

2006

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

LEGAL PROFESSION BILL 2006

EXPLANATORY STATEMENT

**Circulated by the authority of
Simon Corbell MLA
Attorney General**

Background

The object of this Bill is to replace the *Legal Practitioners Act 1970* with a new Act to provide for the regulation of legal practice in the ACT and to facilitate the regulation of legal practice on a national basis, in conjunction with the National Legal Profession Model Laws Project.

National Legal Profession Model Laws Project

The Model Laws Project aims to achieve greater consistency and uniformity in legal profession regulation and legal trade, and it resulted in the release of model provisions approved by the Standing Committee of Attorneys-General. 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, and established the Legal Profession Joint Working Group to maintain uniformity and monitor implementation. The Joint Working Group had representatives from the Commonwealth, States and Territories and from the Law Council of Australia.

The model provisions were designed to ensure that clients and practitioners in all States and Territories have similar rights and responsibilities, and to provide for the regulation of the legal profession on a consistent national basis (including nationwide recognition of admission as a lawyer in any jurisdiction and of the grant of a practising certificate in any jurisdiction to practise as a legal practitioner).

Legal Profession Bill 2006

The Bill incorporates, to the greatest extent practicable, the Core Uniform (CU) and Core Non Uniform (CNU) provisions mentioned above. Most of the Non Core (NC) provisions have also been included.

As the model provisions address principally those aspects of legal profession regulation requiring national uniformity, many elements of the *Legal Practitioners Act 1970* are retained, though the drafting has been modernised (e.g. councils and regulatory authorities, and the distinction between barristers and solicitors).

Terminology

The Bill defines a number of expressions used in it. Many of these expressions are used in this explanatory note, including the following expressions:

ADI – an authorised deposit-taking institution.

licensing body – the Law Society of the A.C.T.

jurisdiction – a State or Territory of Australia.

relevant council – the council of Law Society of the A.C.T. or the council of the A.C.T. Bar Association, as the case requires.

OUTLINE OF PROVISIONS

Chapter 1 Introduction

Part 1.1 Preliminary – ch 1

Chapter 1 (clauses 1–13) contains machinery provisions for commencement, application of the Criminal Code, and other interpretative clauses.

Clause 6 states the purposes of the Act.

The *Legal Practitioners Act 1970* was drafted principally to cover local solicitors. This Bill defines key terms using the concepts of *lawyer* and *legal practitioner*, to ensure that the activities of any Australian lawyer practising in the ACT (which includes a solicitor or a barrister) are covered by relevant provisions.

Under the *Legal Practitioners Act 1970*, a person is a “legal practitioner” when admitted to the Supreme Court and a “solicitor” when they hold the appropriate practising certificate. This has been changed in the Bill. When admitted to the profession, a person will become a “lawyer”. When a practising certificate has been obtained, the person will become a “legal practitioner”.

Part 1.2 Important terms

To assist with the uniform status of the model laws project, the Bill uses the following new terms:

Australian lawyer – a person admitted to the legal profession in any jurisdiction in Australia (the Legal Practitioners Act currently only applies to people admitted in NSW);

interstate lawyer – a person admitted in a jurisdiction other than the ACT (the Legal Practitioners Act currently uses “interstate legal practitioner”);

local lawyer – a person admitted to the legal profession under this Act;

Australian legal practitioner – a person holding a practising certificate issued by an Australian jurisdiction (there is no similar term in the Legal Practitioners Act);

interstate legal practitioner – a person holding a practising certificate issued by a jurisdiction other than the ACT (there is no similar term in the Legal Practitioners Act);

local legal practitioner – an Australian lawyer holding a local practising certificate.

These definitions will allow a lawyer to apply for a practising certificate and be covered by compatible provisions in all Australian jurisdictions.

Chapter 2 General requirements for engaging in legal practice

Part 2.1 Preliminary

Part 2.1 (clause 14) provides a simplified outline of Chapter 2.

Part 2.2 Reservation of legal work and legal titles

Clause 15 contains a statement of the purposes of Part 2.2 – to protect consumers, and the public interest in the proper administration of justice, by ensuring that legal work is carried out only by people who are qualified and entitled to do so.

Clauses 16 – 19 contain general prohibitions on a person engaging in legal work unless suitably qualified. The prohibition is general, stating that “a person must not engage in legal practice ... unless the person is an Australian legal practitioner”. The provisions also create an offence for an unqualified person to represent or advertise that they are entitled to engage in legal practice, and restrict the use of titles commonly used by qualified legal practitioners.

A contravention of Part 2.2 by an Australian lawyer who is not an Australian legal practitioner is capable of being professional misconduct, and subject to penalties or other disciplinary action under this Act.

Part 2.3 Admission of local lawyers

Division 2.3.1 Preliminary

Division 2.3.1 (clause 20) provides a statement of the purposes of Part 2.3 – to provide a system for qualified, fit and proper people to be admitted to the legal profession, and for the recognition of equivalent qualifications and training of people in other jurisdictions.

Division 2.3.2 Eligibility and suitability for admission

Division 2.3.2 (clauses 21 – 25) deals with eligibility and suitability requirements for admission as a lawyer. The Division also provides a mechanism for early consideration of suitability and for referral of some matters to the Supreme Court, and for appeals to the Supreme Court against a decision by the admissions board to refuse to make a declaration that a suitability matter will not affect the board’s assessment of whether a person is a fit and proper person to be admitted to the legal profession.

Division 2.3.3 Admission to the legal profession

Division 2.3.3 (clauses 26 – 28) provides for the admission, by the Supreme Court of the ACT, of persons as lawyers. The Supreme Court must keep a roll of people admitted to the legal profession under this Act.

A person becomes an officer of the Supreme Court upon admission.

Division 2.3.4 Functions and powers of admissions board

Division 2.3.4 (clauses 29 – 31) provides for the role of the legal practitioners admissions board (“the admissions board”) in advising the Supreme Court on matters concerning the admission of lawyers. The role of the admissions board is to consider an applicant’s eligibility and suitability for admission, and to issue compliance certificates for applicants for admission. The admissions board may require an applicant to provide information or to cooperate with any appropriate inquiries.

Division 2.3.5 Miscellaneous

Division 2.3.5 (clause 32) provides that the admissions board is taken to be a respondent to every application for admission (except an application made by the admissions board).

Part 2.4 Legal practice by Australian legal practitioners

Division 2.4.1 Preliminary

Division 2.4.1 (clause 33) contains a statement of the purposes of Part 2.4 – to facilitate the national practice by ensuring that Australian practitioners can practise in the ACT, and to provide for the certification of Australian lawyers, whether or not they are admitted in the ACT. Regulations may alter the application of this Part to a government lawyer or an “in-house” lawyer.

Division 2.4.2 Legal practice by Australian legal practitioners

Division 2.4.2 (clause 34) provides for the entitlement of an Australian legal practitioner to engage in legal practice in the ACT.

Division 2.4.3 Local practising certificates generally

Division 2.4.3 (clauses 35 – 40) deals with the grant of local practising certificates by the licensing body and the suitability of persons to hold a local practising certificate.

Clause 35 provides for the grant of unrestricted, restricted and barrister practising certificates in the ACT. The holder of a local practising certificate must not hold another Australian practising certificate.

The Division also provides for the duration of local practising certificates, and requires practitioners to maintain professional indemnity insurance.

A person who is not already an officer of the Supreme Court of the ACT becomes an officer of the Court upon being granted a practising certificate under this Act. This enables a person who was admitted to legal practice in another jurisdiction to become an officer of the Court in the ACT.

