

**2007**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**LEGAL PROFESSION AMENDMENT BILL 2007**

**EXPLANATORY STATEMENT**

Circulated with the authority of  
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## LEGAL PROFESSION AMENDMENT BILL 2007

### Overview of Bill

The Legal Profession Amendment Bill 2007 amends the *Legal Profession Act 2006* to implement in the Australian Capital Territory a range of amendments to the national model Legal Profession Bill, which were developed by the national legal profession model laws Joint Working Party.

The first national model bill was developed and refined in consultation with a wide range of stakeholders. Many of the amendments to the model respond to concerns raised by law societies, bar associations and the Law Council of Australia, about the protection given to clients, practitioners and other people who may be affected by the operation of the legislation (such as office holders and third party payers of legal costs). Costs disclosure and trust account provisions, in particular, underwent significant review in response to stakeholders' submissions.

The model provisions are of three types:

- Core Uniform (CU) – core provisions that are to be adopted in each State and Territory, using the same wording as far as practicable.
- Core Non Uniform (CNU) – core provisions that are to be adopted in each State and Territory, but the wording of the model provisions need not be adopted.
- Non Core (NC) – States and Territories can choose the extent to which they will adopt these provisions.

In July 2004, the Commonwealth, States and Territories agreed to implement all the CU and CNU provisions in their respective jurisdictions, the objective being to maximise uniformity of legislation. A further category of 'Core Uniform if Adopted' (CUA) – provisions that are not mandatory, but must be uniform if adopted – was implemented during the review of the model law.

Many of the provisions of this Bill, therefore, reflect CU, CUA and CNU amendments to the model law. The more significant amendments are in the following areas:

- a) extension of the prohibition on engaging in unqualified legal practice;
- b) extension of the class of Australian lawyers to whom practising certificates may be granted;
- c) refinement of the provisions relating to the registration and regulation of foreign lawyers;
- d) provision for disclosure of the rate of interest payable on unpaid legal costs;
- e) narrowing of the restriction on entering costs agreements providing for uplift fees;
- f) removal of the restriction on recovering certain costs when prohibited uplift fees are involved, so that the balance of costs can be recovered;
- g) expansion of the categories of clients who are exempted from initial costs disclosure, and from some other requirements relating to costs;

- h) provisions enabling a client who has received a lump sum bill of costs from a law practice to request the practice to provide an itemised bill;
- i) ensuring that provisions relating to trust money and trust accounts extend to foreign lawyers;
- j) provisions for the summary conclusion of the complaint procedure, in suitable cases, by the imposition of a condition on the practitioner's practising certificate;
- k) enabling complainants under the disciplinary provisions of the Act to apply for compensation for loss suffered by clients of the law practices involved;
- l) extension of the application of legal profession rules to interstate-registered foreign lawyers; and
- m) other amendments of a minor, consequential or ancillary nature.

There are also numerous amendments to the Act, addressing the needs and circumstances of the local legal profession and its clients, which did not arise from revision of the model law. Those amendments follow extensive consultation with the local legal profession. They relate to a number of areas of regulation of the profession, particularly to the establishment and functions of the disciplinary tribunal, the role of the Supreme Court in costs assessment and the manner in which statutory deposits are managed in the ACT. The more significant provisions include:

- a) provision for the Supreme Court to set aside a provision of a costs agreement, rather than the whole agreement, under section 288 of the Act;
- b) enabling a law practice to recover costs, after assessment, as a debt;
- c) amendments to provisions regarding the requirement to deposit trust money into a statutory account, and the use of that money;
- d) empowering the disciplinary tribunal to decide a complaint proceeding without conducting a hearing;
- e) restricting the publication of the name of a practitioner in disciplinary proceedings until the matter has been finally decided (including any appeal); and
- f) insertion of a general protection against civil liability ( in addition to more specific provisions throughout the Act), for people acting honestly and without recklessness in the exercise of a function under the Act.

#### *Human Rights Act 2004*

Section 28 of the *Human Rights Act 2004* provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

There are several new strict liability offences, none of which carry a penalty of higher than 50 penalty units, and all of which apply to law practices, practitioners or partners. The new strict liability offences are inserted by clauses 48 (new section 92A), 106 (new section 223A), 107 (new section 224A), 112 (new section 226A), 118 (section 241 and 242), 282 (new section 519A and 519B) and 286 (new section 555A).

Liability under the above new provisions attaches to principals of the law practice for any offences committed by the law practice. This raises the question of access to a fair trial under section 21(1) of the *Human Rights Act 2004*. Section 588 of the *Legal Profession Act 2006* (which remains unchanged by the Bill) states that a principal is not liable if the principal establishes that they had no knowledge of, or could not have influenced, the breach of the Act, or that they exercised due diligence in relation to the breach. The provisions recognise that principals of law practices are responsible for ensuring that the conduct of their associates and employees, as well as their own conduct, meets the standards set by this Act and legal profession rules. Principals retain the opportunity to demonstrate that a breach of the Act or rules was not within their control.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context in which, for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, when a defendant can reasonably be expected, because of his or her professional involvement, to be aware of the requirements of the law the mental, or fault, element can justifiably be excluded.

Professionals engaged in the practice of law can reasonably be expected to be aware of their duties and obligations. Unless some knowledge or intention ought be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

A number of entities have been added to the list of entities in relation to which costs disclosure is not required (liquidators, administrators, receivers, a partnership that comprises more than 20 members, or which is a large proprietary company, a proprietary company that is a joint venture where any shareholder of the company is a person to whom disclosure of costs is not required). This may raise questions in relation to equality before the law under section 8(3) of the *Human Rights Act 2004*. The provisions relating to sophisticated clients are included to reduce the administrative requirement to give those clients information that will already be familiar to them. Costs disclosure requirements are aimed at protecting clients from incurring an unexpected, sometimes significant costs liability.

The new section 420A relates to decisions of the disciplinary tribunal without hearing. This also engages the right to a fair trial under section 21(1) of the *Human Rights Act 2004*. Proceedings may only be determined without hearing if the parties give their consent. The new provision introduces an opportunity to deal with a complaint without undue procedure, if it is considered by the tribunal to be appropriate and the parties give their consent.

In relation to the new section 426A, which prohibits publication of the names of parties to disciplinary proceedings until the proceedings (including any appeal) have concluded, section 21 of the *Human Rights Act 2004* requires hearings to be public, although there is an exception for the purposes of protection of the private lives of the parties. Under the new provision, publication is allowed after a finding of guilt. The section seeks to protect the right to privacy and reputation contained in section 12 of the *Human Rights Act 2004*.

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## Clause Notes

**Clause 1 Name of Act** – states the title of the Act as the *Legal Profession Amendment Act 2007*.

**Clause 2 Commencement** – provides for the commencement for the Act. The Act commences on 1 October 2007.

**Clause 3 Legislation amended** – this Act amends the *Legal Profession Act 2006*.

**Clause 4 Terms relating to associates and principals of law practices – Section 9, definition of associate, paragraph (a)(v)** – the definition has been amended to include consultants as associates of a law practice.

**Clause 5 Section 9, definition of *associate*, paragraph (e)** – substitutes a new paragraph (e) in the definition of “associate” in section 9 of the Act. The reference to a “business” becomes a reference to a “multi-disciplinary partnership”.

**Clause 6 Local lawyer is officer of Supreme Court – New section 28(2)** – inserts a new subsection 28(2) into the Act, stating that a person ceases to be an officer of the Court if the person’s name is removed from the local roll of practitioners.

**Clause 7 Suitability to hold practising certificate – Section 36(2)(e)(ii)** – the words “of this Act, or” have been removed, as they are unnecessary.

**Clause 8 Section 36(4)(b)** – corrects a grammatical error. The paragraph now begins with the words “decided by”, to follow “If a matter was –”.

**Clause 9 Sections 38 and 39** – substitutes new sections 38 and 39 into the Act.

The existing paragraphs 38(1)(c) and (2)(c) have been deleted, as those requirements are accounted for elsewhere in the Act. Section 38 now deals specifically with government lawyers and in-house lawyers. A new subsection 38(3) requires a person to comply with conditions imposed under subsection (2), while subsection (4) states that a failure to comply may be unsatisfactory professional conduct or professional misconduct.

Section 39 has been deleted. A new section 312A is inserted into Part 3.3 (Professional Indemnity Insurance), dealing with the continuing obligation upon an insurable legal practitioner to have professional indemnity insurance (see clause 201, below).

**Clause 10 Application for grant or renewal of local practising certificate – Section 41(2)(a)** – substitutes a new paragraph 41(2)(a) into the Act. A lawyer, who is not an Australian legal practitioner and applies for the grant or renewal of a local practising certificate, is eligible to apply for the certificate if the lawyer reasonably expects to be engaged in legal practice solely or principally in the ACT, or if that cannot reasonably be established, the lawyer’s place of residence is the ACT or the person does not reside in Australia. The provision is intended to ensure that Australian lawyers hold practising certificates in the jurisdiction in which they mainly practise or reside.

**Clause 11 Section 41(2)(b)(i) and (iii)** – the word “solely” is inserted before “principally” in paragraphs 41(2)(b)(i) and (iii).

**Clause 12 Section 41(2)(iv)** – is omitted, as it is unnecessary (see the new paragraph 41(2)(a)(ii) inserted by clause 10).

**Clause 13 Section 41(2)(b)(v)** – makes a grammatical change. The expression “is in the ACT” becomes “is the ACT”.

**Clause 14 Section 41(3)** – the word “solely” is inserted before “principally”.

**Clause 15 Section 41(6), (7) and (8)** – subsections 41(6) and (7) are amended to make it clear that the obligation to apply for a local practising certificate in the ACT applies only to a practitioner who reasonably expects to engage in practice solely or principally in the ACT in the next financial year. The existing provision imposes the obligation upon a practitioner who expects to practise in the ACT in any capacity in the next financial year.

A new subsection 41(8) states that the exemption in subsection (7), in relation to temporary practice arrangements, ceases to operate at the end of the period (if any) prescribed by regulation.

A new subsection 41(9) ensures that the requirements of this section do not prevent an Australian lawyer, who expects to engage in practice principally in a foreign country in the next financial year, from applying for a local practising certificate if the lawyer otherwise meets the requirements of section 41.

A new subsection 41(10) provides that a regulation may in relation to certain prescribed Australian legal practitioners – see subsection 41(2)(c) – limit the kind of certificate for which the practitioner may apply, or provide that a council has a discretion as to whether or not to grant or renew a local practising certificate to the prescribed practitioner.

