILP compliance audits.

8 *Note* Ch 6 also applies in relation to matters under div 2.4.7 (see s 67) and
9 matters under div 2.7.7 (see s 186).

10 **519 Privileges against selfincrimination and exposure to civil**
11 **penalty**

12 (1) This section applies to a requirement made of a person under this
13 chapter (other than in relation to a complaint investigation).

14 (2) The person cannot rely on the common law privileges against
15 selfincrimination and exposure to the imposition of a civil penalty to
16 refuse to comply with a requirement.

17 *Note* The Legislation Act, s 171 deals with client legal privilege.

18 (3) However, any information, document or thing obtained, directly or
19 indirectly, because of the giving of an answer or the production of a
20 document is not admissible in evidence against the person in a civil
21 or criminal proceeding, other than—

22 (a) a proceeding for an offence against this Act or the Criminal
23 Code, part 3.4 (False or misleading statements, information
24 and documents); or

25 (b) any other offence relating to the keeping of trust accounts or
26 the receipt of trust money.

- 1 (4) A failure of an Australian lawyer to comply with the requirement
2 can be unsatisfactory professional conduct or professional
3 misconduct.

Part 6.2 Requirements relating to documents, information and other assistance

520 Application—pt 6.2

This division applies to—

- (a) trust account investigations; and
- (b) trust account examinations; and
- (c) complaint investigations; and
- (d) ILP compliance audits.

521 Requirements that may be imposed for investigations, examinations and audits under pt 3.1 and pt 2.6

- (1) For carrying out a trust account investigation, trust account examination or ILP compliance audit in relation to a law practice, an investigator may, on production of evidence of the investigator's appointment, require the practice or an associate or former associate of the practice or anyone (including, for example, an ADI, auditor or liquidator) having control of documents relating to the affairs of the practice to give the investigator—

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

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

1 (2) A person commits an offence if the person does not comply with a
2 requirement made of the person under subsection (1).

3 Maximum penalty: 50 penalty units.

4 (3) Subsection (2) does not apply if the person has a reasonable excuse.

5 **522 Requirements that may be imposed for investigations**
6 **under ch 4**

7 (1) For carrying out a complaint investigation in relation to an
8 Australian lawyer, an investigator may, by notice served on the
9 lawyer, require the lawyer to do any 1 or more of the following:

10 (a) to produce, at or before a stated reasonable time and at a stated
11 reasonable place, a stated document (or a copy of the
12 document);

13 (b) to produce, at a stated reasonable time and stated reasonable
14 place, a stated document (or a copy of the document);

15 (c) to provide written information on or before a stated reasonable
16 date (verified by statutory declaration if stated in the
17 requirement);

18 (d) to otherwise assist in, or cooperate with, the investigation of
19 the complaint in a stated reasonable way.

20 (2) For carrying out a complaint investigation in relation to an
21 Australian lawyer, the investigator may, on production of evidence
22 of the investigator's appointment and by written notice require an
23 associate or former associate of the lawyer or anyone (including, for
24 example, an ADI, auditor or liquidator but not including the lawyer)
25 having control of documents relating to the affairs of the lawyer to
26 give the investigator—

27 (a) access to the documents relating to the lawyer's affairs the
28 investigator reasonably requires; and

- 1 (b) information relating to the lawyer's affairs the investigator
2 reasonably requires (verified by statutory declaration if the
3 requirement so states).

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

- 7 (3) A person commits an offence if the person does not comply with a
8 requirement made of the person under subsection (1) or (2).

9 Maximum penalty: 50 penalty units.

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

11 **523 Provisions relating to requirements under pt 6.2**

- 12 (1) This section applies to a requirement made of a person under this
13 part.

- 14 (2) The validity of the requirement is not affected, and the person is not
15 excused from compliance with the requirement, on the ground that a
16 law practice or legal practitioner has a lien over a particular
17 document or class of documents.

18 *Note* Section 593 (Professional privilege or duty of confidence does not
19 affect validity of or compliance with certain requirements etc) contains
20 a similar provision in relation to client legal privilege and duties of
21 confidence. Section 519 (Privileges against selfincrimination and
22 exposure to civil penalty) also applies to a requirement made of a
23 person under this chapter.

- 24 (3) The investigator imposing the requirement may—

- 25 (a) inspect any document provided under the requirement; and
26 (b) make copies of the document or any part of the document; and
27 (c) keep the document for a period the investigator considers
28 necessary for the purposes of the investigation in relation to
29 which it was produced.

Section 523

- 1 (4) The person is not subject to any liability, claim or demand only
2 because of compliance with the requirement.
- 3 (5) A failure of an Australian lawyer to comply with the requirement
4 can be unsatisfactory professional conduct or professional
5 misconduct.
- 6 (6) The relevant council may suspend a local practitioner's local
7 practising certificate while a failure by the practitioner to comply
8 with the requirement continues.

Part 6.3 Entry and search of premises

Division 6.3.1 Preliminary—pt 6.3

524 Application—pt 6.3

- (1) This division applies to—
- (a) trust account investigations; and
 - (b) complaint investigations.
- (2) This division does not apply to—
- (a) trust account examinations; or
 - (b) ILP compliance audits.

525 Definitions—pt 6.3

In this part:

connected—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

data includes—

- (a) information in any form; and
- (b) a program (or part of a program).

data storage device means a thing containing, or designed to contain, data for use by a computer.

- 1 *occupier*, of premises, includes—
- 2 (a) a person believed, on reasonable grounds, to be an occupier of
- 3 the premises; and
- 4 (b) a person apparently in charge of the premises.
- 5 *offence* includes an offence that there are reasonable grounds for
- 6 believing has been, is being, or will be, committed.
- 7 *person assisting*, in relation to a search warrant, means a person
- 8 who has been authorised by an investigator to assist in executing the
- 9 warrant.
- 10 *search warrant* means a warrant issued under division 6.3.3 (Search
- 11 warrants) that is in force.

12 **Division 6.3.2 Powers of investigators**

13 **526 Power to enter premises**

- 14 (1) For this Act, an investigator may, in relation to a trust account
- 15 investigation—
- 16 (a) enter premises of the law practice whose affairs are being
- 17 investigated, or any other premises where the investigator
- 18 suspects, on reasonable grounds, that the trust records of the
- 19 law practice required to be kept under this Act are being
- 20 kept—
- 21 (i) at any reasonable time; or
- 22 (ii) at any time, with the occupier's consent; or
- 23 (b) enter premises in accordance with a search warrant; or
- 24 (c) at any time, without the consent of the occupier and without a
- 25 warrant, enter premises if the investigator believes, on
- 26 reasonable grounds, that it is urgently necessary to prevent the
- 27 destruction of or interference with relevant material.

- 1 (2) For this Act, an investigator may, in relation to a complaint
2 investigation—
- 3 (a) at any time, enter premises with the occupier's consent; or
4 (b) enter premises in accordance with a search warrant.
- 5 (3) However, subsection (1) (a) does not authorise entry into a part of
6 premises that is being used only for residential purposes.
- 7 (4) An investigator must not enter premises under subsection (1) (c)
8 unless the relevant council has authorised the investigator (orally or
9 in writing) to enter the premises without consent and without a
10 warrant.
- 11 (5) An investigator may, without the consent of the occupier of
12 premises, enter land around the premises to ask for consent to enter
13 the premises.
- 14 (6) To remove any doubt, an investigator may enter premises under
15 subsection (1) or (2) without payment of an entry fee or other
16 charge.

17 **527 Consent to entry**

- 18 (1) When seeking the consent of an occupier of premises to enter
19 premises under section 526 (1) or (2) an investigator must—
- 20 (a) produce evidence of the investigator's appointment; and
21 (b) tell the occupier—
- 22 (i) the purpose of the entry; and
23 (ii) that anything found and seized under this part may be
24 used in evidence in court; and
25 (iii) that consent may be refused.
- 26 (2) If the occupier consents, the investigator must ask the occupier to
27 sign a written acknowledgment (an *acknowledgment of consent*)—

- 1 (a) that the occupier was told—
2 (i) the purpose of the entry; and
3 (ii) that anything found and seized under this part may be
4 used in evidence in court; and
5 (iii) that consent may be refused; and
6 (b) that the occupier consented to the entry; and
7 (c) stating the time and date when consent was given.
8 (3) If the occupier signs an acknowledgment of consent, the investigator
9 must immediately give a copy to the occupier.
10 (4) A court must find that the occupier did not consent to entry to the
11 premises by the investigator under this part if—
12 (a) the question arises in a proceeding in the court whether the
13 occupier consented to the entry; and
14 (b) an acknowledgment of consent for the entry is not produced in
15 evidence; and
16 (c) it is not proved that the occupier consented to the entry.

17 **528 General powers on entry to premises**

- 18 (1) An investigator who enters premises under this part may, for this
19 Act, do 1 or more of the following in relation to the premises or
20 anything at the premises:
21 (a) inspect or examine;
22 (b) take photographs, films, or audio, video or other recordings;

- 1 (c) require the occupier, or anyone at the premises, to give the
2 investigator reasonable help to exercise a power under this
3 part.

4 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
5 privilege against selfincrimination and client legal privilege.

- 6 (2) A person must take all reasonable steps to comply with a
7 requirement made of the person under subsection (1) (c).

8 Maximum penalty: 50 penalty units.

9 **529 Power to require name and address**

- 10 (1) An investigator may require a person to state the person's name and
11 home address if the investigator believes, on reasonable grounds,
12 that the person is committing or has just committed an offence
13 against this Act.

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

- 17 (2) The investigator must tell the person the reason for the requirement
18 and, as soon as practicable, record the reason.

- 19 (3) The person may ask the investigator to produce evidence of the
20 investigator's appointment for inspection by the person.

- 21 (4) A person must comply with a requirement made of the person under
22 subsection (1) if the investigator—

23 (a) tells the person the reason for the requirement; and

24 (b) complies with any request made by the person under
25 subsection (3).

26 Maximum penalty: 10 penalty units.

- 27 (5) An offence against this section is a strict liability offence.

(6) In this section:

home address, of a person, means the address of the place where the person usually lives.

530 Power to seize things

(1) An investigator who enters premises under this part with the occupier's consent may seize anything at the premises if—

(a) the investigator is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An investigator who enters premises under a warrant under this part may seize anything at the premises that the investigator is authorised to seize under the warrant.

(3) An investigator who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an investigator may—

(a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

1 (5) A person commits an offence if—

2 (a) the person interferes with a seized thing, or anything
3 containing a seized thing, to which access has been restricted
4 under subsection (4); and

5 (b) the person does not have an investigator's approval to interfere
6 with the thing.

7 Maximum penalty: 50 penalty units.

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

9 **Division 6.3.3 Search warrants**

10 **531 Warrants generally**

11 (1) An investigator may apply to a magistrate for a warrant to enter
12 premises.

13 (2) The application must be sworn and state the grounds on which the
14 warrant is sought.

15 (3) The magistrate may refuse to consider the application until the
16 investigator gives the magistrate all the information the magistrate
17 requires about the application in the way the magistrate requires.

18 (4) The magistrate may issue a warrant only if satisfied there are
19 reasonable grounds for suspecting—

20 (a) there is a particular thing or activity connected with an offence
21 against this Act; and

22 (b) the thing or activity—

23 (i) is, or is being engaged in, at the premises; or

24 (ii) may be, or may be engaged in, at the premises within the
25 next 14 days.

- 1 (5) The warrant must state—
- 2 (a) that an investigator may, with any necessary assistance and
- 3 force, enter the premises and exercise the investigator's powers
- 4 under this part; and
- 5 (b) the offence for which the warrant is issued; and
- 6 (c) the things that may be seized under the warrant; and
- 7 (d) the hours when the premises may be entered; and
- 8 (e) the date, within 14 days after the day of the warrant's issue, the
- 9 warrant ends.
- 10 **532 Warrants—application made other than in person**
- 11 (1) An investigator may apply for a warrant by phone, fax, radio or
- 12 other form of communication if the investigator considers it
- 13 necessary because of—
- 14 (a) urgent circumstances; or
- 15 (b) other special circumstances.
- 16 (2) Before applying for the warrant, the investigator must prepare an
- 17 application stating the grounds on which the warrant is sought.
- 18 (3) The investigator may apply for the warrant before the application is
- 19 sworn.
- 20 (4) After issuing the warrant, the magistrate must immediately fax a
- 21 copy to the investigator if it is practicable to fax the copy.
- 22 (5) If it is not practicable to fax a copy to the investigator—
- 23 (a) the magistrate must tell the investigator—
- 24 (i) the terms of the warrant; and
- 25 (ii) the date and time the warrant was issued; and

-
- 1 (b) the investigator must complete a form of warrant (the *warrant*
2 *form*) and write on it—
- 3 (i) the magistrate's name; and
- 4 (ii) the date and time the magistrate issued the warrant; and
- 5 (iii) the warrant's terms.
- 6 (6) The faxed copy of the warrant, or the warrant form properly
7 completed by the investigator, authorises the entry and the exercise
8 of the investigator's powers under this part.
- 9 (7) The investigator must, at the first reasonable opportunity, send to
10 the magistrate—
- 11 (a) the sworn application; and
- 12 (b) if the investigator completed a warrant form—the completed
13 warrant form.
- 14 (8) On receiving the documents, the magistrate must attach them to the
15 warrant.
- 16 (9) A court must find that a power exercised by the investigator was not
17 authorised by a warrant under this section if—
- 18 (a) the question arises in a proceeding in the court whether the
19 exercise of power was authorised by a warrant; and
- 20 (b) the warrant is not produced in evidence; and
- 21 (c) it is not proved that the exercise of power was authorised by a
22 warrant under this section.

23 **533 Search warrants—announcement before entry**

- 24 (1) An investigator must, before anyone enters premises under a search
25 warrant—
- 26 (a) announce that the investigator is authorised to enter the
27 premises; and

- 1 (b) give anyone at the premises an opportunity to allow entry to
2 the premises; and
- 3 (c) if the occupier of the premises, or someone else who
4 apparently represents the occupier, is present at the premises—
5 identify himself or herself to the person.
- 6 (2) The investigator is not required to comply with subsection (1) if the
7 investigator believes, on reasonable grounds, that immediate entry
8 to the premises is required to ensure—
- 9 (a) the safety of anyone (including the investigator or any person
10 assisting); or
- 11 (b) that the effective execution of the warrant is not frustrated.

12 **534 Details of search warrant to be given to occupier etc**

13 If the occupier of premises, or someone else who apparently
14 represents the occupier, is present at the premises while a search
15 warrant is being executed, the investigator or a person assisting must
16 make available to the person—

- 17 (a) copy of the warrant; and
- 18 (b) a document setting out the rights and obligations of the person.

19 **535 Occupier entitled to be present during search etc**

20 (1) If the occupier of premises, or someone else who apparently
21 represents the occupier, is present at the premises while a search
22 warrant is being executed, the person is entitled to observe the
23 search being conducted.

- 24 (2) However, the person is not entitled to observe the search if—
- 25 (a) to do so would impede the search; or

1 (b) the person is under arrest, and allowing the person to observe
2 the search being conducted would interfere with the objectives
3 of the search.

4 (3) This section does not prevent 2 or more areas of the premises being
5 searched at the same time.

6 **536 Use of electronic equipment at premises**

7 (1) An investigator or a person assisting may operate electronic
8 equipment at premises entered under a search warrant to access data
9 (including data not held at the premises) if the investigator or person
10 believes, on reasonable grounds, that—

11 (a) the data might be something to which the warrant relates; and

12 (b) the equipment can be operated without damaging the data.

13 (2) If the investigator or person assisting believes, on reasonable
14 grounds, that any data accessed by operating the electronic
15 equipment might be something to which the warrant relates, the
16 investigator or person may—

17 (a) copy the data to a data storage device brought to the premises;
18 or

19 (b) if a person in charge of the premises agrees in writing—copy
20 the data to a data storage device at the premises.

21 (3) The investigator or person assisting may take the device from the
22 premises.

23 (4) The investigator or person assisting may do the following things if
24 the investigator or person finds that anything to which the warrant
25 relates (the *material*) is accessible using the equipment:

26 (a) seize the equipment and any data storage device;

- 1 (b) if the material can, by using facilities at the premises, be put in
2 documentary form—operate the facilities to put the material in
3 that form and seize the documents produced.
- 4 (5) An investigator may seize equipment under subsection (4) (a) only
5 if—
- 6 (a) it is not practicable to copy the data as mentioned in
7 subsection (2) or to put the material in documentary form as
8 mentioned in subsection (4) (b); or
- 9 (b) possession of the equipment by a person in charge of the
10 premises or someone else could be an offence.

11 **537 Person with knowledge of computer or computer system**
12 **to assist access etc**

- 13 (1) An investigator may apply to a magistrate for an order requiring a
14 stated person to provide any information or assistance that is
15 reasonably necessary to allow the investigator or a person assisting
16 to do 1 or more of the following:
- 17 (a) access data held in or accessible from a computer that is at the
18 premises;
- 19 (b) copy the data to a data storage device;
- 20 (c) convert the data into documentary form.
- 21 (2) The magistrate may make an order if satisfied that—
- 22 (a) there are reasonable grounds for suspecting that something to
23 which the warrant relates is accessible from the computer; and
- 24 (b) the stated person is—
- 25 (i) reasonably suspected of possessing, or having under the
26 person's control, something to which the warrant relates;
27 or
- 28 (ii) the owner or lessee of the computer; or

- 1 (iii) an employee or agent of the owner or lessee of the
2 computer; and
- 3 (c) the stated person has knowledge of—
- 4 (i) the computer or a computer network of which the
5 computer forms a part; or
- 6 (ii) measures applied to protect data held in or accessible
7 from the computer.
- 8 (3) A person commits an offence if the person contravenes an order
9 under this section.
- 10 Maximum penalty: 50 penalty units, imprisonment for 6 months or
11 both.
- 12 (4) The provisions of this chapter relating to the issue of search
13 warrants apply, with any necessary changes, to the making of an
14 order under this section.

15 **538 Securing electronic equipment**

- 16 (1) This section applies if the investigator or a person assisting believes,
17 on reasonable grounds, that—
- 18 (a) something to which the warrant relates (the *material*) may be
19 accessible by operating electronic equipment at the premises;
20 and
- 21 (b) expert assistance is required to operate the equipment; and
- 22 (c) the material may be destroyed, altered or otherwise interfered
23 with if the investigator or person does not take action.
- 24 (2) The investigator or person may do whatever is necessary to secure
25 the equipment, whether by locking it up, placing a guard or
26 otherwise.

- 1 (3) The investigator or a person assisting must give written notice to a
2 person in charge of the premises of—
- 3 (a) the investigator's or person's intention to secure the
4 equipment; and
- 5 (b) the fact that the equipment may be secured for up to 24 hours.
- 6 (4) Equipment may be secured until the earlier of the following events
7 happens:
- 8 (a) the end of the 24-hour period;
- 9 (b) the equipment is operated by the expert.
- 10 (5) If the investigator or a person assisting believes, on reasonable
11 grounds, that the expert assistance will not be available within the
12 24-hour period, the investigator or person may apply to a magistrate
13 to extend the period.
- 14 (6) The investigator or a person assisting must tell a person in charge of
15 the premises of the intention to apply for an extension, and the
16 person is entitled to be heard on the application.
- 17 (7) The provisions of this chapter relating to the issue of search
18 warrants apply, with any necessary changes, to the giving of an
19 extension under this section.

20 **539 Copies of seized things to be provided**

- 21 (1) This section applies if—
- 22 (a) a person in charge of premises, or someone else who
23 apparently represents the person, is present at the premises
24 while a search warrant is executed; and
- 25 (b) the investigator seizes—
- 26 (i) a document, film, computer file or something else that can
27 be readily copied; or

- 1 (ii) a data storage device containing information that can be
2 readily copied.
- 3 (2) The person in charge or other person may ask the investigator to
4 give the person a copy of the thing or information.
- 5 (3) The investigator must give the person the copy as soon as
6 practicable after the seizure.
- 7 (4) However, the investigator is not required to give the copy if—
- 8 (a) the thing was seized under section 536 (Use of electronic
9 equipment at premises); or
- 10 (b) possession of the thing or information by a person in charge of
11 the premises or someone else would be an offence.

12 **Division 6.3.4 Return and forfeiture of things seized**

13 **540 Receipt for things seized**

- 14 (1) As soon as practicable after an investigator seizes a thing under this
15 part, the investigator must give a receipt for it to the person from
16 whom it was seized.
- 17 (2) If, for any reason, it is not practicable to comply with subsection (1),
18 the investigator must leave the receipt, secured conspicuously, at the
19 place of seizure under section 530 (Power to seize things).
- 20 (3) A receipt under this section must include the following:
- 21 (a) a description of the thing seized;
- 22 (b) an explanation of why the thing was seized;
- 23 (c) the investigator's name, and how to contact the investigator;
- 24 (d) if the thing is moved from the premises where it is seized—
25 where the thing is to be taken.

541 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
- (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An investigator may apply to a magistrate for an extension of time if the investigator believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The investigator must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the investigator must, if practicable—
- (a) tell the occupier of the premises the address of the place where, and the time when, the examination or processing will be carried out; and
- (b) allow the occupier or the occupier's representative to be present during the examination or processing.

- 1 (6) The provisions of this part relating to the issue of search warrants
2 apply, with any necessary changes, to the giving of an extension
3 under this section.

4 **542 Access to things seized**

5 A person who would, apart from the seizure, be entitled to inspect a
6 thing seized under this part may—

- 7 (a) inspect it; and
8 (b) if it is a document—take extracts from it or make copies of it.

9 **543 Return of things seized**

- 10 (1) A thing seized under this part must be returned to its owner, or
11 reasonable compensation must be paid by the relevant council to the
12 owner for the loss of the thing if either—

13 (a) a prosecution for an offence relating to the thing is not started
14 within the 1-year period; or

15 (b) a prosecution for an offence relating to the thing is started
16 within the 1-year period but the court does not find the offence
17 proved.

- 18 (2) If anything seized under this part is not required to be returned or
19 reasonable compensation is not required to be paid under
20 subsection (1), the thing—

21 (a) is forfeited to the relevant council; and

22 (b) may be sold, destroyed or otherwise disposed of as the council
23 directs.

Division 6.3.5 Miscellaneous—pt 6.3

544 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an investigator must take all reasonable steps to ensure that the investigator, and anyone assisting the investigator, causes as little inconvenience, detriment and damage as practicable.
- (2) If an investigator, or a person assisting an investigator, damages anything in the exercise or purported exercise of a function under this part, the investigator must give written notice of the particulars of the damage to the person the investigator believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

545 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the relevant council if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an investigator or a person assisting an investigator.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

- 1 (4) A regulation may prescribe matters that may, must or must not be
2 taken into account by the court in considering whether it is just to
3 make the order.

**Part 6.4 Additional powers in relation to
incorporated legal practices**

546 Application—pt 6.4

(1) This part applies to—

(a) trust account investigations; and

(b) complaint investigations; and

(c) ILP compliance audits;

conducted in relation to incorporated legal practices.

(2) The provisions of this part are additional to the other provisions of this chapter.

547 Investigative powers relating to investigations and audits

An investigator conducting an investigation or audit to which this part applies may exercise the powers set out in this part.

548 Examination of people under pt 6.4

(1) The investigator, by force of this section, has and may exercise the same powers as the powers given to the Australian Securities and Investments Commission by the *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3, division 2.

- 1 (2) The *Australian Securities and Investments Commission Act 2001*
2 (Cwlth), part 3, division 2 applies to the exercise of those powers,
3 with the following changes (and any changes prescribed by
4 regulation and any other necessary changes):
- 5 (a) a reference to the Australian Securities and Investments
6 Commission (however expressed) is taken to be a reference to
7 the law society council or investigator;
- 8 (b) a reference to a matter that is being or is to be investigated
9 under that Act, part 3, division 1 is taken to be a reference to a
10 matter that is being or is to be investigated, examined or
11 audited by the investigator;
- 12 (c) a reference in that Act, section 19 to a person is taken to be a
13 reference to an Australian legal practitioner or an incorporated
14 legal practice;
- 15 (d) a reference to a prescribed form is taken to be a reference to a
16 form approved under this Act.
- 17 (3) The *Australian Securities and Investments Commission Act 2001*
18 (Cwlth), section 22 (2) and (3), section 25 (2) and (2A), sections 26
19 and 27 do not apply in relation to the exercise of the powers given
20 by this section.

21 **549 Inspection of books under pt 6.4**

- 22 (1) The investigator, by force of this section, has and may exercise the
23 same powers as the powers given to the Australian Securities and
24 Investments Commission by the *Australian Securities and*
25 *Investments Commission Act 2001* (Cwlth), section 30 (1),
26 section 34 and sections 37 to 39.

- 1 (2) Those provisions apply to the exercise of those powers, with the
2 following changes (and any changes prescribed by regulation and
3 any other necessary changes):
- 4 (a) a reference to the Australian Securities and Investments
5 Commission (however expressed) is taken to be a reference to
6 the law society council or investigator;
- 7 (b) a reference to a body corporate (including a body corporate
8 that is not an exempt public authority) is taken to be a
9 reference to an incorporated legal practice;
- 10 (c) a reference to an eligible person in relation to an incorporated
11 legal practice is taken to be a reference to an officer or
12 employee of the incorporated legal practice;
- 13 (d) a reference to a member or staff member is taken to be a
14 reference to the law society council or a person authorised by
15 the council who is an officer or employee of the law society;
- 16 (e) a reference in that Act, section 37 to a proceeding is taken to be
17 a reference to an investigation, examination or audit to which
18 this part applies.

19 **550 Power to hold hearings under pt 6.4**

- 20 (1) The law society council or an investigator may hold hearings for the
21 purposes of an investigation, examination or audit to which this part
22 applies.
- 23 (2) The *Australian Securities and Investments Commission Act 2001*
24 (Cwlth), section 52, section 56 (1), section 58, section 59 (1), (2),
25 (5), (6) and (8) and section 60 (except paragraph (b)) apply to a
26 hearing, with the following changes (and any changes prescribed by
27 regulation and any other necessary changes):
- 28 (a) a reference to Australian Securities and Investments
29 Commission (however expressed) is taken to be a reference to
30 the law society council or investigator;

- 1 (b) a reference to a member or staff member is taken to be a
2 reference to the law society council or a person authorised by
3 the council who is an officer or employee of the law society;
4 (c) a reference to a prescribed form is taken to be a reference to a
5 form approved by the law society council under section 583.

6 **551 Failure to comply with investigation under pt 6.4**

7 The following acts or omissions can be unsatisfactory professional
8 conduct or professional misconduct:

- 9 (a) a failure by an Australian legal practitioner to comply with any
10 requirement made by the law society council or investigator, or
11 a person authorised by the council or investigator, in the
12 exercise of powers given by this part;
13 (b) a contravention by an Australian legal practitioner of any
14 condition imposed by the law society council or investigator in
15 the exercise of powers given by this part;
16 (c) a failure by a legal practitioner director of an incorporated legal
17 practice to ensure that the incorporated legal practice, or any
18 officer or employee of the incorporated legal practice,
19 complies with any of the following:
20 (i) any requirement made by the law society council or
21 investigator, or a person authorised by the council or
22 investigator, in the exercise of powers given by this part;
23 (ii) any condition imposed by the law society council or
24 investigator in the exercise of powers given by this part.

Part 6.5 Miscellaneous—ch 6

552 Additional obligations of Australian lawyers

- (1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) An Australian lawyer must not mislead an investigator or the relevant council in the exercise of—
 - (a) any function under this part; or
 - (b) any function under a provision of a corresponding law that corresponds to this part.
- (3) An Australian lawyer who is subject to—
 - (a) a requirement under section 522 (Requirements that may be imposed for investigations under ch 4); or
 - (b) a requirement under provisions of a corresponding law that correspond to that section;must not, without reasonable excuse, fail to comply with the requirement.

553 Permitted disclosure of confidential information—ch 6

- (1) The relevant council or an investigator may disclose information obtained in the course of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit to any of the following:
 - (a) any court, tribunal or other entity acting judicially;
 - (b) the relevant council or any other entity regulating legal practitioners in any jurisdiction;

- 1 (c) any officer of or Australian legal practitioner instructed by—
2 (i) the relevant council or any other entity regulating legal
3 practitioners in any jurisdiction; or
4 (ii) the Territory, the Commonwealth, a State or another
5 Territory; or
6 (iii) an authority of the Territory, the Commonwealth, a State
7 or another Territory;
8 in relation to any proceeding, inquiry or other matter pending
9 or contemplated arising out of the investigation, examination
10 or audit;
11 (d) an investigative or prosecuting authority established under
12 legislation (for example, the Australian Securities and
13 Investments Commission);
14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).
17 (e) a police officer if the relevant council or investigator is
18 reasonably satisfied the information relates to an offence that
19 may have been committed by—
20 (i) if a law practice is the subject of the investigation,
21 examination or audit—the law practice or an associate or
22 former associate of the law practice; or
23 (ii) if an Australian lawyer is the subject of the investigation,
24 examination or audit—the lawyer or an associate or
25 former associate of the law practice of which the lawyer
26 is or was an associate;
27 (f) if the subject of the investigation, examination or audit is or
28 was—
29 (i) a law practice—a principal of the law practice; or

- 1 (ii) an incorporated legal practice—a director or shareholder
2 in the practice; or
- 3 (iii) an Australian lawyer—the lawyer or a principal of the law
4 practice of which the lawyer is or was an associate;
- 5 (g) if the subject of the investigation, examination or audit is or
6 was—
- 7 (i) a law practice—a client or former client of the practice; or
- 8 (ii) an Australian lawyer—a client or former client of the law
9 practice of which the lawyer is or was an associate;
- 10 but only if the information relates to the client or former client;
- 11 (h) if the subject of the investigation, examination or audit is or
12 was—
- 13 (i) a law practice—a supervisor, manager or receiver
14 appointed in relation to the law practice; or
- 15 (ii) an Australian lawyer—a supervisor, manager or receiver
16 appointed in relation to the law practice of which the
17 lawyer is or was an associate;
- 18 or an Australian legal practitioner or accountant employed by
19 the supervisor, manager or receiver;
- 20 (i) an investigator carrying out another investigation, examination
21 or audit in relation to the law practice or Australian lawyer
22 who is or was the subject of the investigation, examination or
23 audit.
- 24 (2) No liability (including liability in defamation) is incurred by a
25 protected person in relation to anything done or omitted to be done
26 honestly for the purpose of disclosing information under this
27 section.

- 1 (3) In this section:
- 2 *protected person* means—
- 3 (a) the bar association or law society; or
- 4 (b) a council or any member of a council; or
- 5 (c) an investigator; or
- 6 (d) a member of the staff of any entity mentioned in this
- 7 definition; or
- 8 (e) a person acting at the direction of any entity mentioned in this
- 9 definition.

Chapter 7 Regulatory authorities

Part 7.1 Admissions board

554 Admissions board

- (1) The Legal Practitioners Admissions Board (the *admissions board*) is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

- (2) The admissions board consists of 5 lawyers including 2 barristers.

- (3) The Chief Justice must appoint the members of the admissions board.

