

2007

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Legal Profession Amendment Bill 2007

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2007

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Legal Profession Amendment Bill 2007

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### A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

4 This Act commences on 1 October 2007.

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

7 **3 Legislation amended**

8 This Act amends the *Legal Profession Act 2006*.

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

- 10 • *Court Procedures Rules 2006*
- 11 • *Legal Aid Act 1977*.

12 **4 Terms relating to associates and principals of law  
13 practices  
14 Section 9, definition of *associate*, paragraph (a) (v)**

15 *substitute*

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

17 **5 Section 9, definition of *associate*, paragraph (e)**

18 *substitute*

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

21 **6 Local lawyer is officer of Supreme Court  
22 New section 28 (2)**

23 *insert*

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



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1 **7 Suitability to hold local practising certificate**  
2 **Section 36 (2) (e) (ii)**

3 *substitute*

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

7 **8 Section 36 (4) (b)**

8 *substitute*

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

12 **9 Sections 38 and 39**

13 *substitute*

14 **38 Conditions on practising certificate—government lawyer**  
15 **and in-house lawyer**

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

- 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.
- 12          (3) A person must comply with a condition imposed under  
13          subsection (2) on the person’s practising certificate.
- 14          (4) A failure by an Australian lawyer to comply with subsection (3) can  
15          be unsatisfactory professional conduct or professional misconduct.

16       **10           Application for grant or renewal of local practising**  
17       **certificate**  
18       **Section 41 (2) (a)**

- 19           *substitute*
- 20           (a) if the lawyer is not an Australian legal practitioner at the time  
21           of making the application—
- 22           (i) the lawyer reasonably expects to be engaged in legal  
23           practice solely or principally in the ACT during the  
24           currency of the certificate or renewal applied for; or
- 25           (ii) if subparagraph (i) does not apply to the lawyer or it is  
26           not reasonably practicable to establish whether  
27           subparagraph (i) applies—the lawyer’s place of residence  
28           in Australia is the ACT or the lawyer does not have a  
29           place of residence in Australia; or

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1 **11 Section 41 (2) (b) (i) and (iii)**

2 *omit*

3 principally

4 *substitute*

5 solely or principally

6 **12 Section 41 (2) (b) (iv)**

7 *omit*

8 **13 Section 41 (2) (b) (v)**

9 *omit*

10 in the ACT

11 *substitute*

12 the ACT

13 **14 Section 41 (3)**

14 *omit*

15 principally

16 *substitute*

17 solely or principally

18 **15 Section 41 (6), (7) and (8)**

19 *substitute*

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

- 1           (7) Subsection (6) does not apply to an interstate legal practitioner who  
2           applied for the grant or renewal of an interstate practising certificate  
3           on the basis that the practitioner reasonably expected to engage in  
4           legal practice solely or principally in the ACT under an arrangement  
5           that is of a temporary nature.
- 6           (8) The exemption provided by subsection (7) ceases to operate at the  
7           end of the period prescribed by regulation.
- 8           (9) A reference in this section to engaging in legal practice principally  
9           in a jurisdiction applies only to legal practice in Australia and  
10          despite anything in this section an Australian lawyer who is engaged  
11          or expects to be engaged in legal practice principally in a foreign  
12          country is eligible to apply for the grant or renewal of a local  
13          practising certificate if the lawyer otherwise meets the requirements  
14          of this section.
- 15          **Example**
- 16          A person practises both in Australia and overseas and the overseas practice is the  
17          principal part of the person's overall practice. The question whether the person is  
18          engaged in legal practice principally in the ACT is determined by reference to the  
19          person's practice in Australia.
- 20          *Note*     An example is part of the Act, is not exhaustive and may extend, but  
21          does not limit, the meaning of the provision in which it appears (see  
22          Legislation Act, s 126 and s 132).
- 23          (10) A regulation under subsection (2) (c) may—
- 24               (a) limit the kind of practising certificate for which a lawyer  
25               prescribed for that paragraph may apply for grant or renewal;  
26               or
- 27               (b) provide that a council has a discretion as to whether or not to  
28               grant or renew a local practising certificate to a person in his or  
29               her capacity as a lawyer prescribed for that paragraph.

1 **16 Grant or renewal of unrestricted or restricted practising**  
2 **certificate**  
3 **Section 44 (6), note**

4 *substitute*

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

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

10 **17 Grant or renewal of barrister practising certificate**  
11 **Section 45 (6), note**

12 *substitute*

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

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

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

21 *substitute*

22 (ii) particular legal education or training; or

23 **19 Section 47 (10)**

24 *omit*

25 an academic or training course

26 *substitute*

27 particular legal education or training

1 **20 Section 47 (10) (a)**

2 *substitute*

3 (a) the council is satisfied, having regard to—

4 (i) the nature or currency of the holder's academic studies,  
5 legal training or legal experience; or

6 (ii) the holder's conduct;

7 that it is reasonable to require the particular legal education or  
8 training to be undertaken; or

9 **21 Compliance with conditions of local practising certificate**  
10 **Section 53 (2)**

11 *omit*

12 **22 Amending, suspending or cancelling local practising**  
13 **certificate**  
14 **Section 56 (1)**

15 *omit*

16 (the *show-cause notice*)

17 **23 Section 56 (2) (a)**

18 *omit*

19 show-cause notice

20 *substitute*

21 notice under subsection (1)

22 **24 Section 56 (2) (b) and (c)**

23 *omit*

24 show-cause

---

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

*substitute*

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

**26 New section 56 (5)**

*insert*

- (5) In this section:

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

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

*substitute*

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

1 **28 Relationship of div 2.4.6 with ch 4**  
2 **Section 59**

3 *omit*

4 the relevant council from making a complaint

5 *substitute*

6 a complaint from being made

7 **29 Applicant for local practising certificate—show-cause**  
8 **event**  
9 **Section 60 (3) and (4)**

10 *substitute*

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

15 (a) a statement under this section; or

16 (b) a notice and statement under section 61;

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

20 **30 Relationship of div 2.4.7 with pt 4.4 and ch 6**  
21 **Section 67 (3)**

22 *omit*

23 the relevant council from making a complaint

24 *substitute*

25 a complaint from being made



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

4 *substitute*

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

9 **32 Section 72 (3) (a) and (b)**

10 *omit*

11 government employee

12 *substitute*

13 government lawyer

14 **33 Section 72 (4), new definition of *defence costs***

15 *insert*

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

21 **34 Section 72 (4), definitions of *government agency* and**  
22 ***government employee***

23 *omit*

1 **35 Special provisions about interstate legal practitioner**  
2 **engaging in unsupervised legal practice in ACT**  
3 **New section 75 (2)**

4 *insert*

5 (2) Subsection (1)—

6 (a) does not apply if the interstate legal practitioner is exempt from  
7 the requirement for supervised legal practice in the  
8 practitioner's home jurisdiction; or

9 (b) applies only to the extent of a shorter period if the required  
10 period of supervised legal practice has been reduced for the  
11 interstate legal practitioner in the practitioner's home  
12 jurisdiction.

13 **36 Protocols with regulatory authorities**  
14 **Section 77 (1) (a)**

15 *omit*

16 from which

17 *substitute*

18 in which

19 **37 Investigation of practising certificate applicants or**  
20 **holders etc**  
21 **Section 78 (1)**

22 *omit*

23 or impose conditions on a local practising certificate,

1 **38 Government lawyers generally**  
2 **Section 82 (2)**

3 *omit*

4 government employee

5 *substitute*

6 government lawyer

7 **39 Section 82 (5)**

8 *omit*

9 **40 Government lawyers of other jurisdictions**  
10 **Section 83 (1) and (2)**

11 *omit*

12 government employee

13 *substitute*

14 government lawyer

15 **41 Section 83 (5), definitions of *government agency* and**  
16 ***government lawyer***

17 *omit*

18 **42 Official notice to other jurisdictions of removals from**  
19 **local roll**  
20 **Section 88 (1)**

21 *omit*

22 local lawyer's

23 *substitute*

24 person's

- 1 **43 Section 88 (3)**
- 2 *omit*
- 3 lawyer's
- 4 *substitute*
- 5 person's
- 6 **44 Section 91 heading**
- 7 *substitute*
- 8 **91 Lawyer to give notice of removal in another jurisdiction**
- 9 **45 Section 91 (1) (b)**
- 10 *omit*
- 11 or foreign roll
- 12 **46 Section 91 (1) (c)**
- 13 *omit*
- 14 s 91
- 15 *substitute*
- 16 div 2.5.3
- 17 **47 Section 91 (2) (b)**
- 18 *omit*
- 19 or foreign roll

---

**48 New section 92A**

*insert*

**92A Lawyer to give notice of foreign regulatory action**

(1) A person commits an offence if—

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

(b) foreign regulatory action has been taken in relation to the person; and

(c) the person fails to give the registrar written notice of the foreign regulatory action in accordance with section 93 (1) (Provisions applying to notices under div 2.5.3) not later than 7 days after the day the person receives notice of the foreign regulatory action.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

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

(b) foreign regulatory action has been taken in relation to the person to remove the person's name from a foreign roll for disciplinary reasons; and

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

Maximum penalty: 50 penalty units.