**Clause 16 Grant or renewal of unrestricted or restricted practising certificate – Section 44(6), note** – notes 1 and 2 are substituted for the deleted note, in light of the amendments to provisions for professional indemnity insurance.

**Clause 17 Grant or renewal of barrister practising certificate – Section 45(6), note** – notes 1 and 2 are substituted for the deleted note, in light of the amendments to provisions for professional indemnity insurance.

**Clause 18 Conditions imposed on local practising certificate by licensing body or relevant council – Section 47(8)(a)(ii)** – the words “particular legal education or training” are substituted for “an academic or training course”.

**Clause 19 Section 47(10)** - the words “particular legal education or training” are substituted for “an academic or training course”.

**Clause 20 Section 47(10)(a)** – amends the paragraph to focus on the council’s assessment of the capacity of the lawyer, rather than the reasonable expectation of a member of the public. Under the new provision, a condition relating to further education or training must not be imposed on a practising certificate unless the relevant council is satisfied that the requirement is reasonable, having regard to the nature or currency of the holder’s academic studies, training or experience, or the holder’s conduct.

**Clause 21 Compliance with conditions of local practising certificate – Section 53(2)** – the subsection is deleted as it is unnecessary. See sections 386, 387 and 389 of the Act.

**Clause 22 Amending, suspending or cancelling local practising certificate – Section 56(1)** – the expression “the show cause notice” has been deleted. The term “show cause event” continues to be defined in the Dictionary, but the relevant notice is described in full in subsection 56(1).

**Clause 23 Section 56(2)(a)** – the paragraph is amended to reflect the removal of the expression “show cause notice” from the Act.

**Clause 24 Section 56(2)(b) and (c)** – the paragraphs are amended to reflect the removal of the expression “show cause notice” from the Act.

**Clause 25 Section 56(2)(c)(ii)** – a new paragraph 56(2)(c)(iii) is inserted to enable the relevant council to take the less onerous action of amending a person’s practising certificate, if a notice under this section stated the proposed action was to cancel the certificate. This action is available only when representations are made and considered in accordance with section 56.

**Clause 26 New section 56(5)** – a definition of “amend” is inserted, so that it is clear that the section relates to the amendment of a practising certificate under section 47 of the Act, other than at the request of the holder.

**Clause 27 Other ways of amending or cancelling local practising certificate – Section 58(1) and (2)** – subsections 58(1) and (2) are replaced by new subsections (1), (2), (2A) and (2B). The material change to the section is that paragraph 58(1)(c) is removed, and it is now mandatory to cancel a practising certificate if the holder’s name has been removed from the local roll or if the holder ceases to be an Australian lawyer. Subsection (2B) replaces the deleted subsection (2), making it mandatory to amend or cancel a practising certificate by written notice to the holder.

**Clause 28 Relationship of div 2.4.6 with ch 4 – Section 59** – is amended to make it clear that nothing in this division prevents a complaint being made under chapter 4, by any person who may make a complaint, about a matter to which this division relates. The existing provision relates only to complaints made by the relevant council.

**Clause 29 Applicant for local practising certificate – show cause event – Section 60(3) and (4)** – replaces subsection 60(3) with a more clearly worded subsection (3), which has the same effect. Subsection (4) has been deleted, as it is not necessary. See sections 386, 387 and 389 of the Act.

**Clause 30 Relationship of div 2.4.7 with pt 4.4 and ch 6 – Section 67(3)** – is amended to make it clear that nothing in this division prevents a complaint being made under chapter 4, by any person who may make a complaint, about a matter to which this division relates. The existing provision relates only to complaints made by the relevant council.

**Clause 31 Professional indemnity insurance – interstate legal practitioners – Section 72(1)(b)(ii)** – amends paragraph 72(1)(b)(ii) to refer to professional indemnity insurance that is for the relevant amount including defence costs (subsection (4) now defines “defence costs”), unless the practitioner is a barrister. The existing provision, rather than including defence costs, included “any costs arising from claims arising under the insurance”.

**Clause 32 Section 72(3)(a) and (b)** – replaces the term “government employee” with “government lawyer”.



**Clause 33 Section 72(4), new definition of “defence costs”** – inserts a new definition of “defence costs”, which is now referred to in subsection 72(1)(b)(ii).

**Clause 34 Section 72(4) – definitions of *government agency* and *government employee*** – deletes the definitions, as they are not required for this section.

**Clause 35 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in the ACT – New section 75(2)** – inserts a new subsection 75(2), which states that the restriction on an interstate practitioner engaging in legal practice in the ACT does not apply if the practitioner is exempt from the requirement for supervision in the practitioner’s home jurisdiction, or applies only for any shorter period for which the restriction applies in the home jurisdiction.

**Clause 36 Protocols with regulatory authorities – Section 77(1)(a)** – corrects a grammatical error.

**Clause 37 Investigation of practising certificate applicants or holders etc – Section 78(1)** – subsection 78(1) is amended so that it no longer relates to the imposition of conditions on a practising certificate. The words “or impose conditions on a local practising certificate” are deleted.

**Clause 38 Government lawyers generally – Section 82(2)** - the term “government employee” is replaced by “government lawyer”.

**Clause 39 Section 82(5)** – the subsection is deleted, as the definitions of “jurisdiction”, “government agency” and “government lawyer” are not required in this section. The terms are defined elsewhere.

**Clause 40 Government lawyers of other jurisdictions – Section 83(1) and (2)** - the term “government employee” is replaced by “government lawyer”.

**Clause 41 Section 83(5), definitions of *government agency* and *government lawyer*** - deletes these definitions, as they are not required for this section.

**Clause 42 Official notice to other jurisdictions of removals from local roll – Section 88(1)** – the words “local lawyer’s” are replaced by “person’s”, to more accurately reflect the status of the person whose name is being removed from the roll.

**Clause 43 Section 88(3)** – the word “lawyer’s” is replaced by “person’s”, to more accurately reflect the status of the person whose name is being removed from the roll.

**Clause 44 Section 91 heading** – the heading is amended to reflect the fact that the section does not deal with notifying the registrar of removal of a person’s name from a foreign roll.

**Clause 45 Section 91(1)(b)** – the paragraph is amended so that it no longer requires a person to notify the registrar of removal of the person’s name from a foreign roll.

**Clause 46 Section 91(1)(c)** – is amended to reflect the amended heading for section 93. The term “s 91” is replaced by “div 2.5.3”.

**Clause 47 Section 91(2)(b)** – the paragraph is amended so that it no longer requires a person to notify the registrar or the relevant council of removal of the person’s name from a foreign roll.

**Clause 48 New section 92A** – inserts a new section 92A (Lawyer to give notice of foreign regulatory action) into the Act. Subsection 92A(1) provides that a local lawyer who is not a local legal practitioner commits an offence if foreign regulatory action, to remove the person’s name from a foreign roll for disciplinary reasons, has been taken in relation to the person and the person fails to notify the registrar in accordance with section 93(1) of the Act. The notice must be given not later than 7 days after the person receives notice of the regulatory action.

Subsection 92A(2) provides that a person who is a local legal practitioner commits an offence if foreign regulatory action has been taken in relation to the person and the person fails to notify the registrar or the relevant council in accordance with section 93(1) of the Act. The notice must be given not later than 7 days after the person receives notice of the regulatory action.

Strict liability applies to offences under this section.

Subsection 92A(5) defines “foreign regulatory action”.

**Clause 49 Section 93 heading** – amends the heading to the section to refer to division 2.5.3 of the Act, rather than section 91.

**Clause 50 Section 93(1)** – substitutes a new subsection 93(1), which sets out the requirements for notices given under sections 91 and 92.

**Clause 51 Peremptory removal of a local lawyer’s name from local roll following removal in another jurisdiction – Section 94(1)(b)** – deletes the reference to section 96 and substitutes a reference to section 97A, as a new section 97A now provides for orders for non-removal of a name, or for non-cancellation of a local practising certificate.

**Clause 52 Peremptory cancellation of local practising certificate following removal of name from interstate roll – Section 95(1(c))** - deletes the reference to section 96 and substitutes a reference to section 97A, as a new section 97A now provides for orders for non-removal of a name, or for non-cancellation of a local practising certificate.

**Clause 53 Sections 96 and 97** – deletes sections 96 and 97 and substitutes new sections 96, 97 and 97A.

Section 96 applies if the relevant council is satisfied that foreign regulatory action has been taken in relation to a local lawyer who is not a local legal practitioner, and no order under section 97A(1)(a) is in force. The council may notify the lawyer that it intends to apply to the Supreme Court for an order that the lawyer's name be removed from the local roll. The lawyer has an opportunity to satisfy the council that the lawyer's name should not be removed. Subsection 96(5) empowers the Supreme Court to order that the lawyer's name be removed from the roll.

Section 97 applies if the relevant council is satisfied that foreign regulatory action has been taken in relation to a local legal practitioner, and no order under section 97A(1)(a) is in force. The council may notify the lawyer that it intends to cancel the practitioner's practising certificate. The lawyer has an opportunity to satisfy the council that the certificate should not be cancelled. Subsection 97(4) empowers the relevant council to cancel the practitioner's certificate. The council must give the practitioner notice of the decision to cancel, and the practitioner may appeal to the Supreme Court against that decision.

Section 97A enables an Australian lawyer who reasonable expects that his or her name will be removed from an interstate roll, or that foreign regulatory action will be taken against them, to apply to the Supreme Court for an order under this section. If the Court is satisfied that the lawyer's name is likely to be removed from the interstate roll, and that the reason for that removal will not involve disciplinary action, the Court may order that the lawyer's name not be removed from the local roll under section 94 or 96, or that the lawyer's practising certificate not be cancelled under section 95. An order may be subject to conditions, and may be revoked. This section does not affect action being taken in relation to the lawyer under other provisions of the Act.

**Clause 54 Definitions – pt 2.6 – Section 99(2), definition of *disqualified person*** – the definition of “disqualified person” is deleted, as it is contained in the Dictionary.

**Clause 55 Incorporated legal practice must have legal practitioner director etc – Section 107(5)** - the subsection is deleted as it is unnecessary. See sections 386, 387 and 389 of the Act.

**Clause 56 Section 107(6)** – makes a grammatical change, as required by an amendment to the model law.

**Clause 57 Obligations of legal practitioner director relating to misconduct – incorporated legal practices – new section 108(1A)** – inserts a new subsection (1A) into section 108, as required by amendments to the model law. A legal practitioner director is not guilty of unsatisfactory professional conduct or profession misconduct under subsection 108(1), if the director took all reasonable steps to ensure that circumstances set out in paragraphs 108(1A) (a), (b) or (c).