Division 2.4.4 Grant or renewal of local practising certificates

Division 2.4.4 (clauses 41 – 45) deals with the making of an application for the grant or renewal of a local practising certificate, including eligibility to apply and the form in which an application must be made, the period within which an application for renewal of a local practising certificate must be made, and the procedure for deciding an application for a local practising certificate.

Clause 45 deals specifically with the grant or renewal of a barrister practising certificate.

Division 2.4.5 Conditions on local practising certificates

Division 2.4.5 (clauses 46 – 53) deals with the imposition of conditions on local practising certificates, including the imposition of various statutory conditions.

The licensing body may impose a condition on an unrestricted or restricted practising certificate or, if the bar association recommends or agrees, on a barrister practising certificate.

The licensing body may impose, amend or revoke conditions when a practising certificate is granted or renewed, and the relevant council may impose, amend or revoke conditions during the currency of a certificate.

Contravention of a condition imposed on a local certificate is capable of being unsatisfactory professional conduct or professional misconduct.

It is a statutory condition of a local practising certificate that:

- the holder must not contravene conditions imposed under a corresponding law in another jurisdiction;
- the holder must not engage in unsupervised practice except as provided by regulation;
- the holder must notify the relevant council if the holder is convicted of, or charge with, certain offences.

A regulation, rule or a condition on a barrister practising certificate may prohibit a barrister from engaging in legal practice other than as a sole practitioner, in a partnership or as an employee of a person, or from holding office as an officer of an incorporated legal practice.

Legal profession rules may impose conditions or authorise the imposition of conditions on local practising certificates.

Division 2.4.6 Amendment, suspension or cancellation of local practising certificates

Division 2.4.6 (clauses 54 – 59) sets out the grounds and procedures for the amendment, suspension or cancellation of a local practising certificate.

A licence may be amended, suspended or cancelled if the holder is no longer a fit and proper person to hold a certificate, or if the person no longer holds professional indemnity insurance.

Provision is also made for the holder of a local practising certificate to ask the relevant council to amend or cancel their certificate.

Division 2.4.7 Special powers in relation to local practising certificates – show cause events

Division 2.4.7 (clauses 60 – 67) contains special provisions for dealing with the occurrence of “show cause events” (acts of bankruptcy, indictable offences and tax offences) in respect of the holder of or an applicant for a local practising certificate.

A person applying for a local practising certificate must advise the relevant council of any relevant “show cause event”, and that information will be taken into account in deciding an application.

This Division describes the circumstances in which the licensing body may refuse to grant or renew a practising certificate, and the circumstances in which the relevant council may amend, suspend or revoke a practising certificate.

Division 2.4.8 Further provisions about local practising certificates

Division 2.4.8 (clauses 68 – 71) provides for the immediate suspension of a local practising certificate if the relevant council considers that it is in the public interest.

The relevant council may amend or impose conditions on a practising certificate if the holder is charged with certain offences. This facilitates the protection of clients and assets while criminal matters are pending.

The holder of a practising certificate may surrender it to the relevant council.

If a licence has been amended, suspended or cancelled by the relevant council, the holder must return the certificate to the relevant council.

Division 2.4.9 Interstate legal practitioners

Division 2.4.9 (clauses 72 – 76) deals with the obligations of interstate legal practitioners to maintain professional indemnity insurance if an office is established in the ACT.

The Division also provides for the extent of the entitlement of an interstate legal practitioner to practise in the ACT, and additional conditions of practice on interstate legal practitioners.

Division 2.4.10 Miscellaneous

Division 2.4.10 (clauses 77 – 84) contains a number of provisions concerning the admission and licensing of lawyers in the ACT.

The councils may enter into protocols with regulatory authorities in other jurisdictions. A protocol is a notifiable instrument.

The relevant council may also require a person to provide information to assist in deciding whether to grant, renew, amend, suspend or cancel a practising certificate.

The licensing body must keep a register of holders of local practising certificates.

The relevant council may apply to the Supreme Court for an order that a person complies with conditions of a practising certificate.

A person may appeal to the Supreme Court against a decision of the relevant council.

Clause 82 provides that some requirements relating to professional indemnity insurance, or contributions or levies payable to the fidelity fund, which might generally apply to holders of practising certificates, do not apply to government lawyers. Regulations may limit the application to government lawyers of provisions in the Act relating to discipline, the imposition of conditions on practising certificates or the application of legal profession rules. Clause 82 ensures that certain requirements that generally apply to legal practitioners do not apply to government lawyers to the extent that they cannot properly perform their duties as public officers.

Government employees of other jurisdictions, acting in the course of their duties, are not subject to the general prohibition on engaging in legal practice, or to the conditions or rules that apply to the performance of legal work.

There is also provision for the law society council and the bar council to determine fees in relation to specific matters.

Part 2.5 Inter-jurisdictional provisions about admission and practising certificates

Division 2.5.1 Preliminary

Division 2.5.1 (clauses 85 and 86) contains a statement of the purpose of Part 2.5 – to provide a nationally consistent scheme for notifying and responding to action taken by courts and authorities in relation to the admission of people to the legal profession and their right to engage in practice in Australia.

This Part does not affect any powers or duties under Chapter 4 (Complaints and Discipline).

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

Division 2.5.2 (clauses 87 – 90) provides for the notification of corresponding authorities in other jurisdictions about:

- the making of an application for admission to the legal profession;
- the removal of a local lawyer’s name from the local roll; and
- a decision to refuse to grant an Australian lawyer a local practising certificate or to suspend, cancel or refuse to renew an Australian lawyer’s local practising certificate.

Division 2.5.3 Notices to be given by lawyers to local authorities

Division 2.5.3 (clauses 91 to 93) requires local lawyers and local legal practitioners to give notice to the registrar of removal from an interstate roll, the making of various interstate orders and foreign regulatory actions.

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

Division 2.5.4 (clauses 94 – 98) deals with the taking of action by local authorities in response to notifications received under Division 3. The Division sets out the responsibility of the registrar to remove a person’s name from the local roll, the responsibility of the relevant council to cancel the person’s local practising certificate, and the procedures to be followed.

Part 2.6 Incorporated legal practices and multi-disciplinary partnerships

Division 2.6.1 Preliminary

Division 2.6.1 (clauses 99 and 100) contains a number of definitions relevant to Part 2.6 and a statement of the purpose of this Part.

The purpose of this Part is to regulate the provision of legal services in the ACT by corporations, and the provision of those services in conjunction with other services (whether by a corporation or by people acting in a partnership).

Division 2.6.2 Incorporated legal practices

Division 2.6.2 (clauses 101 – 133) describes the nature of an incorporated legal practice and establishes a scheme for the recognition and regulation of corporations that provide legal services. Provisions relating to corporations engaging in legal practice are new to the ACT, as the ACT Legislative Assembly has not previously been empowered to make laws with regard to corporations, due to the prohibition contained in the *Australian Capital Territory (Self-Government) Act 1988 (C’th)*. The Commonwealth Act and its Regulations now permit these provisions to be made.

An incorporated legal practice (ILP) may conduct any lawful business, but it may not conduct a managed investment scheme.

A corporation may not provide legal services (with certain exceptions, such as corporations providing in-house legal services) unless it complies with the Division.

Before starting to engage in legal practice in the ACT, a corporation must give written notice to the licensing body of its intention to do so, and must also give notice when it ceases to provide legal services.

Although an incorporated legal practice is not required to hold an Australian practising certificate, it must have at least one legal practitioner director who holds an unrestricted practising certificate and who is to be responsible for the proper management and implementation of the provision of legal services.