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

- 1 (4) In this section:  
2 *foreign regulatory action* taken in relation to a person means either  
3 of the following:  
4 (a) removal of the person's name from a foreign roll for  
5 disciplinary reasons;  
6 (b) suspension or cancellation of, or refusal to renew, the person's  
7 right to engage in legal practice in a foreign country.

8 **49 Section 93 heading**

9 *substitute*

10 **93 Provisions applying to notices under div 2.5.3**

11 **50 Section 93 (1)**

12 *substitute*

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

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

4 *omit*

5 96

6 *substitute*

7 97A

8 **52** **Peremptory cancellation of local practising certificate**  
9 **following removal of name from interstate roll**  
10 **Section 95 (1) (c)**

11 *omit*

12 96

13 *substitute*

14 97A

15 **53** **Sections 96 and 97**

16 *substitute*

17 **96** **Show-cause procedure for removal of lawyer's name**  
18 **from local roll following foreign regulatory action**

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

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



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

- 1     **97A     Order for non-removal of name or non-cancellation of**  
2     **local practising certificate**
- 3           (1) If an Australian lawyer reasonably expects that his or her name will  
4           be removed from an interstate roll or that foreign regulatory action  
5           will be taken against the lawyer, the lawyer may apply to the  
6           Supreme Court for either or both of the following orders:
- 7               (a) an order that his or her name not be removed from the local  
8               roll under section 94 (Peremptory removal of local lawyer's  
9               name from local roll following removal in another jurisdiction)  
10              or section 96 (Show-cause procedure for removal of lawyer's  
11              name from local roll following foreign regulatory action);
- 12              (b) an order that his or her local practising certificate not be  
13              cancelled under section 95 (Peremptory cancellation of local  
14              practising certificate following removal of name from  
15              interstate roll).
- 16           (2) The Supreme Court may make an order if satisfied that—
- 17               (a) the lawyer's name is likely to be removed from the interstate  
18               roll; and
- 19               (b) the reason for its removal from the interstate roll will not  
20               involve disciplinary action or the possibility of disciplinary  
21               action.
- 22           (3) An order under this section may be made subject to any conditions  
23           the Supreme Court considers appropriate and remains in force for  
24           the period stated in it.
- 25           (4) The Supreme Court may revoke an order made under this section,  
26           and either or both of section 94 and section 95 (as relevant) then  
27           apply as if the lawyer's name were removed from the interstate roll  
28           when the revocation takes effect.
- 29           (5) This section does not affect action being taken in relation to the  
30           lawyer under other provisions of this Act.

- 1 **54** **Definitions—pt 2.6**  
2 **Section 99 (2), definition of *disqualified person***
- 3 *omit*
- 4 **55** **Incorporated legal practice must have legal practitioner**  
5 **director etc**  
6 **Section 107 (5)**
- 7 *omit*
- 8 **56** **Section 107 (6)**
- 9 *omit*
- 10 liability
- 11 *substitute*
- 12 liabilities
- 13 **57** **Obligations of legal practitioner director relating to**  
14 **misconduct—incorporated legal practices**  
15 **New section 108 (1A)**
- 16 *after subsection (1), insert*
- 17 (1A) A legal practitioner director is not guilty of unsatisfactory  
18 professional conduct or professional misconduct under  
19 subsection (1) if the director establishes that he or she took all  
20 reasonable steps to ensure that—
- 21 (a) Australian legal practitioners employed by the incorporated  
22 legal practice did not engage in conduct or misconduct  
23 mentioned in subsection (1) (a); or
- 24 (b) any other directors (other than Australian legal practitioners) of  
25 the incorporated legal practice did not engage in conduct  
26 mentioned in subsection (1) (b); or

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

4 **58 Advertising requirements—incorporated legal practices**  
5 **Section 116 (2)**

6 *omit*  
7 the business of the relevant class of Australian legal practitioners  
8 *substitute*  
9 business in that branch of the legal profession or in that style of  
10 legal practice

11 **59 Section 118 heading**

12 *substitute*

13 **118 Sharing of receipts, revenue or other income—**  
14 **incorporated legal practices**

15 **60 Section 118 (1) and (2)**

16 *omit*  
17 receipts  
18 *substitute*  
19 receipts, revenue or other income

---

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

3 *omit*  
4 receipts of  
5 *substitute*  
6 receipts, revenue or other income arising from

7 **62 Audit of incorporated legal practices**  
8 **Section 120 (3)**

9 *substitute*  
10 (3) The appointment may be made generally or in relation to a  
11 particular incorporated legal practice or a particular audit.

12 **63 Section 146 heading**

13 *substitute*

14 **146 Sharing of receipts, revenue or other income—**  
15 **multidisciplinary partnerships**

16 **64 Section 146 (1) and (2)**

17 *omit*  
18 receipts  
19 *substitute*  
20 receipts, revenue or other income

1 **65 Disqualified people—multidisciplinary partnerships**  
2 **Section 147 (b)**

3 *omit*  
4 receipts of  
5 *substitute*  
6 receipts, revenue or other income arising from

7 **66 Section 147, note**

8 *omit*

9 **67 Definitions—pt 2.7**  
10 **Section 152, definition of *commercial legal presence***

11 *omit*

12 **68 Requirement for registration to practice foreign law**  
13 **Section 155 (2)**

14 *substitute*

15 (2) This section does not apply to an overseas-registered foreign lawyer  
16 who—

17 (a) either—

18 (i) practises foreign law in the ACT for 1 or more periods  
19 that do not in aggregate exceed 90 days in any 12-month  
20 period; or

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

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

5 **69 Application of Australian professional ethical and**

6 **practice standards to practice of foreign law**

7 **Section 159 (1)**

- 8 *omit*
- 9 be
- 10 *substitute*
- 11 be capable of being

12 **70 Advertising by Australian-registered foreign lawyers**

13 **Section 162 (1)**

- 14 *omit*
- 15 on the practice of law
- 16 *substitute*
- 17 on legal practice engaged in

18 **71 Trust money and trust accounts—Australian-registered**

19 **foreign lawyers**

20 **Section 164 (1)**

- 21 *before*
- 22 Australian legal practitioners
- 23 *insert*
- 24 law practices and

1 **72 Section 164 (2), new note**

2 *insert*

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

4 **73 Professional indemnity insurance—Australian-registered**  
5 **foreign lawyers**  
6 **Section 165 (3) (c)**

7 *substitute*

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

11 **74 Section 165 (5)**

12 *substitute*

13 (5) A disclosure statement must—

14 (a) be in writing; and

15 (b) be given before, or as soon as practicable after, the foreign  
16 lawyer is retained in a matter.

17 (5A) A disclosure statement given to a person before the foreign lawyer is  
18 retained in a matter is taken to be given to the person as a client for  
19 the purposes of this section.

20 (5B) A disclosure statement must be given in accordance with, and must  
21 comply with, any requirement under regulation.



---

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

*insert*

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

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

*substitute*

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

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

*substitute*

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

1 **78 Section 172 (2) (f) and (g)**

2 *substitute*

3 (f) state—

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

8 (ii) whether or not the applicant is subject to any special  
9 conditions in engaging in legal practice 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 legal practice engaged in by the  
14 applicant or any undertaking given by the applicant restricting  
15 the applicant's practice of law; and

16 **79 Section 172 (2) (i)**

17 *substitute*

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

22 **80 Section 172 (3) (b)**

23 *omit*

24 practise law

25 *substitute*

26 engage in legal practice

---

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

3 *substitute*

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

8 **82 Section 173 (4)**

9 *substitute*

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

15 **83 Requirement to grant or renew registration as foreign**  
16 **lawyer if criteria satisfied**  
17 **Section 174 (1) (b), (c) and (d)**

18 *substitute*

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

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

4 **84 Refusal to grant or renew registration as foreign lawyer**  
5 **New section 175 (2) (g)**

6 *substitute*

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

11 **85 Grounds for amending, suspending or cancelling**  
12 **registration of foreign lawyer**  
13 **Section 177 (b) to (g)**

14 *substitute*

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

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

7 **86 New section 177 (2)**

8 *insert*

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

12 **87 Amending, suspending or cancelling registration of**  
13 **foreign lawyer**  
14 **Section 178 (1)**

15 *omit*

16 (the *show-cause notice*)

17 **88 Section 178 (2) (a)**

18 *omit*

19 show-cause notice

20 *substitute*

21 notice under subsection (1)

22 **89 Section 178 (2) (b) and (c)**

23 *omit*

24 show-cause

1 **90 Section 178 (2) (c) (ii)**

2 *substitute*

3 (ii) suspend the registration for a stated period; or

4 (iii) amend the registration in a less onerous way the council  
5 considers appropriate because of the representations.