**Clause 58 Advertising requirements – incorporated legal practices – Section 116(2)** – section 116 ensures that any restrictions that apply to advertising by Australian legal practitioners also apply to advertising by incorporated legal practices in relation to the provision of legal services. Subsection (2) is corrected to clarify the application to incorporated legal practices of limitations on restrictions.

**Clause 59 Section 118 heading** – the heading has been amended to reflect the broader terms of the amended model provision. See clauses 60 and 61.

**Clause 60 Section 118 (1) and (2)** – references to “receipts” are replaced by “receipts, revenue or other income”.

**Clause 61 Disqualified people – incorporated legal practices – Subsection 119(1)(c)** – “receipts of” is deleted and replaced by “receipts, revenue or other income arising from”.

**Clause 62 Audit of incorporated legal practices – Section 120(3)** – subsection 120(3) is amended to state that an appointment of an auditor may be made generally or in relation to a particular incorporated legal practice or audit.

**Clause 63 Section 146 heading** - the heading has been amended to reflect the broader terms of the section. See clauses 64 and 65.

**Clause 64 Section 146(1) and (2)** - references to “receipts” are replaced by “receipts, revenue or other income”.

**Clause 65 Disqualified people – multidisciplinary partnerships – Section 147(b)** - “receipts of” is deleted and replaced by “receipts, revenue or other income arising from”.

**Clause 66 Section 147, note** – the note to this section has been removed, as “disqualified person” is no longer defined in section 99.

**Clause 67 Definitions – pt 2.7 – Section 152, definition of *commercial legal presence*** – the definition is deleted, as the term “commercial legal presence” is no longer used in the Act.

**Clause 68 Requirement for registration to practise foreign law – Section 155(2)** – inserts a substituted subsection 155(2), to change the change the circumstances in which an overseas-registered foreign lawyer is not guilty of an offence under subsection (1). An overseas-registered foreign lawyer may practise foreign law in the ACT for one or more continuous periods that do not, in aggregate, exceed twelve months in any three year period, or if the lawyer is subject to any relevant restriction imposed under the *Migration Act 1958* (Cwth).

**Clause 69 Application of Australian professional ethical and practice standards to practise of foreign law – Section 159(1)** – makes a grammatical change to the subsection. The effect is that the relevant conduct need not actually be professional misconduct or unsatisfactory professional conduct. It is sufficient that the conduct is capable of so being.

**Clause 70 Advertising by Australian-registered foreign lawyers – Section 162(1)** – the words “on the practice of law” are replaced by “on legal practice engaged in”.

**Clause 71 Trust money and trust accounts – Australian-registered foreign lawyers – Section 164(1)** – the subsection is amended to refer to the application of the relevant provisions of part 3.1 of the Act to law practices, in addition to Australian legal practitioners.

**Clause 72 Section 164(2), new note** – inserts a new note. The expression “this Act” is defined in the Dictionary.

**Clause 73 Professional indemnity insurance – Australian-registered foreign lawyers – Section 165(3)(c)** – paragraph 165(3)(c) is replaced by a new provision requiring disclosure to each client of the level of indemnity cover when the insurance is less than the relevant amount including defence costs. Subsection 165(6) defines “relevant amount”.

**Clause 74 Section 165(5)** – subsection 165(5) is replaced by new subsections (5), (5A) and (5B). Subsection (5) requires that a disclosure statement must be in writing, and must be given before, or as soon as possible after, the foreign lawyer is retained in the particular matter.

Subsection 165(5A) states that a disclosure statement given to a person before the foreign lawyer is retained is taken to have been given to the person as a client for the purposes of this section.

Subsection 165(5B) requires a disclosure statement to be given in accordance with any regulation made for this section.

**Clause 75 Section 165(6), new definition of *defence costs*** - inserts a new definition of “defence costs” for this section.

**Clause 76 Approved form for grant or renewal application – foreign lawyers – Section 171(2)(a)** – substitutes a new paragraph 171(2)(a) to require disclosure of matters that may affect the licensing body’s consideration of an application for the grant or renewal of registration as a foreign lawyer.

**Clause 77 Requirements for applications for grant or renewal of registration – foreign lawyers – Section 172(2)(d)** – substitutes a new paragraph 172(2)(d), which states more clearly the requirement that an application must state the details of any conviction of an offence in Australia or a foreign country.

**Clause 78 Section 172(2)(f) and (g)** – substitutes new paragraphs 172(2)(f) and (g) to clarify the intent of the deleted paragraphs.

**Clause 79 Section 172(2)(i)** – substitutes a new paragraph 172(2)(i) to clarify the intent of the deleted provision. The application must state which of section 165(2), (3) or (4) the applicant proposes to rely on, and must be accompanied by supporting proof of the relevant matters.

**Clause 80 Section 172(3)(b)** – the words “practise law” are replaced by “engage in legal practice”, for consistency with the Act.

**Clause 81 Grant or renewal of registration as foreign lawyer – Section 173(1), note** – substitutes a new note that now correctly refers to section 193.

**Clause 82 Section 173(4)** – substitutes a new subsection 173(4) to require the licensing body to give the applicant an information notice if the licensing body refuses an application, or if it imposes a condition on registration and the applicant does not agree to the condition.

**Clause 83 Requirement to grant or renew registration a foreign lawyer if criteria satisfied – Section 174(1)(b), (c) and (d)** – substitutes new paragraphs (b), (c) and (d) to make their terminology consistent with the Act. The effect of the provisions is not substantially changed.

**Clause 84 Refusal to grant or renew registration as foreign lawyer – New section 175(2)(g)** – a new paragraph 175(2)(h) is inserted, stating that the licensing body may refuse to grant or renew registration as a foreign lawyer if the applicant’s foreign legal practice is in receivership (however described).

**Clause 85 Grounds for amending, suspending or cancelling registration of foreign lawyer – Section 177(1)(b) to (g)** – paragraphs 177(1)(b) to (g) are replaced by new paragraphs (b) to (g). Each of the following is now a ground for amending, suspending or cancelling a person’s registration as a foreign lawyer:

- (a) the registration was obtained because of incorrect or misleading information;
- (b) the person fails to comply with a requirement of this part of the Act;

- (c) the person fails to comply with a condition of registration;
- (d) the person becomes involved in disciplinary proceedings, in Australia or in a foreign country;
- (e) the person has been convicted of an offence;
- (f) the person's registration is cancelled because of disciplinary action in any place;
- (g) the person does not meet the requirements of section 165 (which relates to professional indemnity insurance).

**Clause 86 New section 177(2)** – inserts a new subsection 177(2), stating that subsection (1) does not limit the grounds on which conditions may be imposed under section 193 of this Act.

**Clause 87 Amending, suspending or cancelling registration of foreign lawyer – Section 178(1)** – the term “show cause notice” is deleted.

**Clause 88 Section 178(2)(a)** – the term “show cause notice” is replaced by “notice under subsection (1)”.

**Clause 89 Section 178(2)(b) and (c)** – the words “show cause” are deleted.

**Clause 90 Section 178(2)(c)(ii)** – paragraph 178(2)(c)(ii) is replaced by new paragraphs (ii) and (iii). Paragraph (ii) now states that registration may be suspended for a stated period. Paragraph (iii) states that the licensing body may amend the person's registration in a less onerous way, considered appropriate by the council because of representations.

**Clause 91 New section 178(5)** – inserts a new subsection 178(5), defining “amend” for this section.

**Clause 92 Relationship of div 2.7.6 with ch 4 – Section 181** – is amended to make it clear that nothing in this division prevents a complaint being made under chapter 4, by any person who may make a complaint, about a matter to which this division relates. The existing provision relates only to complaints made by the relevant council.

**Clause 93 Investigation of applicants and locally-registered foreign lawyers etc – Section 200(1)** – substitutes a new subsection 200(1). The amendment removes reference to the imposition of conditions on a person's registration.

**Clause 94 Appeals or reviews – section 207(3), except the note** – deletes subsection 207(3), as it is not considered appropriate to provide that parties to appeals or reviews should bear their own costs unless the Court otherwise orders.

**Clause 95 Definitions – pt 3.1 – Section 210(1), definition of *controlled money*** – the definition is amended to include circumstances in which a law practice already holds trust money and a written direction.

**Clause 96 Section 210(1), new definition of *deposit record*** – in this Act, “deposit record” includes a deposit slip or duplicate deposit slip.

**Clause 97 Section 210(2), definition of *controlled money account*** – corrects a grammatical error in the definition of “controlled money account”. The word “approved” is deleted, as it is included in “ADI”

**Clause 98 Section 210(2), definition of *trust records*, paragraph (d)** – the term “duplicate deposit slips” is replaced by “deposit records”, now defined as including deposit slips and duplicate deposit slips.

**Clause 99 New section 210(4)** – inserts a new subsection 210(4) into the Act. The power given to a law practice or an associate of the practice to deal with money on behalf of a person is exercisable by the practice alone, an associate of the practice alone (otherwise than in a private capacity), or the practice or an associate acting jointly or severally, or jointly and severally with one or more associates or the person (or the person’s nominee or nominees).

**Clause 100 Money involved in financial services or investments – Section 212(3)(a)** – the words “or property” are deleted from paragraph 212(3)(a).

**Clause 101 When money is received by law practice – Section 216(1)(b), (c) and (d)** – deletes paragraphs 216(1)(b), (c) and (d), and substitutes paragraphs (b) and (c). Paragraph (b) amends the deleted paragraph (b) by making it clear that the paragraph refers to an associate of the law practice. The deleted paragraphs (c) and (d) are replaced by a new paragraph (c), stating that a law practice also receives money when the practice, or an associate of the practice (not in a private capacity), is given power to deal with the money for or on behalf of someone else.

**Clause 102 Keeping of general trust account – Section 221(3)** – subsection 221(3) has been re-written to make its meaning clearer.

**Clause 103 Certain trust money to be deposited in general trust account – Section 222(2)(d)** – a new paragraph 222(2)(d) is substituted, providing that the requirement, for a law practice to deposit trust money as soon as practicable into a general trust account, does not apply if the money is the subject of a power given to the practice or an associate to deal with the money for or on behalf of someone else.

**Clause 104 Section 222(5)** – the subsection is deleted, in light of the insertion of a new subsection 222(8A).

**Clause 105 New section 222(8A)** – provides that this section is subject to a new section 226A (Trust money received in the form of cash).