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

- (4) Subject to section 555, the appointment of a member of the admissions board ends on the 31 December after the day the appointment commences.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (5) The registrar, or a public servant approved by the Chief Justice, is the secretary to the admissions board.

555 Ending appointments of members

- (1) The Supreme Court may, on the application of the Attorney-General, end the appointment of a member of the admissions board—

- (a) for misbehaviour; or

- 1 (b) for physical or mental incapacity, if the incapacity substantially
2 affects the exercise of the member's functions.
- 3 (2) The Supreme Court may end the appointment of a member of the
4 admissions board—
- 5 (a) if the member contravenes a territory law; or
- 6 (b) for misbehaviour; or
- 7 (c) if the member becomes bankrupt or executes a personal
8 insolvency agreement; or
- 9 (d) if the member is convicted, or found guilty, in Australia of an
10 offence punishable by imprisonment for at least 1 year; or
- 11 (e) if the member is convicted, or found guilty, outside Australia
12 of an offence that, if it had been committed in the ACT, would
13 be punishable by imprisonment for at least 1 year; or
- 14 (f) if the member fails to take all reasonable steps to avoid being
15 placed in a position where a conflict of interest arises during
16 the exercise of the member's functions; or
- 17 (g) if the member stops being a lawyer; or
- 18 (h) if the member is absent from 3 consecutive meetings of the
19 admissions board except on leave given by the board.
- 20 *Note* A person's appointment also ends if the person resigns (see Legislation
21 Act, s 210).
- 22 (3) The Supreme Court may also end the appointment of the member if
23 the board tells the Supreme Court in writing that it has resolved, by
24 a majority of at least $\frac{2}{3}$ of the members, to recommend that the
25 member's appointment be ended.

- 1 (4) The admissions board may pass a resolution mentioned in
2 subsection (3) in relation to the member only if—
- 3 (a) at least 3 weeks written notice of the intention to consider the
4 proposed resolution has been given to the member; and
- 5 (b) the member has been given an opportunity to make
6 submissions and present documents to a meeting of the board;
7 and
- 8 (c) if the member has used the opportunity mentioned in
9 paragraph (b)—a summary of the member’s submissions is
10 recorded in the minutes of the board and a copy of any
11 documents presented is included in the minutes.

12 **556 Chair of admissions board**

13 The members of the admissions board must elect a chair for the
14 board.

15 **557 Meetings of admissions board**

- 16 (1) Meetings of the admissions board are to be held when and where it
17 decides.
- 18 (2) Business may be carried on at a meeting of the admissions board
19 only if at least 3 members are present.
- 20 (3) The chair presides at all meetings at which the chair is present.
- 21 (4) If the chair is absent, the member chosen by the members present
22 presides.

23 **558 Protection of members from liability**

- 24 (1) A member of the admissions board is not civilly liable for anything
25 done or omitted to be done honestly and without recklessness—
- 26 (a) in the exercise of a function under this Act; or

1 (b) in the reasonable belief that the act or omission was in the
2 exercise of a function under this Act.

3 (2) Any liability that would, apart from this section, attach to a member
4 attaches instead to the Territory.

5 **Part 7.2** **Disciplinary tribunal**

6 **559 Establishment of disciplinary tribunal**

7 The Legal Practitioners Disciplinary Tribunal (the *disciplinary*
8 *tribunal*) is established.

9 **560 Functions of disciplinary tribunal**

10 The disciplinary tribunal has the following functions:

- 11 (a) to decide applications made to the tribunal under part 4.7;
- 12 (b) any other function given to the board under this Act or any
13 other territory law.

14 *Note* A provision of a law that gives an entity (including a person) a function
15 also gives the entity powers necessary and convenient to exercise the
16 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

17 **561 Members of disciplinary tribunal**

18 The disciplinary tribunal consists of—

- 19 (a) a judicial member appointed under section 562; or
- 20 (b) a judicial member appointed under section 562 and 2 non-
21 judicial members.

1 **562 Appointment of judicial members of the disciplinary**
2 **tribunal**

- 3 (1) The Attorney-General must appoint the chair and the deputy chair.

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

6 *Note 2* Certain Ministerial appointments require consultation with an Assembly
7 committee and are disallowable (see Legislation Act, div 19.3.3).

- 8 (2) The Attorney-General may appoint a person to be chair or deputy
9 chair only if the person is judicially qualified.

- 10 (3) The chair and the deputy chair are the *judicial members* of the
11 disciplinary tribunal.

- 12 (4) The *Supreme Court Act 1933*, section 16 (Holding other judicial
13 offices) does not apply to the appointment of a judge as a judicial
14 member.

- 15 (5) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do
16 other work) does not apply to the appointment of a magistrate as a
17 judicial member.

- 18 (6) The appointment of a person who is a judge or magistrate as a
19 judicial member does not affect the person's office of judge or
20 magistrate.

- 21 (7) A person who is a judge or magistrate may exercise the functions of
22 the person's office as judge or magistrate even though the person is
23 a judicial member.

- 24 (8) For this section, each of the following are *judicially qualified*:

25 (a) a judge or retired judge;

26 (b) a magistrate or retired magistrate;

27 (c) a person qualified to be appointed as a judge.

1 **563 Term of appointment of disciplinary tribunal member**

2 The appointment of a disciplinary tribunal member must not be for
3 longer than 3 years.

4 *Note* A person may be reappointed to a position if the person is eligible to be
5 appointed to the position (see Legislation Act, s 208 and dict, pt 1, def
6 *appoint*).

7 **564 Role of disciplinary tribunal chair**

8 (1) The disciplinary tribunal chair is responsible for ensuring the
9 orderly and prompt discharge of the tribunal's business.

10 (2) Without limiting subsection (1), the chair may give directions about
11 the judicial member who is to be the judicial member of a particular
12 disciplinary tribunal and whether the tribunal is to consist of the
13 judicial member alone.

14 **565 Presiding member of disciplinary tribunal**

15 A judicial member of the disciplinary tribunal must preside at a
16 proceeding before the tribunal.

17 **566 Conditions of appointment of judicial members**

18 The conditions of appointment of a judicial member of the
19 disciplinary tribunal are the conditions agreed between the
20 Attorney-General and the member, subject to any determination
21 under the *Remuneration Tribunal Act 1995*.

22 **567 Ending appointment of judicial members**

23 (1) The Attorney-General may end the appointment of a judicial
24 member of the disciplinary tribunal—

25 (a) for misbehaviour; or

- 1 (b) if the member becomes bankrupt or executes a personal
2 insolvency agreement.

3 *Note* A person's appointment also ends if the person resigns (see Legislation
4 Act, s 210).

- 5 (2) The Attorney-General must end the appointment of a judicial
6 member of the disciplinary tribunal—

7 (a) for physical or mental incapacity, if the incapacity substantially
8 affects the exercise of the member's functions; or

9 (b) the member is convicted, or found guilty, in Australia of an
10 offence punishable by imprisonment for at least 1 year; or

11 (c) if the member is convicted, or found guilty, outside Australia
12 of an offence that, if it had been committed in the ACT, would
13 be punishable by imprisonment for at least 1 year; or

14 (d) if the member fails to take all reasonable steps to avoid being
15 placed in a position where a conflict of interest arises during
16 the exercise of the member's functions; or

17 (e) for a judicial member, if the member stops being a judicially
18 qualified person.

19 **568 How is a disciplinary tribunal constituted for application?**

- 20 (1) For hearing and deciding an application made to the disciplinary
21 tribunal under part 4.7, the tribunal is constituted by—

22 (a) a judicial member of the tribunal; or

23 (b) a judicial member of the tribunal and the following members:

24 (i) 1 member chosen by the judicial member from the list of
25 suitably qualified legal practitioners under section
26 569 (1) (a) or (b); and

27 (ii) 1 member chosen by the judicial member from the list of
28 lay people kept under section 569 (1) (c).

- 1 (2) The members chosen by the judicial member are the *non-judicial*
2 *members* of the disciplinary tribunal.

3 **569 Lists of non-judicial members**

- 4 (1) The disciplinary tribunal chair must keep the following lists:
- 5 (a) a list of at least 3 suitably qualified legal practitioners
6 nominated by the bar council;
- 7 (b) a list of at least 3 suitably qualified legal practitioners
8 nominated by the law society council;
- 9 (c) a list of at least 3 lay people nominated by the Attorney-
10 General.
- 11 (2) For subsection (1) (c), the Attorney-General must nominate people
12 who, in the Attorney-General's opinion, have the qualifications,
13 training or experience to give specialist assistance to the disciplinary
14 tribunal.
- 15 (3) In this section:
- 16 *suitably qualified legal practitioner* means a legal practitioner who
17 has been admitted for at least 5 years and holds an unrestricted
18 practising certificate or a barrister practising certificate.

19 **570 Disciplinary tribunal trust fund**

- 20 (1) The Attorney-General must keep and administer a fund called the
21 disciplinary tribunal trust fund.
- 22 (2) The chief executive must open and maintain under the *Financial*
23 *Management Act 1996*, section 51 (Departmental trust banking
24 accounts) a trust account with an authorised deposit-taking
25 institution (the *disciplinary tribunal trust account*) to be used only
26 for the fund.
- 27 (3) The fund may be used only for the purpose of meeting the recurrent
28 costs of remuneration and administration of the disciplinary tribunal.

Chapter 8 Professional bodies

Part 8.1 Bar council

571 Functions of bar council

- (1) The bar council has the following functions:
- (a) to take any step it considers necessary or proper for or in relation to the investigation under this Act of any question about—
 - (i) the conduct of a barrister; or
 - (ii) the conduct of anyone who is or was employed by a barrister in relation to the barrister's practice as a barrister; or
 - (iii) conduct that is, or may be, a contravention of part 2.2 (Reservation of legal work and legal titles); or
 - (iv) conduct that is, or may be, a contravention of part 2.7 (Legal practice—foreign lawyers);
 - (b) to appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of a function of the Supreme Court under this Act or otherwise in relation to a barrister or locally-registered foreign lawyer registered by the bar council;
 - (c) to start proceedings for breaches of provisions of this Act;
 - (d) to appear by barrister or solicitor before, and be heard by, any court in any matter affecting the bar association or its members or in which the bar association is concerned or interested;
 - (e) to recover as a debt owing to the bar association any amount payable to the bar association under this Act;

- 1 (f) any other function given to the bar council under this Act or
2 any other territory law.

3 *Note* A provision of a law that gives an entity (including a person) a function
4 also gives the entity powers necessary and convenient to exercise the
5 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- 6 (2) The bar council may delegate the council's functions under this Act
7 to—

- 8 (a) a committee of the council; or
9 (b) a member of the staff of the bar association.

10 *Note* For the making of delegations and the exercise of delegated functions,
11 see the Legislation Act, pt 19.4.

- 12 (3) In this section, a reference to a **barrister** (other than for the bar
13 council appearing before or being heard by a court) is a reference
14 to—

- 15 (a) an Australian legal practitioner to whom chapter 4 (Complaints
16 and discipline) applies and who is, or was, the holder of a
17 barrister practising certificate; or
18 (b) an Australian-registered foreign lawyer to whom chapter 4
19 applies and who is, or was, the holder of a barrister practising
20 certificate.

Part 8.2 Law society and law society council

572 Establishment of law society

- (1) The Law Society of the Australian Capital Territory is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

- (2) The law society—

- (a) is a corporation; and
- (b) may sue and be sued in its corporate name; and
- (c) may have a seal.

- (3) The law society has the legal capacity and powers of an individual both in and outside the ACT (including outside Australia).

Examples

- 1 to enter into a contract
- 2 to own, deal with and dispose of property
- 3 to act as trustee

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

- (4) The constitution of the law society is, subject to this Act, the constitution of the law society as in force immediately before the commencement of this section.
- (5) An amendment of the constitution of the law society does not take effect unless it is approved by the Attorney-General.

- 1 (6) An amendment of the constitution of the law society that is
2 approved by the Attorney-General takes effect—
3 (a) if the amendment states a day when it is to take effect that is
4 not earlier than the day after the day the Attorney-General
5 approves the amendment—at the beginning of the day stated;
6 and
7 (b) in any other case—at the beginning of the day after the day the
8 Attorney-General approves the amendment.
9 (7) A person is not entitled to be a member of the law society unless the
10 person's name is on the roll of legal practitioners.
11 (8) A person who holds a practising certificate is entitled, on application
12 to the law society, to be admitted to membership of the society
13 without paying a fee for admission.
14 (9) A member of the law society is not, while the member holds a
15 practising certificate, liable to pay to the society any annual
16 subscription to the society's funds.

17 **573 Functions of law society council**

- 18 (1) In addition to its other functions, the law society council has the
19 following functions:
20 (a) to take any step it considers necessary or proper for or in
21 relation to the investigation under this Act of any question
22 about—
23 (i) the conduct of a solicitor; or
24 (ii) the conduct of anyone who is or was employed by a
25 solicitor in relation to the solicitor's practice as a solicitor;
26 or
27 (iii) conduct that is, or may be, a contravention of part 2.2
28 (Reservation of legal work and legal titles); or

- 1 (iv) conduct that is, or may be, a contravention of part 2.7
2 (Legal practice—foreign lawyers);
- 3 (b) to appear by barrister or solicitor before, and be heard by, the
4 Supreme Court in the exercise of a function of the Supreme
5 Court under this Act or otherwise in relation to a solicitor or
6 locally-registered foreign lawyer registered by the law society
7 council;
- 8 (c) to start proceedings for breaches of provisions of this Act;
- 9 (d) to appear by barrister or solicitor before, and be heard by, any
10 court in any matter affecting the law society or its members or
11 in which the law society is concerned or interested;
- 12 (e) to recover as a debt owing to the law society any amount
13 payable to the law society under this Act;
- 14 (f) to distribute information to increase public awareness of the
15 requirements of this Act and the Corporations Act in relation to
16 solicitors who negotiate the making of or act in relation to
17 regulated mortgages within the meaning of part 3.5 (Mortgage
18 practices and managed investment schemes) or are involved in
19 managed investment schemes;
- 20 (g) to exercise any other function given to the law society council
21 under this Act or any other territory law.
- 22 *Note* A provision of a law that gives an entity (including a person) a function
23 also gives the entity powers necessary and convenient to exercise the
24 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).
- 25 (2) The law society council may delegate the council's functions under
26 this Act to—
- 27 (a) a committee of the council; or
- 28 (b) to a member of the staff of the law society.
- 29 *Note* For the making of delegations and the exercise of delegated functions,
30 see the Legislation Act, pt 19.4.

- 1 (3) In this section, a reference to a *solicitor* (other than for the law
2 society council appearing before or being heard by a court) is a
3 reference to—
- 4 (a) an Australian legal practitioner to whom chapter 4 (Complaints
5 and discipline) applies and who is not, or was not, the holder of
6 a barrister practising certificate; or
- 7 (b) an Australian-registered foreign lawyer to whom chapter 4
8 applies and who is not, or was not, the holder of a barrister
9 practising certificate.

Part 8.3 Legal profession rules

Division 8.3.1 Preliminary

574 Purpose—pt 8.3

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

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

575 Rules for barristers

- (1) The bar council may make rules for or in relation to practice as a barrister.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The bar council may make rules for or in relation to practice as an Australian-registered foreign lawyer.

576 Rules for solicitors

- (1) The law society council may make rules for or in relation to practice as a solicitor.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The law society council may make rules for or in relation to practice as an Australian-registered foreign lawyer.

-
- 1 **577 Joint rules for Australian legal practitioners**
- 2 (1) The bar council and the law society council may jointly make rules
- 3 (*joint rules*) for or in relation to any matter about which they may
- 4 separately make rules.
- 5 *Note* Rules must be notified, and presented to the Legislative Assembly,
- 6 under the Legislation Act.
- 7 (2) A joint rule may, but need not, apply in the same way to both
- 8 barristers and solicitors.
- 9 (3) Joint rules prevail, to the extent of any inconsistency, over legal
- 10 profession rules made separately by the bar council or law society
- 11 council (whether made before or after the joint rules).
- 12 **578 Subject matter of legal profession rules**
- 13 Legal profession rules for Australian legal practitioners or locally-
- 14 registered foreign lawyers may make provision in relation to any
- 15 aspect of legal practice, including standards of conduct expected of
- 16 practitioners or lawyers to whom the rules apply.
- 17 **579 Public notice of proposed legal profession rules**
- 18 (1) The council or councils proposing to make a legal profession rule
- 19 under this division must ensure that a notice is published in a daily
- 20 newspaper circulating in the ACT—
- 21 (a) explaining the object of the proposed rule; and
- 22 (b) advising where or how a copy of the proposed rule may be
- 23 accessed, obtained or inspected; and
- 24 (c) inviting comments and submissions within a stated period of
- 25 not less than 21 days after the date of first publication of the
- 26 notice.
- 27 (2) The council or councils must ensure that a copy of the proposed rule
- 28 is given to the Attorney-General before the notice is published.
-

- 1 (3) The council or councils must not make the rule before the end of the
2 period stated in the notice for making comments and submissions
3 and must ensure that any comments and submissions received
4 within that period are appropriately considered.
- 5 (4) However, the council or councils may make the rule before the end
6 of the period stated in the notice for making comments and
7 submissions if—
- 8 (a) in the opinion of the council or councils, the urgency of the
9 case justifies immediate action; and
- 10 (b) the notice indicates that opinion and that immediate action is to
11 be taken.
- 12 (5) Subsections (1) to (4) do not apply to a proposed rule that in the
13 opinion of the council or councils does not justify publication
14 because of its minor or technical nature.

15 **Division 8.3.3 Rules for incorporated legal practices**
16 **and multidisciplinary partnerships**

17 **580 Rules for incorporated legal practices and multidisciplinary**
18 **partnerships**

- 19 (1) The law society council may make rules for or in relation to the
20 following matters:
- 21 (a) the provision of legal services by or in relation to incorporated
22 legal practices or multidisciplinary partnerships, and in
23 particular the provision of legal services by—
- 24 (i) officers or employees of incorporated legal practices; or
25 (ii) partners or employees of multidisciplinary partnerships;

- 1 (b) the provision of services that are not legal services by or in
2 relation to incorporated legal practices or multidisciplinary
3 partnerships, but only if the provision of those services by any
4 of the following people may give rise to a conflict of interest
5 relating to the provision of legal services:
- 6 (i) officers or employees of incorporated legal practices;
7 (ii) partners or employees of multidisciplinary partnerships.
- 8 *Note* Rules must be notified, and presented to the Legislative Assembly,
9 under the Legislation Act.
- 10 (2) The rules under this section may make provision for or in relation to
11 professional obligations relating to legal services provided by or in
12 relation to incorporated legal practices or multidisciplinary
13 partnerships.
- 14 (3) However, the rules under this section cannot—
- 15 (a) regulate any services that an incorporated legal practice may
16 provide or conduct (other than the provision of legal services,
17 or other services that may give rise to a conflict of interest
18 relating to the provision of legal services); or
- 19 (b) regulate or prohibit the conduct of officers or employees of an
20 incorporated legal practice (other than in relation to the
21 provision of legal services, or other services that may give rise
22 to a conflict of interest relating to the provision of legal
23 services); or
- 24 (c) regulate any services that a multidisciplinary partnership or
25 partners or employees of a multidisciplinary partnership may
26 provide or conduct (other than the provision of legal services,
27 or other services in circumstances where a conflict of interest
28 relating to the provision of legal services may arise); or

- 1 (d) regulate or prohibit the conduct of partners or employees of a
2 multidisciplinary partnership (otherwise than in connection
3 with the provision of legal services, or other services that may
4 give rise to a conflict of interest relating to the provision of
5 legal services).
- 6 (4) The power to make rules under this section is not limited to any
7 matters for which this Act specifically authorises the making of
8 legal profession rules.

9 **Division 8.3.4 General**

10 **581 Binding nature of legal profession rules**

- 11 (1) Legal profession rules are binding on Australian legal practitioners
12 and locally-registered foreign lawyers to whom they apply.
- 13 (2) Failure to comply with legal profession rules can be unsatisfactory
14 professional conduct or professional misconduct.

15 **582 Legal profession rules inconsistent with Act or regulation**

- 16 (1) Legal profession rules do not have effect to the extent that they are
17 inconsistent with this Act, a regulation or rules made under the
18 *Court Procedures Act 2004*.
- 19 (2) Legal profession rules do not have effect to the extent that they are
20 inconsistent with a direction or guideline under the *Director of*
21 *Public Prosecutions Act 1990*, section 12 (Directions and guidelines
22 by director).

Chapter 9 General provisions

583 Approved forms—licensing body and councils

(1) If the licensing body or a council has functions under this Act in relation to a matter, it may approve forms for use in relation to the matter.

(2) If the licensing body or a council approves a form under this section for a particular purpose, the approved form must be used for that purpose.

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

(3) An approved form is a notifiable instrument.

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

584 Liability of principals of law practice

(1) If a law practice contravenes, whether by act or omission, any provision of this Act or a regulation imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that—

(a) the practice contravened the provision without the knowledge actual, imputed or constructive of the principal; or

(b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or

(c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.

(2) Subsection (1) does not affect the liability of the law practice for the contravention.

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- 1 (3) A contravention of a requirement imposed on a law practice by this
2 Act can be unsatisfactory professional conduct or professional
3 misconduct by a principal of the practice.

4 **585 Associates who are disqualified or convicted people**

- 5 (1) A law practice must not have a person as a lay associate if—
6 (a) the law practice knows that the person—
7 (i) is a disqualified person; or
8 (ii) has been convicted of a serious offence; and
9 (b) the person is not approved by the relevant council.
10 (2) The relevant council may, on application, approve a lay associate
11 for this section.
12 (3) An approval under this section may be subject to stated conditions.
13 (4) A person may appeal to the Supreme Court against a decision of the
14 relevant council under subsection (2) or (3).
15 (5) A person commits an offence if—
16 (a) the person is—
17 (i) a disqualified person; or
18 (ii) a person who has been convicted of a serious offence; and
19 (b) the person applies to become a lay associate of a law practice;
20 and
21 (c) the person has not told the law practice of the disqualification
22 or conviction.
23 Maximum penalty: 50 penalty units.
24 (6) This section does not apply in circumstances prescribed by
25 regulation.

1 (7) In this section:

2 ***disqualified person*** means any of the following people:

- 3 (a) a person whose name has been removed from an Australian
4 roll (whether or not at the request of the person) and who has
5 not later been admitted to the legal profession under this Act or
6 a corresponding law;
- 7 (b) a person who is not an Australian legal practitioner because the
8 person's Australian practising certificate has been cancelled
9 under this Act or a corresponding law;
- 10 (c) a person whose Australian practising certificate has been
11 suspended under this Act or a corresponding law and in
12 relation to whom the suspension is in force;
- 13 (d) a person who has been refused a renewal of an Australian
14 practising certificate under this Act or a corresponding law and
15 who has not later been granted an Australian practising
16 certificate;
- 17 (e) a person who is the subject of an order under this Act or a
18 corresponding law prohibiting a law practice from employing
19 or paying the person in relation to the practice;
- 20 (f) a person who is the subject of an order under this Act or a
21 corresponding law prohibiting an Australian legal practitioner
22 from being a partner of the person in a business that includes
23 the practitioner's practice;
- 24 (g) a person who is the subject of an order under section 123
25 (Disqualification from managing incorporated legal practice)
26 or section 148 (Prohibition on partnerships with certain
27 partners who are not Australian legal practitioners) or under a
28 provision of a corresponding law that corresponds to
29 section 123 or section 148.

586 Injunctions to restrain offences against Act

- (1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Act.

Note 1 A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) A council or any other interested person may apply to the Magistrates Court for an injunction.

- (3) On application under subsection (2), the Magistrates Court may grant an injunction restraining the person from contravening this Act (including by requiring the person to do something).

- (4) The Magistrates Court may grant the injunction—

(a) whether or not it appears to the court that the person intends to contravene this Act, contravene this Act again or continue to contravene this Act; and

(b) whether or not the person has previously contravened this Act; and

(c) whether or not there is a likelihood of substantial damage to anyone else if the person contravenes this Act; and

(d) whether or not a proceeding for an offence against this Act has begun or is about to begin.

- (5) The Magistrates Court may grant an interim injunction restraining the person from committing an offence against this Act (including requiring the person to do something) before deciding an application for an injunction under this section.

1 **587 Enforcement of injunctions**

2 The Magistrates Court has the same powers as the Supreme Court to
3 enforce an injunction (including an interim injunction) made under
4 this chapter.

5 **588 Amendment or discharge of injunctions**

6 The Magistrates Court may amend or discharge an injunction
7 (including an interim injunction) made under this chapter on the
8 application of the licensing body or any other interested person.

9 **589 Interim injunctions—undertakings about damages**

- 10 (1) If a council applies for an injunction under this chapter, the
11 Magistrates Court must not require the council to give an
12 undertaking about costs or damages as a condition of granting an
13 interim injunction.
- 14 (2) The Magistrates Court must accept an undertaking from a council
15 about costs or damages, and not require a further undertaking from
16 anyone else, if—
- 17 (a) the applicant for an injunction under this chapter is not the
18 council; and
- 19 (b) the court would, apart from this subsection, require the
20 applicant to give an undertaking about costs or damages; and
- 21 (c) the council gives the undertaking.

22 **590 Magistrates Court's other powers not limited**

- 23 (1) The powers given to the Magistrates Court under this chapter are in
24 addition to any other powers of the court.
- 25 (2) In particular, an application to the Magistrates Court for an
26 injunction under this chapter may be made without notice to the
27 person against whom the injunction is sought.

591 Disclosure of information by local regulatory authorities

(1) A local regulatory authority may disclose information to another local regulatory authority about anything relating to or arising under this Act or a corresponding law.

(2) A local regulatory authority may disclose information to an interstate regulatory authority about anything relating to or arising under this Act or a corresponding law.

(3) In this section:

interstate regulatory authority means—

(a) an authority with functions under a corresponding law; or

(b) an entity prescribed by regulation.

local regulatory authority means—

(a) a council; or

(b) another entity with functions under this Act; or

(c) an entity prescribed by regulation.

592 Confidentiality of personal information

(1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

divulge includes communicate.

local regulatory authority means—

(a) a council; or

(b) another entity with functions under this Act; or

(c) an entity prescribed by regulation.

1 ***person to whom this section applies*** means anyone who is, or has
2 been—

- 3 (a) a local regulatory authority; or
4 (b) a member of a local regulatory authority; or
5 (c) a member of the staff of the bar association or the law society;
6 or
7 (d) acting under the direction or authority of a local regulatory
8 authority; or
9 (e) providing advice, expertise or assistance to a local regulatory
10 authority.

11 ***personal information*** means information or an opinion (including
12 information or an opinion forming part of a database), that is
13 recorded in any form and whether true or not, about an individual
14 whose identify is apparent, or can be reasonably ascertained, from
15 the information or opinion, but does not include information or an
16 opinion prescribed by regulation.

17 ***produce*** includes allow access to.

18 (2) A person to whom this section applies commits an offence if—

- 19 (a) the person—
20 (i) makes a record of personal information about a person;
21 and
22 (ii) is reckless about whether the information is personal
23 information about a person; or
24 (b) the person—
25 (i) does something that divulges personal information about
26 a person; and

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- 1 (ii) is reckless about whether—
- 2 (A) the information is protected information about a
- 3 person; and
- 4 (B) doing the thing would result in the information being
- 5 divulged.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (3) This section does not apply if the record is made, or the information
- 9 is divulged—
- 10 (a) under this Act or another territory law, a law of the
- 11 Commonwealth or a corresponding law;
- 12 (b) in relation to the exercise of a function, as a person to whom
- 13 this section applies, under this Act or another territory law;
- 14 (c) to a court or tribunal in the course of a proceeding;
- 15 (d) under an order of a court or tribunal;
- 16 (e) to the extent reasonably required to enable the investigation or
- 17 enforcement of an offence or disciplinary action.
- 18 (4) Subsection (2) does not apply to the divulging of protected
- 19 information about a law practice or another person—
- 20 (a) to the practice or person; or
- 21 (b) with the written consent of the practice or person; or
- 22 (c) if divulging the information is necessary for properly
- 23 conducting an investigation and making the report of the
- 24 investigation; or
- 25 (d) as provided in section 553 (Permitted disclosure of confidential
- 26 information—ch 6).

- 1 **593** **Professional privilege or duty of confidence does not**
2 **affect validity of certain requirements etc**
- 3 (1) This section applies to a requirement under—
- 4 (a) section 231 (Reporting certain irregularities etc) to give written
5 notice of an irregularity in relation to a trust account, a trust
6 ledger account or trust money; or
- 7 (b) section 498 (Power of receiver to require documents or
8 information) to give access to documents or information; or
- 9 (c) section 523 (Provisions relating to requirements under part 6.2)
10 to produce documents, provide information or otherwise assist
11 in, or cooperate with, an investigation.
- 12 (2) The validity of the requirement is not affected, and a person is not
13 excused from complying with the requirement, on the ground of
14 client legal privilege or any other duty of confidence.
- 15 **594** **Reviewable decisions**
- 16 The following decisions of the law society council are *reviewable*
17 *decisions*:
- 18 (a) under section 338 (Deciding claims generally) completely or
19 partly disallowing a claim;
- 20 (b) under section 338 (5) reducing the amount payable on a claim.
- 21 **595** **Review of decisions**
- 22 Application may be made to the AAT for review of a reviewable
23 decision.
- 24 **596** **Notice of reviewable decisions**
- 25 (1) If the law society council makes a reviewable decision, it must give
26 a written notice of the decision to each person affected by the
27 decision.
-

Section 597

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

4 **597 Minister may determine fees**

- 5 (1) The Minister may determine fees for this Act in relation to the
6 admissions board.

- 7 (2) A determination is a disallowable instrument.

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

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

12 **598 Regulation-making power**

- 13 (1) The Executive may make regulations for this Act.

14 *Note* A regulation must be notified, and presented to the Legislative
15 Assembly, under the Legislation Act.

- 16 (2) A regulation may create offences for contraventions of a regulation
17 and prescribe maximum penalties of not more than 10 penalty units
18 for offences against a regulation.

19 **599 Review of Act**

- 20 (1) The Attorney-General must review the operation of this Act and
21 present a report of the review to the Legislative Assembly as soon as
22 practicable after 30 June 2010.

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

- 26 (2) This section expires on 30 June 2011.

Chapter 10 Transitional

600 Definitions—ch 10

In this chapter:

commencement day means the day this chapter commences.

repealed Act means the *Legal Practitioners Act 1970*.

601 Continuing application of provisions of Legal Practitioners Act about trust money

(1) In this section:

existing trust account provisions means the provisions of the repealed Act, part 11 (Trust moneys and controlled moneys) in force immediately before the commencement day, other than the following provisions:

- (a) division 11.5 (Audit);
- (b) division 11.6 (Examination of solicitors' records);
- (c) division 11.7 (Investigation of affairs of solicitors).

(2) For the period beginning on the commencement day and ending on 31 March 2007—

- (a) the provisions of part 3.1 (Trust money and trust accounts) do not apply to law practices; and
- (b) the existing trust account provisions apply to law practices as if—
 - (i) those provisions were provisions of this Act; and

Section 602

- 1 (ii) all necessary changes, and any changes prescribed by
2 regulation, were made to apply those provisions as
3 provisions of this Act.