It is an offence for an incorporated legal practice not to have any legal practitioner directors for a period exceeding 7 days and not to notify the Law Society of that fact.

A legal practitioner who provides legal services on behalf of an incorporated legal practice has the same professional obligations and privileges as other legal practitioners.

In addition, the incorporated legal practice and each insurable solicitor who is involved (either as a director or employee) in the practice must comply with professional indemnity insurance obligations.

An incorporated legal practice must give a disclosure notice to clients about services that clients might reasonably assume are legal services.

The Division makes other special provision about incorporated legal practices, including in relation to advertising and conflict of interest.

Restrictions on sharing receipts, income and other revenue with non-lawyers are lifted.

It is an offence for an ILP to be managed by, or employ, a disqualified person – a person who is not entitled to be a legal practitioner or an employee of a legal practice.

This Division also provides for audits of ILPs.

The Supreme Court may, on application by the licensing body, disqualify a corporation from providing legal services or to disqualify a person from managing an incorporated legal practice.

The Supreme Court, on application by the licensing body, may disqualify a person from managing an ILP. The operation of the Corporations Act is not affected by an order under this provision.

The licensing body may disclose information about an ILP to the Australian Securities and Investments Commission, despite any law to the contrary.

The licensing body may also, in certain circumstances, intervene in proceedings involving an ILP.

The Division clarifies the position of a receiver appointed under Chapter 5 of this Act and an administrator appointed under the Corporations Act or other legislation, when both have been appointed in relation to an ILP.

An ACT Court may enter in to arrangements for communicating and cooperating with other courts and tribunals.

The Division also clarifies the relationship between this Act and:

- the constitution and constituent documents of an ILP;
- prescribed provisions of the legislation under which the ILP is established or regulated; and
- prescribed elements of the Corporations Act.

It is an offence for any person to cause or induce someone to contravene this Act or the person's professional obligations as an Australian legal practitioner.

Division 2.6.3 Multi-disciplinary partnerships

Division 2.6.3 (clauses 134 – 149) establishes a scheme for the recognition and regulation of partnerships that provide legal services, as well as other services, and authorises legal practitioners to provide legal services while being involved in or employed by such a partnership.

Before starting to engage in legal practice as a member of a multi-disciplinary partnership, a legal practitioner must give written notice to the licensing body.

This Division imposes requirements on members of multi-disciplinary partnerships, including requiring a legal practitioner partner to be responsible for the proper management and implementation of the provision of legal services by the partnership.

A legal practitioner who provides legal services on behalf of a multi-disciplinary partnership has the same professional obligations and privileges as other legal practitioners.

Partners in a multidisciplinary partnership do not breach a provision of this Act unless the provision expressly applies to them.

For the application of this Act or any other law relating to conflict of interest of a legal practitioner who is a partner or employee of a multidisciplinary partnership, the interests of any partner, or of the partnership, are taken to be the interests of that legal practitioner.

Legal practitioner partners of multidisciplinary partnerships must give a disclosure notice to clients about services that clients might reasonably assume are legal services.

The Division makes other special provision with respect to multi-disciplinary partnerships, including:

- the application of legal profession rules to legal practitioner partners;
- requirements in relation to advertising;
- sharing of receipts with other partners; and
- the employment of disqualified people.

The Supreme Court, on application by the licensing body, may disqualify a person from being a partner of a multidisciplinary partnership.

It is an offence for any person to cause or induce someone to contravene this Act or the person's professional obligations as an Australian legal practitioner.

Division 2.6.4 Miscellaneous – pt 2.6

Part 2.6 does not affect any obligations imposed on legal practitioner directors of ILPs or legal practitioner partners in multidisciplinary partnerships, or their legal practitioner employees.

Clause 151 provides for the making, and status, of regulations relating to the provision of legal and other services by ILPs and multidisciplinary partnerships.

Part 2.7 Legal practice – foreign lawyers

Division 2.7.1 Preliminary

Division 2.7.1 (clauses 152 – 154) contains definitions and a statement of the purpose of Part 2.7. Part 2.7 does not apply to Australian legal practitioners.

The purpose of this Part is to facilitate the ‘internationalisation’ of legal services by providing for the regulation of the practice of foreign law in the ACT by foreign lawyers.

Division 2.7.2 Practice of foreign law

Division 2.7.2 (clauses 155 – 166) sets out the practice rights and obligations in the ACT of foreign lawyers, who are registered overseas as legal practitioners (overseas-registered foreign lawyers), or who have registered in Australia as foreign lawyers (Australian-registered foreign lawyers), to practice the law of their home jurisdiction in the ACT.

An overseas-registered foreign lawyer may practice without registration only for a limited period before the person is required to become an Australian-registered foreign lawyer or an Australian legal practitioner in order to continue practising foreign law in the ACT.

The scope of practice of an Australian-registered foreign lawyer is defined. The services that an Australian-registered foreign lawyer may provide are to be limited to those involving legal services concerning the law of the home jurisdiction or conciliation and other similar proceedings, but do not extend to legal proceedings before a court.

Australian professional and ethical standards apply to Australian-registered foreign lawyers.

Other obligations applicable to legal practitioners, including trust account obligations and insurance and fidelity cover requirements (to the extent provided by the regulations), are applied under this Division.

Division 2.7.3 Local registration of foreign lawyers generally

Division 2.7.3 (clauses 167 – 169) provides for overseas-registered foreign lawyers to be registered as foreign lawyers under the Act, and for registration to expire at the end of the financial year in which it is granted. A locally-registered foreign lawyer is not an officer of the Supreme Court.

Division 2.7.4 Applications for grant or renewal of registration as foreign lawyer

Division 2.7.4 (clauses 170 – 172) sets out the procedural requirements for applications for registration as a foreign lawyer in the ACT. Applications must be made to the licensing body.

Division 2.7.5 Grant or renewal of registration as foreign lawyer

Division 2.7.5 (clauses 173 – 175) sets out the procedural requirements for the grant or renewal by the licensing body of registration as a foreign lawyer in the ACT.

The licensing body must register a foreign lawyer if it is satisfied as to the applicant’s registration in a foreign country, that law practice is regulated in that country and that the person is not subject to restrictions in practice in that country that would make registration inappropriate.

The licensing body may refuse registration on formal, disciplinary or other grounds set out in clause 175.

Division 2.7.6 Amendment, suspension or cancellation of local registration of foreign lawyer

Division 2.7.6 (clauses 176 – 181) sets out the grounds and procedural requirements for amending, suspending or cancelling the registration of a foreign lawyer.

Grounds for taking action include:

- formal defects in the person’s application for registration;
- disciplinary action taken, in the ACT or another jurisdiction, in relation to a registered person;
- lapsing of the person’s foreign registration as a lawyer;
- the absence of a local office or commercial presence;
- insolvency; or
- other grounds considered sufficient by the licensing body.

The licensing body may amend, suspend or cancel the registration of a foreign lawyer, and requires the licensing body, before taking action under this Division, to issue a ‘show cause notice’ and consider representations. A decision to amend, suspend or cancel a person’s registration as a foreign lawyer operates as provided by clause 179.

A locally-registered foreign lawyer may ask the licensing body to amend or cancel the lawyer’s registration, or the licensing body to amend or cancel the registration for formal or clerical reasons, or in a way that does not adversely affect the lawyer’s interests.

This Division does not prevent the licensing body from making a complaint under Chapter 4.

Division 2.7.7 Special powers in relation to local registration of foreign lawyer – show cause events

Division 2.7.7 (clauses 182 – 186) provides for an automatic ‘show cause’ process, and for the refusal, amendment, suspension or cancellation of, or a ban on, registration as a foreign lawyer, if a foreign lawyer becomes insolvent under administration or is convicted of a serious offence or a tax offence.