**Clause 106 New section 223A** – inserts a new section 223A into the Act. A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer. Subsection 223A(2)



expressly prohibits cash withdrawals, ATM transactions and telephone banking transactions. A regulation may make further provision in relation to withdrawals or electronic funds transfer. Subsections (4) and (5) provide strict liability offences for breach of subsection (1), with a maximum penalty of 50 penalty units. Subsection (7) states that the new section has effect despite any direction given to the law practice.

**Clause 107 New section 224A** – inserts a new section 224A into the Act. A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer. Subsection 224A(2) expressly prohibits cash withdrawals, ATM transactions and telephone banking transactions. A regulation may make further provision in relation to withdrawals or electronic funds transfer. Subsections (4) and (5) provide strict liability offences for contravention of subsection (1), with a maximum penalty of 50 penalty units. Subsection (7) states that the new section has effect despite any direction given to the law practice.

**Clause 108 Transit money – new section 225(6)** – provides that this section is subject to a new section 226A (Trust money received in the form of cash).

**Clause 109 Trust money subject to specific powers – Section 226(1)** – substitutes a new subsection 226(1), to clarify the meaning of the provision. The requirement, that trust money is dealt with only in accordance with the power relating to the money, relates to trust money that is the subject of a power given to the law practice or an associate of the practice.

**Clause 110 Section 226(2)** – makes a technical correction.

**Clause 111 New section 226(6)** – provides that this section is subject to a new section 226A (Trust money received in the form of cash).

**Clause 112 New section 226A** – inserts a new section 226A, dealing with trust money received in the form of cash. Subsection (1) states that a law practice must deposit general trust money, received as cash, in a general trust account of the practice.

Under subsection 226A(2), if a practice has a written direction to deal with trust money, received as cash, otherwise than in accordance with subsection (1), the money must first be deposited in a general trust account and then as directed, to the extent that the direction is not inconsistent with subsection (2)(a).

Subsection 226A(3) requires controlled money to be deposited in a controlled money account in accordance with section 224.

Subsection 226A(4) requires a law practice to deposit transit money in a general trust account before dealing with it according to other instructions relating to the money.

Under subsection 226A(5), trust money in the form of cash, which is the subject of a power, must be deposited in a general trust account (or a controlled money account if the cash is controlled money) before the money is otherwise dealt with in accordance with the power.

Subsection 226A(7) states that this section has effect despite anything in a relevant direction, instruction or power.

Subsections 226A(6) and (7) provide strict liability offences for contravention of subsections (1), (4) or (5), with a maximum penalty of 50 penalty units.

**Clause 113 Dealing with trust money – legal costs and unclaimed money – Section 229(1)(a)** – makes a technical amendment.

**Clause 114 Section 229(1)(b)** – makes a technical amendment.

**Clause 115 Section 229(1), new note** – inserts a note after subsection 229(1), that “This Act” is defined in the Dictionary.

**Clause 116 Section 229(2)** – makes a technical amendment.

**Clause 117 Costs of investigation – Section 239(2), (3) and (4)** – deletes subsections 239(2), (3) and (4) and substitutes new subsections (2) and (3). In effect, subsection (4) is deleted entirely, so that the licensing body is no longer required to give a law practice an information notice before seeking to recover from that practice the costs of an investigation. The new subsections (2) and (3) have the same effect as deleted subsections (2) and (3).

**Clause 118 Sections 241 and 242** – replaces sections 241 and 242 with a new section 241. Subsection 91) requires a law practice to have its trust records examined by an external examiner at least once in each financial year.

Subsection 241(2) sets out the circumstances in which the licensing body may appoint an external examiner to examine a law practice’s trust records.

Subsection 241(3) provides that this section has effect subject to any exemption under a relevant regulation.

Subsections 241(4) and (5) provide strict liability offences for contravention of subsection (1).

**Clause 119 Reports, records and information by ADIs – Section 252(6)** – ensures that the provisions of this section, imposing reporting and information requirements on ADIs, and providing offences, apply despite any legislation to the contrary (in addition to any contrary duty of confidence).

**Clause 120 Statutory deposits – Section 253(1) and (2)** – substitutes new subsections 253(1) and (2). Subsection (1) now correctly provides for a law practice to pay amounts out of a general trust account into an ADI account

kept by the law society – a “statutory deposit account”. The subsection also now provides for a regulation to require the law society to pay interest on money in a statutory deposit account into another ADI account kept by the law society – a “statutory interest account”. Paragraph (2)(d) is amended to make it clear that a regulation may relate to the person entitled to interest on money in a statutory interest account.

**Clause 121 Application of pt 3.1 to incorporated legal practices and multidisciplinary partnerships – New section 255(1A)** – inserts, before subsection 255(1), a new subsection (1A), making it clear that obligations imposed on law practices by this part of the Act (and other provisions of the Act relating to trust money and trust accounts) apply to incorporated legal practices and multidisciplinary partnerships only in relation to legal services provided by the practice or partnership.

**Clause 122 Section 255(2)** – is deleted, in light of the insertion of new subsection 255(1A).

**Clause 123 Disclosure – money not received as trust money – Section 257(3)** – is amended to provide that a regulation, rather than the legal profession rules, may make provision in relation to the way notices under this section are given, and their content.

**Clause 124 Section 260** – substitutes a new section 260, which now relates to the making of legal profession rules in addition to regulations.

**Clause 125 Part 3.2 heading** – substitutes a new heading for the part, in light of the substitution of the term “assessment” for “review” throughout the Act.

**Clause 126 Definitions – pt 3.2 – Section 261, definition of *client*** – the definition is deleted, as the term is defined in the Dictionary.

**Clause 127 Section 261, definition of *costs review*** – now defines “costs assessment”.

**Clause 128 Section 261, definition of *itemised bill*** – deletes “reviewed” and substitutes “assessed”, reflecting the change in terminology throughout the Act.

**Clause 129 Section 261, new definition of *public authority*** – inserts a new definition of “public authority”.

**Clause 130 Section 261, new definitions of *sophisticated client* and *third party payer*** – inserts two new definitions of “sophisticated client” and “third party payer” (see new section 261A).

**Clause 131 Section 261, definition of *uplift fee*** – substitutes a new definition of “uplift fee”.

**Clause 132 New section 261A** – inserts a new section 261A, which describes the terms “third party payer”, “associated third party payer” and “non-associated third party payer”.

**Clause 133 Purpose – pt 3.2 – Section 262(d)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 134 Pt 3.2 also applies by agreement or at a client’s election – Section 264(1)(c)(i)** – substitutes a new paragraph 263(1)(c)(i) to provide for acceptance by a client, in writing or by other conduct, of an offer to enter into an agreement under paragraph 264(2)(a).

**Clause 135 Section 264(2)(a)** – substitutes a new paragraph 263(2)(a) to provide for acceptance by a client, in writing or by other conduct, of an offer to enter into an agreement that this part applies to a matter. The offer must comply with subsection 264(2A).

**Clause 136 New section 264(2A)** – inserts a new subsection 264(2A) sets out the requirements to be met by an offer referred to in subsection 264(2)(a).

**Clause 137 Displacement of pt 3.2 – Section 265(2)(b)(i)** – makes a technical amendment. Rather than signing an agreement, the client enters into an agreement.

**Clause 138 Section 266** – substitutes a new section 266, making it clear that the client first instructs a law practice when the practice first receives instructions, rather than when the client first provides them, and that the instructions may be received from or on behalf of the client.

**Clause 139 What happens when different laws apply to a matter? – Section 268(4) and (5)** – deletes subsections 268(4) and (5) and substitutes new subsections (4) to (7). New subsection (4) replaces references to costs “review” with costs “assessment” in the deleted subsection (4), and provides that an agreement may be entered into, rather than signed, by the client. A new subsection (5) states that an agreement need not be signed, but must be communicated by fax, email or other written form. A new subsection (6) provides that, if a corresponding law applied to a matter for a period and this part applies after that period, this part does not require disclosure of matters to the extent that they have already been disclosed under the corresponding law. Subsection (7) provides that this section has effect despite any other provisions of this part.

**Clause 140 Disclosure of costs to client – Section 269(1)(b)(iii)** – substitutes a new paragraph 269(1)(b)(iii). A law practice must disclose to a client the client’s right to request an itemised bill if the lump sum bill is more than the threshold amount. The displaced paragraph imposed a time limit of 30 days on the making of a request.

**Clause 141 New section 269(1)(ba)** – inserts a new paragraph 269(1)(ba), which stipulates that a law practice must disclose to a client that the client may not request an itemised bill if the bill is equal to, or less than, the threshold amount (defined in section 292).

**Clause 142 New section 269(1)(e)** – substitutes a new paragraph 269(1)(e), which allows the rate of interest referred to in a disclosure to be a specified rate or a benchmark rate.

**Clause 143 Section 269(1)(i)(i)** – substitutes a new paragraph 269(1)(i)(i), which refers to costs assessment rather than costs review.

**Clause 144 Section 269(1)(l)(i)** – substitutes a new paragraph 269(1)(l)(i). The new provision refers to accepting, under a corresponding law, an offer to enter into an agreement, rather than signing an agreement.

**Clause 145 Section 269(1)(l), note** – deletes “sign” and substitutes “enter into”.

**Clause 146 Section 269(1A) and (1B)** – inserts new subsections 269(1A) and (1B). Subsection (1A) describes “benchmark rate of interest”. Subsection (1B) states that a regulation may make provision in relation to use of benchmark rates of interest.

**Clause 147 New section 269(3) and (4)** – inserts new subsections 269(3) and (4). Subsection (3) permits the law society to approve (under section 587) a form for disclosure of matters set out in paragraphs 269(1)(b)(i) to (iii), (g), (i) (j) and (l). If it does so approve at the time other details are disclosed as required by this section, the practice is taken to have complied with this section in relation to those details disclosed. Subsection (4) provides a ‘signpost’ to the definition of “threshold amount” – see section 292(10).

**Clause 148 Disclosure if another law practice is to be retained – Section 270(1)** – makes a technical amendment. The first reference in this section to “the client” is changed to “a client”.

**Clause 149 Section 271 heading** – the substitutes heading expressly refers to disclosure to a client.

**Clause 150 Section 271(2) and (3)** – substitutes new subsections 271(2) and (3). The new subsection (2) relaxes the requirement for disclosure under subsection 270(1) (when the law practice intends to retain another law practice), allowing disclosure before, or as soon as practicable after, the other practice is retained. Subsection (3) provides that disclosure to a person before a law practice is retained is taken to be disclosure to the person as a client for sections 269 and 270.

**Clause 151 Exceptions to requirement for disclosure – Section 272(1)(a)** – inserts “(exclusive of GST)” after \$1 500.

**Clause 152 Section 272(1)(c)(ii)** – substitutes a new paragraph 272(1)(c)(ii), which adds a reference to a “large proprietary company”.