- 4 (3) This section expires on 1 April 2007.

5 **602 Continuing application of provisions of Legal**
6 **Practitioners Act about costs**

- 7 (1) In this section:

8 *existing costs provisions* means the provisions of the repealed Act,
9 part 15 (Costs) in force immediately before the commencement day.

- 10 (2) For the period beginning on the commencement day and ending on
11 31 December 2006—

12 (a) the provisions of part 3.2 (Costs disclosure and review) do not
13 apply to law practices; and

14 (b) the existing costs provisions apply to law practices as if—

15 (i) those provisions were provisions of this Act; and

16 (ii) all necessary changes, and any changes prescribed by
17 regulation, were made to apply those provisions as
18 provisions of this Act.

- 19 (3) This section expires on 1 January 2007.

20 **603 Cost disclosure**

- 21 (1) In this section:

22 *existing costs provisions* means the provisions of the repealed Act,
23 part 15 (Costs) in force immediately before the commencement day.

- 1 (2) If a client of a law practice first instructs the law practice in relation
2 to a matter before 1 January 2007—
- 3 (a) the provisions of part 3.2 (Costs disclosure and review) do not
4 apply to the law practice in relation to the matter; and
- 5 (b) the existing costs provisions apply to the law practice in
6 relation to the matter as if—
- 7 (i) those provisions were provisions of this Act; and
- 8 (ii) all necessary changes, and any changes prescribed by
9 regulation, were made to apply those provisions as
10 provisions of this Act.
- 11 (3) If a law practice is retained by another law practice on behalf of a
12 client on or after 1 January 2007 in relation to a matter for which the
13 other law practice was retained by the client before 1 January
14 2007—
- 15 (a) the provisions of part 3.2 (Costs disclosure and review) do not
16 apply to the law practice in relation to the matter; and
- 17 (b) the existing costs provisions apply to the law practice in
18 relation to the matter as if—
- 19 (i) those provisions were provisions of this Act; and
- 20 (ii) all necessary changes, and any changes prescribed by
21 regulation, were made to apply those provisions as
22 provisions of this Act.
- 23 (4) This section does not apply to the determination of a statement of
24 costs and disbursements by taxation if section 604 applies to the
25 determination.
- 26 (5) This section is a law to which the Legislation Act, section 88
27 (Repeal does not end effect of transitional laws etc) applies.

1 **604 Notice for taxation of costs**

- 2 (1) This section applies if—
- 3 (a) before 1 January 2007 a person gives notice to the registrar
- 4 under the repealed Act, section 180 (including that section as
- 5 applied as a provision of this Act) that the person wishes to
- 6 have a statement of costs and disbursements determined by
- 7 taxation; and
- 8 (b) immediately before 1 January 2007 the taxation has not been
- 9 completed or the notice withdrawn.
- 10 (2) If the registrar has started the taxation, the registrar may complete
- 11 the taxation as if the repealed Act had not been repealed.
- 12 (3) If the registrar has not started the taxation, the statement of costs and
- 13 disbursements may be assessed under this Act as if it were an
- 14 itemised bill given to the person under division 3.2.6 (Billing).

15 **605 Roll of legal practitioners**

- 16 (1) The roll of legal practitioners kept by the registrar under the
- 17 repealed Act, section 16C immediately before the commencement
- 18 day is taken to be, or form part of, the local roll kept by the Supreme
- 19 Court under this Act.
- 20 (2) This section is a law to which the Legislation Act, section 88
- 21 (Repeal does not end effect of transitional laws etc) applies.

22 **606 Existing legal practitioners**

- 23 (1) If a person was a legal practitioner under the repealed Act
- 24 immediately before the commencement day, the person is taken to
- 25 have been admitted as a lawyer under this Act.
- 26 (2) This section is a law to which the Legislation Act, section 88
- 27 (Repeal does not end effect of transitional laws etc) applies.

1 **607 Pending applications for admission**

- 2 (1) This section applies to a person if the person applied for admission
3 as a legal practitioner under the repealed Act and, immediately
4 before the commencement day, the application was not decided.
- 5 (2) If the Supreme Court is satisfied that the person could have been
6 admitted as a legal practitioner under the repealed Act if that Act
7 had not been repealed—
- 8 (a) the requirements of section 21 (Eligibility for admission) are
9 taken to have been satisfied in relation to the person; and
- 10 (b) the Supreme Court may admit the person as a lawyer under this
11 Act.
- 12 (3) The Supreme Court may have regard to anything it considers
13 appropriate, including but not limited to—
- 14 (a) any report of the admission board under the repealed Act,
15 section 14 in relation to the application; or
- 16 (b) any information given to the registrar by the law society under
17 the repealed Act, section 15 about the applicant for admission.
- 18 (4) Subsection (5) applies to anything done by the admissions board if
19 the doing of the thing was effective immediately before the
20 commencement day.
- 21 (5) The Legislation Act, section 94 (Continuance of appointments etc
22 made under amended provisions) applies to the thing done as if that
23 Act, section 94 (4), definition of ***amend*** read as follows:
- 24 ***amend*** includes omit and re-enact in the same or another law (with
25 or without changes).
- 26 (6) This section is a law to which the Legislation Act, section 88
27 (Repeal does not end effect of transitional laws etc) applies.

- 1 **608 Pending complaints before professional conduct board**
- 2 (1) This section applies in relation to a complaint that was made under
- 3 the repealed Act and in relation to which, immediately before the
- 4 commencement day, the professional conduct board had not
- 5 completed its inquiry.
- 6 (2) The complaint is to be dealt with as if this Act had not been enacted.
- 7 (3) The professional conduct board established under the repealed Act
- 8 continues in existence but only for this section.
- 9 (4) The provisions of the repealed Act, division 8.5 (Inquiries) apply in
- 10 relation to the complaint as if—
- 11 (a) those provisions were provisions of this Act; and
- 12 (b) all necessary changes, and any changes prescribed by
- 13 regulation, were made to apply those provisions as provisions
- 14 of this Act.
- 15 **609 New complaints about old conduct**
- 16 (1) This section applies to conduct that happened or is alleged to have
- 17 happened before the commencement day and that could have been,
- 18 but was not, the subject of a complaint under the repealed Act.
- 19 (2) A complaint about the conduct may be made, and dealt with, under
- 20 this Act, even if the conduct could not be the subject of a complaint
- 21 under this Act if it had happened after the commencement day.
- 22 (3) Chapter 4, and all other relevant provisions of this Act, apply in
- 23 relation to the conduct with any necessary changes.
- 24 (4) However, disciplinary action may not be taken against a person
- 25 under this Act in relation to the conduct that is more onerous than
- 26 the disciplinary action that could have been taken against the person
- 27 under the repealed Act in relation to the conduct.

1 **610 Statutory interest account**

2 A statutory interest account kept by the law society under the
3 repealed Act, section 128 is taken to be a statutory interest account
4 under this Act.

5 **611 Legal profession rules**

6 (1) The provisions set out in schedule 1, part 1.1 are taken, on the
7 commencement day, to be legal profession rules made under this
8 Act by the law society council.

9 (2) The provisions set out in schedule 1, part 1.2 are taken, on the
10 commencement day, to be legal profession rules made under this
11 Act by the bar council.

12 (3) To remove any doubt, section 579 (Public notice of proposed legal
13 profession rules) does not apply to the provisions mentioned in
14 subsection (1) or (2).

15 (4) To remove any doubt and without limiting subsection (1), the
16 provisions mentioned in that subsection may be amended or
17 repealed as if they had been made as legal profession rules by the
18 law society council under this Act.

19 (5) To remove any doubt and without limiting subsection (2), the
20 provisions mentioned in that subsection may be amended or
21 repealed as if they had been made as legal profession rules by the
22 bar council under this Act.

23 (6) To remove any doubt, the legal profession rules mentioned in
24 subsection (1) and (2) are taken—

25 (a) to have been notified under the Legislation Act on the
26 commencement day; and

27 (b) to have commenced on the commencement day; and

28 (c) not to be required to be presented to the Legislative Assembly
29 under the Legislation Act, section 64.

1 (7) This section is a law to which the Legislation Act, section 88
2 (Repeal does not end effect of transitional laws etc) applies.

3 (8) This section and schedule 1 expire on the day they commence.

4 **612 HIH insurance**

5 (1) The provisions in schedule 3 apply in relation to a legal practitioner
6 who is insured under an approved policy that was issued or renewed
7 by an HIH group member.

8 *Note* HIH Casualty and General Insurance Limited (**HIH**) was the insurer
9 under approved policies for the period from 1 July 1998 to 1 July 2001.
10 HIH, together with other HIH group members, were also insurers under
11 approved policies before that period. A provisional liquidator was
12 appointed in relation to HIH and other HIH group members on
13 15 March 2001.

14 (2) In this section:

15 *approved policy* means a policy of indemnity insurance approved
16 under the repealed Act, part 9 (Professional indemnity insurance).

17 *HIH group member* means—

18 (a) HIH Casualty and General Insurance Limited, FAI General
19 Insurance Company Limited or CIC Insurance Limited; or

20 (b) any corporation that is, for a corporation mentioned in
21 paragraph (a), a related body corporate within the meaning of
22 the Corporations Act, section 50.

23 (3) This section and schedule 3 are laws to which the Legislation Act,
24 section 88 (Repeal does not end effect of transitional laws etc)
25 applies.

26 **613 Mortgage practices and managed investment schemes—** 27 **old mortgages**

28 (1) The provisions in schedule 4 apply in relation to mortgages that
29 were entered into before the commencement day.

- 1 (2) This section and schedule 4 are laws to which the Legislation Act,
2 section 88 (Repeal does not end effect of transitional laws etc)
3 applies.

4 **614 Transitional regulations**

- 5 (1) A regulation may prescribe transitional matters necessary or
6 convenient to be prescribed because of the enactment of this Act.
- 7 (2) A regulation may modify this part to make provision in relation to
8 anything that, in the Executive's opinion, is not, or is not adequately
9 or appropriately, dealt with in this chapter.
- 10 (3) A regulation under subsection (2) has effect despite anything in
11 another territory law.

12 **615 Expiry—ch 10**

- 13 This chapter, schedule 3 and schedule 4 expire on 1 July 2008.

1 **Chapter 11 Repeals and consequential**
2 **amendments**

3 **616 Legislation repealed**

- 4 (1) The *Legal Practitioners Act 1970* A1970-43 is repealed.
5 (2) All registrable instruments under the *Legal Practitioners Act 1970*
6 are repealed.

7 **617 Legislation amended—sch 2**

8 This Act amends the legislation mentioned in schedule 2.

1 **Schedule 1** **Legal profession rules**
2 (see s 611)

3 **Part 1.1** **Rules for solicitors**



Australian Capital Territory

4 **Legal Profession (Solicitors) Rules 2006**
5 **Subordinate Law**
6 made under the
7 **Legal Profession Act 2006**



LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Professional Conduct Rules for Solicitors

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INTRODUCTION

The Rules which follow apply to legal practitioners practising as solicitors, or as barristers and solicitors. The term "practitioner" is used throughout to refer to persons practising as solicitors, or as barristers and solicitors.

The Rules are divided into six categories under the following headings.

- Relations with clients
- Duties to the Court
- Advocacy Rules
- Relations with other lawyers
- Relations with third parties
- Legal practice

The first five categories are preceded by a statement of general principle which is not intended to constitute by itself a Rule, but is intended to describe the underlying principles and objectives of the Rules which follow.

The Rules are based on the model rules developed by the Law Council of Australia. A number of provisions of the former *Guide to Professional Conduct & Etiquette* (adopted by the Council of the ACT Law Society in 1984) have been incorporated into these Rules. This document supersedes the Society's *Guide to Professional Conduct & Etiquette*.

The Rules are intended to assist practitioners in the conduct of their practices. While it may indicate to the Society's Complaints Committee or the Court the opinion of the Law Society on matters of ethics and practice, it is not a penal code. A breach of the Rules may not necessarily amount to professional misconduct or unsatisfactory professional conduct. However, practitioners should note that failure to comply can be unsatisfactory professional conduct or professional misconduct under s 581 of the *Legal Profession Act 2006*. Practitioners

1 should therefore abide by the terms of the Rules. If a practitioner does
2 not do so, then the onus will be on the practitioner to justify his or her
3 conduct.

4 The Supreme Court of the ACT has said, in relation to the former *Guide*
5 *to Professional Conduct & Etiquette*, that the Guide was a binding Code
6 set by solicitors and that practitioners who ignored the Guide did so at
7 their own risk.

DEFINITIONS

“associate” a reference to an associate of a practitioner is a reference to:

(a) a partner, employee, or agent, of the practitioner;

(b) a corporation or partnership in which the practitioner has a significant beneficial interest;

(c) a member of the practitioner's immediate family.

“case” means the litigation or proceedings in which the practitioner in question is retained or intending to appear, or the dispute in which the practitioner is advising, as the case may be.

“client” includes an officer, servant or agent of a client, who is authorised to give instructions on behalf of the client.

“compromise” includes any form of settlement of the case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

“costs” a reference to costs, unless the context of a rule indicates a contrary intention, includes disbursements.

“Council” means the Council of the Law Society of the Australian Capital Territory

“court” means any body described as such and all other tribunals exercising judicial, or quasi-judicial, functions, and includes professional disciplinary tribunals, industrial and administrative tribunals, statutory or Parliamentary

-
- 1 investigations and inquiries, Royal Commissions,
2 arbitrations and mediations.
- 3 “current
4 proceedings” means proceedings which have not been determined,
5 including proceedings in which there is still the real
6 possibility of an appeal or other challenge to a decision
7 being filed, heard or decided.
- 8 “Executive
9 Committee” has the same meaning as in the Constitution of the Law
10 Society of the Australian Capital Territory
- 11 “forensic
12 judgments” do not include decisions as to the commencement of
13 proceedings, the joinder of parties, admissions or
14 concessions of fact, amendments of pleadings or
15 undertakings to a court, or in criminal proceedings as to a
16 plea, but do include advice given to assist the client or the
17 instructing practitioner to make such decisions.
- 18 “immediate
19 family” means the spouse (which expression may include a de facto
20 spouse or partner of the same sex), or a child, grandchild,
21 sibling, parent or grandparent of a practitioner.
- 22 “Law Society” means the Law Society of the Australian Capital
23 Territory
- 24 “opponent” means the practitioner appearing for the party opposed to
25 the client, or the party opposed to the client if that party is
26 unrepresented.
- 27 “order” includes a judgment, decision or determination.
-

Schedule 1
Part 1.1

Legal profession rules
Rules for solicitors

-
- 1 “practitioner” means a legal practitioner who holds a current restricted or
2 unrestricted practising certificate issued by the Law
3 Society.
- 4 “principal” means a practitioner who is the holder of a current
5 unrestricted practising certificate issued by the Law
6 Society
- 7 “prosecutor” means a practitioner who appears for the complainant or
8 Crown in criminal proceedings.
- 9 “Trust account” means a general trust bank account or a special trust
10 bank account required by the Act to be opened and
11 maintained.

RELATIONS WITH CLIENTS

Practitioners should serve their clients competently and diligently. They should be acutely aware of the fiduciary nature of their relationship with their clients, and always deal with their clients fairly, free of the influence of any interest which may conflict with a client's best interests. Practitioners should maintain the confidentiality of their clients' affairs, but give their clients the benefit of all information relevant to their clients' affairs of which they have knowledge. Practitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

1 . Acceptance of Retainer - (Instructions to Act or Provide a Legal Service)

- 1.1** A practitioner should treat his or her client fairly and in good faith, giving due regard to the client's position of dependence upon the practitioner, his or her special training and experience and the high degree of trust which a client is entitled to place in a practitioner.
- 1.2** A practitioner must act honestly, fairly, and with competence and diligence in the service of a client, and should accept instructions, and a retainer to act for a client, only when the practitioner can reasonably expect to serve the client in that manner and attend to the work required with reasonable promptness.
- 1.3** (a) A practitioner must not accept instructions in a field of practice in which he or she possesses insufficient knowledge and skill to provide competent representation to the client unless:

- 1 (i) the practitioner is able, without undue delay and
2 cost to the client, to obtain such knowledge and skill
3 either through private study and research or through
4 the association with him or her of another lawyer of
5 established competence in that field; or
- 6 (ii) where access to the relevant body of knowledge or
7 to a lawyer of established competence in the field is
8 not readily available, the practitioner warns the
9 client of those facts and of the likely delay and cost
10 in acquiring the requisite knowledge and skill and
11 the client voluntarily consents to the practitioner
12 acting in the matter.
- 13 (b) A practitioner should take such steps as are reasonably
14 necessary to maintain and improve his or her knowledge
15 and skill in the fields of law in which he or she practises.

16 **2. Confidentiality**

17 2.1 A practitioner must not, during, or after termination of, a retainer,
18 disclose to any person, who is not a partner or employee of the
19 practitioner's firm, any information, which is confidential to a client
20 of the practitioner, and acquired by the practitioner during the
21 currency of the retainer, unless :

- 22 (a) the client authorises disclosure;
- 23 (b) the practitioner is permitted or compelled by law to
24 disclose;

-
- 1 (c) the practitioner discloses information in circumstances in
2 which the law would probably compel its disclosure,
3 despite a client's claim of legal professional privilege, and
4 for the sole purpose of avoiding the probable commission
5 or concealment of a felony; or
- 6 (d) necessary for replying to or defending any charge or
7 complaint as to conduct or professional behaviour brought
8 against the practitioner or his or her partners, associates
9 or employees or to respond to a requirement under sub-
10 Rule 41.2.
- 11 2.2 A practitioner's obligation to maintain the confidentiality of a
12 client's affairs is not limited to information which might be
13 protected by legal professional privilege, and is a duty inherent in
14 the fiduciary relationship between the practitioner and client.
- 15 **3. Keeping the Client Informed**
- 16 3.1 A practitioner must give the client the following information in
17 writing as soon as practicable after receipt of new instructions:
- 18 (a) The name of the practitioner responsible for the day to day
19 conduct of the matter and, if appropriate, the name of the
20 principal responsible for supervising the management of
21 the matter and the role that principal will have in the
22 matter.
- 23 (b) The basis on which costs will be charged and, if
24 reasonably possible, an estimate of those costs including
25 disbursements and counsel's fees, billing intervals and
26 payment arrangements.

-
- 1 3.2 Both at the outset and during the course of the matter, the
2 practitioner should cause the client to be informed, where
3 appropriate, as to the issues raised by the matter, the steps
4 which are likely to be required, how long it is likely to be before it
5 is concluded and progress from time to time, and the client's
6 prospects of success.
- 7 3.3 During the course of the matter, if unexpected delay occurs, the
8 practitioner should provide the client with an explanation of such
9 delay including whether or not it is within the control of the person
10 responsible for the matter to resolve such delay.
- 11 3.4 A practitioner need not comply with Rules 3.1 and 3.2 above in
12 the following circumstances:
- 13 (a) when undertaking work of a repetitive nature for the same
14 client;
- 15 (b) where the client is a long standing client of the practitioner
16 or the practitioner's firm;
- 17 (c) where it is not considered necessary, on reasonable
18 grounds, by the practitioner to provide the information
19 taking into account the knowledge and experience of the
20 client in dealing with solicitors;
- 21 (d) where the practitioner reasonably anticipates that the
22 matter will be billed and concluded within 21 days;
- 23 (e) where the practitioner reasonably anticipates that the
24 amount of the bill, excluding outlays, will be less than
25 \$500.00 or such other sum as the Council determines from
26 time to time.

1 3.5 A practitioner should within a reasonable time of completion of
2 the matter render to the client a memorandum of fees in writing
3 sufficient to identify the general nature of the professional work or
4 services performed.

5 4. **Acting Against a Former Client**

6 Consistent with the duty which a practitioner has to preserve the
7 confidentiality of a client's affairs, a practitioner must not accept a
8 retainer to act for another person in any action or proceedings
9 against, or in opposition to, the interest of a person :

10 (a) for whom the practitioner or the firm, of which the
11 practitioner was a partner, has acted previously; and

12 (b) from whom the practitioner or the practitioner's firm has
13 thereby acquired information confidential to that person
14 and material to the action or proceedings; and

15 that person might reasonably conclude that there is a real
16 possibility the information will be used to the person's detriment.

17 5. **Practitioners employed otherwise than by a practitioner**

18 A practitioner, who is employed by a corporation or by any other
19 person who is not a practitioner, must not, despite any contrary
20 direction from the practitioner's employer, act as a practitioner in
21 the performance of any legal work or service in breach of any of
22 the provisions of the *Legal Profession Act 2006*.

23 6. **Termination of Retainer**

24 6.1 A practitioner must complete the work or legal service required by
25 the practitioner's retainer, unless :

1 (a) the practitioner and the practitioner's client have otherwise
2 agreed;

3 (b) the practitioner is discharged from the retainer by the
4 client; or

5 (c) the practitioner terminates the retainer for just cause, and
6 on reasonable notice to the client.

7 6.2 Despite the above Rule, a practitioner, who has accepted
8 instructions to act for a defendant required to stand trial for a
9 criminal offence, must not terminate the retainer and withdraw
10 from the proceedings on the ground that the client has failed to
11 make arrangements satisfactory to the practitioner for payment of
12 the practitioner's costs, unless the practitioner has, at a time
13 reasonably in advance of the date appointed for the
14 commencement of the trial, or the commencement of the sittings
15 of the Court in which the trial is listed :

16 (a) served notice in writing on the client of the practitioner's
17 intention to terminate the retainer and withdraw from the
18 proceedings at the expiration of seven (7) days if the client
19 fails, within that time, to make satisfactory arrangements
20 for payment of the practitioner's costs; and

21 (b) delivered a copy of that notice to the Registrar of the Court
22 in which the trial is listed to commence.

23 6.3 Without limiting the general application of Rule 6.1, a practitioner,
24 who is acting for a legally assisted client in any proceedings, may
25 terminate the practitioner's retainer upon giving reasonable notice
26 in writing to the client of the practitioner's intention so to do, if the
27 client's grant of legal aid is withdrawn, or otherwise terminated,
28 and the client is unable to make any other satisfactory

1 arrangements for payment of the practitioner's costs which would
2 be incurred if the retainer continued.

3 **7. Ownership of Clients' Documents - Termination of Retainer**

4 7.1 A practitioner must retain, securely and confidentially, documents
5 to which a client is entitled, for the duration of the practitioner's
6 retainer and at least six years thereafter, or until such time as the
7 practitioner gives them to the client or another person authorised
8 by the client to receive them, or the client instructs the practitioner
9 to deal with them in some other manner.

10 7.2 Upon completion or termination of a practitioner's retainer, a
11 practitioner must, when requested so to do by the practitioner's
12 client, give to the client, or another person authorised by the
13 client, any documents related to the retainer to which the client is
14 entitled, unless :

- 15 (a) the practitioner has completed the retainer; or
16 (b) the client has terminated the practitioner's retainer; or
17 (c) the practitioner has terminated the retainer for just cause
18 and on reasonable notice; and

19 the practitioner claims a lien over the documents for costs due to
20 the practitioner by the client.

21 7.3 Despite Rule 7.2, a practitioner who claims to exercise a lien for
22 unpaid costs over a client's documents, which are essential to the
23 client's defence or prosecution of current proceedings, must:

- 24 (a) deal with the documents as provided in Rule 27, if another
25 lawyer is acting for the client; or

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- 1 (b) upon receiving satisfactory security for the unpaid costs,
2 deliver the documents to the client.
- 3 7.4 The documents to which a client of a practitioner should be
4 entitled will usually include:
- 5 (a) documents prepared by a practitioner for the client, or
6 predominantly for the purposes of the client, and for which
7 the client has been, or will be, charged costs by the
8 practitioner; and
- 9 (b) documents received by a practitioner from a third party in
10 the course of the practitioner's retainer for or on behalf of
11 the client or for the purposes of a client's business and
12 intended for the use or information of the client.
- 13 **8. Acting for more than one party**
- 14 8.1 For the purposes of this Rule:
- 15 (a) "proceedings or transaction" mean any action or claim at
16 law or in equity, or any dealing between parties, which
17 may affect, create, or be related to, any legal or equitable
18 right or entitlement or interest in property of any kind.
- 19 (b) "party" includes each one of the persons or corporations
20 who, or which, is jointly a party to any proceedings or
21 transaction.
- 22 (c) "practitioner" includes a practitioner's partner or employee
23 and a practitioner's firm.
- 24 8.2 A practitioner who intends to accept instructions from more than
25 one party to any proceedings or transaction must be satisfied,
26 before accepting a retainer to act, that each of the parties is

1 aware that the practitioner is intending to act for the others and
2 consents to the practitioner so acting in the knowledge that the
3 practitioner:

4 (a) may be, thereby, prevented from :

5 (i) disclosing to each party all information, relevant to
6 the proceedings or transaction, within the
7 practitioner's knowledge; or,

8 (ii) giving advice to one party which is contrary to the
9 interests of another; and

10 (b) will cease to act for all parties if the practitioner would,
11 otherwise, be obliged to act in a manner contrary to the
12 interests of one or more of them.

13 8.3 If a practitioner, who is acting for more than one party to any
14 proceedings or transaction, determines that the practitioner
15 cannot continue to act for all of the parties without acting in a
16 manner contrary to the interests of one or more of them, the
17 practitioner must thereupon cease to act for all parties.

18 8.4 A practitioner or a firm of practitioners must not act :

19 (a) for both buyer and seller in a matter concerning the sale of
20 land or the sale of a business in the Australian Capital
21 Territory;

22 (b) in the course of carrying on practice in the Australian
23 Capital Territory for both buyer and seller in a matter
24 concerning the sale of land or the sale of a business;

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- 1 (c) for both mortgagor and mortgagee in a matter concerning
2 the mortgage of land in the Australian Capital Territory
3 excepting discharges of mortgages; or
- 4 (d) in the course of carrying on practice in the Australian
5 Capital Territory for both mortgagor and mortgagee in a
6 matter concerning the mortgage of land.
- 7 8.5 Notwithstanding the provisions of Rule 8.4, a practitioner or a firm
8 of practitioners may act for both parties provided that:
- 9 (a) the parties:
- 10 (i) are existing clients of the practitioner or of the firm
11 of practitioners for whom the practitioner or the firm
12 (as the case may be) has previously acted;
- 13 (ii) are related bodies corporate as defined in the
14 Corporations Law; or
- 15 (iii) are related by blood, adoption or marriage (either
16 de jure or de facto).
- 17 (b) Rule 8.4 is brought to the knowledge of both parties; and
- 18 (c) both parties, with knowledge of Rule 8.4, instruct the
19 practitioner or the firm of practitioners in writing in the form
20 of either Schedules 1 or 2 to act in the matter.
- 21 8.6 A practitioner or firm of practitioners should not act :
- 22 (a) for lessor and lessee in a matter concerning the leasing of
23 land in the Australian Capital Territory excepting the
24 surrender of subleases; or

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- 1 (b) in the course of carrying on practice in the Australian
2 Capital Territory for both lessor and lessee in a matter
3 concerning the leasing of land.
- 4 8.7 Notwithstanding the provisions of Rule 8.6, a practitioner or a firm
5 of practitioners may act for both parties provided that:
- 6 (a) Rule 8.6 is brought to the knowledge of both parties; and
- 7 (b) both parties, with knowledge of Rule 8.6, instruct the
8 practitioner or the firm of practitioners in writing in the form
9 of Schedule 3 to act in the matter.
- 10 9. **Avoiding Conflict of Interest (where practitioner's own**
11 **interest involved)**
- 12 9.1 A practitioner must not, in any dealings with a client :
- 13 (a) allow the interests of the practitioner or an associate of the
14 practitioner to conflict with those of the client.
- 15 (b) exercise any undue influence intended to dispose the
16 client to benefit the practitioner in excess of the
17 practitioner's fair remuneration for the legal services
18 provided to the client.
- 19 9.2 A practitioner must not accept instructions to act for a person in
20 any proceedings or transaction affecting or related to any legal or
21 equitable right or entitlement or interest in property, or continue to
22 act for a person engaged in such proceedings or transaction
23 when the practitioner is, or becomes, aware that the person's
24 interest in the proceedings or transaction is, or would be, in
25 conflict with the practitioner's own interest or the interest of an
26 associate.
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- 1 **10. A Practitioner Receiving a Benefit under a Will or other**
2 **Instrument**
- 3 10.1 For the purposes of this Rule:
- 4 "substantial benefit" means a benefit which has a substantial
5 value relative to the financial resources and assets of the person
6 intending to bestow the benefit.
- 7 10.2 A practitioner who receives instructions from a person to draw a
8 Will appointing the practitioner an Executor must inform that
9 person in writing before the client signs the Will:
- 10 (a) of any entitlement of the practitioner to claim commission;
- 11 (b) of the inclusion in the Will of any provision entitling the
12 practitioner, or the practitioner's firm, to charge
13 professional fees in relation to the administration of the
14 Estate; and
- 15 (c) if the practitioner has an entitlement to claim commission,
16 that the person could appoint as Executor a person who
17 might make no claim for commission.
- 18 10.3 A practitioner who receives instructions from a person to:
- 19 (a) draw a will under which the practitioner or an associate
20 will, or may, receive a substantial benefit other than any
21 proper entitlement to commission (if the practitioner is also
22 to be appointed executor) and the reasonable professional
23 fees of the practitioner or the practitioner's firm; or
- 24 (b) draw any other instrument under which the practitioner or
25 an associate will, or may, receive a substantial benefit in
26 addition to the practitioner's reasonable remuneration,
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- 1 including that payable under a conditional costs
2 agreement,
- 3 must decline to act on those instructions and offer to refer the
4 person, for advice, to another practitioner who is not an associate
5 of the practitioner, unless the person instructing the practitioner is
6 either:
- 7 (c) a member of the practitioner's immediate family; or
- 8 (d) a practitioner, or a member of the immediate family of a
9 practitioner, who is a partner, employer, or employee, of
10 the practitioner.
- 11 **11. Practitioner and Client - Borrowing Transactions**
- 12 **11.1** A practitioner must not borrow any money, nor permit or assist an
13 associate to borrow any money from a person :
- 14 (a) who is currently a client of the practitioner, or the
15 practitioner's firm;
- 16 (b) for whom the practitioner or practitioner's firm has provided
17 legal services, and who has indicated continuing reliance
18 upon the advice of the practitioner, or practitioner's firm in
19 relation to the investment of money; or
- 20 (c) who has sought from the practitioner, or the practitioner's
21 firm, advice in respect of the investment of any money, or
22 the management of the person's financial affairs.
- 23 **11.2** This Rule does not prevent a practitioner or an associate
24 borrowing from a client which is recognised by the practitioner's
25 professional association as a business entity engaged in money
26 lending.
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PRACTITIONERS' DUTIES TO THE COURT

Practitioners, in all their dealings with the courts, whether those dealings involve the obtaining and presentation of evidence, the preparation and filing of documents, instructing an advocate or appearing as an advocate, should act with competence, honesty and candour. Practitioners should be frank in their responses and disclosures to the Court, and diligent in their observance of undertakings which they give to the Court or their opponents.