A foreign lawyer who is applying for local registration must give to the licensing body a statement about any show-cause event (defined in the dictionary) that occurred after became an overseas-registered foreign lawyer.

A locally-registered foreign lawyer must notify the licensing body of a show-cause event.

Clause 184 provides the circumstances in which, in relation to a show-cause event, the licensing body may refuse, amend, suspend or cancel a foreign lawyer’s local registration. If any of those actions are taken, under this Act or a corresponding law, the licensing body may decide that the lawyer is not to apply for registration for a period not exceeding 5 years.

Part 4.4 and Chapter 6 apply in relation to matters under this Division.

Division 2.7.8 Further provisions relating to local registration of foreign lawyers

Division 2.7.8 (clauses 187 – 191) provides for the immediate suspension of a foreign lawyer’s registration if the licensing body considers that is in the public interest.

A registered foreign lawyer may surrender his or her local registration certificate to the licensing body.

If a person's registration has been amended, suspended or cancelled by the licensing body, the person must return the certificate to the licensing body if the licensing body so requires by notice.

Division 2.7.9 Conditions on registration of foreign lawyers

Division 2.7.9 (clauses 192 – 197) provide for the imposition of conditions on registration as a foreign lawyer.

Registration under this Part is subject to any conditions imposed by the licensing body, the disciplinary tribunal or an Act, or as a result of a complaint under Chapter 4 of this Act or under a corresponding law.

The Division sets out the procedural requirements for the imposition of conditions by the licensing body, and specific requirements for the making by the disciplinary tribunal of an order relating to conditions, when a foreign lawyer is charged with an offence.

It is a statutory condition of registration that a foreign lawyer must notify the licensing body of certain matters relating to charges and convictions.

Division 2.7.10 Interstate-registered foreign lawyers

Division 2.7.10 (clauses 198 and 199) provides for the conditions on which interstate-registered foreign lawyers may practise foreign law in the ACT and enables the licensing body to impose conditions of practice on interstate-registered foreign lawyers.

Division 2.7.11 Miscellaneous – pt 2.7

Division 2.7.11 (clauses 200 – 207) contains miscellaneous provisions relating to foreign lawyers. The Division includes provisions:

- requiring foreign lawyers to provide information to the licensing body;
- the establishment of a register of registered foreign lawyers by the licensing body;
- the enforcement of practice conditions by Supreme Court order or injunction;
- a right to appeal to the Supreme Court against decisions of the licensing body.

Part 2.8 Community legal centres

Part 2.8 (clauses 208 and 209) provides a definition of a “community legal centre” and sets out the circumstances in which the provision of legal services by, or other conduct of, such an entity does not contravene this Act.

Chapter 3 Conduct of legal practice

Part 3.1 Trust money and trust accounts

Division 3.1.1 Preliminary – pt 3.1

Division 3.1.1 (clauses 210 – 220) contains a statement of the purposes of Part 3.1 and interpretative and application provisions for the Part.

The purpose of Part 3.1 is to:

- ensure that trust money is held in a way that protects the people on whose behalf the money is held;

- minimise compliance requirements; and
- ensure that the licensing body can work effectively with corresponding authorities in relation to the regulation of trust money and trust accounts.

Clause 212 makes it clear that money entrusted to, or held by, a law practice is not trust money if it is held in relation to:

- financial services, described in subsection (1), provided by the law practice;
- a managed investment scheme undertaken by the practice;
- mortgage financing undertaken by the practice; or
- certain investments.

The licensing body may determine whether money held by a law practice is, or is not, trust money.

The Division describes the classes of law practice to which this Part applies. Generally, the Part applies to a law practice that has an office in the ACT, or has no office at all. It also describes when a law practice has received trust money for the purposes of the Act, and sets out the required actions for a legal practitioner associate to discharge the obligations of the practice in relation to trust money. Those obligations apply jointly and severally to the principals of the practice, as does the discharge of an obligation.

This Part applies to former law practices, principals and associates in relation to their conduct at the time they were a practice, principal or associate.

Division 3.1.2 Trust accounts and trust money

Division 3.1.2 (clauses 221 – 233) sets out nationally consistent provisions for the manner in which a law practice must hold, disburse and account for trust money it receives.

There is a general requirement for a law practice that receives trust money to keep a trust account. The requirement does not apply to controlled money or transit money (both defined in clause 210) received other than in the form of cash.

Law practices receiving trust money must place that money in a trust account. The exceptions to that requirement are set out in clause 222(2).

The Division sets out the requirement for the holding, disbursing and accounting for trust money held by a law practice.

A law practice must place “controlled money” received by it into the account specified in the direction relating to the money. There are specific requirements relating to holding, disbursing and accounting for controlled money.

A law practice that receives “transit money” must pay or deliver the money as required by the instruction relating to the money. The practice must account for the money as required by regulation.

A law practice exercising a power to deal with trust money may do so only in accordance with the power relating to that money. The money must be accounted for as required by regulation.

Trust money is protected from being used for unauthorised purposes.

The mixing of trust money with any other money is prohibited, unless it is allowed by regulation.

A law practice may do the following in relation to trust money or controlled money:

- exercise a lien for costs owing to the practice;
- withdraw money for payment of costs, in accordance with the procedure prescribed by regulation; or
- deal with the balance of the account as unclaimed money.

It is an offence for a practitioner to cause, without reasonable excuse, a deficiency in a trust account or trust ledger account, or a failure to pay or deliver any trust money.

The Division provides offences for failure to give notice to the licensing body, and any relevant corresponding authority, of an irregularity in trust accounts or trust ledger accounts.

A law practice must keep permanent trust records in accordance with clause 232(2).

A law practice is prohibited from receiving, or recording the receipt of, money in the practice's trust records under a false name.

Division 3.1.3 Investigations and external examinations

Division 3.1.3 (clauses 234 – 249) provides for the investigation of the affairs of a law practice and for the examination of the trust accounts of a law practice.

Subdivision 3.1.3.1 Investigations

This Subdivision (clauses 234 – 239):

- provides for the appointment of investigators;
- sets out what an investigator may be authorised to do in relation to a law practice;
- applies Chapter 6 (Investigations) to investigations under this subdivision;
- requires an investigator to report to the licensing body as soon as practicable after completing an investigation;
- sets out the circumstances in which a person commits an offence by divulging, or being reckless about, protected information (defined in clause 238(1)); and
- provides for the payment of the costs of an investigation out of the fidelity fund. The amount paid out of the fund is a debt owing to the licensing body by the law practice that has been investigated.

Subdivision 3.1.3.2 External examinations

Subdivision 3.1.3.2 (clauses 240 – 249) provides for the external examination of the trust records of a law practice.

The licensing body may designate a person as being eligible to be appointed as an external examiner.

A regulation may require a law practice to appoint an external examiner. It is an offence to contravene such a regulation.

The Subdivision:

- provides for the appointment of external examiners by the licensing body as required by regulation;
- sets out the circumstances in which an associate of a law firm may be appointed as an external examiner;
- provides that a law practice must appoint an examiner to conduct a final examination of its trust records if it stops engaging in legal practice, or if it stops being authorised to receive trust money. The procedural requirements for that examination are also set out;

- permits an external examiner to examine the affairs of a legal practice or a partnership in connection with an examination of trust records;
- applies Chapter 6 (Investigations) to an examination under this Division. Subject to that Chapter, an external examination is to be carried out in accordance with regulations;
- requires an external examiner to report to the licensing body as soon as possible after completing an examination;
- sets out the circumstances in which a person commits an offence by divulging, or being reckless about, protected information (defined in clause 238(1)); and
- provides for the payment of the costs of an external examination out of the fidelity fund. The amount paid out of the fund is a debt owing to the licensing body by the law practice that has been examined.