**Clause 153 Section 272(1)(c)(iv)** – substitutes new paragraphs 272(1)(c)(iv) to (viii) for the existing paragraph (iv). This amendment significantly expands the range of clients who are a “sophisticated client” (see section 261). The deleted paragraph (iv) is reproduced as the new paragraph (viii).

**Clause 154 Section 272(2)** – inserts “(exclusive of GST)” after \$1 500.

**Clause 155 Section 274** – substitutes a new section 274, which requires disclosure, in addition to that required by section 269, when a costs agreement includes an uplift fee. The section does not apply in relation to a “sophisticated client”.

**Clause 156 Form of disclosure – Section 275(1)** – inserts “to a client” after “disclosures”.

**Clause 157 Section 277(1), (2) and (3)** – substitutes new subsections 277(1), (2), (3), (3A), (3B), (3B) and (3C) in place of deleted subsections 277(1), (2) and (3). Under subsection (1), if a practice does not disclose any matter required to be disclosed under this division, the client or associated third party need not pay the legal costs unless they have been assessed.

Subsection 277(2) prevents a law practice from bringing a proceeding for recovery of costs, if the practice has failed to disclose anything required to be disclosed under this division, unless the costs have been assessed.

Subsection 277(3) allows a client or associated third party payer who has entered into a costs agreement with the practice to apply to have the agreement set aside, if the practice has failed to disclose anything as required by this division.

Subsection 277(3A) states that, where the practice has failed to disclose, the amount of costs may, on assessment, be reduced by an amount considered by the Supreme Court to be proportionate to the seriousness of the practice’s failure.

Subsection 277(3B) provides that, if a practice retains another practice and fails to disclose something to the client only because the retained practice failed to disclose relevant information to the first practice, then subsections (1) to (3A) do not apply to costs owing to the first practice to the extent that the non-disclosure was caused by the failure of the retained practice to disclose. Those subsections do, however, apply to the costs owing to the retained law practice.

Subsection 277(3C) provides that, when a matter involves both a client and an associated third party payer, and disclosure is made to one of them but not the other, subsection (1) does not affect the liability of the person to whom disclosure was made, and subsection (2) does not prevent costs recovery

proceedings being maintained against the person to whom disclosure was made.

**Clause 158 Progress reports – Section 278(4), new note** – inserts a new note after subsection 278(4) regarding the right of an associated third party payer to obtain reports under this section, to the extent that costs are payable by that third party payer.

**Clause 159 On what basis are legal costs recoverable? – Section 279, note** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 160 Section 281(1), new example** – inserts a new example after subsection 281(1), to make it clear that, if costs remain unpaid for longer than 30 days after the day the client is given a bill, interest becomes payable from the day after the bill was given until they are paid.

**Clause 161 Section 281(4)(b)** – substitutes a new paragraph 281(4)(b) to more accurately describe the rate applying under the Court Procedures Rules 2006.

**Clause 162 New section 281(5)** – inserts a new subsection 281(5), which makes clear the intention that interest payable on unpaid legal costs applies to a lump sum bill, even if the client later requests or is later given, an itemised bill. The accrual of interest is not postponed by a request for, or the giving of, an itemised bill.

**Clause 163 New section 281A** – inserts into division 3.2.4 a new section 281A, which relates to disclosure to associated third party payers. If a practice is required to make disclosure to a client under this division, the practice must also make disclosure, in accordance with this section, to any associated third party payer for the client, to the extent that matters disclosed are relevant to, and relate to the costs payable by that third party payer in relation to the legal services provided to the client.

Subsection 281A(2) requires costs disclosure to be in writing, either at the time the disclosure to the client is required under this division or, if the practice only later becomes aware of the third party payer’s obligation to pay legal costs of the client, as soon as the practice becomes aware of the obligation.

Subsection 281A(3) states that section 275 applies to disclosure to third party payers in the same way as it applies to a client.

Subsection 281A(4) provides that an associated third party payer has the same right as the client to obtain reports under section 278 of costs incurred by the client, but only to the extent of that third party payer’s obligation to pay the costs.

**Clause 164 Making costs agreements – New section 282(1)(d)** – inserts a new paragraph 282(1)(d), to allow a costs agreement to be made between a law practice and an associated third party payer.

**Clause 165 Section 282(4)(a) and (b)** – paragraphs 282(4)(a) and (b) have been rewritten to be clearer, and to reflect the fact that a client or an associated third party payer may enter into a costs agreement.

**Clause 166 Section 282(5)** – deletes subsection 282(5) and substitutes new subsections (5) and (6). The prohibition, on providing in a costs agreement that legal costs may not be reviewed under division 3.2.7, has been qualified in the new subsection (5), because a new subsection 300A sets out circumstances in which the Supreme Court must have regard to a costs agreement. Subsection (6) applies references to a client in section 288, and any prescribed provisions of this part, to an associated third party payer if that third party payer (and not the client) is a party to a costs agreement.

**Clause 167 Conditional costs agreements – Section 283(5)** – deletes subsection 283(5) and substitutes new subsections (5) and (6). Subsection (5) relaxes the requirements for entering into a conditional costs agreement in respect of a sophisticated client.

The new subsection (6) changes the circumstances in which a law practice may recover legal costs when a conditional costs agreement has been terminated within the cooling off period. Costs may only be recovered in relation to legal services performed, before the agreement was terminated, on the instructions of the client, and with the client's knowledge that the services would be performed during the cooling off period. The cooling off period is described in paragraph 283(3)(e).

**Clause 168 Conditional costs agreements involving uplift fees – Section 284(1) to (4)** – substitutes new subsections 284(1) to (4), substantially altering the requirements for providing for uplift fees in conditional costs agreements. In relation to non-litigious matters, the section no longer makes a requirement in relation to a reasonable belief that there is a significant risk that a matter will not have a successful outcome – see the deleted subsection (4). The new subsection (1) allows a conditional costs agreement to provide for an uplift fee (defined in section 261).

Subsection 284(2) requires the basis for working out the uplift fee to be separately identified in the agreement.

Under subsection 284(3), if an estimate of the uplift fee is not reasonably practicable, the agreement must contain a range of estimates and an explanation of the major variables that will affect the amount.

If a conditional costs agreement relates to a litigious matter, the agreement must not provide for an uplift fee unless the law practice has a reasonable



belief that a successful outcome of the matter is reasonably likely. The uplift fee must not exceed 25% of the legal fees (excluding disbursements) otherwise payable.

**Clause 169 Contingency fees prohibited – Section 285(1)** – substitutes a new subsection 285(1), which no longer prohibits costs agreements under which costs are worked out by the more general reference to the value of any property, or of any transaction, involved in matter to which the agreement relates. That is, paragraph 285(1)(a) of the Act is deleted. The subsection does, however, continue the prohibition on costs agreements that provide for costs to be worked out by reference to the amount of any award or settlement, or the value of any property, that may be recovered in a proceeding to which the costs agreement relates.

**Clause 170 Effect of costs agreement – Section 286(1)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 171 Section 286(2)** – substitutes a new subsection 286(2), which allows mediation to be used at any time to resolve a dispute over costs claimed under a costs agreement.

**Clause 172 Certain costs agreements void – Section 287(2)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 173 Section 288** – substitutes a new section 288, which is (unless otherwise indicated here) substantially the same as the deleted provision. The section now provides for the Supreme Court to set aside a costs agreement or a provision of a costs agreement, and various provisions in the section are changed to that effect. The Court must be satisfied that the agreement, or provision, is not “fair or reasonable” – the term “just” has been deleted from the section.

Subsection 288(2) is a new provision, stating that the Court may set aside only a provision of an agreement even though the client applied for the whole agreement to be set aside, or all of an agreement even though the client applied to have only a provision of an agreement set aside.

Subsection 288(3) removes paragraph (3)(d) and inserts new paragraphs (d) to (h), which significantly expand the range of matters to which the Court may have regard, in deciding whether or not a costs agreement is fair and reasonable, addressing the conduct of the parties and the circumstances of the matter. Notably, paragraph (h) includes “any other matter”.

Subsection 288(6), replacing the deleted subsection (5), removes the obligation upon the Court to apply any relevant scale of costs in making an order as to payment of legal costs the subject of an agreement or provision, but requires (rather than allows) the Court to decide the fair and reasonable costs in relation to the relevant work. See also the new section 300B.

A new example is inserted after paragraph 288(8)(j) making it clear that, in deciding whether a costs agreement is fair and reasonable, one of the matters that the Court may consider is a scale of costs.

A new subsection 288(11) defines “client” for this section.

**Clause 174 Bills – New section 290(6A)** – inserts a new subsection 290(6A), allowing a bill to be given to a client electronically if the client asks for the bill in that form.

**Clause 175 Notification of client’s rights – Section 291** – makes a technical amendment in light of the insertion of new subsections (2) and (3).

**Clause 176 Section 291(a)(i)** – substitutes a new paragraph 291(a)(i), referring to costs assessment, rather than costs review.

**Clause 177 New section 291(2) and (3)** – inserts new subsection 291(2) and (3). Subsection (3) states that subsection (1) does not apply to a sophisticated client. Subsection (3) allows the licensing body to approve a form for the written statement required under subsection (1). If a practice uses that form, it is taken to have complied with the requirement.

**Clause 178 Section 192** – substitutes a new section 192, which substantially changes the requirements in relation to requests for an itemised bill. The section applies if a lump sum bill has been given to a client for costs exceeding the “threshold amount”. A person who is entitled to apply for an assessment of a bill (who has been given a lump sum bill) may ask the law practice for an itemised bill.

Subsection 292(3) requires a request to be made not later than 90 days after the day the (lump sum) bill was given to the client. Under subsection (4), the law practice must comply with the request as soon as practicable.

Subsection 292(5) states that a person may only request an itemised bill in relation to that part of a bill that the person is liable to pay.

Under subsection 292(6), a law practice must not commence proceeding for recovery of costs until at least 90 days after the person is given the lump sum bill. Subsection (7) states that, if a person asks for an itemised bill under this section, the practice must not commence any proceeding for recovery until at least 30 days after the person is given an itemised bill.

Subsection 292(8) states that a law practice must not charge a person for the preparation of an itemised bill under this section.

Under subsection 292(9), the requirements of subsection 290(2) (that a bill must be signed on behalf of the law practice, by an Australian legal practitioner or an employee of the law practice), and subsection 290(5) (which

sets out the requirements for delivery of a bill to a person) apply to the giving of an itemised bill under this section.

Subsection 292(10) defines “threshold amount” as being \$1 500 or such higher amount as may be prescribed by regulation.