12. Preparation of Affidavits

12.1 If a practitioner is:

(a) aware that a client is withholding information required by an order or rule of a court, with the intention of misleading the court, or

(b) informed by a client that an affidavit, of the client, filed by the practitioner, is false in a material particular,

and the client will not make the relevant information available, or allow the practitioner to correct the false evidence, the practitioner must, on reasonable notice, terminate the retainer and, without disclosing the reasons to the court, give notice of the practitioner's withdrawal from the proceedings.

12.2 A practitioner must not draw an affidavit alleging criminality, fraud, or other serious misconduct unless the practitioner believes on reasonable grounds that:

(a) factual material already available to the practitioner provides a proper basis for the allegation;

1 (b) the allegation will be material and admissible in the case,
2 as to an issue or as to credit; and

3 (c) the client wishes the allegation to be made after having
4 been advised of the seriousness of the allegation.

5 **13. Practitioner a Material Witness in Client's Case**

6 A practitioner must not appear as an advocate and, unless there
7 are exceptional circumstances justifying the practitioner's
8 continuing retainer by the practitioner's client, the practitioner
9 must not act, or continue to act, in a case in which it is known, or
10 becomes apparent, that the practitioner will be required to give
11 evidence material to the determination of contested issues before
12 the court.

13 **14. Admission of Guilt**

14 **14.1** If a practitioner's client, who is the accused or defendant in
15 criminal proceedings, admits to the practitioner before the
16 commencement of, or during, the proceedings, that the client is
17 guilty of the offence charged, the practitioner must not, whether
18 acting as instructing practitioner or advocate :

19 (a) put a defence case which is inconsistent with the client's
20 confession;

21 (b) falsely claim or suggest that another person committed the
22 offence; or

23 (c) continue to act if the client insists on giving evidence
24 denying guilt or requires the making of a statement
25 asserting the client's innocence.

1 14.2 A practitioner may continue to act for a client who elects to plead
2 "not guilty" after admitting guilt to the practitioner, and in that
3 event, the practitioner must ensure that the prosecution is put to
4 proof of its case, and the practitioner may argue that the evidence
5 is insufficient to justify a conviction or that the prosecution has
6 otherwise failed to establish the commission of the offence by the
7 client.

8 15. **Admission of Perjury**

9 15.1 If a practitioner's client admits to the practitioner, during or after
10 any proceedings, while judgment is reserved, that the client has
11 given materially false evidence or tendered a false or misleading
12 document in the proceedings, the practitioner must :

13 (a) advise the client that the Court should be informed of the
14 false evidence, and request the client's authority to inform
15 the Court and correct the record; and

16 (b) if the client refuses to provide that authority, withdraw from
17 the proceedings immediately, and terminate the retainer.

18 16. **Bail**

19 16.1 A practitioner must not promote, or be a party to, any
20 arrangement whereby the bail provided by a surety is obtained by
21 using the money of the accused person, or by which the surety is
22 given an indemnity by the accused person or a third party acting
23 on behalf of the accused person.

24 16.2 A practitioner must not become the surety for the practitioner's
25 client's bail.

ADVOCACY RULES

17. Duty to client

17.1 A practitioner must seek to advance and protect the client's interests to the best of the practitioner's skill and diligence, uninfluenced by the practitioner's personal view of the client or the client's activities, and notwithstanding any threatened unpopularity or criticism of the practitioner or any other person, and always in accordance with the law including these Rules.

17.2 A practitioner must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, if the practitioner is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connection with any compromise of the case.

18. Independence - Avoidance of Personal bias

18.1 A practitioner must not act as the mere mouthpiece of the client or of the instructing practitioner and must exercise the forensic judgments called for during the case independently, after appropriate consideration of the client's and the instructing practitioner's desires where practicable.

18.2 A practitioner will not have breached the practitioner's duty to the client, and will not have failed to give appropriate consideration to the client's or the instructing practitioner's desires, simply by choosing, contrary to those desires, to exercise the forensic judgments called for during the case so as to:

- (a) confine any hearing to those issues which the practitioner believes to be the real issues;

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- 1 (b) present the client's case as quickly and simply as may be
2 consistent with its robust advancement; or
- 3 (c) inform the court of any persuasive authority against the
4 client's case.
- 5 18.3 A practitioner must not make submissions or express views to a
6 court on any material evidence or material issue in the case in
7 terms which convey or appear to convey the practitioner's
8 personal opinion on the merits of that evidence or issue.
- 9 19. **Frankness in court**
- 10 19.1 A practitioner must not knowingly make a misleading statement to
11 a court on any matter.
- 12 19.2 A practitioner must take all necessary steps to correct any
13 misleading statement made by the practitioner to a court as soon
14 as possible after the practitioner becomes aware that the
15 statement was misleading.
- 16 19.3 A practitioner will not have made a misleading statement to a
17 court simply by failing to correct an error on any matter stated to
18 the court by the opponent or any other person.
- 19 19.4 A practitioner seeking any interlocutory relief in an ex parte
20 application must disclose to the court all matters which:
- 21 (a) are within the practitioner's knowledge;
- 22 (b) are not protected by legal professional privilege; and
- 23 (c) the practitioner has reasonable grounds to believe would
24 support an argument against granting the relief or limiting
25 its terms adversely to the client.
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- 1 19.5 A practitioner who has knowledge of matters which are within
2 Rule 19.4(c):
- 3 (a) must seek instructions for the waiver of legal professional
4 privilege if the matters are protected by that privilege, so
5 as to permit the practitioner to disclose those matters
6 under Rule 19.4; and
- 7 (b) if the client does not waive the privilege as sought by the
8 practitioner:
- 9 (i) must inform the client of the client's responsibility to
10 authorise such disclosure and the possible
11 consequences of not doing so; and
- 12 (ii) must inform the court that the practitioner cannot
13 assure the court that all matters which should be
14 disclosed have been disclosed to the court.
- 15 19.6 A practitioner must, at the appropriate time in the hearing of the
16 case and if the court has not yet been informed of that matter,
17 inform the court of:
- 18 (a) any binding authority;
- 19 (b) any authority decided by an Australian superior court
20 which is likely to be considered persuasive; or
- 21 (c) any applicable legislation,
- 22 which the practitioner has reasonable grounds to believe to be
23 directly on point, against the client's case.

- 1 19.7 A practitioner need not inform the court of matters within Rule
2 19.6 at a time when the opponent tells the court that the
3 opponent's whole case will be withdrawn or the opponent will
4 consent to final judgment in favour of the client, unless the
5 appropriate time for the practitioner to have informed the court of
6 such matters in the ordinary course has already arrived or
7 passed.
- 8 19.8 A practitioner who becomes aware of a matter within Rule 19.6
9 after judgment or decision has been reserved and while it
10 remains pending, whether the authority or legislation came into
11 existence before or after argument, must inform the court of that
12 matter by:
- 13 (a) a letter to the court, copied to the opponent, and limited to
14 the relevant reference unless the opponent has consented
15 beforehand to further material in the letter; or
- 16 (b) requesting the court to relist the case for further argument
17 on a convenient date, after first notifying the opponent of
18 the intended request and consulting the opponent as to the
19 convenient date for further argument.
- 20 19.9 A practitioner need not inform the court of any matter otherwise
21 within Rule 19.6 which would have rendered admissible any
22 evidence tendered by the prosecution which the court has ruled
23 inadmissible without calling on the defence.
- 24 19.10 A practitioner will not have made a misleading statement to a
25 court simply by failing to disclose facts known to the practitioner
26 concerning the client's character or past, when the practitioner
27 makes other statements concerning those matters to the court,
28 and those statements are not themselves misleading.

1 19.11 A practitioner who knows or suspects that the prosecution is
2 unaware of the client's previous conviction must not ask a
3 prosecution witness whether there are previous convictions, in
4 the hope of a negative answer.

5 19.12 A practitioner must inform the court in civil proceedings of any
6 misapprehension by the court as to the effect of an order which
7 the court is making, as soon as the practitioner becomes aware
8 of the misapprehension.

9 **20. Admission by client**

10 20.1 A practitioner whose client informs the practitioner, during a
11 hearing or after judgment or decision is reserved and while it
12 remains pending, that the client has lied in a material particular to
13 the court or has procured another person to lie to the court or has
14 falsified or procured another person to falsify in any way a
15 document which has been tendered:

16 (a) must refuse to take any further part in the case unless the
17 client authorises the practitioner to inform the court of the
18 lie or falsification;

19 (b) must promptly inform the court of the lie or falsification
20 upon the client authorising the practitioner to do so; but

21 (c) must not otherwise inform the court of the lie or
22 falsification.

23 20.2 A practitioner retained to appear in criminal proceedings whose
24 client makes admissions of fact consistent with guilt to the
25 practitioner but maintains a plea of not guilty:

26 (a) may cease to act, if there is enough time for another
27 practitioner to take over the case properly before the

- 1 hearing, and the client does not insist on the practitioner
2 continuing to appear for the client;
- 3 (b) in cases where the practitioner continues to act for the
4 client:
- 5 (i) must not falsely suggest that some other person
6 committed the offence charged;
- 7 (ii) must not set up an affirmative case inconsistent
8 with the admission ; but
- 9 (iii) may argue that the evidence as a whole does not
10 prove that the client is guilty of the offence charged;
- 11 (iv) may argue that for some reason of law the client is
12 not guilty of the offence charged; or
- 13 (v) may argue that for any other reason not prohibited
14 by (i) and (ii) the client should not be convicted of
15 the offence charged.
- 16 20.3 A practitioner whose client informs the practitioner that the client
17 intends to disobey a court's order must:
- 18 (a) advise the client against that course and warn the client of
19 its dangers;
- 20 (b) not advise the client how to carry out or conceal that
21 course; but
- 22 (c) not inform the court or the opponent of the client's intention
23 unless:

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- 1 (i) the client has authorised the practitioner to do so
2 beforehand; or
- 3 (ii) the practitioner believes on reasonable grounds that
4 the client's conduct constitutes a threat to any
5 person's safety.

6 **21. Responsible use of privilege**

7 21.1 A practitioner must, when exercising the forensic judgments
8 called for throughout a case, take care to ensure that decisions
9 by the practitioner or on the practitioner's advice to invoke the
10 coercive powers of a court or to make allegations or suggestions
11 under privilege against any person:

- 12 (a) are reasonably justified by the material then available to
13 the practitioner;
- 14 (b) are appropriate for the robust advancement of the client's
15 case on its merits;
- 16 (c) are not made principally in order to harass or embarrass
17 the person; and
- 18 (d) are not made principally in order to gain some collateral
19 advantage for the client or the practitioner or the
20 instructing practitioner out of court.

21 21.2 A practitioner must not draw or settle any court document alleging
22 criminality, fraud or other serious misconduct unless the
23 practitioner believes on reasonable grounds that:

- 24 (a) factual material already available to the practitioner
25 provides a proper basis for the allegation if it is made in a
26 pleading;

- 1 (b) the evidence in which the allegation is made, if it is made
2 in evidence, will be admissible in the case, when it is filed;
3 and
- 4 (c) the client wishes the allegation to be made, after having
5 been advised of the seriousness of the allegation and of
6 the possible consequences for the client if it is not made
7 out.
- 8 21.3 A practitioner must not open as a fact any allegation which the
9 practitioner does not then believe on reasonable grounds will be
10 capable of support by the evidence which will be available to
11 support the client's case.
- 12 21.4 A practitioner must not cross-examine so as to suggest
13 criminality, fraud or other serious misconduct on the part of any
14 person unless:
- 15 (a) the practitioner believes on reasonable grounds that the
16 material already available to the practitioner provides a
17 proper basis for the suggestion;
- 18 (b) in cross-examination going to credit alone, the practitioner
19 believes on reasonable grounds that affirmative answers to
20 the suggestion would diminish the witness's credibility.
- 21 21.5 A practitioner may regard the opinion of the instructing
22 practitioner that material which appears to support a suggestion
23 within Rule 21.4 is itself credible as a reasonable ground for
24 holding the belief required by Rule 21.4(a).
- 25 21.6 A practitioner must make reasonable enquiries to the extent
26 which is practicable before the practitioner can have reasonable
27 grounds for holding the belief required by Rule 21.4(a), unless the

1 practitioner has received and accepted an opinion from the
2 instructing practitioner within Rule 21.5.

3 21.7 A practitioner must not suggest criminality, fraud or other serious
4 misconduct against any person in the course of the practitioner's
5 address on the evidence unless the practitioner believes on
6 reasonable grounds that the evidence in the case provides a
7 proper basis for the suggestion.

8 21.8 A practitioner who has instructions which justify submissions for
9 the client in mitigation of the client's criminality and which involve
10 allegations of serious misconduct against any other person not
11 able to answer the allegations in the case must seek to avoid
12 disclosing the other person's identity directly or indirectly unless
13 the practitioner believes on reasonable grounds that such
14 disclosure is necessary for the robust defence of the client.

15 **22. Integrity of evidence**

16 22.1 A practitioner must not suggest or condone another person
17 suggesting in any way to any prospective witness (including a
18 party or the client) the content of any particular evidence which
19 the witness should give at any stage in the proceedings.

20 22.2 A practitioner will not have breached Rule 22.1 by expressing a
21 general admonition to tell the truth, or by questioning and testing
22 in conference the version of evidence to be given by a
23 prospective witness, including drawing the witness's attention to
24 inconsistencies or other difficulties with the evidence, but must
25 not coach or encourage the witness to give evidence different
26 from the evidence which the witness believes to be true.

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- 1 22.3 A practitioner must not confer with, or condone another
2 practitioner conferring with, more than one lay witness (including
3 a party or client) at the same time, about any issue:
- 4 (a) as to which there are reasonable grounds for the
5 practitioner to believe it may be contentious at a hearing;
6 or
- 7 (b) which could be affected by, or may affect, evidence to be
8 given by any of those witnesses.
- 9 22.4 A practitioner will not have breached Rule 22.3 by conferring with,
10 or condoning another practitioner conferring with, more than one
11 client about undertakings to a court, admissions or concessions
12 of fact, amendments of pleadings or compromise.
- 13 22.5 A practitioner must not confer with any witness (including a party
14 or client) called by the practitioner on any matter related to the
15 proceedings while that witness remains under cross-examination,
16 unless:
- 17 (a) the cross-examiner has consented beforehand to the
18 practitioner doing so; or
- 19 (b) the practitioner:
- 20 (i) believes on reasonable grounds that special
21 circumstances (including the need for instructions
22 on a proposed compromise) require such a
23 conference;
- 24 (ii) has, if possible, informed the cross-examiner
25 beforehand of the practitioner's intention to do so;
26 and
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- 1 (iii) otherwise does inform the cross-examiner as soon
2 as possible of the practitioner having done so.
- 3 22.6 A practitioner must not take any step to prevent or discourage
4 prospective witnesses or witnesses from conferring with the
5 opponent or being interviewed by or on behalf of any other
6 person involved in the proceedings.
- 7 22.7 A practitioner will not have breached Rule 22.6 simply by telling a
8 prospective witness or a witness that the witness need not agree
9 to confer or to be interviewed.
- 10 **23. Duty to opponent**
- 11 23.1 A practitioner must not knowingly make a false statement to the
12 opponent in relation to the case (including its compromise).
- 13 23.2 A practitioner must take all necessary steps to correct any false
14 statement unknowingly made by the practitioner to the opponent
15 as soon as possible after the practitioner becomes aware that the
16 statement was false.
- 17 23.3 A practitioner does not make a false statement to the opponent
18 simply by failing to correct an error on any matter stated to the
19 practitioner by the opponent.
- 20 23.4 A practitioner must not deal directly with the opponent's client
21 unless:
- 22 (a) the opponent has previously consented;
- 23 (b) the practitioner believes on reasonable grounds that:
- 24 (i) the circumstances are so urgent as to require the
25 practitioner to do so; and
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- 1 (ii) the dealing would not be unfair to the opponent's
2 client; or
- 3 (c) the substance of the dealing is solely to enquire whether
4 the person is represented and, if so, by whom.
- 5 23.5 A practitioner must not confer with or deal directly with the party
6 opposed to the client unless:
- 7 (a) the party, not being indemnified by an insurer which is
8 actively engaged in contesting the proceedings, is
9 unrepresented and has signified willingness to that course,
10 or
- 11 (b) the party, being indemnified by an insurer which is actively
12 engaged in contesting the proceedings, is otherwise
13 unrepresented and the practitioner:
- 14 (i) has no reasonable grounds to believe that any
15 statements made by the party to the practitioner
16 may harm the party's interests under the insurance
17 policy; or
- 18 (ii) has reasonable grounds for the belief referred to in
19 (i) but has clearly informed the party beforehand of
20 that possibility; or
- 21 (c) the party, being indemnified by an insurer which is actively
22 engaged in contesting the proceedings, is personally
23 represented but not in the case and the practitioner:
- 24 (i) has notified the party's representative of the
25 practitioner's intention to do so; and

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- 1 (ii) has allowed enough time for the party to be advised
2 by the party's representative.
- 3 23.6 A practitioner must not, outside an ex parte application or a
4 hearing of which the opponent has had proper notice,
5 communicate in the opponent's absence with the court
6 concerning any matter of substance in connection with current
7 proceedings unless:
- 8 (a) the court has first communicated with the practitioner in
9 such a way as to require the practitioner to respond to the
10 court; or
- 11 (b) the opponent has consented beforehand to the practitioner
12 dealing with the court in a specific manner notified to the
13 opponent by the practitioner.
- 14 23.7 A practitioner must promptly tell the opponent what passes
15 between the practitioner and a court in a communication referred
16 to in Rule 23.6.
- 17 23.8 A practitioner must not raise any matter with a court in connection
18 with current proceedings on any occasion to which the opponent
19 has consented under Rule 23.6(b), other than the matters
20 specifically notified by the practitioner to the opponent when
21 seeking the opponent's consent.
- 22 24. **Prosecutor's duties**
- 23 24.1 A prosecutor must fairly assist the court to arrive at the truth,
24 must seek impartially to have the whole of the relevant evidence
25 placed intelligibly before the court, and must seek to assist the
26 court with adequate submissions of law to enable the law
27 properly to be applied to the facts.
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- 1 24.2 A prosecutor must not press the prosecution's case for a
2 conviction beyond a full and firm presentation of that case.
- 3 24.3 A prosecutor must not, by language or other conduct, seek to
4 inflame or bias the court against the accused.
- 5 24.4 A prosecutor must not argue any proposition of fact or law which
6 the prosecutor does not believe on reasonable grounds to be
7 capable of contributing to a finding of guilt and also to carry
8 weight.
- 9 24.5 A prosecutor must disclose to the opponent as soon as
10 practicable all material (including the names of and means of
11 finding prospective witnesses in connection with such material)
12 available to the prosecutor or of which the prosecutor becomes
13 aware which could constitute evidence relevant to the guilt or
14 innocence of the accused, unless:
- 15 (a) such disclosure, or full disclosure, would seriously threaten
16 the integrity of the administration of justice in those
17 proceedings or the safety of any person; and
- 18 (b) the prosecutor believes on reasonable grounds that such a
19 threat could not be avoided by confining such disclosure,
20 or full disclosure, to the opponent being a legal
21 practitioner, on appropriate conditions which may include
22 an undertaking by the opponent not to disclose certain
23 material to the opponent's client or any other person.
- 24 In the event that the prosecutor acts in accordance with sub-
25 paragraphs (a) and (b), the prosecutor must facilitate
26 communication between the defence and prospective witnesses.

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- 1 24.6 A prosecutor who has decided not to disclose material to the
2 opponent under Rule 24.5 must consider whether:
- 3 (a) the defence of the accused could suffer by reason of such
4 nondisclosure;
- 5 (b) the charge against the accused to which such material is
6 relevant should be withdrawn; and
- 7 (c) the accused should be faced only with a lesser charge to
8 which such material would not be so relevant.
- 9 24.7 A prosecutor must call as part of the prosecution's case all
10 witnesses:
- 11 (a) whose testimony is admissible and necessary for the
12 presentation of the whole picture;
- 13 (b) whose testimony provides reasonable grounds for the
14 prosecutor to believe that it could provide admissible
15 evidence relevant to any matter in issue;
- 16 (c) whose testimony or statements were used in the course of
17 any committal proceedings; and
- 18 (d) from whom statements have been obtained in the
19 preparation or conduct of the prosecution's case,
- 20 unless:
- 21 (e) the opponent consents to the prosecutor not calling a
22 particular witness;

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- 1 (f) the only matter with respect to which the particular witness
2 can give admissible evidence has been dealt with by an
3 admission on behalf of the accused; or
- 4 (g) the prosecutor believes on reasonable grounds that the
5 administration of justice in the case would be harmed by
6 calling a particular witness or particular witnesses to
7 establish a particular point already adequately established
8 by another witness or other witnesses,
- 9 provided that:
- 10 (h) the prosecutor is not obliged to call evidence from a
11 particular witness, who would otherwise fall within (a)-(d), if
12 the prosecutor believes on reasonable grounds that the
13 testimony of that witness is plainly unreliable by reason of
14 the witness being in the camp of the accused;
- 15 (i) the prosecutor must inform the opponent as soon as
16 practicable of the identity of any witness whom the
17 prosecutor intends not to call on any ground within (f), (g)
18 and (h), together with the grounds on which the prosecutor
19 has reached that decision; and
- 20 (j) the prosecutor must call any witness whom the prosecutor
21 intends not to call on the ground in (h) if the opponent
22 requests the prosecutor to do so for the purpose of
23 permitting the opponent to cross-examine that witness.
- 24 24.8 A prosecutor who has reasonable grounds to believe that certain
25 material available to the prosecution may have been unlawfully or
26 improperly obtained must promptly:
- 27 (a) inform the opponent if the prosecutor intends to use the
28 material;
-

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- 1 (b) make available to the opponent a copy of the material if it
2 is in documentary form; and
- 3 (c) inform the opponent of the grounds for believing that such
4 material was unlawfully or improperly obtained.
- 5 24.9 A prosecutor must not confer with or interview any of the accused
6 except in the presence of the accused's representative.
- 7 24.10 A prosecutor must not inform the court or the opponent that the
8 prosecution has evidence supporting an aspect of its case unless
9 the prosecutor believes on reasonable grounds that such
10 evidence will be available from material already available to the
11 prosecutor.
- 12 24.11 A prosecutor who has informed the court of matters within
13 Rule 24.10, and who has later learnt that such evidence will not
14 be available, must immediately inform the opponent of that fact
15 and must inform the court of it when next the case is before the
16 court.
- 17 24.12 A prosecutor must not seek to persuade the court to impose a
18 vindictive sentence or a sentence of a particular magnitude, but:
- 19 (a) must correct any error made by the opponent in address
20 on sentence;
- 21 (b) must inform the court of any relevant authority or
22 legislation bearing on the appropriate sentence;
- 23 (c) must assist the court to avoid appealable error on the
24 issue of sentence;

- 1 (d) may submit that a custodial or non-custodial sentence is
2 appropriate; and
- 3 (e) may inform the court of an appropriate range of severity of
4 penalty, including a period of imprisonment, by reference
5 to relevant appellate authority.
- 6 24.13 A practitioner who appears as counsel assisting an inquisitorial
7 body such as the National Crime Authority, the Australian
8 Securities Commission, a Royal Commission or other statutory
9 tribunal or body having investigative powers must act in
10 accordance with Rules 24.1, 24.3 and 24.4 as if the body were
11 the court referred to in those Rules and any person whose
12 conduct is in question before the body were the accused referred
13 to in Rule 24.3.

RELATIONS WITH OTHER PRACTITIONERS

In all of their dealings with other practitioners, practitioners should act with honesty, fairness and courtesy, and adhere faithfully to their undertakings, in order to transact lawfully and competently the business which they undertake for their clients in a manner that is consistent with the public interest.

25. Communications

A practitioner, in all of the practitioner's dealings with other practitioners, must take all reasonable care to maintain the integrity and reputation of the legal profession by ensuring that the practitioner's communications are courteous and that the practitioner avoids offensive or provocative language or conduct.

26. Undertakings

26.1 A practitioner who, in the course of the practitioner's practice, communicates with another practitioner orally, or in writing, in terms which expressly, or by necessary implication, constitute an undertaking on the part of the practitioner, to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the other practitioner will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised, or, if no precise time limit is specified, within a reasonable time.

26.2 A practitioner must not give to another practitioner an undertaking compliance with which requires the co-operation of a third party, who is not a party to the undertaking, and whose co-operation cannot be guaranteed by the practitioner.

26.3 A practitioner must not, in the course of the practitioner's practice, seek from another practitioner or that practitioner's employee, an

1 undertaking, compliance with which would require the co-
2 operation of a third party who is not a party to the undertaking,
3 and whose co-operation could not be guaranteed by the
4 practitioner or employee asked to give the undertaking.

5 **27. Taking over a Matter from Another Practitioner**

6 27.1 Where a practitioner's retainer is terminated before the
7 completion of the client's business to which it relates, and the
8 client instructs another practitioner to take over the conduct of the
9 client's business, the following rules will apply, subject to any
10 orders which may be, made by a court of competent jurisdiction in
11 respect of the delivery of the client's documents.

12 27.2 The first practitioner must promptly, on receipt of a direction in
13 writing from the client, deliver to the second practitioner all
14 relevant documents to which the client is entitled and any
15 information which is necessary for the proper conduct of the
16 client's business, unless the first practitioner claims a lien over
17 the documents for unpaid costs.

18 27.3 If the client has terminated the first practitioner's retainer, the first
19 practitioner may retain possession of the documents until the
20 practitioner's costs are paid, or their payment to the practitioner is
21 satisfactorily secured.

22 27.4 If the first practitioner has terminated the retainer and the client's
23 documents are essential to the defence or prosecution of
24 proceedings which are continuing before a Court, the practitioner
25 must surrender possession of the documents to the client, upon
26 the terms prescribed in Rule 7.3 or to the second practitioner, if
27 so directed by the client, and, provided that the second
28 practitioner :

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- 1 (a) holds the documents subject to the first practitioner's lien,
2 if that is practicable, and provides reasonable security for
3 the payment of the first practitioner's costs; or
- 4 (b) enters into an agreement with the client and the first
5 practitioner to procure payment of the first practitioner's
6 costs upon completion of the relevant proceedings.
- 7 27.5 A practitioner who receives a client's documents from another
8 practitioner pursuant to an agreement between the client and
9 both practitioners, providing that the practitioner receiving the
10 documents will pay the first practitioner's costs from money
11 recovered on the client's behalf in respect of the business or
12 proceedings to which the documents relate, must do all things
13 which are reasonably practicable on the practitioner's part to
14 ensure compliance with the agreement.
- 15 28. **Transfer of a Practitioner's Practice**
- 16 28.1 When a practitioner intends to transfer to another practitioner the
17 whole or part of the practitioner's practice, including clients' work
18 in progress, and to put the other practitioner in possession of the
19 documents held by the practitioner on behalf of clients, the
20 practitioner must give to each client, fourteen (14) days (or such
21 other period as may be reasonable in the circumstances), before
22 the practitioner delivers possession of the practice to the
23 practitioner acquiring it, notice in writing:
- 24 (a) of the intended transfer of documents to the practitioner
25 acquiring the practice, unless a contrary direction is
26 received from the client; and
- 27 (b) of the client's right to give to the practitioner a contrary
28 direction in relation to the conduct of the client's affairs and
29 the delivery of the client's documents.
-

- 1 **28.2** The notice which is sent to any client, on whose behalf the
2 practitioner holds money in trust or under the practitioner's
3 control, must advise the client of:
- 4 (a) the balance of money held on the client's behalf;
- 5 (b) the practitioner's intention to transfer the relevant account
6 to the practitioner acquiring the practice, unless advised by
7 the client to the contrary; and
- 8 (c) the client's right to give to the practitioner a contrary
9 direction as to the manner in which the practitioner should
10 deal with the account on the client's behalf.
- 11 **28.3** The practitioner, in addition to giving notice to clients as required
12 by paragraphs 28.1 and 28.2 must comply with all other
13 legislative provisions applicable to the trust money or controlled
14 money held by the practitioner.
- 15 **28.4** Paragraphs 28.1, 28.2 and 28.3 do not apply where a new
16 partner is admitted to a partnership which continues to conduct
17 the practice.
- 18 **29. Communicating with Another Practitioner's Client**
- 19 **29.1** A practitioner who is acting on behalf of a party in any
20 proceedings or transaction must not communicate directly with
21 any other party for whom, to the practitioner's knowledge, another
22 practitioner is currently acting, unless:
- 23 (a) notice of the practitioner's intention to communicate with
24 the other party, in default of a reply from the other
25 practitioner, has been given to that practitioner, who has
26 failed, after a reasonable time, to reply;

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- 1 (b) the communication is made for the sole purpose of
2 informing the other party that the practitioner has been
3 unable to obtain a reply from that party's practitioner, and
4 requests that party to contact the practitioner; and
- 5 (c) the practitioner, thereafter, notifies the other practitioner of
6 the communication.
- 7 29.2 A practitioner who receives notice from another practitioner that
8 the practitioner's client has instructed or retained that practitioner
9 may, after notifying the other practitioner, communicate with the
10 former client for the purpose of confirming the client's instructions
11 and arranging for the orderly transfer of the client's affairs to the
12 other practitioner.

RELATIONS WITH THIRD PARTIES

Practitioners should, in the course of their practice, conduct their dealings with other members of the community, and the affairs of their clients which affect the rights of others, according to the same principles of honesty and fairness which are required in relations with the courts and other lawyers and in a manner that is consistent with the public interest.

30. Contracting for Services

A practitioner who deals with a third party for the purpose of obtaining some service on behalf of a client, must inform the third party when the service is requested, that the practitioner will accept personal liability for payment of the fees to be charged for the service or, if the practitioner is not to accept personal liability, the practitioner must inform the third party of the arrangements intended to be made for payment of the fees.

31. Undertakings

A practitioner who, in the course of providing legal services to a client, communicates with a third party orally, or in writing, in terms which, expressly, or by necessary implication, constitute an undertaking on the part of the practitioner to ensure the performance of some action or obligation, in circumstances where it might reasonably be expected that the third party will rely on it, must honour the undertaking so given strictly in accordance with its terms, and within the time promised (if any) or within a reasonable time.

1 **32. Communications**

2 32.1 A practitioner must not, in any communication with another
3 person on behalf of a client:

- 4 (a) represent to that person that anything is true which the
5 practitioner knows, or reasonably believes, is untrue; or
6 (b) make any statement that is calculated to mislead or
7 intimidate the other person, and which grossly exceeds the
8 legitimate assertion of the rights or entitlement of the
9 practitioner's client; or
10 (c) threaten the institution of criminal proceedings against the
11 other person in default of the person's satisfying a
12 concurrent civil liability to the practitioner's client.

13 **33. Debt Collection or Mercantile Agencies**

14 33.1 A practitioner must not allow the practitioner's business name or
15 stationery to be used by a debt collection, or mercantile, agent in
16 a manner that is likely to mislead the public, and a practitioner
17 who receives, from a debt collection, or mercantile, agent,
18 instructions to act for a client creditor, must ensure that:

- 19 (a) the practitioner's relationship to the agent is fully disclosed
20 to the client;
21 (b) the information required to be disclosed to the client by
22 any relevant legislation and these Rules is communicated
23 to the client;
24 (c) the practitioner maintains direct control and supervision of
25 any proceedings on behalf of the client; and
26 (d) that any money recovered on behalf of the client is
27 accounted for by the practitioner.