6 **91 New section 178 (5)**

7 *insert*

8 (5) In this section:

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

12 **92 Relationship of div 2.7.6 with ch 4**  
13 **Section 181**

14 *omit*

15 the licensing body from making a complaint

16 *substitute*

17 a complaint from being made

18 **93 Investigation of applicants and locally-registered foreign**  
19 **lawyers etc**  
20 **Section 200 (1)**

21 *omit everything before paragraph (a), insert*

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

- 1 **94 Appeals or reviews**  
2 **Section 207 (3), except the note**
- 3 *omit*
- 4 **95 Definitions—pt 3.1**  
5 **Section 210 (1), definition of *controlled money***
- 6 *omit*
- 7 received by a law practice with  
8 *substitute*  
9 received or held by a law practice for which the practice has
- 10 **96 Section 210 (1), new definition of *deposit record***
- 11 *insert*  
12 ***deposit record*** includes a deposit slip or duplicate deposit slip.
- 13 **97 Section 210 (2), definition of *controlled money account***
- 14 *omit*  
15 approved
- 16 **98 Section 210 (2), definition of *trust records*, paragraph (d)**
- 17 *substitute*  
18 (d) deposit records;
- 19 **99 New section 210 (4)**
- 20 *insert*  
21 (4) A reference in this part to a power given to a law practice or an  
22 associate of the practice to deal with money for or on behalf of  
23 someone else is a reference to a power given to the practice or  
24 associate that is exercisable by—

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

10 **100 Money involved in financial services or investments**  
11 **Section 212 (3) (a)**

12 *omit*  
13 or property

14 **101 When money is received by law practice**  
15 **Section 216 (1) (b), (c) and (d)**

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



1 **102 Keeping of general trust account**  
2 **Section 221 (3)**

3 *substitute*

4 (3) Subsection (1) does not apply to a law practice in relation to any  
5 period during which the practice receives only either or both of the  
6 following:

7 (a) controlled money;

8 (b) transit money received in a form other than cash.

9 **103 Certain trust money to be deposited in general trust**  
10 **account**  
11 **Section 222 (2) (d)**

12 *substitute*

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

16 **104 Section 222 (5)**

17 *omit*

18 **105 New section 222 (8A)**

19 *insert*

20 (8A) This section is subject to section 226A (Trust money received in  
21 form of cash).

1 **106 New section 223A**

2 *insert*

3 **223A Way of withdrawing trust money from general trust**  
4 **account**

5 (1) A law practice must not withdraw trust money from a general trust  
6 account otherwise than by cheque or electronic funds transfer.

7 (2) Without limiting subsection (1), the following are prohibited:

8 (a) cash withdrawals;

9 (b) ATM withdrawals or transfers;

10 (c) telephone banking withdrawals or transfers.

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

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

16 Maximum penalty: 50 penalty units.

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

20 Maximum penalty: 50 penalty units.

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

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

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

---

**107 New section 224A**

*insert*

**224A Way of withdrawing controlled money from controlled money account**

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subsection (1), the following are prohibited:
- (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.
- (3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.
- Maximum penalty: 50 penalty units.
- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

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

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

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

5           **108           Transit money**  
6           **New section 225 (6)**

7           *insert*

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

10          **109           Trust money subject to specific powers**  
11          **Section 226 (1)**

12          *substitute*

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

17          **110           Section 226 (2)**

18          *omit*

19          required by regulation

20          *substitute*

21          prescribed by regulation

22          **111           New section 226 (6)**

23          *insert*

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

---

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

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

1           (7) 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), (4) or (5), the practitioner or practice commits an  
4           offence.

5           Maximum penalty: 50 penalty units

6           (8) If a law practice that is a law firm, or a multidisciplinary  
7           partnership, contravenes subsection (1), (4) or (5) each principal of  
8           the 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          (9) An offence against subsection (7) or (8) is a strict liability offence.

14          (10) In this section:

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

18               **general trust money** means trust money other than—

19               (a) controlled money; and

20               (b) transit money; and

21               (c) money that is the subject of a power.

---

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

4 *omit*  
5 practitioner  
6 *substitute*  
7 practice

8 **114 Section 229 (1) (b)**

9 *omit*  
10 the procedure prescribed by regulation  
11 *substitute*  
12 any relevant provision of this Act

13 **115 Section 229 (1), new note**

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

16 **116 Section 229 (2)**

17 *omit*  
18 review  
19 *substitute*  
20 assessment

1 **117** **Costs of investigation**  
2 **Section 239 (2), (3) and (4)**

3 *substitute*

4 (2) However, the licensing body may decide that all or part of the costs  
5 of carrying out the investigation is payable to the licensing body,  
6 and decide the amount payable, if—

7 (a) an investigator states in his or her report that there is evidence  
8 that a breach of this Act has been committed or that a default  
9 (within the meaning of part 3.4 (Fidelity cover)) has happened  
10 in relation to the law practice whose affairs are under  
11 investigation; and

12 (b) the licensing body is satisfied that the breach or default is  
13 intentional or of a substantial nature.

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

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

18 **118** **Sections 241 and 242**

19 *substitute*

20 **241** **Trust records to be externally examined**

21 (1) A law practice must at least once in each financial year have its trust  
22 records externally examined by an external examiner appointed as  
23 required by regulation.

24 (2) The licensing body may appoint an external examiner to examine a  
25 law practice's trust records if the licensing body is not satisfied—

26 (a) that the practice has had its trust records externally examined  
27 under subsection (1); or



- 1 (b) that an external examination of the practice's trust records has  
2 been carried out as required by regulation.
- 3 (3) This section has effect subject to any exemption under a regulation  
4 from the requirement to have trust records examined under this  
5 section.
- 6 (4) 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), the practitioner or practice commits an offence.
- 9 Maximum penalty: 50 penalty units
- 10 (5) If a law practice that is a law firm, or a multidisciplinary  
11 partnership, contravenes subsection (1), each principal of the  
12 practice commits an offence
- 13 Maximum penalty: 50 penalty units.
- 14 *Note* For this part, a reference to a *law practice* includes the principals of the  
15 law practice (see s 218 (Liability of principals of law practices under  
16 pt 3.1)).
- 17 (6) An offence against subsection (4) or (5) is a strict liability offence.

18 **119 Reports, records and information by ADIs**  
19 **Section 252 (6)**

20 *after*  
21 *any*  
22 *insert*  
23 *legislation or*

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

3 *substitute*

4 **253 Statutory deposits**

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

18 **121 Application of pt 3.1 to incorporated legal practices and**  
19 **multidisciplinary partnerships**  
20 **New section 255 (1A)**

21 *before subsection (1), insert*

- 22 (1A) The obligations imposed on law practices by this part, and any other  
23 provisions of this Act relating to trust money and trust accounts,  
24 apply to an incorporated legal practice or multi-disciplinary  
25 partnership only in relation to legal services provided by the practice  
26 or partnership.