Division 3.1.4 Provisions relating to ADIs and statutory deposits

Division 3.1.4 (clauses 250 – 253) deals with the approval of ADIs to hold trust money of law practices and with the obligations and liabilities of those ADIs with respect to trust money, reports, recommendations and information.

This Division provides for the approval of ADIs at which trust accounts may be kept, and sets out a number of offences in relation to reporting and information obligations of ADIs.

ADIs are not obliged to control, or supervise transactions or disbursements, in relation to trust accounts, and that they have no rights against amounts in those accounts.

A regulation may require a law practice to pay amounts from a general trust account into an ADI account kept by the licensing body. Clause 253(4) sets out the matters in relation to which the law society, with the written consent of the Attorney-General, may use the money in a statutory interest account. Some of those matters may relate to barristers.

Division 3.1.5 Miscellaneous – pt 3.1

Division 3.1.5 (clauses 254 – 260) contains provisions dealing with restrictions on the receipt of trust money, disclosure of information and the application of Part 3.1 to incorporated legal practices, multi-disciplinary partnerships and community legal centres.

Clause 254 imposes restrictions on the receipt of trust money by law practices.

Regulations may state that provisions of this Part, and other provisions of the Act, do not apply to incorporated legal practices or multidisciplinary partnerships, or that provisions apply with changes.

A regulation may provide that Part 3.1 does not apply, or has limited application, to a complying community centre.

A law practice must give notice to a person if money entrusted to the practice by the person has been determined not to be trust money, or is money to which clause 211 applies (being money involved in financial services or investments).

A law practice must give the law society details of money entrusted to it, whether or not it is trust money, and whether or not clause 211 applies to the money.

Law practices must pay unclaimed trust money to the Territory.

Legal profession rules may provide for law practices to tell a client that money is not trust money, and therefore not subject to provisions relating to fidelity cover.

Part 3.2 Costs disclosure and review

Division 3.2.1 Preliminary – pt 3.2

Division 3.2.1 (clauses 261 and 262) contains a number of definitions and a statement of the purpose for Part 3.2.

Division 3.2.2 Application – pt 3.2

Division 3.2.2 (clauses 263 – 268) specifies the kinds of matters to which Part 3.2 will apply.

This Part applies to a matter if a client provides first instructions to a law practice, and may apply at the election of the client.

Clause 265 sets out the circumstances in which the application of this Part is displaced.

Clause 266 describes how and when a client first instructs a law practice.

A regulation may prescribe means of deciding whether a matter has a substantial connection with the ACT, for the purposes of determining the application of this Part.

Clause 268 deals with the application of this Act when a corresponding law applies to the same matter.

Division 3.2.3 Cost disclosure

Division 3.2.3 (clauses 269 – 278) imposes obligations on law practices to disclose certain matters concerning legal costs to clients and prospective clients in respect of the provision of legal services.

The Division also makes provision for the consequences of a failure to disclose such matters. As a general rule, a client will not be required to pay legal costs in respect of matters that have not been disclosed unless the costs have been assessed under Division 3.2.7.

The Division sets out the requirements for disclosure of costs by a law practice to a client, and how and when disclosure is to be made.

If another law practice is to be engaged in relation to a matter, the costs of the other practice must also be disclosed.

Clause 272 sets out a number of exceptions to the requirement for disclosure.

The Division also sets out additional disclosure requirements that apply when a law practice negotiates settlement of a litigious matter on behalf of a client, and requirements in relation to uplift fees (which are defined in clause 261).

Disclosure must be clear, and in a language and form understandable to the client.

The law practice must tell the client if there is any substantial change to anything included in a disclosure.

A client need not pay costs that have not been disclosed, unless they have been reviewed under Division 3.2.7.

A law practice, on request by a client, must give the client progress reports in relation to progress and costs to date.

Division 3.2.4 Legal costs generally

Division 3.2.4 (clauses 279 – 281) specifies in general terms the kinds of legal costs that are recoverable by law practices from clients.

Clause 279 provides that, subject to Division 3.2.2, legal costs are recoverable:

- under a costs agreement made in accordance with Division 3.2.5 or the corresponding provisions of a corresponding law; or
- if paragraph (a) does not apply, in accordance with an applicable scale of costs; or
- if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.

Clause 280 allows a law firm to take reasonable security for costs. A law firm may stop acting for a client who does not provide reasonable security.

Clause 281 allows a law firm to charge interest, at the prescribed rate, on legal costs that are unpaid. Interest applies after 30 days from the day payment of costs is demanded.

Division 3.2.5 Costs agreements

Division 3.2.5 (clauses 282 – 288) describes how costs agreements may be entered into.

This Division::

- provides a number of requirements for the making of costs agreements;
- sets out requirements for the making of conditional costs agreements; and
- permits conditional costs agreements in certain circumstances. They are not permitted unless the law practice reasonably believes there is a significant risk that the matter will not have a successful outcome.

Clause 285 prohibits contingency fees. A law practice must not enter into a costs agreement under which costs payable are worked out according to:

- the value of property or any transaction involved in the matter; or
- the amount of any settlement or award, or the value of any property recovered in any proceedings.

A costs agreement is enforceable in the same way as any other contract.

Any costs agreement that contravenes this Division is void. Provision is made for recovery of costs in certain circumstances.

A client may apply to the Supreme Court to have a costs agreement set aside on the grounds that it is not fair, just or reasonable. Clause 289(2) sets out the matters to be considered by the Court. Clause 289 also sets out the kinds of orders that the Court may make, and what the Court must consider in making an order.

Division 3.2.6 Billing

Division 3.2.6 (clauses 289 – 293) generally requires a legal practice to give a client a bill of costs before the practice is entitled to recover the costs.

A law practice must not start proceedings to recover unpaid costs until at least 30 days after the practice has given a bill to the client, unless a court orders that the practice may do so.

The Division provides a number of formal requirements regarding the form and delivery of a bill.

A bill must be accompanied by a statement setting out the avenues available to the client in the event of a dispute about costs.

A person may request an itemised bill.

A law practice may give a person an interim bill relating to part of the services the practice was retained to provide. An interim bill may be reviewed under Division 3.2.7.

Division 3.2.7 Costs review

Division 3.2.7 (clauses 294 – 304) makes provision for the following matters:

- the making of applications for bills of costs to be reviewed by the Supreme Court;
- the procedure to be followed by the Court when conducting a costs review; and
- the making of determinations by the Court in respect of a costs review.

The Division:

- sets out the circumstances in which a client may apply to the Supreme Court for a costs review;
- sets out the circumstances in which a law practice that has retained another law practice may apply to the Court for a costs review; and
- permits a law practice that has given a bill to apply to the Court for a review of the costs to which the bill relates.

An application for review must contain a statement that there is no reasonable prospect of settlement of the dispute by mediation.

If an application for review is made, no amount may be paid into Court during the proceedings, and the law practice may not commence proceedings to recover unpaid costs until the review is complete.

The Court may proceed in the absence of a party who does not attend, provided the party has been given notice of the review.

Clause 300 sets out the matters to be considered by the Supreme Court in conducting a costs review.

Under clause 301, if a law practice gives a bill in the form of a lump sum bill, and later furnishes an itemised bill, the Supreme Court may decide that the law practice is not entitled to recover more than the amount set out in the lump sum bill.