1 **LEGAL PRACTICE**

2 **34. Conducting Another Business**

3 34.1 A practitioner who engages in the conduct of another business
4 concurrently, but not directly in association, with the conduct of
5 the practitioner's legal practice must ensure that the other
6 business is not of such a nature that the practitioner's
7 involvement in it would be likely to impair, or conflict with, the
8 practitioner's duties to clients in the conduct of the practice, and
9 the practitioner must:

10 (a) maintain separate and independent files, records and
11 accounts in respect of the legal practice, and the other
12 business;

13 (b) disclose to any client of the practitioner, who, in the course
14 of dealing with the practitioner, deals with the other
15 business, the practitioner's financial or other interest in that
16 business; and

17 (c) cease to act for the client if the practitioner's independent
18 service of the client's interest is reasonably likely to be
19 affected by the practitioner's interest in the other business.

20 34.2 For the purpose of paragraph 34.1, a practitioner will be deemed
21 to be carrying on another business if that business, whether
22 conducted by a company or otherwise, is carried on substantially
23 under the practitioner's direction or control.

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- 1 **35. Referral Fees - Taking unfair advantage of potential clients -**
2 **Commissions**
- 3 35.1 In the conduct or promotion of a practitioner's practice, the
4 practitioner must not:
- 5 (a) accept a retainer or instructions to provide legal services to
6 a person, who has been introduced or referred to the
7 practitioner by a third party to whom the practitioner has
8 given or offered to provide a fee, benefit or reward for the
9 referral of clients or potential clients, unless the practitioner
10 has first disclosed to the person referred the practitioner's
11 arrangement with the third party; or
- 12 (b) seek instructions for the provision of legal services in a
13 manner likely to oppress or harass a person who, by
14 reason of some recent trauma or injury, or other
15 circumstances, is, or might reasonably be expected to be,
16 at a significant disadvantage in dealing with the
17 practitioner at the time when the instructions are sought.
- 18 35.2 A practitioner must not act for a client in any dealing with a third
19 party from whom the practitioner may receive, directly or
20 indirectly, any fee, benefit or reward in respect of that dealing
21 unless:
- 22 (a) the practitioner is able to advise and, in fact, advises the
23 client free of any constraint or influence which might be
24 imposed on the practitioner by the third party;
- 25 (b) the practitioner's advice is fair and free of any bias caused
26 by the practitioner's relationship with the third party; and
- 27 (c) the nature and value of any fee, benefit, or reward, which
28 may be received by the practitioner, are fair and
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1 reasonable, having regard to objective commercial
2 standards, and are disclosed fully in writing to the client
3 before the dealing is commenced.

4 **36. Supervision**

5 A practitioner should properly supervise all legal professional
6 work carried out for and on the practitioner's behalf.

7 **37. Conduct of Practice**

8 37.1 A practitioner should ensure that his or her practice is efficiently
9 and properly administered and should take all reasonable and
10 practicable steps to ensure that professional engagements are
11 fulfilled or that early notice is given if they cannot be fulfilled.

12 37.2 A practitioner who is the holder of a current unrestricted
13 practising certificate must ensure that he or she or another
14 practitioner who is the holder of a current unrestricted practising
15 certificate is at all times in charge of and attends regularly at each
16 address at which the practitioner carries on practice.

17 37.3 Where a practitioner carries on practice as a solicitor at an office
18 other than his or her usual place of residence which is not open
19 continuously during normal business hours:

20 (a) the practitioner must ensure that a notice, clearly visible
21 outside the practitioner's place of practice, which specifies
22 the days on which and the hours during which such place
23 of practice is open, is affixed;

24 (b) such notice should also state a telephone number on
25 which the practitioner can be contacted, and such
26 telephone number will, during normal business hours, be

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- 1 serviced personally or by a functional machine answering
2 service;
- 3 (c) the practitioner must notify the Law Society promptly in
4 writing of the hours during which the said place of
5 business is open, the said telephone number and any
6 changes thereto; and
- 7 (d) the provisions of this sub-Rule will not in any way limit the
8 generality of the preceding two sub-Rules 37.1 and 37.2.
- 9 37.4 Where a practitioner who practises as a solicitor does not have
10 an office other than at his or her place of residence and sees
11 clients by appointment only:
- 12 (a) the practitioner should have a telephone number on which
13 he or she can be contacted. The telephone number
14 should be serviced personally or by a functional machine
15 answering service during normal business hours;
- 16 (b) the practitioner must notify the Law Society promptly in
17 writing of the telephone number and any changes thereto;
18 and
- 19 (c) the provisions of this sub-Rule will not in any way limit the
20 generality of the preceding two sub-Rules 37.1 and 37.2.
- 21 38. **Firms**
- 22 38.1 Firm Names
- 23 A practitioner may practise under a business name that includes
24 the name of the practitioner, a partner of the practitioner, any past
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1 member of the firm or a firm that conducted the same practice, or
2 any other name provided that the business name:

3 (a) does not mislead or deceive, and is not likely to mislead or
4 deceive; and

5 (b) is not likely to bring the practitioner or the legal profession
6 into disrepute; or

7 (c) is approved by Council.

8 **38.2 Professional Stationery**

9 In this Rule “professional stationery” includes letterheads,
10 compliment slips, business cards and any other document that
11 identifies the practitioner’s firm.

12 **38.3** A practitioner must place in legible form on any letterhead of the
13 practitioner’s practice:

14 (a) the name under which the practitioner practises; and

15 (b) the address of the practitioner’s principal place of practice;
16 and

17 (c) the practitioner’s telephone number.

18 **38.4** A practitioner may permit to appear on his or her professional
19 stationery the name of any person who is:

20 (a) another practitioner, being a partner of that practitioner; or

21 (b) any other person employed by or associated with the firm,

1 provided that the use of that name does not mislead or deceive,
2 and is not likely to mislead or deceive.

3 **39. Attraction of Business**

4 **39.1 For the purpose of this Rule:**

5 (a) the expression “publication” means a book, pamphlet,
6 brochure, newspaper, magazine, periodical, journal,
7 gazette, directory, or other printed material;

8 (b) the expression “transmission” means a radio or television
9 transmission, a visual display communicated by electronic
10 means or a cinematographic exhibition.

11 **39.2 (a)** A practitioner may advertise in connection with his or her
12 practice provided that such advertising:

13 (i) is not false in any material particular;

14 (ii) is not misleading or deceptive or likely to mislead or
15 deceive;

16 (iii) is not vulgar, sensational or otherwise such as
17 would bring or be likely to bring the practitioner or
18 the legal profession into disrepute.

19 (b) The onus would be on any practitioner who claimed that
20 he was a specialist or an expert in a particular field of
21 practice to prove, if required, that his claim was not false,
22 misleading or deceptive.

23 (c) The acceptance of a claim by a practitioner to be a
24 specialist or an expert in a particular field of practice would
25 depend on a number of factors. While an assessment of a

- 1 practitioner's claim would depend on the particular facts
2 and circumstances, the following factors may be taken into
3 account in judging the validity of a claim:
- 4 (i) the academic qualifications of the practitioner;
- 5 (ii) the number of years of experience the practitioner
6 has had in the field of practice;
- 7 (iii) the proportion of the practitioner's total working time
8 involved in the field of practice;
- 9 (iv) the level of success achieved by the practitioner in
10 the field of practice;
- 11 (v) the importance or significance of the matters in
12 respect of which the practitioner has practised in the
13 field;
- 14 (vi) an assessment by a number of the practitioner's
15 peers to establish whether or not the practitioner is
16 regarded by other practitioners as a specialist or as
17 having special expertise in the field of practice;
- 18 (vii) any interstate accreditation as a specialist;
- 19 (viii) such other matters as are relevant in all the
20 circumstances.
- 21 (d) The term "specialist" and the phrase "an expert in a
22 particular field of practice" means "a practitioner having
23 special expertise". A practitioner will need to consider
24 carefully any claim to be a specialist. Alternative
25 indications such as "practising in the fields of..." or
26 "undertaking legal work in..." may be more accurate and

1 satisfactory. The connotation of the term “specialist” to
2 denote the field in which the practitioner principally
3 practises may be more satisfactorily met by the indication
4 of a field or fields of practice.

5 39.3 A practitioner may in any lecture, talk, public appearance,
6 transmission, or publication on any subject be identified therein
7 by his or her name, academic qualifications and the fact that he
8 or she is a practitioner provided that:

9 (a) where the subject matter or part of the subject matter
10 thereof concerns a matter in which the practitioner is or
11 has been professionally engaged:

12 (i) the practitioner must in all cases confine himself or
13 herself to an objective account of the matter without
14 giving undue publicity to his or her own part in the
15 matter;

16 (ii) the practitioner must not participate therein if it is
17 contrary to the interests of the client or former client
18 so to do;

19 (b) the practitioner must not therein profess to be representing
20 the Society or the legal profession or presenting the views
21 of the Society or the legal profession unless he or she has
22 been expressly authorised by the Council or the Executive
23 Committee so to do.

24 39.4 A practitioner may communicate with a person who is not then his
25 or her client with a view to obtaining instructions for professional
26 business provided that:

27 (a) the content and nature of any material, whether printed,
28 spoken or otherwise, used by the practitioner in the course

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- 1 of the communication will be subject to the same
2 restrictions as are contained in sub-Rule 39.2;
- 3 (b) the form of the communication does not derogate from the
4 dignity of the legal profession;
- 5 (c) the physical, emotional and mental state of the person is
6 such that the person is capable of exercising reasonable
7 judgment in employing a practitioner;
- 8 (d) the practitioner must not communicate with a person who
9 has made known to the practitioner, directly or indirectly,
10 that he or she does not desire to receive such
11 communications from the practitioner or from practitioners
12 generally; and
- 13 (e) the communication does not involve undue influence,
14 coercion, duress, harassment or nuisance.
- 15 39.5 Except as allowed by this Rule, a practitioner must not:
- 16 (a) apply, directly or indirectly, to a person who is not then his
17 or her client for instructions for professional business; or
- 18 (b) do or permit in the carrying on of his or her practice any
19 act or thing that may reasonably be regarded as calculated
20 to attract business unfairly.
- 21 39.6 (a) The Council may from time to time provide for the
22 guidance of practitioners examples of material which it
23 considers to accord with or not to accord with the
24 restrictions contained in the provisos to sub-Rule 39.2.
- 25 (b) the Council may by notice in writing to a practitioner order:

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- 1 (i) the alteration, withdrawal or discontinuance of an
2 advertisement;
- 3 (ii) the alteration or discontinuance of the use of
4 material referred to in sub-paragraph 39.4(a);
- 5 (iii) the removal or alteration of a sign or brochure,
6 by a practitioner where the Council is of the opinion that
7 the advertisement, material, sign or brochure contravenes
8 the provisions of this Rule.
- 9 (c) The Council may by notice in writing to a practitioner order
10 him or her to cease or limit:
- 11 (i) communications with persons who are not his or her
12 clients with a view to obtaining instructions for
13 professional business;
- 14 (ii) the lectures, talks, public appearances,
15 transmissions or publications in which he or she
16 participates,
- 17 if in the opinion of the Council the practitioner is thereby
18 contravening the provisions of this Rule.
- 19 (d) A practitioner must forthwith comply with any order given
20 by the Council pursuant to paragraphs (b) and (c).

21 **40. Fees**

- 22 **40.1** A practitioner should, when accepting instructions, inform the
23 client of the basis on which fees for professional services will be
24 charged and the manner in which it is expected that those fees
25 and disbursements, if any, should be paid by the client.

1 40.2 A practitioner should within a reasonable time after being so
2 requested by a client render a bill of costs covering all work
3 performed for that client to which the request relates.

4 40.3 A practitioner should not bargain with a client for an interest in the
5 subject matter of litigation nor, except to the extent permitted by
6 any scale of costs which may be applicable, for remuneration
7 proportionate to the amount which may be recovered by the client
8 in the proceedings.

9 **41 Dealings with the Law Society**

10 41.1 Subject only to his or her duty to the client, a practitioner should
11 be open and frank in his or her dealings with the Law Society.

12 41.2 A practitioner should respond within a reasonable time and in any
13 event within 14 days (or such extended time as the Society may
14 allow) to any requirement of the Society for comments or
15 information in relation to the practitioner's conduct or professional
16 behaviour and in doing so the practitioner should furnish in writing
17 a full and accurate account of his or her conduct in relation to the
18 matter.

19 **42. Anti-Discrimination**

20 42.1 A practitioner should not in the course of his or her practice
21 discriminate against a person on the ground of the person's sex,
22 marital status, pregnancy or family responsibilities where such
23 discrimination would be unlawful by virtue of the *Sex*
24 *Discrimination Act* 1994 of the Commonwealth.

25 42.2 A practitioner should not in the course of his or her practice
26 sexually harass another person where such harassment would be

1 unlawful by virtue of the *Sex Discrimination Act* 1994 of the
2 Commonwealth.

3 42.3 A practitioner should not in the course of his or her practice do
4 any act involving a distinction, exclusion, restriction or preference
5 based upon the race, colour or national or ethnic origin of a
6 person where such an act would be unlawful by virtue of the
7 *Racial Discrimination Act* 1975 of the Commonwealth.

8 42.4 A practitioner should not in the course of his or her practice
9 discriminate against a person on the ground of a disability of that
10 person where such discrimination would be unlawful by virtue of
11 the *Disability Discrimination Act* 1992 of the Commonwealth.

12 43. Trust Accounts

13 43.1 For the purposes of this Rule, a “client” includes a person from
14 whom a practitioner receives money in the course of his or her
15 practice on the condition that the money is held by the
16 practitioner and subsequently disbursed or otherwise dealt with
17 by the practitioner in accordance with the directions of that
18 person or another person.

19 (a) Opening of Trust Account

20 (i) A principal must comply with the provisions of the
21 Act in respect to the opening, operation and
22 maintenance of trust accounts.

23 (ii) For the purposes of section 90(1) of the *Legal*
24 *Practitioners Act*, the date by which a practitioner is
25 required to open a trust account is the next banking
26 day following the date of receipt by the practitioner
27 of the first amount of trust moneys after
28 commencing practice.

1 (b) Signing of Trust Account Cheques

2 Except as allowed in this sub-Rule, every cheque drawn
3 on a trust account must be signed personally by a
4 principal.

5 (c) In isolated instances only and in circumstances which
6 could not reasonably have been foreseen by the principal
7 or principals, a cheque drawn on a trust account may be
8 signed by a practitioner who is not a principal provided
9 that:

10 (i) it is in the interests of a client that the cheque be
11 drawn without delay; and

12 (ii) it is not reasonably practicable to obtain the
13 signature of a principal to the cheque.

14 The principal and the practitioner must notify the Law
15 Society in writing of any such instances within 7 days of
16 the cheque being so drawn on the trust account furnishing
17 full particulars of the circumstances giving rise to the
18 signing of the cheque and the date, payee and amount for
19 which the cheque was drawn.

20 (d) Delegation of Authority to Sign Trust Account Cheques

21 The Executive Committee may permit a principal to
22 delegate the authority to sign trust account cheques to:

23 (i) a practitioner in his or her employ; or

24 (ii) another principal,

for a limited period and on such terms and conditions as may be specified by the Executive Committee.

(e) Electronic Transfer of Funds

“An electronic transfer from a trust bank account is to be effected by or under the direction or with the authority of a principal.

The principal must ensure that for each electronic funds transfer, a record is kept of the following particulars:

- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose authority the transfer is effected.
- (b) Details identifying the ledger account debited and name of the person on whose behalf the amount is transferred.
- (c) Brief particulars of the subject-matter and purpose for which the money is transferred.
- (d) The reference number or other means of identification of the transfer.
- (e) The name or style of the bank account to which the money is paid, its number and identifying numbers of the receiving bank and its branch
- (f) The date of the transfer and the amount transferred.

1 43.2 Legal Aid Matters

2 A practitioner to whom a matter has been assigned under the
3 *Legal Aid Act 1977* must not exercise or purport to exercise a lien
4 over money held in the practitioner's trust account on behalf of
5 the legally assisted person in respect of the practitioner's
6 professional costs or disbursements of acting in that matter
7 pursuant to the assignment except to the extent of any
8 contribution which the legally assisted person has been directed
9 to pay towards those costs and disbursements.

10 43.3 Investment of Trust Money

- 11 (a) A practitioner, other than a principal, must not invest a
12 client's money in his or her own name.
- 13 (b) A principal must not undertake the investment of a client's
14 money in his or her own name except where:
- 15 (i) the client has specifically requested the principal in
16 writing to invest the money as trustee for the client
17 in a particular investment nominated by the client in
18 the name of the principal; and
- 19 (ii) the principal forms the opinion that in all of the
20 circumstances the client's request is reasonable.

21 43.4 Where a principal invests money in his or her own name as a
22 trustee for a client the principal must keep in addition to such
23 other records as may be required to be kept by the Act a Journal
24 entitled with the name of the principal's firm immediately followed
25 by the words "Trust Investment Journal" in such form as may
26 conveniently be audited.

-
- 1 43.5 A principal will not be required to comply with sub-Rule 43.3 or
2 43.4 where:
- 3 (a) the money to be invested is paid to the practitioner as
4 stakeholder pursuant to a contract for sale;
- 5 (b) the money to be invested is paid to the practitioner
6 pursuant to a Court Order which includes an order that the
7 money be invested in the name of the practitioner; or
- 8 (c) the Council or the Executive Committee determines, either
9 before or after the transaction is entered into, that sub-
10 Rules 43.3 or 43.4 (as the case may be) will not apply to
11 that particular transaction.
- 12 43.6 A practitioner should notify his or her client promptly of the receipt
13 by him or her of moneys or securities on behalf of that client.
- 14 43.7 Statement of Account
- 15 Subject to any rule of Court, where any moneys are received by a
16 practitioner from any person other than the client or the agent of
17 the client the practitioner should:
- 18 (a) within a reasonable time of receiving a request from the
19 client for a statement of account; and
- 20 (b) upon completion of the matter render to the client a
21 statement of account showing particulars of:
- 22 (i) all moneys received, when and from whom;
- 23 (ii) all moneys paid, when and to whom;
- 24 (iii) the balance remaining undisbursed;
-

1 in sufficient detail to enable the statement to be conveniently and
2 properly understood.

3 43.8 Nothing in sub-Rule 43.7 prejudices, diminishes or affects any
4 other right of the client to an account.

5 43.9 A practitioner must comply with sub-Rule 43.7 notwithstanding
6 any waiver or direction to the contrary by the client.

7 44. **Practising Solicitors Serving as Part-Time Judicial Officers**
8 **or Tribunal Members**

9 44.1 A practitioner must not appear, or undertake work on behalf of a
10 client in relation to any proceedings before a court or statutory
11 tribunal of which the practitioner is a member.

12 44.2 A practitioner must not appear in any proceedings before a court
13 or statutory tribunal on behalf of a client if a partner, employer or
14 employee of the practitioner is sitting as a member of the court or
15 tribunal for the purpose of those proceedings.

16 44.3 A practitioner must not knowingly appear, or undertake work on
17 behalf of a client in relation to any proceedings before a court or
18 statutory tribunal of which a partner, employer or employee of the
19 practitioner is a member unless the practitioner has as soon as
20 practicable advised the client and all other parties to the
21 proceedings that a partner, employer or employee of the
22 practitioner is a member of the court or tribunal.

SCHEDULE 1

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Buyer and Seller

Instructions to Solicitor

The Law Society of the Australian Capital Territory is opposed to the practice of the one solicitor or firm of solicitors acting for both buyer and seller in a matter concerning the sale of land or the sale of a business and has ruled that members of the Society must not so act in the Territory.

The reason for the rule is that a solicitor or firm of solicitors cannot properly fulfil their duty to both parties in circumstances where a conflict between the parties arises.

However, the Society recognises that occasions do arise where both buyer and seller desire to employ the same solicitor or firm of solicitors and in this situation is prepared to waive the rule subject to the following conditions:

1. The parties must be:

- (a) existing clients for whom the solicitor or firm of solicitors has previously acted;
- (b) related bodies corporate as defined in the Corporations Law; or

Schedule 1
Part 1.1

Legal profession rules
Rules for solicitors

1 (c) related by blood, adoption or marriage (either de jure or de
2 facto).

3 2. The above rule of the Society must be brought to the notice of
4 both buyer and seller.

5 3. Both buyer and seller must then instruct the solicitor in writing to
6 act, such instructions to specify the matter in question.

7 Having read the above I, hereby
8 instruct to act
9 for me in the matter of my *sale to/*purchase from
10 of the *property known as Block Section
11 Division /*Business known as

12 Signed.....

13 Date

14 * Strike out inappropriate words

SCHEDULE 2

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Mortgagor and Mortgagee

Instructions to Solicitor

The Law Society of the Australian Capital Territory is opposed to the practice of the one solicitor or firm of solicitors acting for both mortgagor and mortgagee in a matter concerning the mortgage of land and has ruled that members of the Society must not so act in the Territory.

The reason for the rule is that a solicitor or firm of solicitors cannot properly fulfil their duty to both parties in circumstances where a conflict between the parties arises.

However, the Society recognises that occasions do arise where both mortgagor and mortgagee desire to employ the same solicitor or firm of solicitors and in this situation is prepared to waive the rule subject to the following conditions:

1. The parties must be:

- (a) existing clients for whom the solicitor or firm of solicitors has previously acted;
- (b) related bodies corporate as defined in the Corporations Law; or
- (c) related by blood, adoption or marriage (either de jure or de facto).

3 3. Both mortgagor and mortgagee must then instruct the solicitor in
4 writing to act, such instructions to specify the matter in question.

5 Having read the above I, hereby
6 instruct to act
7 for me in the matter of my *mortgage to/*mortgage from
8 of the *property known as Block Section Division

9 Signed.....

10 Date

11 * Strike out inappropriate words

SCHEDULE 3

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

Solicitor Acting for Both Lessor and Lessee

Instructions to Solicitor

The Law Society of the Australian Capital Territory is not in favour of the practice of one solicitor or firm of solicitors acting for both lessor and lessee in any transaction for the reason that a solicitor or firm of solicitors cannot, in the opinion of the Society, properly fulfil their duty to both parties in circumstances where a conflict between the parties may arise.

The Society recognises, however, that occasions do arise when a lessor and lessee desire to employ the same solicitor or firm of solicitors and it does not object provided the fact that the solicitor proposes to accept instructions to act for both parties is drawn to the attention of each party.

I have read the above I, hereby
instruct to
act for me in the matter specified below acknowledging that the
*solicitor/*firm of solicitors will also be acting for the *lessor/*lessee in
the same transaction.

Details of transaction:

Schedule 1
Part 1.1

Legal profession rules
Rules for solicitors

1 Signed.....

2 Date

3 * Strike out inappropriate words

1 **Part 1.2 Rules for barristers**



Australian Capital Territory

2 **Legal Profession (Barrister) Rules 2006**

3 **Subordinate Law**

4 made under the

5 **Legal Profession Act 2006**



The ACT Bar Association

The Australian Capital Territory Barristers' Rules

Consolidated in March 2006 by adopting the ABA Rules.

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PREAMBLE

These Rules are made in the belief that:

1. The administration of justice is best served by reserving the practice of law to officers of the Supreme Court who owe their paramount duty to the administration of justice.
2. As legal practitioners, barristers must maintain high standards of professional conduct.
3. The role of barristers as specialist advocates in the administration of justice requires them to act honestly, fairly, skilfully, diligently and fearlessly.
4. Barristers owe duties to the courts, to other bodies and persons before whom they appear, to their clients, and to their barrister and solicitor colleagues.
5. Barristers should exercise their forensic judgements and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.
6. The provision of advocates for those who need legal representation is better secured if there is a Bar whose members:
 - (a) must accept briefs to appear regardless of their personal prejudices;
 - (b) must not refuse briefs to appear except on proper professional grounds; and
 - (c) compete as specialist advocates with each other and with other legal practitioners as widely and as often as practicable.
7. Barristers should be free to choose how they lawfully practise as barristers except only in those cases where the unchecked exercise of that freedom would threaten harm to the greater public interest that barristers' conduct be honourable, diligent, especially skilled, disinterested and competitive and that access to barristers' services be enhanced.

1 INTRODUCTION & INTERPRETATION

- 2 8. These Rules are made by the Bar Council. They may be cited as the ACT
3 Barristers' Rules.
- 4 9. These Rules are not, and should not be read as if they were, a complete or
5 detailed code of conduct for barristers. Other standards for, requirements of
6 and sanctions on the conduct of barristers are found in the inherent disciplinary
7 jurisdiction of the Supreme Court and in the general law (including the law
8 relating to contempt of court).
- 9 10. These Rules should be read and applied so as most effectively to attain the
10 objects and uphold the values expressed in their Preamble.
- 11 11. General provisions of these Rules should not be read or applied in a limited
12 way by reason of any particular or illustrative provisions.
- 13 12. Headings in these Rules shall be read as part of these Rules, but shall not be
14 used so as to read or apply any of the Rules in a more limited way than would
15 have been so if the headings were not part of the Rules.
- 16 13. These Rules are not to be read by reference to any former rules made by the
17 Bar Association, whether or not the substance of any such rule is reflected in
18 any of these Rules.
- 19 14. Barristers who are employed by a government or by an office or body created
20 by statute, and who have been accepted by the Bar Council as members of the
21 Bar Association, while acting pursuant to that employment, are not bound by
22 Rules 74-92, Rule 115, or Rule 121.
- 23 15. Unless the context requires otherwise, the following expressions are defined as
24 follows when used in these Rules:

25 26 27 28 29 30	<p>“allege” includes conduct constituted by settling, or opening on pleadings or affidavits, or witness statements, and reading or tendering affidavits or witness statements filed or prepared for the client (whether or not they were drawn or settled by the barrister).</p>
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1	“alternative dispute resolution”	includes, but is not limited to mediation,
2		arbitration, and collaborative lawyering.
3	“Bar Association”	means the Australian Capital Territory Bar
4		Association.
5	“Bar Council”	means the Council of the Bar Association.
6	“barrister”	means a member of the Bar Association
7		whose name is on the Roll of Legal
8		Practitioners of the Supreme Court of the
9		ACT and who practises in the ACT as a
10		barrister only.
11	“barristers' work”	means work permitted by Rule 74.
12	“case”	means the litigation or proceedings in which
13		the barrister in question is briefed to appear,
14		or the dispute in which the barrister is
15		advising, as the case may be.
16	“client”	means the client of the barrister in question,
17		and includes a professional acting as such, and
18		in Rules 32, 34 and 46 includes those officers,
19		servants or agents of a client which is not a
20		natural person who are responsible for or
21		involved in giving instructions on behalf of
22		the client.
23	“compromise”	includes any form of settlement of the case,
24		whether pursuant to a formal offer under the
25		rules or procedure of a court, or otherwise.
26	“court”	means any body described as such and all
27		other judicial tribunals, and, except in Rule 4,
28		all statutory tribunals, and, except in Rules 4
29		and 87(j), all investigations and inquiries
30		established by statute or by the Legislative
31		Assembly, Royal Commissions, arbitrations
32		and mediations.
33	“criminal proceedings”	includes disciplinary proceedings, in which
34		context other expressions appropriate to

1		criminal proceedings include corresponding
2		meanings appropriate to disciplinary
3		proceedings and in particular "a serious
4		criminal offence" includes a disciplinary
5		shortcoming which, if proved, involves the
6		serious possibility of suspension or
7		deregistration (or the equivalent).
8	"current proceedings"	means proceedings which have not been
9		determined, including proceedings in which
10		there is still the real possibility of an appeal or
11		other challenge to a decision being filed,
12		heard or decided.
13	"fee"	includes any payment for the reimbursement
14		of expenses.
15	"forensic judgments"	do not include decisions as to the
16		commencement of proceedings, the joinder of
17		parties, admissions or concessions of fact,
18		amendments of pleadings or undertakings to a
19		court, or in criminal proceedings as to a plea,
20		but do include advice given to assist the client
21		or the instructing solicitor to make such
22		decisions.
23	"instructing solicitor"	means the solicitor from whom the barrister in
24		question has accepted a brief or who is
25		instructing that barrister in that brief, as the
26		case may be, but does not include a solicitor
27		appearing with the barrister as a joint
28		advocate.
29	"insurance company"	in Rule 55 includes any entity, whether
30		statutory or otherwise, which performs the
31		function of indemnifying in any way civil
32		defendants.
33	"legal advice"	includes assistance at or presiding over
34		meetings.

1	“member”	of a court, in Rule 87(j), does not include the
2		holder of an acting commission or
3		appointment.
4	“opponent”	means the legal practitioner appearing for the
5		party opposed to the client, or the party
6		opposed to the client if that party is
7		unrepresented.
8	“order”	includes a judgement, decision or
9		determination.
10	“professional”	when used as a noun means a person actively
11		engaged in an occupation generally
12		recognised as being a profession, and includes
13		accountants, architects, doctors, engineers,
14		surveyors, town planners and valuers.
15	“prosecutor”	means a barrister who appears for the
16		complainant or Crown in criminal
17		proceedings.
18	“reader”	means a barrister who has been a member of
19		the Bar Association for a period of less than
20		12 months and has not been exempted by the
21		Bar Council from being a reader.
22	“reading programme”	means a programme of instruction, the content
23		or aims and objectives of which are approved
24		from time to time by the Bar Council.
25	“representative”	means the barrister or, if no barrister, the
26		solicitor who is retained by the party in
27		question.
28	“Senior Counsel”	means and includes senior counsel appointed
29		as such in accordance with Rule 114, senior
30		counsel appointed as such in other states and
31		territories pursuant to a similar procedure, and
32		Her Majesty's Counsel for the ACT and for
33		other states and territories of the
34		Commonwealth.

1

“tutor”

has the meaning in Rule 112.1.

1 **ADVOCACY RULES**

2 ***Duty to client***

- 3 16. A barrister must seek to advance and protect the client's interests to the best of
4 the barrister's skill and diligence, uninfluenced by the barrister's personal view
5 of the client or the client's activities, and notwithstanding any threatened
6 unpopularity or criticism of the barrister or any other person, and always in
7 accordance with the law including these Rules.
- 8 17. A barrister must seek to assist the client to understand the issues in the case
9 and the client's possible rights and obligations, if the barrister is instructed to
10 give advice on any such matter, sufficiently to permit the client to give proper
11 instructions, particularly in connection with any compromise of the case.
- 12 17A. A barrister must inform the client or the instructing solicitor about the
13 alternatives to fully contested adjudication of the case which are reasonably
14 available to the client, unless the barrister believes on reasonable grounds that
15 the client already has such an understanding of those alternatives as to permit
16 the client to make decisions about the client's best interests in relation to the
17 litigation.
- 18 17B. A barrister must (unless circumstances warrant otherwise in the barrister's
19 considered opinion) advise a client who is charged with a criminal offence
20 about any law, procedure or practice which in substance holds out the prospect
21 of some advantage (including diminution of penalty), if the client pleads guilty
22 or authorises other steps towards reducing the issues, time, cost or distress
23 involved in the proceedings.⁸

24 ***Disinterestedness***

- 25 18. A barrister must not act as the mere mouthpiece of the client or of the
26 instructing solicitor and must exercise the forensic judgements called for
27 during the case independently, after appropriate consideration of the client's
28 and the instructing solicitor's desires where practicable.