---

1 **122 Section 255 (2)**

2 *omit*

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

5 *omit*

6 The legal profession rules

7 *substitute*

8 A regulation

9 **124 Section 260**

10 *substitute*

11 **260 Regulations and legal profession rules—pt 3.1**

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

14 (a) the establishment, keeping and closure of general trust  
15 accounts and controlled money accounting; and

16 (b) the way of receiving, depositing, withdrawing, making records  
17 about and otherwise dealing with an accounting for trust  
18 money; and

19 (c) without limiting paragraph (a) or (b)—

20 (i) the keeping and reconciliation of trust records; and

21 (ii) the establishment and keeping of trust ledger accounts;  
22 and

23 (iii) the establishment and keeping of records about controlled  
24 money and transit money; and

25 (iv) the establishment and keeping of registers of powers and  
26 estates where trust money is involved; and

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

19 **125 Part 3.2 heading**

20 *substitute*

21 **Part 3.2 Costs disclosure and**  
22 **assessment**

23 **126 Definitions—pt 3.2**  
24 **Section 261, definition of *client***

25 *omit*

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**127 Section 261, definition of costs review**

*substitute*

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

**128 Section 261, definition of itemised bill**

*omit*

reviewed

*substitute*

assessed

**129 Section 261, new definition of public authority**

*insert*

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

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

*insert*

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

**third party payer**—see section 261A.

1 **131 Section 261, definition of *uplift fee***

2 *substitute*

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

6 **132 New section 261A**

7 *insert*

8 **261A Terms relating to third party payers**

9 (1) In this part:

10 (a) a person is a *third party payer*, in relation to a client of a law  
11 practice if the person—

12 (i) is not the client; and

13 (ii) either—

14 (A) is under a legal obligation to pay all or any part of  
15 the legal costs for legal services provided to the  
16 client; or

17 (B) being under that obligation, has paid all or a part of  
18 the legal costs; and

19 (b) a third party payer is an *associated third party payer* if the  
20 legal obligation mentioned in paragraph (a) is owed to the law  
21 practice, whether or not it is also owed to the client of someone  
22 else; and

23 (c) a third party payer is a *non-associated third party payer* if the  
24 legal obligation mentioned in paragraph (a) is owed to the  
25 client or someone else but not to the law practice.

26 (2) The legal obligation mentioned in subsection (1) can arise by or  
27 under contract or legislation.

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

4 **133 Purpose—pt 3.2**  
5 **Section 262 (d)**

- 6 *omit*  
7 review  
8 *substitute*  
9 assessment

10 **134 Pt 3.2 also applies by agreement or at client's election**  
11 **Section 264 (1) (c) (i)**

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

16 **135 Section 264 (2) (a)**

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

21 **136 New section 264 (2A)**

- 22 *insert*  
23 (2A) An offer mentioned in subsection (2) (a) must clearly state—  
24 (a) that it is an offer to enter into an agreement that this part is to  
25 apply to the matter; and

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

3 **137 Displacement of pt 3.2**  
4 **Section 265 (2) (b) (i)**

5 *substitute*

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

10 **138 Section 266**

11 *substitute*

12 **266 How and where does a client first instruct a law practice?**

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

18 **139 What happens when different laws apply to a matter?**  
19 **Section 268 (4) and (5)**

20 *substitute*

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



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

15 **140 Disclosure of costs to client**  
16 **Section 269 (1) (b) (iii)**

17 *substitute*

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

20 **141 New section 269 (1) (ba)**

21 *insert*

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

1 **142 Section 269 (1) (e)**

2 *substitute*

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

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

8 **143 Section 269 (1) (i) (i)**

9 *substitute*

10 (i) costs assessment under division 3.2.7;

11 **144 Section 269 (1) (l) (i)**

12 *substitute*

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

17 **145 Section 269 (1) (l), note**

18 *omit*

19 sign

20 *substitute*

21 enter into

---

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

*insert*

(1A) For subsection (1) (e), a *benchmark rate of interest* is a rate of interest for the time being equal to or worked out by reference to a rate of interest that is specified or determined by an ADI or another entity and that is publicly available.

(1B) A regulation may make provision in relation to the use of benchmark rates of interest, and in particular in relation to permitting, regulating or preventing the use of particular benchmark rates.

**147 New section 269 (3) and (4)**

*insert*

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

(4) In this section:

*threshold amount*—see section 292 (10).

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

*omit*

on behalf of the client

*substitute*

on behalf of a client

1 **149 Section 271 heading**

2 *substitute*

3 **271 How and when must disclosure be made to a client?**

4 **150 Section 271 (2) and (3)**

5 *substitute*

6 (2) Disclosure under section 270 (1) (Disclosure if another law practice  
7 is to be retained) must be made in writing before, or as soon as  
8 practicable after, the other law practice is retained.

9 (3) Disclosure made to a person before the law practice is retained in a  
10 matter is taken to be disclosure to the person as a client for  
11 section 269 and section 270.

12 **151 Exceptions to requirement for disclosure**  
13 **Section 272 (1) (a)**

14 *after*

15 \$1 500

16 *insert*

17 (exclusive of GST)

18 **152 Section 272 (1) (c) (ii)**

19 *substitute*

20 (ii) a public company, a subsidiary of a public company, a  
21 large proprietary company, a foreign company, a  
22 subsidiary of a foreign company or a registered  
23 Australian body (each within the meaning of the  
24 Corporations Act); or

---

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

*substitute*

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

**154 Section 272 (2)**

*after*

\$1 500

*insert*

(exclusive of GST)

1 **155 Section 274**

2 *substitute*

3 **274 Additional disclosure—uplift fees**

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

13 **156 Form of disclosure**  
14 **Section 275 (1)**

15 *after*

16 disclosures

17 *insert*

18 to a client

---

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

*substitute*

**277 Effect of failure to disclose**

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

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

- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this division to be disclosed may not bring a proceeding against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under division 3.2.7.

- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client or associated third party payer may also apply under section 288 (Setting aside costs agreements) for the costs agreement to be set aside.

- (3A) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed, the amount of the costs may, on an assessment of the relevant legal costs, be reduced by an amount considered by the Supreme Court to be proportionate to the seriousness of the failure to disclose.

- 1 (3B) If a law practice retains another law practice on behalf of a client  
2 and the first law practice fails to disclose something to the client  
3 only because the retained law practice failed to disclose relevant  
4 information to the first law practice as required by section 270 (2)  
5 (Disclosure if another law practice is to be retained), subsections (1)  
6 to (3A)—
- 7 (a) do not apply to the legal costs owing to the first law practice on  
8 account of legal services provided by it, to the extent that the  
9 non-disclosure by the first law practice was caused by the  
10 failure of the retained law practice to disclose the relevant  
11 information; and
- 12 (b) do apply to the legal costs owing to the retained law practice;
- 13 (3C) In a matter involving both a client and an associated third party  
14 payer, if disclosure has been made to 1 of them but not the other—
- 15 (a) subsection (1) does not affect the liability of the person to  
16 whom disclosure was made to pay the legal costs; and
- 17 (b) subsection (2) does not prevent proceedings being maintained  
18 against the person to whom the disclosure was made for the  
19 recovery of the legal costs.

20 **158 Progress reports**  
21 **Section 278 (4), new note**

22 *insert*

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



1 **159 On what basis are legal costs recoverable?**  
 2 **Section 279, note**

3 *omit*

4 review

5 *substitute*

6 assessment

7 **160 Section 281 (1), new example**

8 *insert*

9 **Example**

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

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 **161 Section 281 (4) (b)**

18 *substitute*

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

22 **162 New section 281 (5)**

23 *insert*

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

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

1 **163 New section 281A**

2 *in division 3.2.4, insert*

3 **281A Disclosure to associated third party payers**

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

25 **164 Making costs agreements**  
26 **New section 282 (1) (d)**

27 *insert*

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

---

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

*substitute*

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

**166 Section 282 (5)**

*substitute*

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

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

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

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

*substitute*

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

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

10 **168 Conditional costs agreements involving uplift fees**  
11 **Section 284 (1) to (4)**

12 *substitute*

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

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

3 **169 Contingency fees prohibited**  
4 **Section 285 (1)**

5 *substitute*

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

11 **170 Effect of costs agreement**  
12 **Section 286 (1)**

13 *omit*

14 review

15 *substitute*

16 assessment

17 **171 Section 286 (2)**

18 *substitute*

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

21 **172 Certain costs agreements void**  
22 **Section 287 (2)**

23 *omit*

24 review

25 *substitute*

26 assessment

1 **173 Section 288**

2 *substitute*

3 **288 Setting aside costs agreements or provisions of costs**  
4 **agreements**

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

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

- 13 (2) The Supreme Court may set aside—

14 (a) a provision only of a costs agreement even though the client  
15 has applied for the whole agreement to be set aside; or

16 (b) the whole of a costs agreement even though the client has  
17 applied only to have a provision of the agreement set aside.

- 18 (3) In deciding whether or not a costs agreement is fair or reasonable,  
19 the Supreme Court may have regard to any or all of the following  
20 matters:

21 (a) whether the client was induced to enter into the agreement by  
22 the fraud or misrepresentation of the law practice or of any  
23 representative of the practice;

24 (b) whether any Australian legal practitioner or  
25 Australian-registered foreign lawyer acting on behalf of the  
26 law practice has been found guilty of unsatisfactory  
27 professional conduct or professional misconduct in relation to  
28 the provision of legal services to which the agreement relates;

29 (c) whether the law practice failed to make any of the disclosures  
30 required under division 3.2.3 (Costs disclosure);

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

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



1 (j) any other relevant matter.