**Clause 179 Interim bills – Section 293(2)** – deletes “reviewed” and substitutes “assessed”, reflecting the change in terminology throughout the Act.

**Clause 180 Division 3.2.7 heading** – the new heading reflects the use of the term “assessment”, in place of “review”, throughout the Act.

**Clause 181 Section 294** – deletes section 294 and substitutes new sections 294 and 294A. The new section 294 defines “client” for this division. Section 294A replaces the deleted section 294.

Subsection 294A(1) states that a client may apply to the Supreme Court for an assessment of all or any part of legal costs. Subsection (2) provides for third party payer to also apply for an assessment in relation to costs payable by that third party payer.

Subsection 294A(3) states that an application for assessment may be made even if the costs have been completely or partially paid. Under subsection (4), an application may be made even if any legal costs have been paid without a bill.

Under subsection 294A(5), an application for assessment must be made not later than 12 months after a bill was given or a request made for payment or, if no bill was given or request made, 12 months after the bill was paid. Subsection (6), however, provides for the Court to deal with an application made out of time. Subsection (7) states that the Court may not deal with an application made out of time by a sophisticated client or a third party payer who would be a sophisticated client if the person were a client of the law practice concerned.

Subsection 294A(8) requires a law practice to give to a non-associated third party payer (upon written application) sufficient information to allow that third party payer to make an application for assessment under this section.

Subsection 294A(9) sets out a number of procedural requirements in relation to applications for assessment when there is an associated third party payer for a client of a law practice. Subsection (10) sets out similar requirements to apply when there is a non-associated third party payer.

Subsection 294A(11) defines “client” and “third party payer” for this section.

**Clause 182 Section 295 heading** – the new heading reflects the use of the term “assessment”, in place of “review”, throughout the Act.

**Clause 183 Section 295(1)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 184 Section 295(2) and (3)** – deletes subsections 295(2) and (3), and substitutes new subsections (2), (3) and (3A). This section relates to applications for assessment of costs when a law practice has retained another practice in a matter. Subsection (2) states that, even if any legal costs have been paid to the retained practice without a bill, the law practice may apply for a costs assessment. Subsection (3) allows an application to be made even if legal costs have been completely or partly paid.

Under subsection 295(3A), an application for assessment must be made not later than 60 days after a bill was given or a request made for payment or, if no bill was given or request made, 60 days after the costs were paid.

**Clause 185 Section 296** – substitutes a new section 296. This section relates to applications for costs assessment by a law practice that has given a bill. Subsection (1) provides that the practice may apply to the Supreme Court for an assessment of all or part of the legal costs to which a bill relates.

Subsection (2) states that, even if any legal costs have been paid without a bill, the law practice may apply for a costs assessment. Subsection (3) allows an application to be made even if legal costs have been completely or partly paid.

Under subsection 296(4), an application for assessment may not be made until at least 30 days have passed since:

- (a) a bill was given or a request made for payment of costs; or
- (b) the costs were paid, if no bill was given or request made; or
- (c) an application for assessment has been made by someone else in relation to the costs.

**Clause 186 Sections 297, 298 and 299** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 187 Section 300 heading** – the new heading reflects the use of the term “assessment”, in place of “review”, throughout the Act.

**Clause 188 Section 300(1)** – deletes “a review” and substitutes “an assessment”, reflecting the change in terminology throughout the Act.

**Clause 189 Section 300(1)(c)** – deletes paragraph 300(1)(c) and substitutes new paragraphs (c) and (d) to expand the matters which must be considered by the Supreme Court in conducting an assessment of legal costs. The new paragraph (c) requires the Court to consider the fairness and reasonableness of the amount of costs, except to the extent that new sections 300A or 300B apply. Under paragraph (d), if a costs agreement provides for an uplift fee, the Court must consider whether the uplift fee is justified.

**Clause 190 Section 300(2)(b)** – substitutes a new paragraph 300(2)(b), which no longer refers to failure to make disclosures under division 3.2.3. In considering what is a fair and reasonable amount of legal costs, the Court may now, under this paragraph, consider only disclosures made.

**Clause 191 Section 300(2)(d)** – is deleted, so that the Court, in considering what is a fair and reasonable amount of legal costs, may not consider a relevant costs agreement. See the new section 300A.

**Clause 192 New sections 300A, 300B and 300C** – inserts new sections 300A, 300B and 300C.

Section 300A sets out the circumstances in which the Supreme Court may assess legal costs by reference to the provisions of a costs agreement.

Under subsection (1), reference may be made to the agreement if:

- (a) a relevant provision of the agreement specifies the amount, or a rate or other means of working out the amount, of the costs; and
- (b) the agreement has not been set aside under section 288; unless the Court is satisfied that:
  - (c) the agreement does not comply in a material respect with any applicable disclosure requirements under division 3.2.3; or
  - (d) division 3.2.5 prevents the practice from recovering the amount; or
  - (e) the parties otherwise agree.

Under subsection 300A(2), the Court is not required an examination of the matters mentioned in paragraphs (1)(c) and (d).

Section 300B provides that the Supreme Court may assess the amount of any disputed costs that are not the subject of a costs agreement by reference to anything it considers appropriate, including a scale of costs.

Section 300C relates to the recovery of costs assessed by the Supreme Court. Under subsection (2), if costs were paid before the assessment was made, and the amount paid exceeds the assessed amount, then the excess amount may be recovered as a debt in a court of competent jurisdiction. Under subsection (3), if an amount of costs has not been paid, an assessment is taken to be a judgement of the Supreme Court for the unpaid amount, and the rate of interest payable on the amount is the rate applying under the Court Procedures Rules 2006, schedule 2, part 2.2.

**Clause 193 Section 302** – substitutes a new section 302 requires the Supreme Court to determine the costs of a costs assessment. Under subsection (2), unless the Court otherwise orders, the law practice must pay the costs of the assessment if, on assessment, the costs are reduced by 15% or more, or the Court is satisfied that the practice failed to comply with its costs disclosure obligations under division 3.2.3. Subsection (3) states that, if the practice is not liable under subsection (2) to pay the costs of an assessment, the costs must be paid by the party ordered by the Court to pay.

**Clause 194 Referral for disciplinary action – Section 303(1) and (2)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 195 Section 304 heading** – the new heading reflects the use of the term “assessment”, in place of “review”, throughout the Act.

**Clause 196 Section 304(1)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 197 Section 304(2)** – deletes “cost review” and substitutes “costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 198 New section 304A** – inserts into division 3.2.7 a new section 304A, which allows a sophisticated client, or an associated third party payer who would be a sophisticated client if that third party payer were a client of the practice, to contract out of this division.

**Clause 199 Division 3.3.1 heading** – deletes the heading, as there is only one division in part 3.3.

**Clause 200 Professional indemnity insurance for insurable legal practitioners – Section 311(2)(b)** – corrects a grammatical error.

**Clause 201 New section 312A** – inserts a new section 312A, which requires an insurable legal practitioner whose practising certificate requires the practitioner to hold an approved indemnity insurance policy, to take all reasonable steps to ensure that the policy continues in force during the period of currency of the practising certificate and, if the policy stops being in force during that period, to obtain a replacement policy for that period. Subsection (2) states that a failure to comply with the requirement can be unsatisfactory professional conduct or professional misconduct. Under subsection (3), the relevant council may suspend the practitioner’s certificate during the period of the practitioner’s non-compliance.

**Clause 202 Definitions – pt 3.4 – Section 316, definition of *concerted interstate default*** – amends the definition to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 203 Section 316, definition of *default*** – substitutes a new definition of “default” which removes references to an associate of the practice. The new definition also acknowledges that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 204 Purpose – pt 3.4 – Section 318** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 205 Meaning of *relevant jurisdiction* – pt 3.4 – Section 327(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 206 Defaults to which pt 3.4 applies – Section 328(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 207 Section 328(3)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 208 Claims not affected by certain matters – Section 335(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 209 Claims by law practices or associates about defaults – Section 350(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 210 Claims by law practices or associates about notional defaults – Section 351(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 211 Defaults involving interstate elements if committed by 1 associate only – Section 353(1)** – has been amended to make it clear that a default of a law practice may not only arise from, but may also be constituted by, an act or omission.

**Clause 212 Section 367 heading** – makes a minor amendment to the heading.

**Clause 213 Section 367(1)** – deletes subsection 367(1) and substitutes new subsections (1) and (1A), which restate the terms of the deleted subsection (1) in clearer terms. The new subsection (1) now also applies this section to a lawyer who was a sole practitioner immediately before the lawyer's practising certificate lapsed.

**Clause 214 New section 367(3)(aa)** – adds a further circumstance in which subsection 367(2) ceases to apply – if the first event that happens is the appointment of a manager or receiver for the practice, if the law practice is a sole practitioner.

**Clause 215 Conduct capable of being unsatisfactory professional conduct or professional misconduct – Section 389(e)** – deletes paragraph 389(e) and substitutes new paragraphs (e), (f) and (g). The new paragraph (e) restates the deleted paragraph (e).

Paragraph (f) adds a new category of conduct that can be unsatisfactory professional conduct – failing to comply with an order of the disciplinary tribunal, or an order of a corresponding disciplinary body made under a corresponding law, including failure to pay all or part of a fine.

Paragraph (g) also adds a new category of conduct – failing to comply with a compensation order made under this Act or a corresponding law.

**Clause 216 Person to be told about complaint – Section 397(2)** – amends the subsection to provide that the relevant council must give the person, about whom a complaint is made, written notice of the complaint as soon as practicable, rather than within 14 days. The amendment recognises the practical difficulty in giving notice within 14 days in some cases.

**Clause 217 New section 397(6)** – inserts a new subsection 397(6), which states that this section does not require the relevant council to give written notice under subsection (1) until the council has had time to consider the complaint, seek information about the complaint or otherwise undertake preliminary inquiries, and then to properly prepare the notice.

**Clause 218 Summary dismissal of complaints – Section 399(1)(f)** – corrects a grammatical error, so that the reference is to a person whose name has been removed from any Australian roll, rather than ‘each’ Australian roll.

**Clause 219 Section 409 heading** – the new heading reflects the use of the term “assessment”, in place of “review”, throughout the Act.

**Clause 220 Section 409(1)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 221 Section 409(2)** – substitutes a new subsection 409(2), which reflects the change to section 294A, to make the period for making an application for a costs assessment, from 60 days to 12 months.

**Clause 222 Section 409(3)** – deletes “review of costs” and substitutes “a costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 223 Section 409(3)** – deletes “a review” and substitutes “an assessment”, reflecting the change in terminology throughout the Act.