Clause 302 makes provision for the payment of the costs of a costs review.

The Supreme Court may, in some circumstances, refer legal costs to the disciplinary tribunal to consider whether any action should be taken against the legal practitioner involved.

Costs are not reviewable if they are or have been the subject of a consumer dispute.

Division 3.2.8 Miscellaneous – pt 3.2

Division 3.2.8 (clauses 305 – 307) contains other provisions relating to the application of Part 3.2 to certain kinds of lawyers.

Regulations may provide that certain provisions of this Part do not apply to incorporated legal practices or multidisciplinary partnerships.

Clause 306 clarifies what is taken to be done, or omitted to be done, by a law practice, and what the practice is taken to be aware of or to have a belief about.

Any liability of a law practice is extended to the principals of the practice.

Part 3.3 Professional indemnity insurance

Part 3.3 (clauses 308 – 315) sets out the requirements for legal practitioners to hold professional indemnity insurance.

The purpose of this Part is to provide a scheme for professional indemnity insurance to protect clients of law practices from professional negligence.

The relevant council (defined in the Dictionary) may exempt an Australian legal practitioner from the requirement to hold professional indemnity insurance.

The grant or renewal of a practising certificate is prohibited unless the licensing body is satisfied that the practitioner is, or will be, insured.

Clause 312 describes the manner of approval of professional indemnity insurance policies.

The relevant council may negotiate with insurance providers for the provision of professional indemnity insurance.

The relevant council may also require a practitioner to give information relevant to the provision of insurance.

The relevant council may approve to approve an indemnity fund to which a practitioner may make contributions. The fund need not be established in the ACT.

Part 3.4 Fidelity cover

Division 3.4.1 Preliminary – pt 3.4

Part 3.4.1 (clauses 316 – 319) states the purpose of this Part, provides definitions and clarifies jurisdiction.

The purpose of this Part is to establish and maintain a fund to provide a source of compensation for defaults by law practices arising from acts or omissions of associates.

A default is taken to have happened when the act or omission giving rise to the default happened.

This Part does not apply to a barrister.

Division 3.4.2 Fidelity fund

Division 3.4.2 (clauses 320 – 326) establishes the fidelity fund to meet claims by consumers who have suffered financial loss due to a practitioner’s dishonest default. This is known as “fidelity cover”.

The fund must be invested in accordance with the *Trustee Act 1925*, as far as practicable.

The law society council must have the accounts of the fund audited each year. The report of the auditor is to be given to the Attorney-General.

Clause 323 sets out the requirement for solicitors to pay contributions to the fund.

The law society council may impose a levy if it considers the fund is insufficient to cover its liabilities.

The law society may arrange for the fidelity fund to be insured.

Clause 326 prohibits borrowing from the fund.

Division 3.4.3 Defaults to which pt 3.4 applies

Division 3.4.3 (clauses 327 – 329) sets out the matters in relation to which claims may be made against the fidelity fund.

Clause 327 defines the relevant jurisdiction for the purposes of claims.

This Part applies to acts of associates of the practice if the ACT is the relevant jurisdiction of one or more of the associates involved in the default. It does not matter where the default happens, or that the act or omission giving rise to the default is not an offence.

This Part does not apply to certain defaults in relation to the provision of financial services.

Division 3.4.4 Claims about defaults

Clause 330 sets out the right of a person to make a claim against the fidelity fund.

The law society council may require claims to be made in a particular form.

Claims must be made within the times set out in clause 332(1). Clause 332(2) allows the Supreme Court to extend the time for making a claim.

If the law society council believes there may have been a default by a law practice, it may publish a notice seeking information, or inviting claims. Procedural requirements are set out, and it is made clear that neither the publication of a notice nor the provision of information subjects a person to any liability (including in defamation).

Clause 334 sets out time limits for making claims following publication of a notice under clause 333.

A change in status of a law practice will not affect any claim made against it in relation to a default.

The law society council may investigate a claim in any way it considers appropriate.

The law society council, in its absolute discretion, may make payments to a client in advance deciding a claim.

Division 3.4.5 Deciding claims

Clause 338 provides for the deciding of claims by the law society council. The council may completely or partly allow or disallow a claim.

The amount payable in relation to a default must not exceed the pecuniary loss arising from the default.

The law society council may order payment of the claimant's reasonable legal costs in relation to the claim. If the claim is completely or partly allowed, the council must make an order for payment of those costs.

The law society council, in determining the amount payable in relation to a claim, must add interest to the pecuniary loss suffered, unless special circumstances exist.

A person may not recover from the fidelity fund any amounts covered by other benefits.

Clause 343 sets out the circumstances in which the law society council is subrogated to the rights and remedies of the claimant against anyone in relation to the default to which the claim relates.

Clause 344 sets out the circumstances in which a claimant must repay amounts to the fidelity fund.

The law society council must advise a claimant if a decision on the claim is likely to be delayed.

Division 3.4.6 Payments from fidelity fund for defaults

The law society council must apply the funds of the fidelity fund in relation to claims under this Part.

Clause 348 places a cap on payments from the fund.

If the law society council believes there is insufficient money in the fund it can levy solicitors to ensure client claims are met. It may also postpone or apportion payments, or make partial payments.

Division 3.4.7 Claims by law practices or associates

Clause 350 allows an associate of a law practice to make a claim against the fidelity fund in relation to the default of another associate of the practice.

Clause 351 permits claims to be made by law practices or associates in circumstances where the default has been avoided, remedied or reduced.

Division 3.4.8 Defaults involving interstate elements

Division 3.4.8 (clauses 352 and 353) sets out the way in which the law society council may deal with claims with an interstate element.

Division 3.4.9 Inter-jurisdictional provisions

Division 3.4.9 (clauses 354 – 363) makes provision for matters in relation to fidelity cover when more than one jurisdiction is involved.

The law society council may enter into protocols with corresponding authorities in relation to which this Part applies.

The law society council, in appropriate cases, may forward a claim to the corresponding authority of the jurisdiction in which the default occurred.

The law society council may request a corresponding authority to act as its agent in relation to a default occurring in more than one, or in an uncertain, jurisdiction.

The law society council and corresponding authorities may act as agent for each other in processing or investigating claims with inter-jurisdictional elements.

The law society council and corresponding authorities may make recommendations when acting as an agent under this Division. If a corresponding authority makes recommendations, the law society council, and not the corresponding authority, may decide on the claim.

The law society council may request a corresponding authority to investigate any aspect of a claim and to provide a report.

The law society council may conduct an investigation if asked to do so by a corresponding authority. The law society council must provide a report on the investigation to the corresponding authority.

The law society council may consult and cooperate with other entities having powers under a corresponding law in relation to the practice or the practitioner.

Division 3.4.10 Miscellaneous – pt 3.4

Regulations may set out requirements that apply when an interstate legal practitioner becomes authorised to withdraw money from a local trust account.

Regulations may also provide that a provision of this Part does not apply, or has limited application, to an incorporated legal practice. This does not affect the obligations of an incorporated legal practice in relation to the fidelity fund.

Regulations may provide that a provision of this Part does not apply, or has limited application, to a multidisciplinary partnership. This provision does not affect the obligations of a multidisciplinary partnership in relation to the fidelity fund.

This Part continues to apply to legal practitioners whose practising certificate has lapsed, but the Part ceases to apply after 6 months, or if the practitioner's practising certificate is earlier renewed.

The fidelity fund is the only property of the law society council available in relation to a claim.