2 **Example—par (j)**

3 a scale of costs

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

7 (9) The Supreme Court may decide whether or not a costs agreement  
8 exists.

9 (10) The Supreme Court may order the payment of the costs of and  
10 incidental to a hearing under this section.

11 (11) In this section:

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

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

16 **174 Bills**  
17 **New section 290 (6A)**

18 *insert*

19 (6A) Despite anything in subsections (2) to (6), a bill may be given to a  
20 client electronically if the client asks for the bill to be given  
21 electronically.

22 **175 Notification of client's rights**  
23 **Section 291**

24 *omit*

25 A bill

26 *substitute*

27 (1) A bill

1 **176 Section 291 (a) (i)**

2 *substitute*

- 3 (i) costs assessment under division 3.2.7;

4 **177 New section 291 (2) and (3)**

5 *insert*

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

11 **178 Section 292**

12 *substitute*

13 **292 Request for itemised bill**

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

- 1 (6) A law practice must not start any proceeding to recover legal costs  
2 from a person who has been given a lump sum bill until at least  
3 90 days after the day the person is given the bill.
- 4 (7) However, if the person asks for an itemised bill under this section,  
5 the law practice must not start any proceeding to recover the legal  
6 costs from the person until at least 30 days after the day the person  
7 is given an itemised bill.
- 8 (8) A law practice is not entitled to charge a person for the preparation  
9 of an itemised bill under this section.
- 10 (9) Section 290 (2) and (5) apply to the giving of an itemised bill under  
11 this section.
- 12 (10) In this section:
- 13 *threshold amount* means—
- 14 (a) \$1 500 (excluding disbursements); or
- 15 (b) if a higher amount is prescribed by regulation—the higher  
16 amount.

17 **179 Interim bills**  
18 **Section 293 (2)**

- 19 *omit*
- 20 reviewed
- 21 *substitute*
- 22 assessed

1 **180 Division 3.2.7 heading**

2 *substitute*

3 **Division 3.2.7 Costs assessment**

4 **181 Section 294**

5 *substitute*

6 **294 Definition—div 3.2.7**

7 In this division:

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

10 **294A Application by client or third party payer for costs**  
11 **assessment**

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

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

- 1 (c) the client or the associated third party payer—
- 2 (i) if the other of them makes an application for assessment
- 3 under this section in relation to costs for which they are
- 4 both liable—may participate in the costs assessment
- 5 process; and
- 6 (ii) is taken to be a party to the assessment and is bound by
- 7 the assessment; and
- 8 (d) the law practice—
- 9 (i) if an application is made under this section by the
- 10 associated third party payer—must participate in the costs
- 11 assessment process in the same way as the practice must
- 12 participate in the process if an application is made under
- 13 this section by a client; and
- 14 (ii) is taken to be a party to the assessment and is bound by
- 15 the assessment.
- 16 (10) If there is a non-associated third party payer for a client of a law
- 17 practice—
- 18 (a) this section does not prevent—
- 19 (i) the client from applying for assessment under this section
- 20 in relation to costs for which the client is liable; and
- 21 (ii) the non-associated third party payer from applying for
- 22 assessment under this section in relation to costs for
- 23 which the non-associated third party is liable; and
- 24 (b) applications mentioned in paragraph (a) (i) and (ii) may be
- 25 made at the same time or at different times but must be dealt
- 26 with separately; and

- 1 (c) the client—
- 2 (i) if the non-associated third party payer makes an  
3 application under this section in relation to the legal costs  
4 for which the non-associated third party payer is liable—  
5 may participate in the costs assessment process; and
- 6 (ii) is taken to be a party to the assessment and is bound by  
7 the assessment; and
- 8 (d) the law practice—
- 9 (i) must participate in the costs assessment; and  
10 (ii) is taken to be a party to the assessment; and
- 11 (e) despite any provision of this division, the assessment of the  
12 costs payable by the non-associated third party payer does not  
13 affect the amount of legal costs payable by the client to the law  
14 practice.
- 15 (11) In this section:
- 16 *client* includes the following:
- 17 (a) an executor or administrator of a client;  
18 (b) a trustee of the estate of a client.
- 19 *third party payer* includes the following:
- 20 (a) an executor or administrator of a third party payer;  
21 (b) a trustee of the estate of a third party payer.

22 **182 Section 295 heading**

23 *substitute*

24 **295 Application for costs assessment by law practice**  
25 **retaining another law practice**

1 **183 Section 295 (1)**

2 *omit*

3 a review

4 *substitute*

5 an assessment

6 **184 Section 295 (2) and (3)**

7 *substitute*

8 (2) If any legal costs have been paid without a bill, the law practice may  
9 nevertheless apply for a costs assessment.

10 (3) An application for a costs assessment may be made even if the legal  
11 costs have been completely or partly paid.

12 (3A) An application under this section must be made not later than  
13 60 days after—

14 (a) the day the bill was given or the request for payment was  
15 made; or

16 (b) the day the costs were paid if neither a bill was given nor a  
17 request was made.

18 **185 Section 296**

19 *substitute*

20 **296 Application for costs assessment by law practice giving**  
21 **bill**

22 (1) A law practice that has given a bill in accordance with division 3.2.6  
23 (Billing) may apply to the Supreme Court for an assessment of all or  
24 any part of the legal costs to which the bill relates.

25 (2) If any legal costs have been paid without a bill, the law practice may  
26 nevertheless apply for a costs assessment.



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

11 **186 Sections 297, 298 and 299**

12 *omit*

13 review

14 *substitute*

15 assessment

16 **187 Section 300 heading**

17 *substitute*

18 **300 Criteria for costs assessment**

19 **188 Section 300 (1)**

20 *omit*

21 a review

22 *substitute*

23 an assessment

1 **189 Section 300 (1) (c)**

2 *substitute*

3 (c) the fairness and reasonableness of the amount of legal costs in  
4 relation to the work, except to the extent that section 300A  
5 (Assessment of costs by reference to costs agreement) or  
6 section 300B (Assessment of costs by reference to scale of  
7 costs etc) applies to any disputed costs; and

8 (d) if the costs agreement contained provision for an uplift fee  
9 under section 284 (Conditional costs agreements involving  
10 uplift fees), whether the uplift fee was justified in the  
11 circumstances.

12 **190 Section 300 (2) (b)**

13 *substitute*

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

16 **191 Section 300 (2) (d)**

17 *omit*

18 **192 New sections 300A, 300B and 300C**

19 *insert*

20 **300A Assessment of costs by reference to costs agreement**

21 (1) The Supreme Court must assess the amount of any disputed legal  
22 costs that are subject to a costs agreement by reference to the  
23 provisions of the costs agreement if—

24 (a) a relevant provision of the costs agreement specifies the  
25 amount, or a rate or other means of working out the amount, of  
26 the costs; and

- 1 (b) the agreement has not been set aside under section 288 (Setting  
2 aside costs agreements);  
3 unless the Supreme Court is satisfied—  
4 (c) that the agreement does not comply in a material respect with  
5 any applicable disclosure requirements of division 3.2.3 (Costs  
6 disclosure); or  
7 (d) that division 3.2.5 (Costs agreements) prevents the law practice  
8 concerned from recovering the amount of the costs; or  
9 (e) that the parties otherwise agree.  
10 (2) The Supreme Court is not required to initiate an examination of the  
11 matters mentioned in subsection (1) (c) and (d).

12 **300B Assessment of costs by reference to scale of costs etc**

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

16 **300C Recovery of assessed costs**

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

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

4 **193 Section 302**

5 *substitute*

6 **302 Costs of costs assessment**

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

19 **194 Referral for disciplinary action**  
20 **Section 303 (1) and (2)**

21 *omit*

22 review

23 *substitute*

24 assessment

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1	<b>195</b>	<b>Section 304 heading</b>
2		<i>substitute</i>
3	<b>304</b>	<b>Legal costs subject to consumer dispute not assessable</b>
4	<b>196</b>	<b>Section 304 (1)</b>
5		<i>omit</i>
6		review
7		<i>substitute</i>
8		assessment
9	<b>197</b>	<b>Section 304 (2)</b>
10		<i>omit</i>
11		cost review
12		<i>substitute</i>
13		costs assessment
14	<b>198</b>	<b>New section 304A</b>
15		<i>in division 3.2.7, insert</i>
16	<b>304A</b>	<b>Contracting out of div 3.2.7 by sophisticated clients</b>
17		A sophisticated client of a law practice, or an associated third party
18		payer who would be a sophisticated client if the third party payer
19		were a client of the law practice, may contract out of this division.
20	<b>199</b>	<b>Division 3.3.1 heading</b>
21		<i>omit</i>

1 **200 Professional indemnity insurance for insurable legal**  
2 **practitioners**  
3 **Section 311 (2) (b)**

4 *omit*

5 that premium

6 *insert*

7 the premium

8 **201 New section 312A**

9 *insert*

10 **312A Continuing indemnity insurance**

11 (1) An insurable legal practitioner who is issued with a practising  
12 certificate on the basis that the practitioner is, or will be, the holder  
13 of an approved indemnity insurance policy for the period of the  
14 practising certificate must—

15 (a) take all reasonable steps to ensure that the policy continues in  
16 force during the period; and

17 (b) if the policy stops being in force for part of the period, obtain a  
18 replacement policy for that part of the period.