**Clause 224 Section 409(4)** – deletes “(Costs review) applies to the review of costs” and substitutes “(Costs assessment) applies to the costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 225 Council to give reasons to complainant and practitioner – Section 415(c)** - deletes “cost review” and substitutes “costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 226 New section 416(2A)** – inserts a new subsection 416(2A), providing that an appeal to the disciplinary tribunal against a decision of a



council must be made not later than 28 days after the council's decision was given to the complainant, or any further time allowed by the tribunal.

**Clause 227 Complainant and person complained about to be told about action taken – Section 418(2)(c)** – deletes “cost review” and substitutes “costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 228 Section 418(3)** – corrects the provision so that, in relation to the dismissal by a council of a complaint, the right of the complainant to appeal to the disciplinary tribunal must be included in the notice to the complainant under subsection 418(2). The provision erroneously made reference to a right to apply to the relevant council for review of the dismissal.

**Clause 229 New section 420A** – inserts a new section 420A, which states that, if the disciplinary tribunal is satisfied that a proceeding may be decided on the material filed with the tribunal without hearing the parties, and the parties consent to the proceeding being decided without a hearing, the tribunal may decide the proceeding without holding a hearing.

**Clause 230 New section 426A** – inserts a new section 426A, which restricts the publication of certain identifying material from disciplinary proceedings. Subsection (1) states that a person must not publish an account or report of a proceeding in the disciplinary tribunal if it discloses the identity of the person who is the subject of the proceeding, or allows the identity of that person to be worked out. Under subsection (2), however, the person's identity may be published if the tribunal has made a final decision that the person is guilty of the conduct complained of, and either the appeal period has ended and no appeal has been made, or any appeal has ended and has been decided against the person who is the subject of the complaint. Subsection (3) defines “appeal” and “appeal period” for this section.

**Clause 231 Decisions of disciplinary tribunal – unsatisfactory professional conduct or professional misconduct – Section 430(5)(b)** – substitutes a new paragraph 430(5)(b), which provides for an order recommending suspension or cancellation of a practitioner's practising certificate. The deleted paragraph provided for an order suspending or cancelling a certificate.

**Clause 232 Section 430(5)(d)** – substitutes a new paragraph 430(5)(d), which restates the paragraph in clearer terms.

**Clause 233 Compliance with decisions and orders of disciplinary tribunal – Section 433(3)** – substitutes a new subsection 433(3), which now provides that a copy of an order, recommending that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll, may be filed in the Supreme Court.

**Clause 234 Definitions – pt 4.9 – Section 447, definition of *disciplinary action*, paragraph (b)(iii)** – substitutes a new paragraph 447(b)(iii) into the definition of “disciplinary action”, which now refers to a refusal to grant or renew a practising certificate. Renewal had not been referred to in the deleted paragraph.

**Clause 235 Register of disciplinary action – Section 448(3)** – the subsection is deleted.

**Clause 236 Disciplinary action taken because of infirmity, injury or illness – Section 452(2)(b)** – substitutes a simplified paragraph 452(2)(b).

**Clause 237 Sections 489 and 459** – substitutes new section 458 and 459. A new section 458 provides that the councils may, separately or jointly, enter into arrangements with a corresponding authority for providing that authority with information about complaints and investigations under this chapter, and any action taken in relation to complaints or investigations (including decisions of the disciplinary tribunal).

A new section 549 restates the deleted section 459 in clearer terms, and also allows both councils to act jointly or separately.

**Clause 238 Protection for things done in administration of ch 4 – Section 468(2), definition of *protected person*, paragraphs (e), (f), (g) and (h)** – deletes paragraphs 468(2)(e), (f), (g) and (h) and substitutes new paragraphs (e), (f) and (g). Paragraph (e) combines and extends the deleted paragraphs (e) and (f), so that “protected person” includes the disciplinary tribunal, any member of the tribunal, or anyone exercising the functions of the registrar of the tribunal.

A new paragraph (f) restates the deleted paragraph (g).

A new paragraph (g) effectively restates the deleted paragraph (h).

**Clause 239 Definitions – ch 5 – Section 473(1), definition of *regulated property*** – substitutes a new definition of “regulated property”. In addition to restating in clearer terms, in a new paragraph (a), the deleted paragraphs (a) and (b), this clause substitutes a new paragraph (d), which clarifies the deleted paragraph (d).

**Clause 240 Purpose – ch 5 – Section 474(1)** – substitutes a new subsection 474(1). Paragraph 474(1)(a) is stated more clearly, and paragraph (b) is deleted.

**Clause 241 Application of ch 5 to barristers – Section 476(1)** – makes a technical amendment reflecting the amended heading for part 5.3.

**Clause 242 Application of ch 5 to Australian-registered foreign lawyers – Section 477** – amends the section so that it also refers to former Australian-registered foreign lawyers.

**Clause 243 Decision about external intervention – Section 480(1)** – amends the subsection so that it refers only to the interest of clients of the law practice. The interests of owners and employees of the practice are no longer referred to.

**Clause 244 Section 480(2)(b)** – substitutes a new paragraph 480(2)(b) which, in effect, replaces paragraph 480(2)(b)(i) with new paragraphs (i) and (ii), which state that the relevant council may decide to appoint a manager for a law practice if it is of the opinion that:

- (i) the intervention is required because of issues relating to the trust records of the practice; or
- (ii) the appointment is necessary to protect the interests of clients of the practice in relation to trust money or trust property.

**Clause 245 Part 5.3 heading** – substitutes a new heading, “Supervisors of trust money”.

**Clause 246 Appointment of supervisor – Section 481(1)** – corrects a grammatical error.

**Clause 247 Section 481(2)** – inserts “of trust money” after “supervisor”.

**Clause 248 Section 481(3)(a)** – substitutes a new paragraph 481(3)(a), which makes the additional requirement that an Australian legal practitioner who is appointed as a supervisor of trust money must be the holder of an unrestricted practising certificate.

**Clause 249 Section 481(5)(b)** – inserts “of trust money” after “supervisor”.

**Clause 250 Notice of appointment of supervisor – Section 482(1) and (2)(b)** – inserts “of trust money” after “supervisor”.

**Clause 251 Effect of service of notice of appointment of supervisor – Section 483(1)** – deletes “a supervisor for a law practice” and substitutes “a supervisor of trust money of a law practice”.

**Clause 252 Section 483(1)(a), (b) and (c)** – inserts “or a nominee of the supervisor” after “by the supervisor”.

**Clause 253 Section 483(2)(a)** – deletes “a supervisor for a law practice” and substitutes “a supervisor of trust money of a law practice”.

**Clause 254 Section 483(3)** – deletes “a supervisor for a law practice” and substitutes “a supervisor of trust money of a law practice”.

**Clause 255 Section 483(5)** – deletes “a supervisor for a law practice” and substitutes “a supervisor of trust money of a law practice”.

**Clause 256 Section 484 heading** – substitutes a new heading, “Role of supervisor of trust money”.

**Clause 257 Section 484(1)(a)** – substitutes a new paragraph 484(1)(a), which makes it clearer that a supervisor has powers that include receiving trust money entrusted to the law practice (rather than “on behalf of” the practice).

**Clause 258 Section 484(2)(b)** – substitutes a new paragraph 484(2)(b), which makes it clear that a supervisor may require a practice to give the supervisor either or both of the things referred to in paragraphs 484(2)(b)(i) or (ii).

**Clause 259 Ending of supervisor’s appointment – Section 486(1)** – deletes “a supervisor for a law practice” and substitutes “a supervisor of trust money of a law practice”.

**Clause 260 New section 486(1)(aa)** – inserts a new paragraph 486(1)(aa), which states that the appointment of a supervisor also ends when the appointment is set aside under section 514.

**Clause 261 Effect of service of notice of appointment of manager – Section 489(3)(a), (b) and (c)** – substitutes new paragraphs 489(3)(a), (b) and (c). The paragraphs have been reproduced in clearer form, the only substantive change being that withdrawals or transfers may be made by a nominee of the manager or receiver.

**Clause 262 Section 489(9)** – amends subsection 489(9) to allow amounts recovered from an ADI to be paid into an account nominated by the manager or receiver, if not into the trust account of the practice.

**Clause 263 Role of manager – Section 490(2)(b)** – substitutes a new paragraph 490(2)(b), which makes it clear that the obligation also applies if the practice, associate or other person had, but no longer has, control of client files, and that a manager may require a practice to give the manager either or both of the things referred to in paragraphs 490(2)(b)(i) or (ii).

**Clause 264 Ending of a manager’s appointment – New section 493(1)(aa)** – inserts a new paragraph 493(1)(aa), which states that the appointment of a manager also ends when the appointment is set aside under section 514.

**Clause 265 Appointment of receiver – Section 494(7)(a)** – substitutes a new paragraph 494(7)(a), which makes the additional requirement that an Australian legal practitioner who is appointed as a receiver must be the holder of an unrestricted practising certificate.

**Clause 266 Notice of appointment of receiver – New section 495(2)(fa)** – inserts a new paragraph 495(2)(fa), which requires a notice of appointment of a receiver to state that a law practice may appeal against the appointment under section 514.

**Clause 267 Effect of service of notice of appointment of receiver – Section 496(3)(a), (b) and (c)** – substitutes new paragraphs 496(3)(a), (b) and (c). The paragraphs have been reproduced in clearer form, the only substantive change being that withdrawals or transfers may be made by a nominee of the manager or receiver.

**Clause 268 Section 496(9)** – amends subsection 496(9) to allow amounts recovered from an ADI to be paid into an account nominated by the manager or receiver, if not into the trust account of the practice.

**Clause 269 Role of receiver – Section 497(5)(b)** – amends paragraph 490(2)(b) to make it clear that the obligation also applies if the practice, associate or other person had, but no longer has, control of client files, and that a manager may require a practice to give the manager either or both of the things referred to in paragraphs 497(5)(b)(i) or (ii).

**Clause 270 Section 497(6), new note** – inserts a note after subsection 497(6), relating to approval of forms by the law society under section 587.

**Clause 271 Power of receiver to require documents of information – Section 502(1)(a) and (b)** – amends both paragraphs to make it clear that the receiver may only require information and documents relating to the affairs of the law practice.

**Clause 272 Section 502(5)(c)** – deletes paragraph 502(5)(c) and substitutes new paragraphs (c) and (d), which expand the range of information or documents that are admissible in proceedings against a person. The new paragraph (c) allows documents or information obtained under this section in respect of proceedings for an offence relating to the falsity of the answer. The new paragraph (d) relates to proceedings taken by the receiver for the recovery of regulated property.