-
- 1 19. A barrister will not have breached the barrister's duty to the client, and will not
2 have failed to give reasonable consideration to the client's or the instructing
3 solicitor's desires, simply by choosing, contrary to those desires, to exercise
4 the forensic judgements called for during the case so as to:
- 5 (a) confine any hearing to those issues which the barrister believes to be
6 the real issues;
- 7 (b) present the client's case as quickly and simply as may be consistent
8 with its robust advancement; or
- 9 (c) inform the court of any persuasive authority against the client's case.
- 10 20. A barrister must not make submissions or express views to a court on any
11 material evidence or material issue in the case in terms which convey or
12 appear to convey the barrister's personal opinion on the merits of that evidence
13 or issue.

Frankness in court

21. A barrister must not knowingly make a misleading statement to a court on any matter.
22. A barrister must take all necessary steps to correct any misleading statement made by the barrister to a court as soon as possible after the barrister becomes aware that the statement was misleading.
23. A barrister must take all necessary steps to correct any express concession made to the court, in civil proceedings by the opponent in relation to any material fact, case-law or legislation:
- (a) only if the barrister knows or believes on reasonable grounds that it was contrary to what should be regarded as the true facts or the correct state of the law;
 - (b) only if the barrister believes the concession was an error; and
 - (c) not (in the case of a concession of fact) if the client's instructions to the barrister support the concession.
24. A barrister seeking any interlocutory relief in an ex parte application must disclose to the court all matters which:
- (a) are within the barrister's knowledge;
 - (b) are not protected by legal professional privilege; and
 - (c) the barrister has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.
- 24A. A barrister who has knowledge of matters which are within Rule 24(c):
- (a) must seek instructions for the waiver of legal professional privilege if the matters are protected by that privilege, so as to permit the barrister to disclose those matters under Rule 24; and
 - (b) if the client does not waive the privilege as sought by the barrister:
 - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and

-
- 1 (ii) must inform the court that the barrister cannot assure the court
2 that all matters which should be disclosed have been disclosed
3 to the court.
- 4 25. A barrister must, at the appropriate time in the hearing of the case and if the
5 court has not yet been informed of that matter, inform the court of:
- 6 (a) any binding authority;
- 7 (b) any authority decided by the Full Court of the Federal Court of
8 Australia, a Court of Appeal of a Supreme Court or a Full Court of a
9 Supreme Court;
- 10 (c) any authority on the same or materially similar legislation as that in
11 question in the case, including any authority decided at first instance in
12 the Federal Court or a Supreme Court, which has not been
13 disapproved; or
- 14 (d) any applicable legislation;
- 15 which the barrister has reasonable grounds to believe to be directly in point,
16 against the client's case.
- 17 26. A barrister need not inform the court of matters within Rule 25 at a time when
18 the opponent tells the court that the opponent's whole case will be withdrawn
19 or the opponent will consent to final judgement in favour of the client, unless
20 the appropriate time for the barrister to have informed the court of such
21 matters in the ordinary course has already arrived or passed.
- 22 27. A barrister who becomes aware of a matter within Rule 25 after judgement or
23 decision has been reserved and while it remains pending, whether the authority
24 or legislation came into existence before or after argument, must inform the
25 court of that matter by:
- 26 (a) a letter to the court, copied to the opponent, and limited to the relevant
27 reference unless the opponent has consented beforehand to further
28 material in the letter; or
- 29 (b) requesting the court to re-list the case for further argument on a
30 convenient date, after first notifying the opponent of the intended
31 request and consulting the opponent as to the convenient date for
32 further argument.
-

-
- 1 28. A barrister need not inform the court of any matter otherwise within Rule 25
2 which would have rendered admissible any evidence tendered by the
3 prosecution which the court has ruled inadmissible without calling on the
4 prosecution or the defence.
- 5 29. A barrister will not have made a misleading statement to a court simply by
6 failing to disclose facts known to the barrister concerning the client's character
7 or past, when the barrister makes other statements concerning those matters to
8 the court, and those statements are not themselves misleading.
- 9 30. A barrister who knows or suspects that the prosecution is unaware of the
10 client's previous conviction must not ask a prosecution witness whether there
11 are previous convictions, in the hope of a negative answer.
- 12 31. A barrister must inform the court in civil proceedings of any misapprehension
13 by the court as to the effect of an order which the court is making, as soon as
14 the barrister becomes aware of the misapprehension.

15 ***Delinquent or guilty clients***

- 16 32. A barrister whose client informs the barrister, during a hearing or after
17 judgement or decision is reserved and while it remains pending, that the client
18 has lied to the court or procured another person to lie to the court or has
19 falsified or procured another person to falsify in any way a document which
20 has been tendered:
- 21 (a) must refuse to take any further part in the case unless the client
22 authorises the barrister to inform the court of the lie or falsification;
- 23 (b) must promptly inform the court of the lie or falsification upon the
24 client authorising the barrister to do so; but
- 25 (c) must not otherwise inform the court of the lie or falsification.
- 26 33. A barrister briefed to appear in criminal proceedings whose client confesses
27 guilt to the barrister but maintains a plea of not guilty:
- 28 (a) may return the brief, if there is enough time for another legal
29 practitioner to take over the case properly before the hearing, and the
30 client does not insist on the barrister continuing to appear for the
31 client;

-
- 1 (b) in cases where the barrister keeps the brief for the client:
- 2 (i) must not falsely suggest that some other person committed the
- 3 offence charged;
- 4 (ii) must not set up an affirmative case inconsistent with the
- 5 confession; but
- 6 (iii) may argue that the evidence as a whole does not prove that the
- 7 client is guilty of the offence charged; and
- 8 (iv) may argue that for some reason of law the client is not guilty
- 9 of the offence charged.
- 10 (v) may argue that for any other reason not prohibited by (i) and
- 11 (ii) the client should not be convicted of the offence charged.
- 12 34. A barrister whose client informs the barrister that the client intends to disobey
- 13 a court's order must:
- 14 (a) advise the client against that course and warn the client of its dangers;
- 15 (b) not advise the client how to carry out or conceal that course; but
- 16 (c) not inform the court or the opponent of the client's intention unless:
- 17 (i) the client has authorised the barrister to do so beforehand; or
- 18 (ii) the barrister believes on reasonable grounds that the client's
- 19 conduct constitutes a threat to any person's safety.
- 20 ***Responsible use of court process and privilege***
- 21 35. A barrister must, when exercising the forensic judgements called for
- 22 throughout a case, take care to ensure that decisions by the barrister or on the
- 23 barrister's advice to invoke the coercive powers of a court or to make
- 24 allegations or suggestions under privilege against any person:
- 25 (a) are reasonably justified by the material then available to the barrister;
- 26 (b) are appropriate for the robust advancement of the client's case on its
- 27 merits;
- 28 (c) are not made principally in order to harass or embarrass the person;
- 29 and
-

-
- 1 (d) are not made principally in order to gain some collateral advantage for
2 the client or the barrister or the instructing solicitor out of court.
- 3 36. A barrister must not allege any matter of fact in:
- 4 (a) any court document settled by the barrister;
- 5 (b) any submission during any hearing;
- 6 (c) the course of an opening address; or
- 7 (d) the course of a closing address or submission on the evidence;
- 8 unless the barrister believes on reasonable grounds that the factual material
9 already available provides a proper basis to do so.
- 10 37. A barrister must not allege any matter of fact amounting to criminality, fraud
11 or other serious misconduct against any person unless the barrister believes on
12 reasonable grounds that:
- 13 (a) available material by which the allegation could be supported provides
14 a proper basis for it; and
- 15 (b) the client wishes the allegation to be made, after having been advised
16 of the seriousness of the allegation and of the possible consequences
17 for the client and the case if it is not made out.
- 18 38. A barrister must not make a suggestion in cross-examination on credit unless
19 the barrister believes on reasonable grounds that acceptance of the suggestion
20 would diminish the witness's credibility.
- 21 39. A barrister may regard the opinion of the instructing solicitor that material
22 which is available to the solicitor is credible, being material which appears to
23 the barrister from its nature to support an allegation to which Rules 36, 37 and
24 38 apply, as a reasonable ground for holding the belief required by those rules
25 (except in the case of a closing address or submission on the evidence).
- 26 40. A barrister must make reasonable enquiries to the extent which is practicable
27 before the barrister can have reasonable grounds for holding the belief
28 required by Rule 38(a), unless the barrister has received and accepted an
29 opinion from the instructing solicitor within Rule 39.
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Efficient administration of justice

41. A barrister must seek to ensure that:
- (a) the barrister does work which the barrister is briefed to do, whether expressly or impliedly, specifically or generally, in relation to steps to be taken by or on behalf of the client, in sufficient time to enable compliance with orders, directions, rules or practice notes of the court; and
 - (b) warning is given to the instructing solicitor or the client, and to the opponent, as soon as the barrister has reasonable grounds to believe that the barrister may not complete any such work on time.¹³
42. A barrister must seek to ensure that work which the barrister is briefed to do in relation to a case is done so as to:
- (a) confine the case to identified issues which are genuinely in dispute;
 - (b) have the case ready to be heard as soon as practicable;
 - (c) present the identified issues in dispute clearly and succinctly;
 - (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interest which are at stake in the case; and
 - (e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.
- 42A. A barrister must take steps to inform the opponent as soon as possible after the barrister has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly.

Integrity of evidence

43. A barrister must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.

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- 1 44. A barrister will not have breached Rule 43 by expressing a general admonition
2 to tell the truth, or by questioning and testing in conference the version of
3 evidence to be given by a prospective witness, including drawing the witness's
4 attention to inconsistencies or other difficulties with the evidence, but must not
5 coach or encourage the witness to give evidence different from the evidence
6 which the witness believes to be true.
- 7 45. Deleted.
- 8 46. A barrister must not confer with, or condone another legal practitioner
9 conferring with, more than one lay witness (including a party or client) at the
10 same time, about any issue:
- 11 (a) as to which there are reasonable grounds for the barrister to believe it
12 may be contentious at a hearing; and
- 13 (b) which could be affected by, or could affect, evidence to be given by
14 any of those witnesses;
- 15 unless the barrister believes on reasonable grounds that special circumstances
16 require such a conference.
- 17 47. A barrister will not have breached Rule 46 by conferring with, or condoning
18 another legal practitioner conferring with, more than one client about
19 undertakings to a court, admissions or concessions of fact, amendments of
20 pleadings or compromise.
- 21 48. A barrister must not confer with any witness (including a party or client)
22 called by the barrister on any matter related to the proceedings while that
23 witness remains under cross-examination, unless:
- 24 (a) the cross-examiner has consented beforehand to the barrister doing so;
25 or
- 26 (b) the barrister:
- 27 (i) believes on reasonable grounds that special circumstances
28 (including the need for instructions on a proposed
29 compromise) require such a conference;
- 30 (ii) has, if possible, informed the cross-examiner beforehand of
31 the barrister's intention to do so; and
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- 1 (iii) otherwise does inform the cross-examiner as soon as possible
2 of the barrister having done so.
- 3 49. A barrister must not take any step to prevent or discourage prospective
4 witnesses or witnesses from conferring with the opponent or being interviewed
5 by or on behalf of any other person involved in the proceedings.
- 6 50. A barrister will not have breached Rule 49 simply by telling a prospective
7 witness or a witness that witness need not agree to confer or to be interviewed.
- 8 ***Duty to opponent***
- 9 51. A barrister must not knowingly make a false statement to the opponent in
10 relation to the case (including its compromise).
- 11 52. A barrister must take all necessary steps to correct any false statement
12 unknowingly made by the barrister to the opponent as soon as possible after
13 the barrister becomes aware that the statement was false.
- 14 53. A barrister will not have made a false statement to the opponent simply by
15 failing to correct an error on any matter stated to the barrister by the opponent.
- 16 54. A barrister must not deal directly with the opponent's client unless:
- 17 (a) the opponent has previously consented;
- 18 (b) the barrister believes on reasonable grounds that:
- 19 (i) the circumstances are so urgent as to require the barrister to do
20 so; and
- 21 (ii) the dealing would not be unfair to the opponent's client; or
- 22 (c) the substance of the dealing is solely to enquire whether the person is
23 represented and, if so, by whom.
- 24 55. A barrister must not confer with or deal directly with the party opposed to the
25 client unless:
- 26 (a) the party, not being indemnified by an insurance company which is
27 actively engaged in contesting the proceedings, is unrepresented and
28 has signified willingness to that course; or
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- 1 (b) the party, being indemnified by an insurance company which is
2 actively engaged in contesting the proceedings, is otherwise
3 unrepresented and the barrister:
- 4 (i) has no reasonable grounds to believe that any statements made
5 by the party to the barrister may harm the party's interests
6 under the insurance policy; or
- 7 (ii) has reasonable grounds for the belief referred to in (i) but has
8 clearly informed the party beforehand of that possibility; or
- 9 (c) the party, being indemnified by an insurance company which is
10 actively engaged in contesting the proceedings, is personally
11 represented but not in the case and the barrister:
- 12 (i) has notified the party's representative of the barrister's
13 intention to do so; and
- 14 (ii) has allowed enough time for the party to be advised by the
15 party's representative.
- 16 56. A barrister must not, outside an ex parte application or a hearing of which the
17 opponent has had proper notice, communicate in the opponent's absence with
18 the court concerning any matter of substance in connection with current
19 proceedings unless:
- 20 (a) the court has first communicated with the barrister in such a way as to
21 require the barrister to respond to the court; or
- 22 (b) the opponent has consented beforehand to the barrister dealing with the
23 court in a specific manner notified to the opponent by the barrister.
- 24 57. A barrister must promptly tell the opponent what passes between the barrister
25 and a court in a communication referred to in Rule 56.
- 26 58. A barrister must not raise any matter with a court in connection with current
27 proceedings on any occasion to which the opponent has consented under Rule
28 56(b), other than the matters specifically notified by the barrister to the
29 opponent when seeking the opponent's consent.

Integrity of hearings

- 1
- 2 59. (a) Subject to sub rule (b), a barrister must not publish or take any steps
3 towards the publication of any material concerning any current or
4 potential proceedings which:-
- 5 (i) is inaccurate;
- 6 (ii) discloses any confidential information;
- 7 (iii) appears to or does express the opinion of the barrister on the
8 merits of the current or potential proceeding or on any issue
9 arising in the proceeding other than in the course of genuine
10 educational or academic discussion on matters of law.
- 11 (b) may publish or assist the publishing of material concerning a current
12 proceeding, by supplying only:-
- 13 (i) copies of pleadings or court documents in their current form,
14 which have been filed and which have been served in
15 accordance with the court's requirements;
- 16 (ii) copies of affidavits or witness statements, which have been
17 read, tendered or verified in open court, clearly marked so as
18 to show any parts which have not been read, tendered or
19 verified or which have been disallowed on objection;
- 20 (iii) copies of transcript of evidence given in open court, if
21 permitted by copyright and clearly marked so as to show any
22 corrections agreed by other parties or directed by the court;
- 23 (iv) copies of exhibits admitted in open court and without
24 restriction on access;
- 25 (v) answers to unsolicited questions concerning the current
26 proceedings and the answers are limited to information as to
27 the identity of the parties or of any witness already called, the
28 nature of the issues in the case, the nature of the orders made
29 or judgment given including any reasons given by the court
30 and the client's intentions as to any further steps in the case.

- 1 provided that where the barrister is engaged in the current proceeding
2 the barrister does so only with the consent of the client first obtained.
- 3 60. A barrister will not have breached Rule 59 simply by advising the client about
4 whom there has been published a misleading or coloured report relating to the
5 case, and who has sought the barrister's advice in relation to that report, and
6 who has sought the barrister's advice in relation to that report, that the client
7 may take appropriate steps to present the client's own position for publication.
- 8 61. A barrister must not in the presence of any of the parties or solicitors deal with
9 a court, or deal with any legal practitioner appearing before the barrister when
10 the barrister is a referee, arbitrator or mediator, on terms of informal personal
11 familiarity which may reasonably give the appearance that the barrister has
12 special favour with the court or towards the legal practitioner.
- 13 ***Prosecutor's Duties***
- 14 62. A prosecutor must fairly assist the court to arrive at the truth, must seek
15 impartially to have the whole of the relevant evidence placed intelligibly
16 before the court, and must seek to assist the court with adequate submissions
17 of law to enable the law properly to be applied to the facts.
- 18 63. A prosecutor must not press the prosecution's case for a conviction beyond a
19 full and firm presentation of that case.
- 20 64. A prosecutor must not, by language or other conduct, seek to inflame or bias
21 the court against the accused.
- 22 65. A prosecutor must not argue any proposition of fact or law which the
23 prosecutor does not believe on reasonable grounds to be capable of
24 contributing to a finding of guilt and also to carry weight.
- 25 66. A prosecutor must disclose to the opponent as soon as practicable all material
26 (including the names of and means of finding prospective witnesses in
27 connection with such material) available to the prosecutor or of which the
28 prosecutor becomes aware which could constitute evidence relevant to the
29 guilt or innocence of the accused, unless:
- 30 (a) such disclosure, or full disclosure, would seriously threaten the
31 integrity of the administration of justice in those proceedings or the
32 safety of any person; and
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- 1 (b) the prosecutor believes on reasonable grounds that such a threat could
2 not be avoided by confining such disclosure, or full disclosure, to the
3 opponent being a legal practitioner, on appropriate conditions which
4 may include an undertaking by the opponent not to disclose certain
5 material to the opponent's client or any other person.
- 6 66A. A prosecutor who has decided not to disclose material to the opponent under
7 Rule 66 must consider whether:
- 8 (a) the defence of the accused could suffer by reason of such non-
9 disclosure;
- 10 (b) the charge against the accused to which such material is relevant
11 should be withdrawn; and
- 12 (c) the accused should be faced only with a lesser charge to which such
13 material would not be so relevant.
- 14 66B. A prosecutor must call as part of the prosecution's case all witnesses:
- 15 (a) whose testimony is admissible and necessary for the presentation of all
16 of the relevant circumstances;
- 17 (b) whose testimony provides reasonable grounds for the prosecutor to
18 believe that it could provide admissible evidence relevant to any matter
19 in issue;
- 20 (c) whose testimony or statements were used in the course of any
21 committal proceedings; and
- 22 (d) from whom statements have been obtained in the preparation or
23 conduct of the prosecution's case unless the opponent consents to the
24 prosecutor not calling a particular witness;
- 25 and except where:-
- 26 (e) the only matter with respect to which the particular witness can give
27 admissible evidence has been dealt with by an admission on behalf of
28 the accused;
- 29 (f) the prosecutor believes on reasonable grounds that the administration
30 of justice in the case would be harmed by calling a particular witness
31 or particular witnesses to establish a particular point already
32 adequately established by another witness or other witnesses; or
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- 1 (g) the prosecutor believes on reasonable grounds that the testimony of a
2 particular witness is plainly untruthful or is plainly unreliable by
3 reason of the witness being in the camp of the accused;
4 provided that:-
5 (h) the prosecutor must inform the opponent as soon as practicable of the
6 identity of any witness whom the prosecutor intends not to call on any
7 ground within (e), (f) or (g) together with the grounds on which the
8 prosecutor has reached that decision.
- 9 67. A prosecutor who has reasonable grounds to believe that certain material
10 available to the prosecution may have been unlawfully obtained must
11 promptly:
12 (a) inform the opponent if the prosecutor intends to use the material; and
13 (b) make available to the opponent a copy of the material if it is in
14 documentary form.
- 15 68. A prosecutor must not confer with or interview any of the accused except in
16 the presence of the accused's representative.
- 17 69. A prosecutor must not inform the court or the opponent that the prosecution
18 has evidence supporting an aspect of its case unless the prosecutor believes on
19 reasonable grounds that such evidence will be available from material already
20 available to the prosecutor.
- 21 70. A prosecutor who has informed the court of matters within Rule 69, and who
22 has later learnt that such evidence will not be available, must immediately
23 inform the opponent of that fact and must inform the court of it when next the
24 case is before the court.
- 25 71. A prosecutor must not seek to persuade the court to impose a vindictive
26 sentence or a sentence of a particular magnitude, but:
27 (a) must correct any error made by the opponent in address on sentence;
28 (b) must inform the court of any relevant authority or legislation bearing
29 on the appropriate sentence; and
30 (c) must assist the court to avoid appealable error on the issue of sentence;
31 (d) may submit that a custodial or non-custodial sentence is appropriate;
32 and
-

-
- 1 (e) may inform the court of an appropriate range of severity of penalty,
2 including a period of imprisonment, by reference to relevant appellate
3 authority.
- 4 72. A barrister who appears as counsel assisting an inquisitorial body such as the
5 National Crime Authority, the Australian Securities Commission, a Royal
6 Commission or other statutory tribunal or body having investigative powers
7 must act in accordance with Rules 62, 64 and 65 as if the body were the court
8 referred to in those Rules and any person whose conduct is in question before
9 the body were the accused referred to in Rule 64.

10 **OPINIONS**

- 11 73. A barrister must give the barrister's truthful opinion on any matter submitted to
12 the barrister for advice or opinion.

13 **BARRISTERS' WORK**

- 14 74. A barrister must confine the barrister's professional work to:
- 15 (a) appearing as an advocate;
- 16 (b) preparing to appear as an advocate;
- 17 (c) negotiating for the client with the opponent to compromise the case;
- 18 (d) representing the client in a mediation or case appraisal;
- 19 (e) giving legal advice;
- 20 (f) preparing or advising on documents to be used by the client or by
21 others in the client's affairs;
- 22 (g) acting as a referee, arbitrator or mediator; and
- 23 (h) carrying out work properly incidental to the kinds of work referred to
24 in (a)-(g).
25

- 1 75. A barrister must not:
- 2 (a) act as a person's general agent or attorney in that person's business or
- 3 dealings with others;
- 4 (b) conduct contentious correspondence in the barrister's name on behalf
- 5 of any person with others (including public authorities) with whom
- 6 that person is dealing, otherwise than the opponent;
- 7 (c) place herself or himself at risk of becoming a witness, by investigating
- 8 facts for the purposes of appearing as an advocate or giving legal
- 9 advice, otherwise than by:-
- 10 (i) conferring with the client, the instructing solicitor, prospective
- 11 witnesses or experts;
- 12 (ii) examining documents provided by the instructing solicitor or
- 13 the client as the case may be, or produced to the court;
- 14 (iii) viewing a place or things by arrangement with the instructing
- 15 solicitor or the client, as the case may be; or
- 16 (iv) library research;
- 17 (d) act as a person's only representative in dealings with any court,
- 18 otherwise than when actually appearing as an advocate;
- 19 (e) serve any process of any court;
- 20 (f) conduct the conveyance of any property for any other person;
- 21 (g) administer any trust estate or fund for any other person;
- 22 (h) obtain probate or letters of administration for any other person;
- 23 (i) incorporate companies or provide shelf companies for any other
- 24 person;
- 25 (j) prepare or lodge returns for any other person, unless the barrister is
- 26 registered or accredited to do so under the applicable taxation
- 27 legislation; or
- 28 (k) hold, invest or disburse any fund for any other person.
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- 1 76. A barrister will not have breached Rule 75 by:-
- 2 (a) doing any of the matters referred to in that Rule on the barrister's own
- 3 behalf;
- 4 (b) doing any of the matters referred to in that Rule without fee and as a
- 5 private person on behalf of a member of the barrister's family;
- 6 (c) doing any of the matters referred to in Rule 75 (d) to (k) by way of
- 7 assistance to a friend, without fee and as a private person.
- 8 77. A barrister will not have breached Rule 75 (a), (g) or (k) if the barrister
- 9 becomes such an agent, is appointed so to act or becomes responsible for such
- 10 funds as a private person and not as a barrister or a legal practitioner.

1 ***Referral to Solicitor***

2 78. A barrister who is asked by any person to do work or engage in conduct which
3 is not barristers' work, or which appears likely to require work to be done
4 which is not barristers' work, must promptly inform that person:

5 (a) of the effect of Rules 74 and 75 as they relevantly apply in the
6 circumstances; and

7 (b) that, if it be the case, solicitors are capable of providing those services
8 to that person.

9 79. A barrister who provides information under Rule 78 to a person must not
10 inform the person that the barrister will perform barristers' work for that
11 person on condition that a particular solicitor briefs the barrister to do so.

12 80. ***Disclosure to direct access client*** - Deleted see Rule 115.2

13 **SOLE PRACTITIONER RULES**

14 81. A barrister must be a sole practitioner, and must not practise:

15 (a) in partnership with any person;

16 (b) as the employer of any legal practitioner who acts as a legal
17 practitioner in the course of that employment; or

18 (c) as the employee of any person.

19 82. A barrister must not make or have any arrangement with any person in
20 connection with any aspect of the barrister's practice which imposes any
21 obligation on the barrister of such a kind as may prevent the barrister from:

22 (a) accepting any brief to appear for reasons other than those provided by
23 the exceptions to the cab-rank principle in Rules 87, 89 and 91; or

24 (b) competing with any other legal practitioner for the work offered by
25 any brief for reasons other than those referred to in Rules 87, 89 and
26 91.

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- 1 83. A barrister will not have breached Rules 81 and 82 by carrying out a specific
2 task of research or chamber work given to the barrister by another barrister, or
3 by giving such a task to another barrister, so long as:
- 4 (a) the barrister who was briefed to do the chamber work takes full
5 personal responsibility for the work;
- 6 (b) the work is delivered under the name of the barrister who was briefed;
- 7 (c) the arrangement between the barristers does not go beyond an ordinary
8 devilling or reading arrangement and in particular does not involve any
9 standing retainer or employment terms; and
- 10 (d) the arrangement between the barristers does not provide and is not
11 intended to enable the barrister giving the task to make a profit from
12 the other barrister's work, over and above reasonable remuneration for
13 supervision of and responsibility for the other barrister's work.

14 ***Third-line forcing***

- 15 84. A barrister must not require that any other particular legal practitioner be
16 instructed or briefed, as the case may be, so as in any way to impose that
17 requirement as a condition of the barrister accepting any brief or instructions.

18 **CAB-RANK RULES & BRIEFS**

19 ***Cab-rank principle***

- 20 85. A barrister must accept a brief from a solicitor to appear before a court in a
21 field in which the barrister practises or professes to practise if:
- 22 (a) the brief is within the barrister's capacity, skill and experience;
- 23 (b) the barrister would be available to work as a barrister when the brief
24 would require the barrister to appear or to prepare, and the barrister is
25 not already committed to other professional or personal engagements
26 which may, as a real possibility, prevent the barrister from being able
27 to advance a client's interests to the best of the barrister's skill and
28 diligence;
- 29 (c) the fee offered on the brief is acceptable to the barrister; and

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- 1 (d) the barrister is not obliged or permitted to refuse the brief under Rules
2 87, 90 or 91.
- 3 86. A barrister must not set the level of an acceptable fee, for the purposes of Rule
4 85(c), higher than the barrister would otherwise set if the barrister were willing
5 to accept the brief, with the intent that the solicitor may be deterred from
6 continuing to offer the brief to the barrister.
- 7 ***Briefs which must be refused***
- 8 87. A barrister must refuse to accept or retain a brief or instructions to appear
9 before a court if:
- 10 (a) the barrister has information which is confidential to any other person
11 *in the case* other than the prospective client, and:
- 12 (i) the information may, as a real possibility, be helpful to the
13 prospective client's case; and
- 14 (ii) the person entitled to the confidentiality has not consented to
15 the barrister using the information as the barrister thinks fit in
16 the case;
- 17 (b) the barrister has a general or special retainer which gives, and gives
18 only, a right of first refusal of the barrister's services to another party
19 in the case and the barrister is offered a brief to appear in the case for
20 the other party within the terms of the retainer;
- 21 (c) the barrister has reasonable grounds to believe that the barrister may,
22 as a real possibility, be a witness in the case;
- 23 (d) the brief is to appear on an appeal and the barrister was a witness in the
24 case at first instance;
- 25 (e) the barrister has reasonable grounds to believe that the barrister's own
26 personal or professional conduct may be attacked in the case;
- 27 (f) the barrister has a material financial or property interest in the outcome
28 of the case, apart from the prospect of a fee in the case of a brief under
29 a speculative costs agreement;
- 30 (g) the brief is on the assessment of costs which include a dispute as to the
31 propriety of the fee paid or payable to the barrister, or is for the
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- 1 recovery from a former client of costs in relation to a case in which the
2 barrister appeared for the client;
- 3 (h) the brief is for a party to an arbitration in connection with the
4 arbitration and the barrister has previously advised or appeared for the
5 arbitrator in connection with the arbitration;
- 6 (i) the brief is to appear in a contested hearing before the barrister's
7 parent, sibling, spouse or child or a member of the barrister's
8 household, or before a bench of which such a person is a member
9 (unless the hearing is before the High Court of Australia sitting all
10 available judges);
- 11 (j) there are reasonable grounds for the barrister to believe that the failure
12 of the client to retain an instructing solicitor would, as a real
13 possibility, seriously prejudice the barrister's ability to advance and
14 protect the client's interests in accordance with the law including these
15 Rules.
- 16 87A Without limiting the generality of Rule 87, a barrister must refuse to accept or
17 retain a brief of instructions to appear before a court (excluding a statutory or
18 other tribunal) if the brief is to appear before a court of which the barrister was
19 formerly a member or judicial registrar (other than in an acting capacity), or
20 before a court from which appeals lay to a court of which the barrister was
21 formerly a member (except the Federal Court of Australia in case of appeals
22 from the Supreme Court of any State or Territory) and the appearance would
23 occur:
- 24 (a) within 2 years after the barrister ceased to be a member of the court in
25 question, if the barrister was a member of the court for less than 2
26 years;
- 27 (b) within a period after the barrister ceased to be a member of the court in
28 question equivalent to the period for which the barrister was a member
29 of the court, if the barrister was a member of the court for 2 years or
30 more but less than 5 years; or
- 31 (c) within 5 years after the barrister ceased to be a member of the court in
32 question, if the barrister was a member of the court for 5 years or
33 more.
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- 1 87B. Without limiting the generality of Rule 87 a barrister must refuse to accept or
2 retain a brief or instructions to appear before a statutory or other tribunal if:-
- 3 (a) the brief is to appear before such a tribunal which does not sit in
4 divisions or lists to which its members are assigned and the barrister is
5 a member of the tribunal;
- 6 (b) the brief is to appear before such a tribunal which sits in divisions or
7 lists to which its members are assigned and:-
- 8 (i) the barrister is a member of the tribunal assigned to a division
9 or list; and
- 10 (ii) the brief is to appear in a proceeding in that division or list;
- 11 (c) the brief is to appear before such a tribunal:-
- 12 (i) which does not sit in divisions or lists to which its members
13 are assigned and the barrister was formerly a member of the
14 tribunal – where the appearance would occur within two years
15 after the barrister ceased to be a member of the tribunal;
- 16 (ii) which does sit in divisions or lists to which its members are
17 assigned and the barrister was assigned as a member to a
18 division or list – where the brief is to appear in a proceeding in
19 a division or list to which the barrister was assigned and the
20 appearance would occur within two years after the barrister
21 ceased to be assigned to that division or list.
- 22 88. A barrister need not refuse a brief notwithstanding the application of Rules
23 87(c) or (e) if:
- 24 (a) the barrister believes on reasonable grounds that:
- 25 (i) allegations involving the barrister in such a way as to apply
26 one of those Rules have been raised in order to prevent the
27 barrister from accepting the brief; and
- 28 (ii) those allegations can be met without materially diminishing
29 the barrister's disinterestedness; and
- 30 (b) the President of the Bar Association or a member of the Bar Council
31 who is Senior Counsel approves of the barrister accepting the brief
32 after the barrister has informed that Senior Counsel of the
33 circumstances.
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- 1 89. A barrister must refuse a brief if the barrister has information which is
2 confidential to any person with different interests from those of the
3 prospective client if:
- 4 (a) the information may, as a real possibility, be helpful to the
5 advancement of the prospective client's interests in the matter on
6 which advice is sought; and
- 7 (b) the person entitled to the confidentiality has not consented beforehand
8 to the barrister using the information as the barrister thinks fit in giving
9 advice.
- 10 90. A barrister must not accept a brief to appear on a day when the barrister is
11 already committed to appear or is reasonably likely to be required to appear on
12 another brief unless:
- 13 (a) the person offering the later brief has expressly permitted the barrister
14 to do so; and
- 15 (b) the instructing solicitor in the earlier brief has been informed
16 beforehand of the barrister's intention to accept the later brief.