19 (2) A failure of a legal practitioner to comply with subsection (1) can be  
20 unsatisfactory professional conduct or professional misconduct.

21 (3) The relevant council may suspend the legal practitioner's local  
22 practising certificate while the failure by the practitioner to comply  
23 with the requirement continues.

1 **202** **Definitions—pt 3.4**  
2 **Section 316, definition of *concerted interstate default***

3 *omit*

4 that arises from

5 *substitute*

6 arising from or constituted by

7 **203** **Section 316, definition of *default***

8 *substitute*

9 ***default***, in relation to a law practice, means—

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

18 **204** **Purpose—pt 3.4**  
19 **Section 318**

20 *after*

21 arising from

22 *insert*

23 or constituted by

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

3 *after*  
4 gives rise to  
5 *insert*  
6 or constitutes

7 **206** **Defaults to which pt 3.4 applies**  
8 **Section 328 (1)**

9 *after*  
10 arising from  
11 *insert*  
12 or constituted by

13 **207** **Section 328 (3)**

14 *after*  
15 giving rise to  
16 *insert*  
17 or constituting

18 **208** **Claims not affected by certain matters**  
19 **Section 335 (1)**

20 *omit*  
21 from which the default arose  
22 *substitute*  
23 giving rise to or constituting the default



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

3 *after*  
4 arising from  
5 *insert*  
6 or constituted by

7 **210 Claims by law practices or associates about notional**  
8 **defaults**  
9 **Section 351 (1)**

10 *after*  
11 arising from  
12 *insert*  
13 or constituted by

14 **211 Defaults involving interstate elements if committed by**  
15 **1 associate only**  
16 **Section 353 (1)**

17 *omit*  
18 that arises from  
19 *substitute*  
20 arising from or constituted by

21 **212 Section 367 heading**

22 *substitute*

23 **367 Application of pt 3.4 to sole practitioners whose**  
24 **practising certificates lapse**

1 **213 Section 367 (1)**

2 *substitute*

3 (1) This section applies if—

4 (a) an Australian lawyer is not an Australian legal practitioner  
5 because his or her Australian practising certificate has lapsed;  
6 and

7 (b) the lawyer was a sole practitioner immediately before the  
8 certificate lapsed.

9 (1A) However, this section does not apply if—

10 (a) the practising certificate has been suspended or cancelled under  
11 this Act 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 or renewed.

16 **214 New section 367 (3) (aa)**

17 *before paragraph (a), insert*

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

20 **215 Conduct capable of being unsatisfactory professional  
21 conduct or professional misconduct  
22 Section 389 (e)**

23 *substitute*

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

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

10 **216 Person to be told about complaint**  
11 **Section 397 (2)**

- 12 *omit*
- 13 not later than 14 days
- 14 *substitute*
- 15 as soon as practicable

16 **217 New section 397 (6)**

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

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

3 *omit*

4 each

5 *substitute*

6 any

7 **219 Section 409 heading**

8 *substitute*

9 **409 Referral of matters for costs assessment—complaint**  
10 **investigation**

11 **220 Section 409 (1)**

12 *omit*

13 review

14 *substitute*

15 an assessment

16 **221 Section 409 (2)**

17 *substitute*

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

---

1 **222 Section 409 (3)**

2 *omit*  
3 review of costs  
4 *substitute*  
5 a costs assessment

6 **223 Section 409 (3)**

7 *omit*  
8 a review  
9 *substitute*  
10 an assessment

11 **224 Section 409 (4)**

12 *omit*  
13 (Costs review) applies to the review of costs  
14 *substitute*  
15 (Costs assessment) applies to the costs assessment

16 **225 Council to give reasons to complainant and practitioner**  
17 **Section 415 (c)**

18 *omit*  
19 cost review  
20 *substitute*  
21 costs assessment

1 **226 New section 416 (2A)**

2 *insert*

3 (2A) An appeal under subsection (1) or (2) must be made not later than—

4 (a) 28 days after the day the relevant council gave the person  
5 making the appeal a statement of reasons under section 415; or

6 (b) any further time allowed by the disciplinary tribunal.

7 **227 Complainant and person complained about to be told**  
8 **about action taken**  
9 **Section 418 (2) (c)**

10 *omit*

11 cost review

12 *substitute*

13 costs assessment

14 **228 Section 418 (3)**

15 *substitute*

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

---

**229 New section 420A**

*insert*

**420A Decisions without hearing**

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

**230 New section 426A**

*insert*

**426A Restriction on publication of certain identifying material from proceedings**

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

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

6 (3) In this section:

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

10 *appeal period* means the period within which an appeal may be  
11 made.

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

15 **231 Decisions of disciplinary tribunal—unsatisfactory**  
16 **professional conduct or professional misconduct**  
17 **Section 430 (5) (b)**

18 *substitute*

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

22 **232 Section 430 (5) (d)**

23 *substitute*

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



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

4 **233 Compliance with decisions and orders of disciplinary**  
5 **tribunal**  
6 **Section 433 (3)**

7 *substitute*

- 8 (3) If the disciplinary tribunal makes an order recommending that the  
9 name of an Australian legal practitioner who is a local lawyer be  
10 removed from the local roll—

- 11 (a) a copy of the order may be filed in the Supreme Court; and  
12 (b) the Supreme Court may order the removal of the name from  
13 the roll.

14 **234 Definitions—pt 4.9**  
15 **Section 447, definition of disciplinary action,**  
16 **paragraph (b) (iii)**

17 *substitute*

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

20 **235 Register of disciplinary action**  
21 **Section 448 (3)**

22 *omit*

1 **236** **Disciplinary action taken because of infirmity, injury or**  
2 **illness**  
3 **Section 452 (2) (b)**

4 *substitute*

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

7 **237** **Sections 458 and 459**

8 *substitute*

9 **458** **Sharing of information with corresponding authorities**

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

13 (a) complaints and investigations under this chapter; and

14 (b) any action taken in relation to any complaints made or  
15 investigations conducted under this chapter, including  
16 decisions of the disciplinary tribunal under this chapter.

17 **459** **Cooperation with corresponding authorities**

18 (1) In dealing with a complaint or conducting an investigation, the  
19 councils may, separately or jointly, consult and cooperate with  
20 another entity (whether in or of Australia or another country) that  
21 has or may have relevant information or powers in relation to the  
22 person against whom the complaint was made or in relation to  
23 whom the investigation is conducted.

24 (2) For subsection (1), the councils and the other entity may exchange  
25 information about the complaint or investigation.

1 **238 Protection for things done in administration of ch 4**  
2 **Section 468 (2), definition of protected person,**  
3 **paragraphs (e), (f), (g) and (h)**

4 *substitute*

5 (e) the disciplinary tribunal, any member of the disciplinary  
6 tribunal, or anyone exercising the functions of registrar of the  
7 disciplinary tribunal; or

8 (f) a mediator to whom a matter is referred under this chapter; or

9 (g) any member of the staff of any entity mentioned in  
10 paragraph (a) to (e).

11 **239 Definitions—ch 5**  
12 **Section 473 (1), definition of regulated property**

13 *substitute*

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

15 (a) trust money or trust property received, receivable or held by  
16 the practice;

17 (b) interest, dividends or other income or anything else derived  
18 from or acquired with money or property mentioned in  
19 paragraph (a);

20 (c) documents or records of any description relating to anything  
21 mentioned in paragraph (a) or (b);

22 (d) any computer hardware or software, or other device, in the  
23 custody or control of the practice or an associate of the practice  
24 by which a record mentioned in paragraph (c) may be produced  
25 or reproduced in visible form.