Part 3.5 Mortgage practices and managed investment schemes

Part 3.5 (clauses 369 – 382) substantially re-enacts the provisions of Part 12A of the *Legal Practitioners Act 1970*. It provides for the regulation of certain mortgage work carried out by solicitors and prevents claims against the fidelity fund from being made in respect of losses arising from certain investments made in connection with mortgage practices and managed investment schemes that are associated with solicitors.

Division 3.5.1 Preliminary – pt 3.5

Clause 369 provides definitions for this Part.

Division 3.5.2 Mortgage practices

Division 3.5.2 (clauses 370 – 376) sets out the requirements relating to law practices that intend to deal with regulated mortgages (defined in clause 369). There must be appropriate fidelity cover in relation to dealings in regulated mortgages, and claims may not be made against the fidelity fund in the event of a default by the law practice.

Division 3.5.3 Managed investment schemes

Division 3.5.3 (clauses 377 – 379) sets out the requirements that apply if a person entrusts money with a solicitor to be invested in a managed investment scheme in which the solicitor has an interest.

Division 3.5.4 Miscellaneous

Division 3.5.4 (clauses 380 – 382) sets out a number of further requirements for Part 3.5.

The law society council may give a notice requiring a solicitor to provide information about matters relating to regulated mortgages. Failure to comply with the notice is professional misconduct.

Chapter 4 Complaints and discipline

Chapter 4 (clauses 383 – 468) provides the scheme for disciplining Australian lawyers and foreign lawyers for unsatisfactory professional conduct or professional misconduct. The broad purposes of the Chapter are:

- to provide a nationally consistent scheme for disciplining the legal profession
- to promote and enforce nationally consistent standards
- to promote best practice legal service delivery
- to provide a means of redressing complaints against lawyers

The only Core Uniform (CU) provisions included in Chapter 4 are the definitions of *unsatisfactory professional conduct* and *professional misconduct*. Core Non Uniform (CNU) provisions include the inter-jurisdictional provisions, the range of disciplinary sanctions to be available, and the publicising of disciplinary action.

Part 4.1 Preliminary and application – pt 4.1

Division 4.1.1 Preliminary

Division 4.1.1 (clauses 383 – 385) states the purposes and objects of Chapter 4, defines a number of terms that are relevant to this Chapter, and provides for the application of the Chapter to Australian lawyers, former lawyers and former legal practitioners.

The purposes of this Chapter are to

- provide a nationally consistent scheme for the discipline of the legal profession in the ACT, in the interests of the administration of justice and for the protection of consumers and the community generally;
- promote and enforce professional standards, competence and honesty of the legal profession;
- provide a means of redress for complaints against lawyers; and
- enable non-lawyers to participate in complaints and disciplinary processes involving lawyers.

Division 4.1.2 Key concepts

Division 4.1.2 (clauses 386 – 389) describes the kinds of conduct that constitute unsatisfactory professional conduct, professional misconduct and unsatisfactory employment conduct.

Clause 389 provides some guidance about the kinds of conduct that can be unsatisfactory professional conduct or professional misconduct.

Division 4.1.3 Application of ch 4

Division 4.1.3 (clauses 390 – 392) specifies:

- the *persons* to whom this Part applies – even though provisions of this Part are generally expressed to apply to an “Australian legal practitioner”, the provisions extend to current and former Australian legal practitioners, and current and former Australian lawyers (the Part also applies by force of Part 2.7 to Australian-registered foreign lawyers), and
- the *conduct* to which the Part applies – conduct occurring in this jurisdiction, and (in certain circumstances) conduct occurring outside this jurisdiction.

Part 4.2 Complaints about Australian legal practitioners and solicitor employees

Part 4.2 (clauses 393 – 400) enables complaints to be made about the conduct of Australian legal practitioners. Complaints may be made by clients, a council or any other person.

Complaints must be made within 3 years after the alleged conduct occurred, unless the relevant council decides that it is just and fair to do so or, if the complaint relates to professional misconduct, that it is in the public interest to deal with the complaint.

The practitioner against whom a complaint is made must be notified of the complaint, and has an opportunity to make submissions about it.

A preliminary assessment may be made of a complaint, and provision is made for the summary dismissal of complaints in appropriate cases, and for the withdrawal of complaints.

Part 4.3 Mediation

Part 4.3 (clauses 401 – 405) provides for the relevant council to recommend mediation of complaints that are not considered by the council to involve an issue of professional misconduct.

The council may, with the agreement of the complainant and the legal practitioner involved, facilitate the mediation.

The relevant council is under no obligation to recommend or facilitate mediation.

Mediators under this Part are protected from liability for acts done honestly for the purposes of mediation under this Part.

Part 4.4 Investigation of complaints

Part 4.4 (clauses 406 – 409) requires the investigation of complaints except in specified circumstances, and sets out various powers and requirements regarding investigations. Chapter 6 (Investigations) applies to an investigation under this Part.

A complaint is to be investigated by the relevant council in accordance with Chapter 6. The council investigating a complaint may appoint an investigator.

The relevant council may, at its discretion, for the purpose of investigating a complaint, refer a matter to the Supreme Court for an assessment of costs claimed by an Australian legal practitioner.

Part 4.5 Decision of council

Part 4.5 (clauses 410 – 416) requires disciplinary proceedings to be commenced in the disciplinary tribunal, unless the complaint is dismissed or the relevant council imposes summary discipline under this Part.

Provision is made for the commencement of disciplinary proceedings in the Tribunal without starting or finishing an investigation if there is a reasonable likelihood that the Tribunal will find that the person has engaged in unsatisfactory professional conduct or professional misconduct.

The council is to provide the complainant and the person to whom the complaint relates with reasons for its decision.

Clause 416 provides for appeals to the disciplinary tribunal against decisions of the relevant council.

Part 4.6 General procedural matters about complaints

Part 4.6 (clauses 417 – 418) applies the rules of procedural fairness to investigations under this Chapter, and obligates the relevant council to deal with matters quickly and efficiently.

This Part also sets out the obligation of the council to inform the complainant and the legal practitioner involved of the receipt of a complaint, the action taken in relation to that complaint, the decision that has been made and the right of the complainant to seek a review, by the council, of that decision.

Part 4.7 Proceedings in Disciplinary Tribunal

Part 4.7 (clauses 419 – 436) sets out the procedural requirements for applications to the disciplinary tribunal, and the hearing and determination of complaints before the Tribunal.

Proceedings are commenced by the relevant council, by way of application under clause 419. A disciplinary application must include the charges of unsatisfactory professional conduct, professional misconduct or unsatisfactory employee conduct that the council considers arise out of the complaint.

The Tribunal is bound by the rules of evidence, and hearings are to be open to the public unless the Tribunal directs otherwise.

The Part sets out the disciplinary orders, including interlocutory and interim orders and orders for payment of costs, that may be made by the Tribunal. Relevant councils are obliged to give effect to orders of the Tribunal.

Disciplinary action taken under this Part does not affect any other right that a complainant may have in relation to the conduct of the person involved.

Part 4.8 Compensation

Part 4.8 (clauses 437 – 442) enables the disciplinary tribunal to make a compensation order in relation to a complaint, sets out the kinds of compensation orders that may be made and imposes a number of procedural requirements for the making and enforcement of orders.

The Tribunal may only make an order for compensation if it has found an Australian legal practitioner to be guilty of unsatisfactory professional conduct, professional misconduct or unsatisfactory employee conduct.

An order for compensation may be filed in the Supreme Court and enforced as an order of the Court.

Recovery under a compensation order does not affect any other remedy available to a complainant.

Part 4.9 Publicising disciplinary action

Part 4.9 (clauses 443 – 450) provides for the publicising of disciplinary action taken against Australian legal practitioners in this and other jurisdictions, or against employees in this jurisdiction, in certain circumstances.