**Clause 273 Section 502(6)** – subsection 502(6) is omitted.

**Clause 274 Section 502(7), definition of *relevant person*** – substitutes a new definition of “relevant person”, to include anyone who has information relating to regulated property of a law practice, or property that the receiver believes to be regulated property of the practice.

**Clause 275 Lien for costs on regulated property – Section 504(1)(b)** – substitutes a new subsection 504(1)(b), providing that this section applies if a law practice, or a legal practice associate of the practice, claims a lien for legal costs on the regulated property of the practice.

**Clause 276 Section 504(2)** – amends subsection 504(2) to also refer to a legal practice, as the section now applies to a law practice or an associate of the practice.

**Clause 277 Section 504(3)** – amends subsection 504(3) to also refer to a legal practice, as the section now applies to a law practice or an associate of the practice.

**Clause 278 Ending of receiver’s appointment – Section 509(1)** – substitutes a new subsection 509(1), which makes it clear that the receiver is appointed by the Supreme Court, and to add one further circumstance in which an appointment ends. The new paragraph 509(1)(b) states that an appointment also ends when it is set aside under section 514.

**Clause 279 New section 509(1A) to (1D)** – inserts new subsections 509(1A) to (1D), which further describe the process for ending a receiver’s appointment. Subsection (1A) states that the Supreme Court may, on application by the law society or the receiver (made at any time), determine that the appointment is terminated immediately, or from a stated date.

Subsection 509(1B) states that, unless the appointment of a receiver has already ended, a receiver must apply to the Court to end the appointment when the affairs of the practice have been wound up and ended. Subsection (1C) provides that the Court may make any order that it considers appropriate.

Subsection 509(1D) provides that the appointment of a receiver is not stayed by an application for ending the appointment and, unless the Court otherwise directs, the receiver may continue to exercise his or her powers pending the Court’s decision.

**Clause 280 New section 515A** – inserts a new section 515A, which provides that, if a manager and a receiver are appointed for a law practice, decisions of the receiver will prevail over decisions of the manager, to the extent of any inconsistency.

**Clause 281 Section 516** – substitutes a new section 516, which now describes a number of offences relating to failure to comply with requirements of external interveners. In each case, the external intervener must produce evidence of the appointment of the intervener. Maximum penalties of 50 penalty units apply to each offence.

Under subsection 506(1) an ADI commits an offence if an external intervener requires the ADI to disclose whether a law practice, or an associate of the practice, keeps or has kept an account with the ADI during a stated period.

Under subsection 516(2), an ADI commits an offence if the ADI fails to comply with a requirement by the intervener to give details of all accounts kept with the ADI by a law practice or an associate. The offence applies only if the practice or associate actually keeps an account with the ADI.

Under subsection 516(3), an ADI commits an offence if the ADI fails to comply with a requirement by the intervener to produce for inspection or copying any records of the account or money deposited in the account, or to give the intervener details of any transactions relating to the account or money. The

offence applies only if the practice or associate actually keeps an account with the ADI.

Subsection 516(4) provides that, if an external intervener reasonably believes that trust money has, without authorisation, been deposited into the account of a third party who is not an associate of the practice, the ADI must, if requested by the intervener, disclose whether a stated person keeps or has kept an account with the ADI during a stated period and, if so, details of that account. Under subsection (5), the intervener's request may be general or specific.

Subsection 516(6) states that this section applies despite any law or duty of confidence to the contrary.

Subsection 615(7) protects an ADI, and its officers or employees, from liability for loss or damage arising from the production of records, or giving of details, under subsection (3).

**Clause 282 New sections 519A and 519B** – inserts new sections 519A and 519B.

Section 519A applies to a requirement on a person to give to an external intervener access to documents or information. Under subsection (2), the validity of the requirement is not affected, and the person is not excused from compliance with it, on the ground that a law practice or an Australian legal practitioner has a lien over a particular document.

Under subsection 519A(3), the intervener may inspect a document given to him or her, make copies or keep the document if the intervener thinks it is necessary for the purposes of the external intervention. The person who complies with the intervener's requirement is not subject to any liability, claim or demand. Under subsection (5), however, a failure to comply can be unsatisfactory professional conduct or professional misconduct.

Subsection 519A(6) provides that the relevant council may suspend a local practitioner's practising certificate while the practitioner's failure to comply with a requirement continues.

Section 519B states that a person who knowingly hinders, intimidates or resists an external intervener in the exercise of his or her functions under this Act commits an offence. A maximum penalty of 50 penalty units applies. Strict liability applies to the circumstance that the external intervener was exercising a function under this Act, but the section does not apply if the person has a reasonable excuse.

**Clause 283 Requirements that may be imposed for investigations, examinations and audits under pt 3.1 and pt 2.6 – Section 525(1)** – substitutes a new subsection 525(1), to make it clear that the obligation also applies if the practice, associate or other person had, but no longer has, control of documents relating to the affairs of the practice, and that an investigator may require a practice, associate or other person to give the

investigator either or both of the things referred to in paragraphs 525(1)(a) or (b).

**Clause 284 Requirements that may be imposed for investigations under ch 4 – Section 526(2)** – substitutes a new subsection 526(2), to make it clear that the obligation also applies if the practice, associate or other person had, but no longer has, control of documents relating to the affairs of the lawyer, and that an investigator may require a practice, associate or other person to give the investigator either or both of the things referred to in paragraphs 526(2)(a) or (b).

**Clause 285 Provisions relating to requirements under pt 6.2 – Section 527(2)** – makes a technical correction.

**Clause 286 New section 555A** – inserts into part 6.5 a new section 555A, which states that a person who knowingly hinders, intimidates or resists an investigator in the exercise of his or her functions under this Act commits an offence. A maximum penalty of 50 penalty units applies. Strict liability applies to the circumstance that the investigator was exercising a function under this Act, but the section does not apply if the person has a reasonable excuse.

**Clause 287 Purpose – pt 8.3 – Section 578** – amends the section so that the purpose of part 8.3 relates to Australian-registered foreign lawyers, rather than locally-registered foreign lawyers.

**Clause 288 Division 8.3.2 heading** – substitutes a new heading for the division, so that it relates to Australian-registered foreign lawyers, rather than locally-registered foreign lawyers.

**Clause 289 Subject matter of legal profession rules – Section 582** – amends the section so that it relates to Australian-registered foreign lawyers, rather than locally-registered foreign lawyers.

**Clause 290 Rules for incorporated legal practices and multidisciplinary partnerships – Section 584(3)(a) and (b)** – makes a grammatical correction.

**Clause 291 Section 584(3)(c)** – substitutes a new paragraph 584(3)(c), which more clearly states the reference to services that may give rise to a conflict of interest.

**Clause 292 Section 584(3)(d)** – makes a grammatical correction.

**Clause 293 New section 587A** – inserts a new section 587A, which provides to any person a general protection from civil liability for any act or omission, done honestly and without recklessness, in the exercise of a function under this Act, or in the reasonable belief that the act was in the exercise of a function under this Act. The section is intended to apply in addition to other more specific provisions in the Act giving protection from liability.



**Clause 294 Associates who are disqualified or convicted people – Section 589(1)** – amends subsection 589(1) to attach the knowledge of the circumstances of a person to a principal and any legal practitioner associate of the law practice, rather than “the practice”.

**Clause 295 New section 589(5A)** – inserts a new subsection 589(5A), which places a 6-month limit on bringing proceedings for an offence under subsection (4). The 6-month period begins when the law practice discovers the offence.

**Clause 296 Section 589(7), definition of *disqualified person*** – deletes the definition, which is now fully set out in the Dictionary.

**Clause 297 Section 589(7), new definition of *lay associate*** – inserts a new definition of “lay associate”.

**Clause 298 Minister may determine fees – Section 601(1)** – amends the section to allow the Minister to determine any fees for this Act generally, excepting under section 84, which provides for the determination of fees by the law society council and bar association council.

**Clause 299 Regulation-making power – New section 602(1A)** – inserts a new subsection 602(1A), to make it clear that a regulation may relate to a matter for which a legal profession rule has been or may be made.

**Clause 300 Continuing application of provisions of Legal Practitioners Act about costs – Section 606(2)(a)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 301 Costs disclosure – Section 607(2)(a) and (3)(a)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 302 Dictionary, new definition of *associated third party payer*** – inserts a new definition for part 3.2. See section 261A.

**Clause 303 Dictionary, definition of *client*** – substitutes a new definition of “client”, which replaces the existing paragraph (a) of the definition with a definition for the Act generally – the term includes a person to whom or for whom legal services are provided.

**Clause 304 Dictionary, definitions of *conditional costs agreement* and *costs agreement*** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 305 Dictionary, definition of *commercial legal presence*** – deletes the definition, as the term is no longer used in the Act.

**Clause 306 Dictionary, definition of *costs review*** – substitutes a new definition of “costs assessment”, reflecting the change in terminology throughout the Act.

**Clause 307 Dictionary, definition of *disbursements*** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 308 Dictionary, definition of *disqualified person*** – moves the definition of “disqualified person” from section 99 to the Dictionary.

**Clause 309 Dictionary, new definition of *government lawyer*** – inserts a new definition of “government lawyer”, as the term is now used in several provisions of the Act.

**Clause 310 Dictionary, definitions of *litigious matter* and *lump sum bill*** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 311 Dictionary, new definition of *non-associated third party payer*** – inserts a new definition.

**Clause 312 Dictionary, definition of *scale of costs*** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

**Clause 313 Dictionary, new definition of *sophisticated client*** – inserts a new definition.

**Clause 314 Dictionary, definition of *supervised legal practice, new paragraph (ba)*** – amends the definition of “supervised legal practice” to include an Australian legal practitioner who is a government lawyer engaging in legal practice under the supervision of another Australian lawyer who holds, or is eligible to hold, an unrestricted practising certificate.

**Clause 315 Dictionary, new definition of *third party payer*** – inserts a new definition.

**Clause 316 Dictionary, definition of *trust money*** – substitutes a new definition of “trust money”.

**Clause 317 Dictionary, definition of *uplift fee*** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

## Schedule 1 – Consequential amendments

### Part 1.1 Court Procedures Rules 2006

[1.1] **Rule 6250(3)(e)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

### Part 1.2 Legal Aid Act 1977

[1.1] **Section 69(b)** – deletes “review” and substitutes “assessment”, reflecting the change in terminology throughout the Act.

[1.3] **Dictionary, definition of *practising certificate*** – substitutes a new definition of “practising certificate”, referring to the *Legal Profession Act 2006*.