1 **240 Purpose—ch 5**  
2 **Section 474 (1)**

3 *substitute*

4 (1) The purpose of this chapter is to ensure that an appropriate range of  
5 options is available for intervention in the business and professional  
6 affairs of law practices and Australian-registered foreign lawyers for  
7 the purpose of protecting the interests of—

8 (a) the general public; and

9 (b) clients; and

10 (c) lawyers, including the owners and employees of law practices,  
11 so far as their interests are not inconsistent with the interests of  
12 the general public and clients.

13 **241 Application of ch 5 to barristers**  
14 **Section 476 (1)**

15 *omit*

16 Supervisors

17 *substitute*

18 Supervisors of trust money

19 **242 Application of ch 5 to Australian-registered foreign**  
20 **lawyers**  
21 **Section 477**

22 *after*

23 foreign lawyers

24 *insert*

25 and former Australian-registered foreign lawyers

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

3 *omit*

4 clients, owners and employees of the practice

5 *substitute*

6 clients of the practice

7 **244 Section 480 (2) (b)**

8 *substitute*

9 (b) to appoint a manager for the law practice, if the relevant  
10 council is of the opinion—

11 (i) that external intervention is required because of issues  
12 relating to the practice's trust records; or

13 (ii) that the appointment is necessary to protect the interests  
14 of clients in relation to trust money or trust property; or

15 (iii) that, for this to happen, there is a need for an independent  
16 person to be appointed to take over professional and  
17 operational responsibility for the practice; or

18 **245 Part 5.3 heading**

19 *substitute*

20 **Part 5.3 Supervisors of trust money**

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

3 *omit*  
4 for a law practice  
5 *substitute*  
6 of a law practice

7 **247 Section 481 (2)**

8 *after*  
9 supervisor  
10 *insert*  
11 of trust money

12 **248 Section 481 (3) (a)**

13 *substitute*  
14 (a) an Australian legal practitioner who holds an unrestricted  
15 practising certificate; or

16 **249 Section 481 (5) (b)**

17 *after*  
18 a supervisor  
19 *insert*  
20 of trust money

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

3 *after*  
4 a supervisor  
5 *insert*  
6 of trust money

7 **251 Effect of service of notice of appointment of supervisor**  
8 **Section 483 (1)**

9 *omit*  
10 a supervisor for a law practice  
11 *substitute*  
12 a supervisor of trust money of a law practice

13 **252 Section 483 (1) (a), (b) and (c)**

14 *after*  
15 by the supervisor  
16 *insert*  
17 or a nominee of the supervisor

18 **253 Section 483 (2) (a)**

19 *omit*  
20 a supervisor for a law practice  
21 *substitute*  
22 a supervisor of trust money of a law practice

1 **254 Section 483 (3)**

2 *omit*  
3 the supervisor for the law practice  
4 *substitute*  
5 the supervisor of trust money of the law practice

6 **255 Section 483 (5)**

7 *omit*  
8 The supervisor for a law practice  
9 *substitute*  
10 The supervisor of trust money of a law practice

11 **256 Section 484 heading**

12 *substitute*

13 **484 Role of supervisor of trust money**

14 **257 Section 484 (1) (a)**

15 *substitute*  
16 (a) to receive trust money entrusted to the practice; and

17 **258 Section 484 (2) (b)**

18 *substitute*  
19 (b) require the practice, an associate or former associate of the  
20 practice, or anyone else who has, or has had, control of  
21 documents relating to trust money received by the practice, to  
22 give the supervisor either or both of the following:  
23 (i) access to the files and documents the supervisor  
24 reasonably requires;



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

3 **259 Ending of supervisor's appointment**  
4 **Section 486 (1)**

5 *omit*

6 a supervisor for a law practice

7 *substitute*

8 a supervisor of trust money of a law practice

9 **260 New section 486 (1) (aa)**

10 *insert*

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

13 **261 Effect of service of notice of appointment of manager**  
14 **Section 489 (3) (a), (b) and (c)**

15 *substitute*

- 16 (a) the withdrawal or transfer is made by cheque or other  
17 instrument drawn on the account signed by—

18 (i) the manager; or

19 (ii) a receiver appointed for the practice; or

20 (iii) a nominee of the manager or receiver; or

- 21 (b) the withdrawal or transfer is made by means of electronic or  
22 internet banking facilities by—

23 (i) the manager; or

24 (ii) a receiver appointed for the practice; or

25 (iii) a nominee of the manager or receiver; or

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

7 **262 Section 489 (9)**

8 *after*  
9 the practice  
10 *insert*  
11 or another trust account nominated by the manager or receiver

12 **263 Role of manager**  
13 **Section 490 (2) (b)**

- 14 *substitute*  
15 (b) require the practice, an associate or former associate of the  
16 practice, or anyone else who has, or has had, control of client  
17 files and associated documents (including documents relating  
18 to trust money received by the practice), to give the manager  
19 either or both of the following:  
20 (i) access to the files and documents the manager reasonably  
21 requires;  
22 (ii) information relating to client matters the manager  
23 reasonably requires;

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

3 *insert*

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

6 **265 Appointment of receiver**  
7 **Section 494 (7) (a)**

8 *substitute*

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

11 **266 Notice of appointment of receiver**  
12 **New section 495 (2) (fa)**

13 *insert*

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

17 **267 Effect of service of notice of appointment of receiver**  
18 **Section 496 (3) (a), (b) and (c)**

19 *substitute*

20 (a) the withdrawal or transfer is made by cheque or other  
21 instrument drawn on the account signed by—

22 (i) the receiver; or

23 (ii) a manager appointed for the practice; or

24 (iii) a nominee of the receiver or manager; or

- 1 (b) the withdrawal or transfer is made by means of electronic or  
2 internet banking facilities by—  
3 (i) the receiver; or  
4 (ii) a manager appointed for the practice; or  
5 (iii) a nominee of the receiver or manager; or  
6 (c) the withdrawal or transfer is made in accordance with an  
7 authority to withdraw or transfer funds from the account signed  
8 by—  
9 (i) the receiver; or  
10 (ii) a manager appointed for the practice; or  
11 (iii) a nominee of the receiver or manager.

12 **268 Section 496 (9)**

13 *after*

14 the practice

15 *insert*

16 or another trust account nominated by the manager or receiver

17 **269 Role of receiver**  
18 **Section 497 (5) (b)**

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

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

---

**270 Section 497 (6), new note**

*insert*

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

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

*substitute*

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

**272 Section 502 (5) (c)**

*substitute*

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

**273 Section 502 (6)**

*omit*

**274 Section 502 (7), definition of relevant person**

*substitute*

***relevant person***, for a law practice, means—

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

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

4 **275 Lien for costs on regulated property**  
5 **Section 504 (1) (b)**

6 *substitute*

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

10 **276 Section 504 (2)**

11 *omit everything before paragraph (a), insert*

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

15 **277 Section 504 (3)**

16 *substitute*

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

22 **278 Ending of receiver's appointment**  
23 **Section 509 (1)**

24 *substitute*

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

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

5 **279 New section 509 (1A) to (1D)**

6 *insert*

- 7 (1A) The Supreme Court may, on application by the law society council  
8 or the receiver made at any time, determine that the appointment be  
9 terminated immediately or with effect from a stated date.
- 10 (1B) A receiver for a law practice must apply to the Supreme Court to  
11 end the appointment when the affairs of the practice have been  
12 wound up and ended, unless the term (if any) of the appointment has  
13 already ended.
- 14 (1C) On application under subsection (1B), the Supreme Court may make  
15 the order that it considers appropriate.
- 16 (1D) The appointment of a receiver is not stayed by the making of an  
17 application for ending the receiver's appointment, and the receiver  
18 may continue to exercise his or her functions as a receiver pending  
19 the Supreme Court's decision on the application, except to the  
20 extent (if any) that the Supreme Court otherwise directs.

21 **280 New section 515A**

22 *insert*

23 **515A Manager and receiver appointed for law practice**

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

1 **281 Section 516**

2 *substitute*

3 **516 ADI disclosure requirements**

4 (1) An ADI commits an offence if—

5 (a) an external intervener for a law practice produces to the ADI  
6 evidence of the appointment of the intervener in relation to the  
7 practice; and

8 (b) the external intervener requires the ADI to disclose to the  
9 external intervener whether the practice, or an associate of the  
10 practice, keeps or has kept an account with the ADI during the  
11 period stated by the intervener; and

12 (c) the ADI fails to comply with the requirement.