17 ***Briefs which may be refused***

- 18 91. A barrister may refuse a brief if:
- 19 (a) the brief is not offered by a solicitor;
- 20 (b) the barrister considers on reasonable grounds that the time or effort
21 required for the brief threatens seriously to prejudice the barrister's
22 practice or other professional or personal engagements;
- 23 (c) the barrister has reasonable grounds to doubt that the fee will be paid
24 reasonably promptly or in accordance with the costs agreement;
- 25 (d) the brief may, as a real possibility, require the barrister to cross-
26 examine or criticise a friend or relation;

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- 1 (e) the solicitor does not agree to a request by the barrister that appropriate
2 attendances by the instructing solicitor, solicitor's clerk or client
3 representative will be arranged from time to time for the purposes of:
- 4 (i) ensuring that the barrister is provided with adequate
5 instructions to permit the barrister properly to carry out the
6 work or appearance required by the brief;
- 7 (ii) ensuring that the client adequately understands the barrister's
8 advice;
- 9 (iii) avoiding any delay in the conduct of any hearing or
10 compromise negotiations; and
- 11 (iv) protecting the client or the barrister from any disadvantage or
12 inconvenience which may, as a real possibility, otherwise be
13 caused;
- 14 (f) the prospective client is also the prospective instructing solicitor, or a
15 partner, employer or employee of the prospective instructing solicitor,
16 and has refused the barrister's request to be instructed by a solicitor
17 independent of the prospective client and the prospective client's firm;
18 or
- 19 (g) the barrister, being Senior Counsel, considers on reasonable grounds
20 that the case does not require the services of Senior Counsel.
- 21 92. A barrister may regard the current listing of a solicitor by the Bar Association
22 as one who has failed to pay another barrister's fee without reasonable excuse
23 as a reasonable ground for the doubt referred to in Rule 91(c).

24 ***Return of briefs***

- 25 93. A barrister must not return a brief to defend a charge of a serious criminal
26 offence unless:
- 27 (a) the barrister believes on reasonable grounds that:
- 28 (i) the circumstances are exceptional and compelling; and
- 29 (ii) there is enough time for another legal practitioner to take over
30 the case properly before the hearing; or

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- 1 (b) the client has consented after the barrister has clearly informed the
2 client of the circumstances in which the barrister wishes to return the
3 brief and of the terms of this Rule and Rule 94.
- 4 94. A barrister who holds a brief to defend a charge of a serious criminal offence
5 and also any other brief, both of which would require the barrister to appear on
6 a particular day, must return the other brief as soon as possible, unless the
7 barrister became aware of the appearance being required on that day in the
8 first brief after the barrister was committed to appear on that day in the other
9 brief.
- 10 95. A barrister must not return a brief to appear in order to accept another brief to
11 appear unless the instructing solicitor or the client, as the case may be, in the
12 first brief has permitted the barrister to do so beforehand, after the barrister has
13 clearly informed the instructing solicitor or the client, as the case may be, of
14 the circumstances in which the barrister wishes to return the brief and of the
15 terms of this Rule and Rule 97.
- 16 96. A barrister must not return a brief to appear on a particular date in order to
17 attend a social occasion unless the instructing solicitor or the client, as the case
18 may be, has expressly permitted the barrister to do so.
- 19 97. A barrister who wishes to return a brief which the barrister is permitted to
20 return must do so in enough time to give another legal practitioner a proper
21 opportunity to take over the case.
- 22 98. A barrister must promptly inform the instructing solicitor or the client, as the
23 case may be, as soon as the barrister has reasonable grounds to believe that
24 there is a real possibility that the barrister will be unable to appear or to do the
25 work required by the brief in the time stipulated by the brief or within a
26 reasonable time if no time has been stipulated.
- 27 99. A barrister may return a brief if, after acceptance of the brief:
- 28 (a) the instructing solicitor or client, as the case may be, has refused the
29 barrister's request that appropriate attendances by the instructing
30 solicitor, solicitor's clerk or client representative will be arranged from
31 time to time for the purposes of:
- 32 (i) ensuring that the barrister is provided with adequate
33 instructions to permit the barrister properly to carry out the
34 work or appearance required by the brief;
-

-
- 1 (ii) ensuring that the client adequately understands the barrister's
2 advice;
- 3 (iii) avoiding any delay in the conduct of any hearing or
4 compromise negotiations; or
- 5 (iv) protecting the client or the barrister from any disadvantage or
6 inconvenience which may, as a real possibility, otherwise be
7 caused;
- 8 (b) subject to paragraph (d) the barrister's advice as to the preparation or
9 conduct of the case, not including its compromise, has been rejected or
10 ignored by the instructing solicitor or the client, as the case may be; or
- 11 (c) fees have not been paid reasonably promptly or in accordance with the
12 costs agreement, and have remained unpaid after reasonable notice by
13 the barrister to the instructing solicitor or client, as the case may be, of
14 the barrister's intention to return the brief for that reason.
- 15 (d) the provisions of rule 99A relating to Speculative Fee Agreement
16 applies.
- 17 99A. A barrister may return a brief accepted under a Speculative Fee Agreement if:-
- 18 (a) the barrister, and the instructing solicitor if any, consider on reasonable
19 grounds that the client has unreasonably rejected a reasonable offer of
20 compromise contrary to the barrister's advice;
- 21 (b) the client has refused to pay the barrister a reasonable fee for all work
22 done or to be done after the client's rejection of the offer;
- 23 (c) the client was informed before the barrister accepted the brief of the
24 effect of this Rule; and
- 25 (d) the barrister has the firm view that the client has no reasonable
26 prospects of success or of achieving a result better than the offer.
- 27 99B. Nothing in this Part entitles the barrister to enter into a Speculative Fee
28 Agreement in criminal proceedings or proceedings relating to parenting of
29 children under the Family Law Act 1975.
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- 1 100. A barrister may return a brief accepted under a Speculative Fee if:
- 2 (a) the barrister, and the instructing solicitor if any, consider on reasonable
- 3 grounds that the client has unreasonably rejected a reasonable offer of
- 4 compromise contrary to the barrister's advice;
- 5 (b) the client has refused to pay the barrister a reasonable fee for all work
- 6 done or to be done after the client's rejection of the offer;
- 7 (c) the client was informed before the barrister accepted the brief of the
- 8 effect of this Rule; and
- 9 (d) the barrister has the firm view that the client has no reasonable
- 10 prospects of success or of achieving a result better than the offer.
- 11 101. A barrister who has reasonable grounds to believe that there is a real
- 12 possibility that the barrister may cease to be solely a disinterested advocate by
- 13 becoming also a witness in the case or a defender of the barrister's own
- 14 personal or professional conduct against criticism must return the brief as soon
- 15 as it is possible to do so without unduly endangering the client's interests,
- 16 unless:
- 17 (a) the barrister believes on reasonable grounds that:
- 18 (i) allegations which involve the barrister in that way have been
- 19 raised in order to remove the barrister from the case; and
- 20 (ii) those allegations can be met without materially diminishing
- 21 the barrister's disinterestedness; and
- 22 (b) the President of the Bar Association or a member of the Bar Council
- 23 who is Senior Counsel approves of the barrister keeping the brief after
- 24 the barrister has informed that Senior Counsel of the circumstances.
- 25 102. A barrister must return a brief to appear in a contested hearing before a court
- 26 constituted by a person whose relationship with the barrister is such as to make
- 27 such appearance undesirable unless:
- 28 (a) the barrister learns of the identity of the person or persons constituting
- 29 the court so close to the hearing date that return of the brief would not
- 30 give another legal practitioner enough time to take over the case
- 31 properly before the hearing; and
- 32 (b) the barrister has sought to draw the circumstances to the court's
- 33 attention so as to permit the constitution of the court to be changed.
-

CONFIDENTIALITY & CONFLICTS

103. A barrister must not disclose (except as compelled by law) or use in any way in the course of practice confidential information obtained by the barrister concerning any person to whom the barrister owes some duty or obligation to keep such information confidential unless or until:
- (a) the information has been published;
 - (b) the information is later obtained by the barrister from another person who is not bound by the confidentiality owed by the barrister to the first person and who does not give the information confidentially to the barrister; or
 - (c) the person has consented to the barrister disclosing or using the information generally or on specific terms.
104. A barrister must not disclose (except as compelled by law) or use confidential information under Rule 103(c) in any way other than as permitted by the specific terms of the person's consent.
105. A barrister will not have breached Rules 103 and 104 simply by showing briefs to or disclosing information contained in a brief to the barrister's instructing solicitor in the matter, to a member of the barrister's staff for purposes of that person undertaking clerical or administrative work in relation to the matter or to a reader or to another barrister doing work as permitted by Rule 83 so long as the barrister has reminded the reader of barrister's duties of confidentiality including Rules 103 and 104.
106. A barrister who is shown a brief as a reader or under an arrangement covered by Rule 83 is bound by the same duties of confidentiality which bind the barrister whose brief it is, including the duties imposed by Rules 103 and 104.
107. A barrister who has accepted a brief must return the brief as soon as possible after the barrister becomes aware that the barrister has information confidential to a person other than the client which may, as a real possibility, be helpful to the client's case or to the advancement of the client's interests, being

-
- 1 information which the barrister is prohibited from disclosing or using by Rules
2 103, 104 or 106, unless the person entitled to the confidentiality consents to
3 the barrister disclosing or using the information as the barrister thinks fit.
- 4 108. A barrister who is briefed to appear for two or more parties in any case must
5 determine as soon as possible whether the interests of the clients may, as a real
6 possibility, conflict and, if so, the barrister must then return the brief for:
- 7 (a) all the clients in the case of confidentiality to which Rule 103 would
8 apply; or
- 9 (b) in other cases, one or more of the clients:
- 10 (i) giving preference to the earliest brief if the barrister was
11 briefed at different times; and
- 12 (ii) so as to remove that possibility of conflict.
- 13 109. A barrister who, during the hearing of the case, becomes aware that the
14 interests of the clients or some of them do or may, as a real possibility,
15 conflict, must return the brief for:
- 16 (a) all the clients in the case of confidentiality to which Rule 103 would
17 apply; or
- 18 (b) in other cases, one or more of the clients:
- 19 (i) giving preference to the earliest brief if the barrister was
20 briefed at different times; and
- 21 (ii) so as to remove that possibility of conflict.
- 22 110. A barrister need not return any briefs to appear under Rules 108 or 109, if the
23 barrister has informed the instructing solicitor or the clients, as the case may
24 be, of the barrister's view as to the clients' conflicting interests, and the
25 instructing solicitor or the clients, as the case may be, inform the barrister that
26 all the clients nonetheless wish the barrister to continue to appear for them.
- 27 111. A barrister who believes on reasonable grounds that the interests of the client
28 may conflict with the interests of the instructing solicitor, or that the client
29 may have a claim against the instructing solicitor, must:
- 30 (a) advise the instructing solicitor of the barrister's belief; and
-

- 1 (b) if the instructing solicitor does not agree to advise the client of the
2 barrister's belief, seek to advise the client in the presence of the
3 instructing solicitor of the barrister's belief.

4 **READING**

- 5 112.1 A reader must undertake the reading programme, and must do so under the
6 supervision of a tutor, being another barrister who:
- 7 (a) is not Senior Counsel,
- 8 (b) has been a barrister for not less than 7 years, or has had such relevant
9 experience that the Bar Council waives this requirement,
- 10 (c) has no more than one other reader, and
- 11 (d) has been approved by the Bar Council with respect to the reader.
- 12 112.2 A reader shall not, during the first 3 months of readership, appear in any court
13 except with, or with the express approval of, the tutor.
- 14 112.3 A tutor must seek to assist the reader with all reasonable skill and diligence to:
- 15 (a) instruct the reader in:
- 16 (i) the art of advocacy;
- 17 (ii) barristers' work;
- 18 (iii) the proper conduct of a barrister's practice;
- 19 (iv) the ethical standards required of a barrister, including these
20 Rules; and
- 21 (v) the reading programme;
- 22 (b) set aside sufficient time to meet and speak with the reader from time to
23 time;
- 24 (c) make arrangements for the reader to attend the barrister in chambers to
25 be shown and to assist in chamber work from time to time;
- 26 (d) make arrangements for the reader to appear with the barrister in court
27 as an observer;

-
- | | | |
|---|-----|---|
| 1 | (e) | ensure that the reader is attending to all necessary or appropriate |
| 2 | | courses of instruction arranged by the Bar Association or the |
| 3 | | Australian Advocacy Institute; and |
| 4 | (f) | introduce the reader to the barrister's colleagues. |

2 113. A member of the association who is a local practising barrister must undertake
3 each year the requirements of any continuing professional development
4 programme established by the bar council from time to time.

6 114.1 In this rule:

7 **"Chief Justice" and "resident judge of the Supreme Court"** have the same

8 meaning as in the Supreme Court Act 1933;

9 **"resident"** otherwise means having the Australian Capital

10 Territory as the principal place of practice or

11 sitting.

12 114.2 Resident members who have demonstrated over a considerable period of time
13 as practising barristers a capacity for outstanding service as advocates and
14 advisers, may, for the good of the administration of justice, be appointed
15 Senior Counsel for the Australian Capital Territory.

16 114.3 Members so appointed are entitled to the designation "Senior Counsel", which
17 may be abbreviated "SC".

18 114.4 Senior Counsel, by seeking and accepting appointment, undertake to use the
19 designation only while they remain practising barristers in private practice or
20 retained under statute by the Crown or an Australian government, or in
21 retirement from legal practice, or while (if appropriate) a judge, or during
22 temporary appointments in a legal capacity to a court or tribunal, or while a
23 member of a parliament of Australia. The President for the time being may
24 revoke the appointment for breach of this undertaking.

25 114.5 Subject to the approval of the Chief Justice or the issuing of a relevant Practice
26 Direction, and subject to the requirements of relevant courts, tribunals, and

1 other jurisdictions, Senior Counsel shall wear the court dress worn by Queen's
2 Counsel.

3 114.6 Appointment of Senior Counsel shall be by the President following the
4 selection procedure.

5 114.7 The selection procedure in each year is as follows:

- 6 (a) Applications for appointment are to be made in writing to the President
7 between 1 June and 14 June (or the first working day thereafter).
- 8 (b) The President shall at any time from 1 June to 30 June (or the first
9 working day thereafter) inform any member if requested the names of
10 those who have made applications, and may in that time accept further
11 applications for good reason and in the President's discretion.
- 12 (c) The Bar Council shall appoint one resident Senior Counsel or Queens
13 Counsel to assist the President in the selection process ("assisting
14 Senior Counsel").
- 15 (d) The President and the assisting Senior Counsel shall together seek
16 comments on each application from:
- 17 (i) as many resident judges of the Supreme Court as is
18 practicable;
- 19 (ii) the senior resident judge of the Federal Court;
- 20 (iii) the senior resident judge of the Family Court of Australia;
- 21 (iv) if the applicant practises to a substantial extent in any other
22 court or tribunal, whether in the ACT or elsewhere, the most
23 senior judge or member of such court or tribunal who the
24 President considers is most likely to be able to make useful
25 comment in relation to the Applicant;
- 26 (v) the President of the Law Society of the ACT;
- 27 (vi) as many resident practising Queen's Counsel and Senior
28 Counsel as is reasonably practicable;

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- 1 (vii) such other judges, masters, tribunal members, and legal
2 practitioners, within the ACT and elsewhere, as in their
3 discretion they decide;
- 4 (e) The President and assisting Senior Counsel shall, taking into account
5 all comments received, make a selection of proposed appointees.
- 6 (f) The President shall inform the Chief Justice of the selection of
7 proposed appointees.
- 8 (g) The President shall appoint, and appoint only, proposed appointees
9 whose appointment is not opposed by the Chief Justice.
- 10 (h) The process of selection is to be completed so that a public
11 announcement of appointment may be made by the end of July.
- 12 114.8 Appointment of Senior Counsel in Exceptional Circumstances:
- 13 Separately from the appointment of practising barristers as Senior Counsel, the
14 Bar Council may appoint distinguished Parliamentary Counsel as Senior
15 Counsel.

16 **DISCLOSURE OBLIGATIONS**

17 ***Disclosure Requirements***

- 18 115. In this Rule, a “disclosable event” in relation to a barrister means any of the
19 following:-
- 20 (a) the making of a sequestration order against, or the filing of a debtor’s
21 petition by the barrister pursuant to the Bankruptcy Act 1966 (Cwlth);
- 22 (b) the entry by the barrister into a debt agreement pursuant to Part IX of
23 the Bankruptcy Act 1966 (Cwlth) or an agreement, composition or
24 arrangement to Part X of that Act;
- 25 (c) the disqualification of the barrister from managing or being involved in
26 the management of any body corporate under any law in force in any
27 jurisdiction within Australia, including disqualification from managing
28 corporations under Part 2D.6 of the Corporations Act 2001; or

-
- 1 (d) the conviction of the barrister of an offence under any law in force in
2 Australia or in any overseas country or a finding that such an offence
3 is proved against the barrister where the maximum penalty for the
4 offence is a term of imprisonment of 12 months or more or where
5 fraud or dishonesty is an element of the offence.
- 6 115A. Where a disclosable event occurs in relation to a barrister, the barrister must
7 within 28 days after the disclosable event occurs:-
- 8 (a) inform the Secretary of the Bar Association in writing of the
9 occurrence of the disclosable event; and
- 10 (b) provide the Secretary of the Bar Association with written details of the
11 circumstances giving rise to the disclosable event sufficient to enable
12 the Secretary of the Bar Association to determine whether the
13 occurrence of the disclosable event in relation to the barrister or any
14 circumstances giving rise to it, may affect the barrister's suitability to
15 engage in legal practice as a barrister for the purposes of the relevant
16 legislation in force in each jurisdiction.
- 17 (c) A barrister in relation to whom a disclosable event occurs must, within
18 14 days after receiving a written request from the Secretary of the Bar
19 Association to do so, provide such further information concerning the
20 disclosable event or any of the circumstances giving rise to it, as the
21 Secretary of the Bar Association may require.

22 **DIRECT CLIENT ACCESS**

- 23 115.1 A barrister may do barristers' work for a client without the intervention of an
24 instructing solicitor where expressly permitted by legislation.
- 25 115.2 A barrister who proposes to accept instructions directly from a person who is
26 not a solicitor or a professional acting as such must inform the prospective
27 client in writing of:
- 28 (a) the effect of Rules 74 and 75;
- 29 (b) the fact that circumstances may require the client to retain an
30 instructing solicitor at short notice, and possibly during the case;

- 1 (c) any other disadvantage which the barrister believes on reasonable
2 grounds may, as a real possibility, be suffered by the client if the client
3 does not retain an instructing solicitor; and
- 4 (d) the relative capacity of the barrister in performing barristers' work to
5 supply the requested facilities or services to the client compared to the
6 capacity of the barrister together with an instructing solicitor to supply
7 them.

8 **ADVERTISING**

9 116.1. A barrister may advertise.

10 116.2 An advertisement must not be of a kind that is or might reasonably be regarded
11 as:

- 12 (a) false, misleading, or deceptive;
13 (b) in contravention of any legislation;
14 (c) vulgar, sensational, or otherwise such as would bring or be likely to
15 bring the barrister or the legal profession into disrepute.

SPECIALISATION

117. A barrister may advertise or hold himself or herself out as being a specialist or as offering specialist services, but only if:

- (a) the barrister is not a reader and has had at least two years extensive experience in the relevant field,
- (b) the barrister has given at least 2 months' notice to the Bar Council of the intention to do so, and
- (c) the Bar Council does not disapprove.

118. Deleted

119. Deleted

120. Deleted

120.1 – 121.3 Deleted

121. Deleted

DISCRIMINATION AND SEXUAL HARASSMENT

Discrimination

122. A barrister shall not in any professional context discriminate against a client, solicitor, or another barrister on the basis of the person's religion, age, race, impairment, political belief or activity, trade union activity, sex, marital status, pregnancy, parental status, lawful sexual activity or association with, or relation to, a person identified on the basis of any of the above.

Sexual Harassment

122.1 (a) A barrister shall not, in any professional context, engage in sexual harassment.

- 1 (b) For the purposes of sub-rule (a) a barrister sexually harasses another
2 person if:
- 3 (i) the barrister makes an unwelcome sexual advance, or an
4 unwelcome request for sexual favours, to that person; or
- 5 (ii) engages in other unwelcome conduct of a sexual nature in
6 relation to that person;
- 7 in circumstances in which a reasonable person, having regard to all the
8 circumstances, would have anticipated that that person would be
9 offended, humiliated or intimidated. “Conduct of a Sexual Nature”
10 includes making a statement of a sexual nature to the person allegedly
11 harassed or in the presence of that person, whether the statement is
12 made orally or in writing.

13 ***Vilification***

- 14 122.2 A barrister shall not, in any professional context, engage in conduct which is
15 calculated to disparage, vilify or insult another person (“the person allegedly
16 vilified”) on the basis of that person’s sex, sexual preference, age, race, colour,
17 impairment, political belief or activity, trade union activity, marital status,
18 pregnancy, parental status, descent, national or ethnic origin or religion.

19

Procedure

- 122.3 (a) The person allegedly discriminated against, harassed or vilified may lodge a complaint in writing alleging a breach of the Rules with any one of the persons appointed from time to time by the Bar Council;
- (b) The person appointed by the Bar Council who receives such a complaint shall treat the complaint and any response as confidential but may do any one or more of the following:
- (i) provide the person allegedly harassed or vilified with counselling and advice;
 - (ii) inform the barrister concerned of the complaint;
 - (iii) provide that barrister with an opportunity to respond to the complaint;
 - (iv) provide that barrister with an opportunity to be counselled or advised in respect of the complaint;
 - (v) arrange for the complaint to be conciliated by the person appointed by the Bar Council acting alone or together with any other person appointed by the Bar Council.
- The steps referred to in sub-paragraphs (i), (ii), (iii) and (iv) shall only be taken with the consent of the person allegedly harassed or vilified. The step referred to sub-paragraph (v) shall only be taken with the consent of both parties.
- (c) Nothing in these Rules shall prevent the person allegedly harassed or vilified from lodging a complaint alleging a breach of Rules 122.1, 122.2 or 122.3 with the President of the Bar Council.
123. Deleted

Schedule 2 Consequential amendments

(see s 617)

Part 2.1 Civil Law (Wrongs) Act 2002

[2.1] Section 188 (3)

omit

Legal Practitioners Act 1970, part 8 (Discipline).

substitute

Legal Profession Act 2006, chapter 4 (Complaints and discipline).

Part 2.2 Commercial Arbitration Act 1986

[2.2] Section 20 (1), (2), (3) and (4)

omit

legal practitioner

substitute

lawyer

[2.3] Section 20 (5) and (6)

substitute

- (5) A person who is not a lawyer does not commit an offence against, or breach a provision of, the *Legal Profession Act 2006* or any other territory law only because the person represents a party in an arbitration proceeding in the ACT.

- 1 (6) A reference in this section to—
- 2 (a) a lawyer is a reference to a person who is admitted as, or
- 3 entitled to practise as, a lawyer the ACT or anywhere else,
- 4 including outside Australia; and
- 5 (b) a legally qualified person is a reference to—
- 6 (i) a lawyer; or
- 7 (ii) a person who has qualifications or experience in law
- 8 (whether acquired in the ACT or anywhere else,
- 9 including outside Australia) that, in the opinion of the
- 10 arbitrator or umpire, would be likely to provide an
- 11 advantage in the proceeding.

12 **Part 2.3 Court Procedures Act 2004**

13 **[2.4] Section 15 (2) (c) (iii)**

14 *substitute*

- 15 (iii) under the *Legal Profession Act 2006*, chapter 4
- 16 (Complaints and discipline); or

17 **Part 2.4 Court Procedures Regulation**

18 **2004**

19 **[2.5] New section 3A**

20 *insert*

21 **3A Prescribed tribunal—Act, s 6**

22 The Legal Practitioners Disciplinary Tribunal established under the

23 *Legal Profession Act 2006*, section 559 is prescribed for the Act,

24 part 2 (Court rules and forms).

1 **Part 2.5** **Director of Public Prosecutions**
2 **Act 1990**

3 **[2.6] Section 16 (a)**

4 *substitute*

5 (a) a member of the staff of the office who is a legal practitioner;
6 or

7 **Part 2.6** **Government Solicitor Act 1989**

8 **[2.7] Section 5 (3)**

9 *omit*

10 issued under the *Legal Practitioners Act 1970*.

11 *substitute*

12 under the *Legal Profession Act 2006*.

13 **Part 2.7** **Legal Aid Act 1977**

14 **[2.8] Section 5, definition of *practising certificate***

15 *substitute*

16 *practising certificate* means an unrestricted practising certificate or
17 a restricted practising certificate under the *Legal Profession*
18 *Act 2006*.

19 **[2.9] Section 5, definition of *statutory interest account***

20 *substitute*

21 *statutory interest account*—see the *Legal Profession Act 2006*,
22 section 253.

[2.10] Section 5, definition of *unrestricted practising certificate*

substitute

unrestricted practising certificate means an unrestricted practising certificate under the *Legal Profession Act 2006*.

[2.11] Section 9 (6), (7) and (8)

substitute

(6) The provisions of the *Legal Profession Act 2006* about the keeping of accounts by solicitors in relation to money held by them on trust, and the audit of the accounts, do not apply in relation to money held by the commission on trust.

(7) A regulation may make provision in relation to—

(a) the application to the commission, with any changes prescribed by regulation, of regulations made for the *Legal Profession Act 2006*, section 253 (Statutory deposits); and

(b) the investment by the commission of any amount held on trust by the commission.

[2.12] Section 18

omit

issued under the *Legal Practitioners Act 1970*

substitute

granted under the *Legal Profession Act 2006*

1 **[2.13] Section 22 (10)**

2 *substitute*

- 3 (10) To remove any doubt, the *Legal Profession Act 2006*, chapter 4
4 (Complaints and discipline) applies to officers of the commission
5 who are Australian legal practitioners within the meaning of that
6 Act in the same way as it applies to other people who are Australian
7 legal practitioners within the meaning of that Act.

8 **[2.14] Section 69**

9 *substitute*

10 **69 Application of Legal Profession Act to commission etc**

11 The following provisions of the *Legal Profession Act 2006* do not
12 apply in relation to the commission or an officer of the commission
13 in the officer's official capacity:

- 14 (a) division 3.1.3 (Investigations and external examinations);
15 (b) part 3.2 (Costs disclosure and review);
16 (c) part 3.3 (Professional indemnity insurance);
17 (d) part 3.4 (Fidelity cover);
18 (e) chapter 5 (External intervention).

19 **[2.15] Section 92AA (c)**

20 *substitute*

- 21 (c) in response to a notice under the *Legal Profession Act 2006*,
22 section 428 (Powers of disciplinary tribunal in relation to
23 witnesses).

Part 2.8 Legislation Act 2001

[2.16] Dictionary, definition of *legal practitioner*

substitute

legal practitioner means a person who is admitted to the legal profession under the *Legal Profession Act 2006* or a law that is a corresponding law for that Act.

Part 2.9 Notaries Public Act 1984

[2.17] Section 3A

substitute

3A Terms used in Legal Profession Act

A term used in the Legal Profession Act has the same meaning in this Act.

[2.18] Section 13 (3), (4), (5) and (6)

substitute

- (3) The registrar must remove the name of a person from the roll if—
- (a) the person is a lawyer; and
 - (b) the Supreme Court makes an order under the Legal Profession Act that the name the person be removed from the roll of lawyers kept under that Act.
- (4) The registrar must remove the name of a person from the roll if—
- (a) the person holds an unrestricted practising certificate; and
 - (b) the practising certificate is cancelled under the Legal Profession Act.

- 1 (5) If the unrestricted practising certificate of a person who is on the roll
2 is cancelled under the Legal Profession Act, the law society council
3 must immediately tell the registrar, in writing, about the
4 cancellation.
- 5 (6) If the registrar has removed the name of a person from the roll under
6 subsection (4) because the law society has cancelled the person's
7 practising certificate, the registrar must restore the person's name to
8 the roll if—
- 9 (a) the law society council revokes its decision to cancel the
10 certificate; or
- 11 (b) the Supreme Court makes an order revoking the cancellation of
12 the certificate.

13 **[2.19] Dictionary, definition of *Legal Practitioners Act***

14 *substitute*

15 *Legal Profession Act* means the *Legal Profession Act 2006*.

16 **Part 2.10 Supreme Court Act 1933**

17 **[2.20] Section 11 (1), (2) and (3)**

18 *substitute*

- 19 (1) The jurisdiction of the court in an application for admission to the
20 legal profession must be exercised by a Full Court unless the Chief
21 Justice directs otherwise.
- 22 (2) The jurisdiction of the court in a proceeding in relation to the grant,
23 renewal, amendment, suspension or cancellation of a practising
24 certificate under the *Legal Profession Act 2006* must be exercised
25 by a Full Court.

- 1 (3) The jurisdiction of the court in relation to an application under the
2 *Legal Profession Act 2006*, section 96 or section 97 in relation to the
3 removal of a lawyer's name from the local roll must be exercised by
4 a Full Court.

Schedule 3 HHH provisions

(see s 612)

3.1 Definitions—sch 3

In this schedule:

approved indemnity fund means an indemnity fund approved by the law society council under section 315 (Approval of indemnity fund) for the purpose of indemnifying anyone who is insured under an approved policy that was issued or renewed by an HHH group member.

approved policy means a policy of indemnity insurance approved under the repealed Act, part 9 (Professional indemnity insurance).