13 Maximum penalty: 50 penalty units.

14 (2) An ADI commits an offence if—

15 (a) an account is kept with the ADI by a law practice, or an  
16 associate of a law practice; and

17 (b) an external intervener for a law practice produces to the ADI  
18 evidence of the appointment of the intervener in relation to the  
19 practice; and

20 (c) the external intervener requires the ADI to give the intervener  
21 details of all accounts kept with the ADI by the law practice or  
22 the associate; and

23 (d) the ADI fails to comply with the requirement.

24 Maximum penalty: 50 penalty units.

25 (3) An ADI commits an offence if—

26 (a) an account is kept with the ADI by a law practice, or an  
27 associate of a law practice; and



- 1 (b) an external intervener for a law practice produces to the ADI  
2 evidence of the appointment of the intervener in relation to the  
3 practice; and
- 4 (c) the external intervener requires the ADI—
- 5 (i) to produce for inspection or copying by the intervener, or  
6 a nominee of the intervener, any records relating to the  
7 account or money deposited in the account; or
- 8 (ii) to give the intervener details of any transactions relating  
9 to the account or money; and
- 10 (d) the ADI fails to comply with the requirement.
- 11 Maximum penalty: 50 penalty units.
- 12 (4) If an external intervener for a law practice reasonably believes that  
13 trust money has, without the authorisation of the person who  
14 entrusted the trust money to the law practice, been deposited into the  
15 account of a third party who is not an associate of the practice, the  
16 ADI at which the account is kept must, if asked by the intervener,  
17 disclose to the intervener—
- 18 (a) whether a person stated by the intervener keeps or has kept an  
19 account with the ADI during the period stated by the  
20 intervener; and
- 21 (b) if so, details of the account.
- 22 (5) A request under this section may be general or limited to a particular  
23 kind of account.
- 24 (6) This section applies despite any territory law, law of the  
25 Commonwealth or duty of confidence to the contrary.
- 26 (7) An ADI or an officer or employee of an ADI is not liable for any  
27 loss or damage suffered by someone else because of the producing  
28 of records, or the giving of details, under subsection (3).

1 **282 New sections 519A and 519B**

2 *insert*

3 **519A Provisions relating to requirements under this part**

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

---

**519B Obstruction of external intervener**

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

Maximum penalty: 50 penalty units.

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

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

*substitute*

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

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

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

10 *substitute*

11 (2) For carrying out a complaint investigation in relation to an  
12 Australian lawyer, the investigator may, on production of evidence  
13 of the investigator's appointment and by written notice require an  
14 associate or former associate of a law practice of which the lawyer  
15 is or was an associate or anyone (including, for example, an ADI,  
16 auditor or liquidator but not including the lawyer) who has, or has  
17 had, control of documents relating to the affairs of the lawyer to  
18 give the investigator either or both of the following:

19 (a) access to the documents relating to the affairs of the lawyer the  
20 investigator reasonably requires;

21 (b) information relating to the affairs of the lawyer the investigator  
22 reasonably requires (verified by statutory declaration if stated  
23 in the requirement).

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

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1 **285 Provisions relating to requirements under pt 6.2**  
2 **Section 527 (2)**

3 *before*

4 legal practitioner

5 *insert*

6 Australian

7 **286 New section 555A**

8 *in part 6.5, insert*

9 **555A Obstruction of investigator**

10 (1) A person commits an offence if—

11 (a) the person obstructs, hinders, intimidates or resists an  
12 investigator in the exercise of his or her functions under this  
13 Act; and

14 (b) the person knows that the investigator is an investigator.

15 Maximum penalty: 50 penalty units.

16 (2) Strict liability applies to the circumstance that the investigator was  
17 exercising a function under this Act.

18 (3) This section does not apply if the person has a reasonable excuse.

19 **287 Purpose—pt 8.3**  
20 **Section 578**

21 *omit*

22 locally-registered foreign lawyers

23 *substitute*

24 Australian-registered foreign lawyers

1 **288** **Division 8.3.2 heading**

2 *substitute*

3 **Division 8.3.2** **Rules for Australian legal**  
4 **practitioners and**  
5 **Australian-registered foreign lawyers**

6 **289** **Subject matter of legal profession rules**  
7 **Section 582**

8 *omit*

9 locally-registered foreign lawyers

10 *substitute*

11 Australian-registered foreign lawyers

12 **290** **Rules for incorporated legal practices and**  
13 **multidisciplinary partnerships**  
14 **Section 584 (3) (a) and (b)**

15 *omit*

16 services,

17 *substitute*

18 services

19 **291** **Section 584 (3) (c)**

20 *substitute*

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

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**292 Section 584 (3) (d)**

*omit*

services,

*substitute*

services

**293 New section 587A**

*insert*

**587A Protection from liability**

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

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

*substitute*

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

1 **295 New section 589 (5A)**

2 *insert*

3 (5A) Proceedings for an offence under subsection (4) may only be  
4 brought within 6 months after discovery of the offence by the  
5 law practice.

6 **296 Section 589 (7), definition of disqualified person**

7 *omit*

8 **297 Section 589 (7), new definition of lay associate**

9 *insert*

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

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

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

17 **298 Minister may determine fees**  
18 **Section 601 (1)**

19 *omit*

20 in relation to the admissions board

21 *substitute*

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



- 1 **299** **Regulation-making power**  
2 **New section 602 (1A)**
- 3 *insert*
- 4 (1A) Without limiting subsection (1), a regulation may make provision  
5 about any matter in relation to which a legal profession rule has  
6 been made or may be made.
- 7 **300** **Continuing application of provisions of Legal**  
8 **Practitioners Act about costs**  
9 **Section 606 (2) (a)**
- 10 *omit*
- 11 review
- 12 *substitute*
- 13 assessment
- 14 **301** **Costs disclosure**  
15 **Section 607 (2) (a) and (3) (a)**
- 16 *omit*
- 17 review
- 18 *substitute*
- 19 assessment
- 20 **302** **Dictionary, new definition of *associated third party payer***
- 21 *insert*
- 22 *associated third party payer*, for part 3.2—see section 261A (Terms  
23 relating to third party payers).

1 **303 Dictionary, definition of *client***

2 *substitute*

3 *client*—

4 (a) for this Act generally—includes a person to whom or for  
5 whom legal services are provided; and

6 (b) for part 3.5 (Mortgage practices and managed investment  
7 schemes)—see section 369.

8 **304 Dictionary, definitions of *conditional costs agreement*  
9 and *costs agreement***

10 *omit*

11 review

12 *substitute*

13 assessment

14 **305 Dictionary, definition of *commercial legal presence***

15 *omit*

16 **306 Dictionary, definition of *costs review***

17 *substitute*

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

20 **307 Dictionary, definition of *disbursements***

21 *omit*

22 review

23 *substitute*

24 assessment

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**308 Dictionary, definition of *disqualified person***

*substitute*

***disqualified person*** means any of the following people:

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

1 **309 Dictionary, new definition of *government lawyer***

2 *insert*

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

5 (a) the Territory, a State, another Territory or the Commonwealth;  
6 or

7 (b) a government department (however described) of the Territory,  
8 a State, another Territory or the Commonwealth; or

9 (c) an entity prescribed by regulation as a government agency.

10 **310 Dictionary, definitions of *litigious matter* and *lump sum***  
11 ***bill***

12 *omit*

13 review

14 *substitute*

15 assessment

16 **311 Dictionary, new definition of *non-associated third party***  
17 ***payer***

18 *insert*

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

20 **312 Dictionary, definition of *scale of costs***

21 *omit*

22 review

23 *substitute*

24 assessment

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**313 Dictionary, new definition of *sophisticated client***

*insert*

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

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

*insert*

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

**315 Dictionary, new definition of *third party payer***

*insert*

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

**316 Dictionary, definition of *trust money***

*substitute*

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

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

1 **317 Dictionary, definition of *uplift fee***

2 *omit*

3 review

4 *substitute*

5 assessment

1 **Schedule 1**            **Consequential amendments**  
2 (see s 3)

3 **Part 1.1**                **Court Procedures Rules 2006**

4 **[1.1] Rule 6250 (3) (e)**

5            *omit*  
6            review  
7            *substitute*  
8            assessment

9 **Part 1.2**                **Legal Aid Act 1977**

10 **[1.2] Section 69 (b)**

11            *omit*  
12            review  
13            *substitute*  
14            assessment

15 **[1.3] Dictionary, definition of *practising certificate***

16            *substitute*  
17            ***practising certificate*** means an unrestricted practising certificate, a  
18            restricted practising certificate or a barrister practising certificate  
19            under the *Legal Profession Act 2006*.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2007.

**2 Notification**

Notified under the Legislation Act on 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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