HHH group member means—

- (a) HHH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited; or
- (b) any corporation that is, for a corporation mentioned in paragraph (a), a related body corporate within the meaning of the Corporations Act, section 50.

insurable solicitor—see section 308.

repealed Act means the *Legal Practitioners Act 1970*.

3.2 Payments relating to HHH group insurance policies

- (1) The law society must make payments from an approved indemnity fund for the purpose of indemnifying a person who is or was insured under an approved policy to the extent of the indemnity provided by the policy.
- (2) On making a payment, the law society is subrogated to the rights and remedies of the insured person under the approved policy, in

-
- 1 relation to the subject matter of the payment, subject to the terms of
2 any agreement entered into under this section.
- 3 (3) Subsection (2) extends, but is not limited to, a right or remedy
4 against any of the following:
- 5 (a) an HHH group member;
- 6 (b) any insurer or reinsurer of an HHH group member;
- 7 (c) anyone who, under a law in force in the ACT, is liable for a
8 failure of an HHH group member to satisfy its obligations under
9 or in relation to an approved policy.
- 10 (4) The law society may exercise its rights and remedies under this
11 section in its own name or in the name of an insured person.
- 12 (5) If the law society exercises its rights and remedies under this section
13 in the name of an insured person, the law society must indemnify
14 the insured person against any liability incurred by the person as a
15 result of the exercise of the rights and remedies.
- 16 (6) The law society may make an agreement with an HHH group
17 member (including a provisional liquidator or liquidator of an HHH
18 group member), or with an insured person, in relation to the
19 payment of amounts from an approved indemnity fund.
- 20 (7) In particular, an agreement may provide for the following:
- 21 (a) the assignment or subrogation to the law society of the rights
22 and remedies of an HHH group member or the insured person
23 (or both) under or in relation to the approved policy;
- 24 (b) the recovery by the law society from an HHH member of any
25 amount paid from an approved indemnity fund under this
26 section.
- 27 (8) Any payment made from an approved indemnity fund under this
28 section, and any agreement made with an insured person under
29 subsection (6), does not prevent the recovery by the law society
30 from an HHH group member of any amount that would have been
-

- 1 recoverable by the insured person under or in relation to the
2 approved policy had the payment or agreement not been made.
- 3 (9) Any amount recovered by the law society because of the exercise of
4 its functions under this section (including its functions under a
5 subrogation or agreement under subsection (6)) must be paid into an
6 approved indemnity fund.
- 7 (10) However, subsection (9) does not apply to any amount that is
8 payable to someone else—
- 9 (a) under a law in force in the ACT; or
10 (b) under an agreement under subsection (6).
- 11 (11) A payment may be made from an approved indemnity fund for the
12 purpose of meeting any reasonable costs and expenses incurred by
13 the law society in exercising a function under this section, including
14 a function under a subrogation or an agreement under
15 subsection (6).
- 16 **3.3 Special contributions and levies—HIH liabilities**
- 17 (1) The law society council may—
- 18 (a) require any insurable solicitor who is or was insured under an
19 approved policy issued or renewed by an HIH group member
20 to pay a special annual contribution to the indemnity fund; or
- 21 (b) require any solicitor or former solicitor who is or was insured
22 under an approved policy issued or renewed by an HIH group
23 member to pay a special levy to the indemnity fund.
- 24 (2) The contribution or levy is payable to the law society council in the
25 way and within the reasonable period required by the council.

**Schedule 4 Mortgage practices and
managed investment
schemes—provisions about
old mortgages**

(see s 613)

Part 4.1 Preliminary—sch 4

4.1 Interpretation—sch 4

(1) In this schedule:

commencement day means the day chapter 10 (Transitional)
commences.

repealed Act means the *Legal Practitioners Act 1970*.

(2) An expression used in this schedule has the same meaning as in
part 3.5 (Mortgage practices and managed investment schemes).

4.2 Mortgage practices and managed investment schemes

(1) Part 3.5 (Mortgage practices and managed investment schemes)
extends to mortgages that were entered into before the
commencement day.

(2) Subsection (1) does not limit this schedule, part 4.2 (Special
provisions about old mortgages).

(3) Anything done or omitted to be done under the repealed Act,
part 12A before the commencement day continues to have the same
effect as if done or omitted to be done under part 3.5.

(4) Part 3.5 has effect, and is to read, as if it included the provisions of
this schedule.

Part 4.2 Special provisions about old mortgages

Note This part substantially re-enacts the provisions of the repealed Act, div 12A.5 (Transitional arrangements—pre-existing mortgages) that expired on 10 September 2005. Div 12A.5 is a law to which the Legislation Act, section 88 (Repeal does not end transitional or validating effect etc) applies (see s 147V (2) (now expired)).

4.3 Part extends to pre-existing mortgages

Except as provided by this part, part 3.5 (Mortgage practices and managed investment schemes) applies to mortgages that were entered into before 10 September 2002.

Note 10 September 2002 is the date of commencement of the repealed Act, pt 12A, as inserted by the *Justice and Community Safety Legislation Amendment Act 2002*, s 24.

4.4 Requirement to obtain fidelity insurance for pre-existing mortgages

- (1) Section 373 (Solicitor to have fidelity cover for regulated mortgages) does not apply in relation to a regulated mortgage that was entered into before 10 September 2002.
- (2) Despite subsection (1), section 373 applies to a solicitor if money entrusted to the solicitor by a client (whether before, on or after the commencement date) is advanced or proposed to be advanced on or after the commencement date to a borrower for a regulated mortgage entered into before 10 September 2002.
- (3) If subsection (2) applies—
 - (a) the solicitor must ensure that a policy of fidelity insurance is in force in relation to the advance in accordance with section 373, and comply with section 375 (Notification of insurance arrangements for regulated mortgages); and

- 1 (b) section 374 (Bar on claims against fidelity fund relating to
2 regulated mortgages) applies to any claim against the fidelity
3 fund so far as it relates to such an advance; and
- 4 (c) for the application of section 374 to the advance, the date that
5 money is entrusted to the solicitor by the client is taken to be
6 the later of—
- 7 (i) 10 September 2002; and
- 8 (ii) the date the money is entrusted to the solicitor.
- 9 (4) This section is subject to section 4.6 (Substitution of lender or
10 contributor under run-out mortgage).

11 **4.5 No further action to be taken in relation to run-out**
12 **mortgages**

- 13 (1) A solicitor must not, in the solicitor's capacity as solicitor for a
14 lender or contributor—
- 15 (a) advance any money entrusted to the solicitor to a borrower for
16 a run-out mortgage; or
- 17 (b) do anything for the purpose of extending the term of a run-out
18 mortgage; or
- 19 (c) accept any money from a client for the purpose of advancing
20 money to a borrower for a run-out mortgage; or
- 21 (d) do anything else in relation to a run-out mortgage in
22 contravention of a regulation relating to run-out mortgages.
- 23 (2) A contravention of this section by a solicitor can be professional
24 misconduct.

- 1 **4.6 Substitution of lender or contributor under run-out**
2 **mortgage**
- 3 (1) Despite section 4.5, a solicitor may accept money from a client, and
4 do other work that is necessary solely for the purpose of substituting
5 a lender or contributor under a run-out mortgage.
- 6 (2) Section 373 (Solicitor to have fidelity cover for regulated
7 mortgages) does not apply in relation to anything done by a solicitor
8 under subsection (1) and, accordingly, the solicitor is not required to
9 obtain fidelity insurance to compensate the substitute lender or
10 contributor for any financial loss.
- 11 (3) If a client entrusts or proposes to entrust money to a solicitor for the
12 purpose of substituting a lender or contributor under a run-out
13 mortgage, the solicitor must give the client written notice telling the
14 client—
- 15 (a) about the effect of section 4.7; and
- 16 (b) that the solicitor is not required to have fidelity insurance in
17 relation to a run-out mortgage.
- 18 (4) The solicitor must not advance the money to a borrower for a
19 run-out mortgage unless the solicitor has given the client notice
20 under subsection (3).
- 21 (5) A contravention of this section by a solicitor can be professional
22 misconduct.
- 23 **4.7 No claims against fidelity fund by substitute lenders**
- 24 (1) This section applies to a person who entrusts money to a solicitor to
25 become a lender or contributor under a run-out mortgage after
26 10 September 2002.
- 27 (2) The person is not entitled to make a claim against the fidelity fund
28 to obtain compensation for any financial loss in relation to that
29 mortgage if the solicitor gave notice to the person in accordance
30 with section 4.6.
-

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- authorised deposit-taking institution (or ADI)
- business day
- change
- contravene
- Commonwealth
- corporation
- Corporations Act
- document
- entity
- exercise
- external territory
- financial year
- for
- foreign country
- function
- indictable offence
- individual
- in relation to
- may (see s 146)
- must (see s 146)
- power
- State
- Supreme Court
- territory law
- under.

- 1 **admissions board** means the Legal Practitioners Admissions Board
2 established by section 554.
- 3 **admission rules** means rules relating to the admission of lawyers
4 and associated matters made under the *Court Procedures Act 2004*
5 for part 2.3 (Admission of local lawyers), and includes any forms
6 approved under that Act for those rules or that part.
- 7 **admission to the legal profession** means admission by a Supreme
8 Court as—
- 9 (a) a lawyer; or
10 (b) a legal practitioner; or
11 (c) a barrister; or
12 (d) a solicitor; or
13 (e) a barrister and solicitor; or
14 (f) a solicitor and barrister;
- 15 under this Act or a corresponding law, but does not include the grant
16 of a practising certificate under this Act or a corresponding law.
- 17 **affairs**, of a law practice, includes the following:
- 18 (a) all accounts and records required under this Act to be kept by
19 the practice or an associate or former associate of the practice;
- 20 *Note* **This Act** is defined in the dictionary.
- 21 (b) other records of the practice or an associate or former associate
22 of the practice;
- 23 (c) any transaction to which the practice or an associate or former
24 associate of the practice was or is a party;
- 25 (d) any transaction in which the practice or an associate or former
26 associate of the practice has acted for a party.

amend includes—

(a) in relation to a practising certificate—

(i) impose a condition on the certificate; and

(ii) amend or revoke a condition already imposed on the certificate; and

(b) in relation to registration as a foreign lawyer—

(i) amend the lawyer's registration certificate; and

(ii) impose a condition on the registration; and

(iii) amend or revoke a condition already imposed on the registration.

approved, for a policy of indemnity insurance, for part 3.3 (Professional indemnity insurance)—see section 312.

approved ADI, for part 3.1 (Trust money and trust accounts)—see section 210 (2).

approved policy of fidelity insurance, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

ASIC exemption, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

associate—

(a) of a law practice, for the Act—see section 9; and

(b) of a solicitor, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

Australia, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

Australian law, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

Australian lawyer—see section 7.

- 1 ***Australian legal practitioner***—see section 8.
- 2 ***Australian practising certificate*** means a local practising certificate
- 3 or an interstate practising certificate.
- 4 ***Australian-registered foreign lawyer*** means a locally-registered
- 5 foreign lawyer or an interstate-registered foreign lawyer.
- 6 ***Australian roll*** means the local roll or an interstate roll.
- 7 ***Australian trust account*** means a local trust account or an interstate
- 8 trust account.
- 9 ***bar association*** means the Australian Capital Territory Bar
- 10 Association (ACN 008 481 258), a corporation incorporated under
- 11 the Corporations Act.
- 12 ***bar council*** means the Council of the bar association.
- 13 ***barrister*** means—
- 14 (a) a local legal practitioner who holds a current barrister
- 15 practising certificate; or
- 16 (b) an interstate legal practitioner who holds a current interstate
- 17 practising certificate that entitles the practitioner to engage in
- 18 legal practice only as or in the manner of a barrister.
- 19 ***borrower***, for part 3.5 (Mortgage practices and managed investment
- 20 schemes)—see section 369.
- 21 ***capping and sufficiency provisions***, for part 3.4 (Fidelity cover)—
- 22 see section 316.
- 23 ***claim***, for part 3.4 (Fidelity cover)—see section 316.
- 24 ***claimant***, for part 3.4 (Fidelity cover)—see section 316.
- 25 ***client***—
- 26 (a) for part 3.2 (Costs disclosure and review)—see section 261;
- 27 and

- 1 (b) for part 3.5 (Mortgage practices and managed investment
2 schemes)—see section 369.
- 3 **commercial legal presence**, for part 2.7 (Legal practice—foreign
4 lawyers)—see section 152.
- 5 **compensation order**, for part 4.8 (Compensation)—see section 437.
- 6 **complaint**, for chapter 4 (Complaints and discipline)—see
7 section 383.
- 8 **compliance certificate**—see section 29 (Compliance certificates).
- 9 **complying community legal centre**—see section 208.
- 10 **concerted interstate default**, for part 3.4 (Fidelity cover)—see
11 section 316.
- 12 **conditional costs agreement**, for part 3.2 (Costs disclosure and
13 review)—see section 261.
- 14 **conditions** means conditions, limitations or restrictions.
- 15 **conduct**, for chapter 4 (Complaints and discipline)—see
16 section 383.
- 17 **connected**, for part 6.3 (Entry and search of premises)—see
18 section 525.
- 19 **contributor**, for part 3.5 (Mortgage practices and managed
20 investment schemes)—see section 369.
- 21 **contributory**, for part 3.5 (Mortgage practices and managed
22 investment schemes)—see section 369.
- 23 **controlled money**—see section 210 (1).
- 24 **controlled money account**, for part 3.1 (Trust money and trust
25 accounts)—see section 210 (2).
- 26 **conviction**—see section 13.
- 27 **corporation**, for part 2.6 (Incorporated legal practices and
28 multidisciplinary partnerships)—see section 99.

- 1 ***corresponding authority*** means—
- 2 (a) an entity with functions under a corresponding law; or
- 3 (b) when used in the context of an entity having functions under
- 4 this Act (the ***local authority***)—
- 5 (i) an entity with corresponding functions under a
- 6 corresponding law; and
- 7 (ii) without limiting subparagraph (i), if the functions of the
- 8 local authority relate to local lawyers or local legal
- 9 practitioners generally or are limited to any particular
- 10 class of local lawyers or local legal practitioners—an
- 11 entity having corresponding functions under a
- 12 corresponding law, whether or not they relate to interstate
- 13 lawyers or interstate legal practitioners generally or are
- 14 limited to any particular class of interstate lawyers or
- 15 interstate legal practitioners.
- 16 ***corresponding disciplinary body*** means—
- 17 (a) a court or tribunal with functions under a corresponding law
- 18 that correspond to any of the functions of the disciplinary
- 19 tribunal; or
- 20 (b) the Supreme Court of another jurisdiction exercising—
- 21 (i) its inherent jurisdiction or powers in relation to the
- 22 control and discipline of any Australian lawyer; or
- 23 (ii) its jurisdiction or powers to make orders under a
- 24 corresponding law of the other jurisdiction in relation to
- 25 any Australian lawyer.
- 26 ***corresponding foreign law*** means the following:
- 27 (a) a law of a foreign country that corresponds to the relevant
- 28 provisions of this Act or, if a regulation is made declaring a
- 29 law of the foreign country to be a law that corresponds to this

1 Act, the law declared under that regulation for the foreign
2 country;

- 3 (b) if the term is used in relation to a matter that happened before
4 the commencement of the law of a foreign country that, under
5 paragraph (a), is the corresponding law for the foreign
6 country—a previous law applying to legal practice in the
7 foreign country.

8 ***corresponding law*** means the following:

- 9 (a) a law of another jurisdiction that corresponds to the relevant
10 provisions of this Act or, if a regulation is made declaring a
11 law of the other jurisdiction to be a law that corresponds to this
12 Act, the law declared under that regulation for the other
13 jurisdiction;

- 14 (b) if the term is used in relation to a matter that happened before
15 the commencement of the law of another jurisdiction that,
16 under paragraph (a), is the corresponding law for the other
17 jurisdiction—a previous law applying to legal practice in the
18 other jurisdiction.

19 ***costs agreement***, for part 3.2 (Costs disclosure and review)—see
20 section 261.

21 ***costs review***, for part 3.2 (Costs disclosure and review)—see
22 section 261.

23 ***council*** means the bar council or law society council.

24 ***data***, for part 6.3 (Entry and search of premises)—see section 525.

25 ***data storage device***, for part 6.3 (Entry and search of premises)—
26 see section 525.

27 ***default***, in relation to a law practice, for part 3.4 (Fidelity cover)—
28 see section 316.

29 ***director***, for part 2.6 (Incorporated legal practices and
30 multidisciplinary partnerships)—see section 99.

- 1 ***disbursements***, for part 3.2 (Costs disclosure and review)—see
2 section 261.
- 3 ***disciplinary action***, for part 4.9 (Publicising disciplinary action)—
4 see section 443.
- 5 ***disciplinary tribunal*** means the Legal Practitioners Disciplinary
6 Tribunal established under section 559.
- 7 ***disciplinary tribunal trust account***—see section 570 (2).
- 8 ***dishonesty***, for part 3.4 (Fidelity cover)—see section 316.
- 9 ***disqualified person***, for part 2.6 (Incorporated legal practices and
10 multidisciplinary partnerships)—see section 99.
- 11 ***engage in legal practice*** includes practise law.
- 12 ***external examination***, for part 3.1 (Trust money and trust
13 accounts)—see section 210 (2).
- 14 ***external examiner***, for part 3.1 (Trust money and trust accounts)—
15 see section 210 (2).
- 16 ***external intervener***, for chapter 5 (External intervention)—see
17 section 469.
- 18 ***external intervention***, for chapter 5 (External intervention)—see
19 section 469.
- 20 ***fidelity fund***—see section 320.
- 21 ***financial institution***, for part 3.5 (Mortgage practices and managed
22 investment schemes)—see section 369.
- 23 ***foreign law***, for part 2.7 (Legal practice—foreign lawyers)—see
24 section 152.
- 25 ***foreign law practice***, for part 2.7 (Legal practice—foreign
26 lawyers)—see section 152.
- 27 ***foreign licensing body***, for part 2.7 (Legal practice—foreign
28 lawyers)—see section 152.

1 **foreign roll** means an official roll of lawyers (whether admitted,
2 practising or otherwise) kept in a foreign country, but does not
3 include a roll prescribed by regulation.

4 **general trust account**, for part 3.1 (Trust money and trust
5 accounts)—see section 210 (2).

6 **grant** an interstate practising certificate includes issue an interstate
7 practising certificate.

8 **home jurisdiction**—see section 10.

9 **incorporated legal practice**—see section 101.

10 **information notice**—see section 12.

11 **insolvent under administration** means—

- 12 (a) a person who is an undischarged bankrupt within the meaning
13 of the *Bankruptcy Act 1966* (Cwlth) (or the corresponding
14 provisions of the law of a foreign country or external territory);
15 or
- 16 (b) a person who has executed a personal insolvency agreement
17 under the *Bankruptcy Act 1966* (Cwlth) (or the corresponding
18 provisions of the law of a foreign country or external territory)
19 but not if the agreement has been set aside or terminated or all
20 of the obligations created by the agreement have been
21 discharged; or
- 22 (c) a person for whom a debt agreement has been made under the
23 *Bankruptcy Act 1966* (Cwlth), part 9 (or the corresponding
24 provisions of the law of a foreign country or external territory)
25 if the debt agreement has not ended or has not been terminated;
26 or
- 27 (d) a person who has executed a deed of arrangement under the
28 *Bankruptcy Act 1966* (Cwlth), part 10 (or the corresponding
29 provisions of the law of a foreign country or external territory)
30 if the terms of the deed have not been fully complied with; or

- 1 (e) a person whose creditors have accepted a composition under
2 the *Bankruptcy Act 1966* (Cwlth), part 10 (or the corresponding
3 provisions of the law of a foreign country or external territory)
4 if a final payment has not been made under the composition.
- 5 ***interstate lawyer***—see section 7.
- 6 ***interstate legal practitioner***—see section 8.
- 7 ***interstate practising certificate*** means a current practising
8 certificate granted under a corresponding law.
- 9 ***interstate-registered foreign lawyer*** means a person who is
10 registered as a foreign lawyer under a corresponding law.
- 11 ***interstate roll*** means a roll of lawyers kept under a corresponding
12 law.
- 13 ***interstate trust account*** means a trust account kept under a
14 corresponding law.
- 15 ***investigation***, for part 3.1 (Trust money and trust accounts)—see
16 section 210 (2).
- 17 ***investigator***, for part 3.1 (Trust money and trust accounts)—see
18 section 210 (2).
- 19 ***itemised bill***, for part 3.2 (Costs disclosure and review)—see
20 section 261.
- 21 ***judicial member***, of the disciplinary tribunal—see section 562 (3).
- 22 ***jurisdiction*** means a State or Territory.
- 23 ***law firm*** means a partnership consisting only of—
- 24 (a) Australian legal practitioners; or
- 25 (b) 1 or more Australian legal practitioners and 1 or more
26 Australian-registered foreign lawyers.

law practice means—

(a) for the Act—

(i) an Australian legal practitioner who is a sole practitioner;
or

(ii) a law firm; or

(iii) a multidisciplinary partnership; or

(iv) an incorporated legal practice; and

(b) for part 3.1—see section 218 (2).

law society means the Law Society of the Australian Capital Territory established under section 572.

law society council means the Council of the law society.

lay associate, of a law practice—see section 9.

legal costs means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest.

legal practitioner associate, of a law practice—see section 9.

legal practitioner director, of an incorporated legal practice—see section 99.

legal practitioner partner, of a multidisciplinary partnership—see section 99.

legal profession rules means rules made under part 7.4.

legal services means work done, or business transacted, in the ordinary course of legal practice.

lender, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

licensing body means the law society council.

- 1 **litigious matter**, for part 3.2 (Costs disclosure and review)—see
2 section 261.
- 3 **local lawyer**—see section 7.
- 4 **local legal practitioner**—see section 8.
- 5 **local practising certificate** means a current practising certificate
6 granted under this Act.
- 7 **local registration certificate**, for part 2.7 (Legal practice—foreign
8 lawyers)—see section 152.
- 9 **local roll** means the roll of lawyers kept under this Act.
- 10 **local trust account** means a trust account kept under this Act.
- 11 **locally-registered foreign lawyer** means a person who is registered
12 as a foreign lawyer under this Act.
- 13 **lump sum bill**, for part 3.2 (Costs disclosure and review)—see
14 section 261.
- 15 **managed investment scheme**—see the Corporations Act, section 9.
- 16 **member**, of a managed investment scheme, for part 3.5 (Mortgage
17 practices and managed investment schemes)—see section 369.
- 18 **mortgage** means an instrument under which an interest in real
19 property is charged, encumbered or transferred as security for the
20 payment or repayment of money, and includes—
- 21 (a) an instrument prescribed by regulation for this definition; and
22 (b) a proposed mortgage.
- 23 **mortgage financing** means facilitating a loan secured or intended to
24 be secured by mortgage by—
- 25 (a) acting as an intermediary to match a prospective lender and
26 borrower; or
27 (b) arranging the loan; or

(c) receiving or dealing with payments for the purposes of, or under, the loan;

but does not include providing legal advice or preparing an instrument for the loan.

multidisciplinary partnership—see section 134.

non-judicial member, of the disciplinary tribunal—see section 568 (2).

occupier, for part 6.3 (Entry and search of premises)—see section 525.

offence, for part 6.3 (Entry and search of premises)—see section 525.

officer, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

official complaint, for chapter 44 (Complaints and discipline)—see section 383.

overseas-registered foreign lawyer, for part 2.7 (Legal practice—foreign lawyers)—see section 152.

pecuniary loss, in relation to a default, for part 3.4 (Fidelity cover)—see section 316.

permanent form, in relation to a trust record, for part 3.1 (Trust money and trust accounts)—see section 210 (2) and (3).

person assisting, for part 6.3 (Entry and search of premises)—see section 525.

practical legal training means—

- (a) legal training by participation in course work; or
- (b) legal training under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise; or
- (c) a combination of both kinds of legal training.

- 1 ***practise foreign law***, for part 2.7 (Legal practice—foreign
2 lawyers)—see section 152.
- 3 ***premises*** includes land or a structure or vehicle and any part of an
4 area of land or a structure or vehicle.
- 5 ***prescribed relationship***, for part 3.5 (Mortgage practices and
6 managed investment schemes)—see section 369.
- 7 ***principal***, of a law practice—see section 9.
- 8 ***professional misconduct***—see section 387.
- 9 ***professional obligations***, of an Australian legal practitioner, for
10 part 2.6 (Incorporated legal practices and multidisciplinary
11 partnerships)—see section 99.
- 12 ***quashing***, of a conviction for an offence—see section 13.
- 13 ***register of disciplinary action***—see section 444.
- 14 ***registered***, used in relation to a foreign country, for part 2.7 (Legal
15 practice—foreign lawyers)—see section 152.
- 16 ***registrar*** means the registrar of the Supreme Court.
- 17 ***regulated mortgage***, for part 3.5 (Mortgage practices and managed
18 investment schemes)—see section 369.
- 19 ***regulated property***, for a law practice, for chapter 5 (External
20 intervention)—see section 469.
- 21 ***regulatory authority*** means—
- 22 (a) in relation to the ACT—
- 23 (i) a council; or
- 24 (ii) another authority having functions under this Act; or
- 25 (iii) an entity prescribed by regulation for this paragraph; or
- 26 (b) in relation to another jurisdiction, means—

- (i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority, unless subparagraph (iii) applies; or
- (ii) if there are separate regulatory authorities for the other jurisdiction for different branches of the legal profession or for people who practise in a particular style of legal practice—the regulatory authority relevant to the branch or style concerned, unless subparagraph (iii) applies; or
- (iii) if a regulation prescribes 1 or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the prescribed regulatory authority or authorities.

related body corporate, for part 2.6 (Incorporated legal practices and multidisciplinary partnerships)—see section 99.

relevant council means—

- (a) in relation to an Australian legal practitioner who is, or a former Australian legal practitioner who was, a barrister or who is an applicant for grant of a barrister practising certificate—the bar council; or
- (b) in relation to an Australian legal practitioner who is, or a former Australian legal practitioner who was, a solicitor or who is an applicant for grant of an unrestricted practising certificate or a restricted practising certificate—the law society council; or
- (c) in relation to an employee, or former employee, of a solicitor—the law society council;

and includes the law society council in relation to the exercise of a function by the law society council as the licensing body.

relevant jurisdiction, for part 3.4 (Fidelity cover)—see section 327.

responsible entity, for part 3.5 (Mortgage practices and managed investment schemes)—see section 369.

1 ***restricted practising certificate*** means a local practising certificate
2 or interstate practising certificate that is not an unrestricted
3 practising certificate or barrister practising certificate.

4 ***run-out mortgage***, for part 3.5 (Mortgage practices and managed
5 investment schemes)—see section 369.

6 ***scale of costs***, for part 3.2 (Costs disclosure and review)—see
7 section 261.

8 ***search warrant***, for part 6.3 (Entry and search of premises)—see
9 section 525.

10 ***serious offence*** means an offence whether committed in or outside
11 the ACT that is—

12 (a) an indictable offence against a law of the Commonwealth or
13 any jurisdiction (whether or not the offence is or may be dealt
14 with summarily); or

15 (b) an offence against a law of another jurisdiction that would be
16 an indictable offence against a territory law if committed in the
17 ACT (whether or not the offence could be dealt with
18 summarily if committed in the ACT); or

19 (c) an offence against a law of a foreign country that would be an
20 indictable offence against a territory law or a law of the
21 Commonwealth if committed in the ACT (whether or not the
22 offence could be dealt with summarily if committed in the
23 ACT).

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

25 (a) the person becoming an insolvent under administration; or

26 (b) the person being convicted of a serious offence or tax offence,
27 whether or not—

28 (i) the offence was committed in or outside the ACT; or

29 (ii) the offence was committed while the person was
30 engaging in legal practice as an Australian legal

practitioner or was practising foreign law as an Australian-registered foreign lawyer; or

- (iii) other people are prohibited from disclosing the identity of the offender.

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

solicitor means—

- (a) a local legal practitioner who holds a current unrestricted practising certificate or restricted practising certificate; or
- (b) an interstate legal practitioner who holds an interstate practising certificate that does not restrict the practitioner to engage in legal practice only as or in the manner of a barrister.

statutory interest account—see section 253.

suitability matter, for an individual—see section 11.

supervised legal practice means legal practice by a person who is an Australian legal practitioner—

- (a) as an employee of a law practice, if—
- (i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
- (ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or
- (b) as a partner in a law firm, if—
- (i) at least 1 other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and

- 1 (ii) the person engages in legal practice under the supervision
2 of an Australian legal practitioner mentioned in
3 subparagraph (i); or
- 4 (c) in a capacity approved under the legal profession rules.
- 5 **tax offence** means any offence against the *Taxation Administration*
6 *Act 1953* (Cwlth), whether committed in or outside the ACT.
- 7 **territory regulated mortgage**, for part 3.5 (Mortgage practices and
8 managed investment schemes)—see section 369.
- 9 **territory regulated mortgage practice**, for part 3.5 (Mortgage
10 practices and managed investment schemes)—see section 369.
- 11 **this Act** includes the admission rules and any other rules made under
12 the *Court Procedures Act 2004* for this Act.
- 13 *Note* A reference to an Act includes a reference to the statutory instruments
14 made or in force under the Act, including any regulation or legal
15 profession rule (see Legislation Act, s 104).
- 16 **transit money**—see section 210 (1).
- 17 **trust account**, for part 3.1 (Trust money and trust accounts)—see
18 section 210 (2) and (3).
- 19 **trust money** means money entrusted to a law practice in the course
20 of or in connection with the provision of legal services by the law
21 practice for or on behalf of another person, and includes—
- 22 (a) money received on account of legal costs in advance of
23 providing the services; and
- 24 (b) controlled money; and
- 25 (c) transit money; and
- 26 (d) money controlled by a law practice (or by an associate of the
27 practice, whether alone or with another associate) under a
28 power to deal with money for or on behalf of someone else that
29 is—

(i) exercisable by the practice (or by an associate of the practice, whether alone or with another associate); or

(ii) exercisable jointly and severally with the person or a nominee or nominees of the person;

but does not include money to which section 211 (Money involved in financial services or investments) applies.

trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, but does not include trust money.

trust records, for part 3.1 (Trust money and trust accounts)—see section 210 (2) and (3).

uplift fee, for part 3.2 (Costs disclosure and review)—see section 261.

unrestricted practising certificate means a local practising certificate that is an unrestricted practising certificate or an interstate practising certificate that—

- (a) is not subject to a condition under a corresponding law similar to the condition under section 49 (Statutory condition about practice as solicitor) or a similar condition under a corresponding law; and
- (b) is not subject to a condition that restricts the holder of the certificate to practise only as or in the manner of a barrister; and
- (c) is not subject to any other condition (other than a condition requiring the holder of the certificate to undertake and complete 1 or more courses of continuing legal education or a condition prescribed by regulation); and
- (d) is not subject to a condition similar to a condition under section 49 and whose holder would not be subject to a condition under that section if the holder were to apply for and be granted a local practising certificate.

- 1 *unsatisfactory employment conduct*—see section 388.
- 2 *unsatisfactory professional conduct*—see section 386.
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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