This Part also requires the keeping of a register of disciplinary action.

The relevant council may publicise disciplinary action in any way they consider appropriate. Provision is made for the protection of people from civil liability for actions taken under this Part.

The Part also contains provisions relating to confidentiality and the disclosure of information. Publication under this Part is subject to any order of the disciplinary tribunal, a corresponding disciplinary body, a court or a tribunal so far as the order prohibits or restricts the disclosure of information.

Part 4.10 Inter-jurisdictional provisions – ch 4

Part 4.10 (clauses 451 – 457) contains provisions to assist with inter-jurisdictional issues arising in connection with the conduct of Australian legal practitioners, including the procedural requirements for inter-jurisdictional investigations of professional conduct and the enforcement of disciplinary orders made in any jurisdiction.

Protocols may be entered into to deal with cases where conduct appears to have occurred in more than one jurisdiction.

Part 4.11 Miscellaneous – ch 4

Part 4.11 (clauses 458 – 468) contains a series of provisions relating to the process for dealing with complaints against, and the discipline of, Australian legal practitioners, including:

- the preservation of the inherent jurisdiction and powers of the Supreme Court regarding discipline;
- the provision of information about the complaints procedure
- failure to comply with orders of the Tribunal;
- the provision of public information about how complaints are handled;
- the requirement for the Tribunal to report compliance action to the Attorney General;

- the duty of councils to report suspected serious offences;
- the protection of liability for, and non-compellability of, the councils and others;
- the production by practitioner of information or documents despite a duty of confidentiality between practitioner and client;
- the waiver by complainant client of confidentiality;

Chapter 5 External intervention

Part 5.1 Preliminary – ch 5

Part 5.1 (clauses 469 – 474) contains definitions for Chapter 5 and a statement of the Chapter’s purpose.

The purpose of this Chapter is to ensure that an appropriate range of options is available for intervention in the affairs of lawyers to protect the interests of the general public, clients and law practices. Interventions should happen in a way that minimises adverse consequences for lawyers and their clients, and they should be consistent with interventions in other jurisdictions and with this Act.

This Part also provides for how this Chapter applies to barristers, Australian-registered foreign lawyers and others.

Part 5.2 Initiation of external intervention

Part 5.2 (clauses 475 and 476) describes the circumstances in which external intervention of a law practice may take place, and the procedure (to be managed by the relevant council) for the appointment of a supervisor, manager or receiver for a law practice.

Part 5.3 Supervisors

Part 5.3 (clauses 477 – 482) deals with the appointment of, and the role, powers, authorities, duties and functions of, a supervisor of trust money of a law practice.

The law society council may appoint supervisors.

The role of a supervisor is to receive trust money on behalf of a law practice, and to open and close trust accounts.

Part 5.4 Managers

Part 5.4 (clauses 483 – 489) deals with the appointment of, and the role, powers, authorities, duties and functions of, a manager of a law practice.

The relevant council may appoint managers.

The role of a manager is to carry on the law practice, which includes doing anything that the practice might lawfully have done.

Part 5.5 Receivers

Part 5.5 (clauses 490 – 505) deals with the appointment of, and the role, powers, authorities, duties and functions of, a receiver for a law practice.

Receivers are appointed by the Supreme Court, upon application by the law society council.

The role of a receiver is to be the receiver of the regulated property of a law practice and to wind up and terminate the affairs of the practice. Accordingly, this Part confers specific powers on receivers to deal with property, documents and information.

A receiver may apply to the Supreme Court for an order that an associate of the law practice appear before the court for examination on oath in relation to the regulated property of the practice.

Part 5.6 General

Part 5.6 (clauses 506 – 516) deals with miscellaneous matters concerning external intervention, including conditions of appointment, status of acts, appeals to and directions by the Supreme Court, disclosure of information by ADIs, and fees, legal costs and expenses.

Provision is made for the protection of people from civil liability for actions taken under this Part.

The Part also contains provisions relating to confidentiality and the disclosure of information.

Chapter 6 Investigations

Part 6.1 Preliminary – ch 6

Part 6.1 (clauses 517 – 519) contains general provisions (including definitions) for the purposes of this Chapter, which deals with trust account investigations, trust account examinations, complaint investigations and compliance audits of incorporated law practices.

The purpose of this Chapter is to set out the powers that are exercisable in relation to trust account investigations, trust account examinations, complaint investigations and ILP compliance audits.

Clause 519 relates to privileges against self-incrimination and exposure to civil liability. If a person is required to provide information under this Chapter, the person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to comply with a requirement. However, the extent to which information may be admitted in evidence is limited by clause 519(3). Clause 519 aims to ensure that information relevant to an investigation (for example, dealings in a trust account) is obtainable.

The Chapter also applies to other matters such as the powers of councils in relation to show cause events (by force of Divisions 2.4.7 and 2.7.7).

Part 6.2 Requirements relating to documents, information and other assistance

Part 6.2 (clauses 520 – 523) sets out requirements, about information, documents and assistance, that may be imposed by an investigator in carrying out an investigation, examination or compliance audit of a law practice or an Australian lawyer.

Part 6.3 Entry and search of premises

Part 6.3 confers powers of entry and search, and other incidental powers, on investigators in connection with the carrying out of trust account investigations and complaint investigations.

Division 6.3.1 Preliminary – pt 6.3

Division 6.3.1 (clauses 524 and 525) states that this Division applies to investigations of trust accounts and complaints, and provides definitions for this Part.

Division 6.3.2 Powers of investigators

Division 6.3.2 (clauses 526 – 530) provides for the power of investigators to enter premises and sets out the things that an investigator may do upon entry.

Clause 527 sets out the formal requirements for obtaining the consent of a person to enter premises.

Division 6.3.3 Search warrants

Division 6.3.3 (clauses 531 – 539) sets out the process for granting search warrants to investigators, and the requirements for use of a warrant.

Provision is made for the use and seizure of electronic equipment.

Division 6.3.4 Return and forfeiture of seized things

Division 6.3.4 (clauses 540 – 543) provides a number of requirements for seizing and dealing with items.

Division 6.3.5 Miscellaneous – pt 6.3

Division 6.3.5 (clauses 544 and 545) sets out requirements for minimising damage to property, and allows a person to claim compensation for any loss suffered as a result of the actions of an investigator.

Part 6.4 Additional powers in relation to incorporated legal practices

Part 6.4 (clauses 546 – 551) contains additional powers, such as the power to examine persons, inspect books and hold hearings, that may be exercised by an investigator in conducting an investigation or compliance audit in relation to an incorporated legal practice. The additional powers are the same as those conferred on ASIC under certain provisions of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

Failure to comply with a requirement or condition imposed by the law society council is capable of being unsatisfactory professional conduct or professional misconduct.

Part 6.5 Miscellaneous – ch 6

Part 6.5 (clauses 552 and 553) imposes additional requirements on legal practitioners in relation to examination, investigation and audit.

The practitioner must not mislead, and must not fail to comply with requirements that are imposed.

Provision is also made for the disclosure of information obtained in the course of an investigation, examination or audit.

Chapter 7 Regulatory authorities

Part 7.1 Admissions Board

Part 7.1 (clauses 554 – 558) establishes the legal practitioners admissions board. The board consists of 5 members, who are lawyers, appointed by the Chief Justice.

The Part contains provisions relating to ending the appointment of a member of the board, meetings, and the protection of members from civil liability.

Part 7.2 Disciplinary Tribunal

Part 7.2 (clauses 559 – 570) establishes the legal practitioners disciplinary tribunal. The principal function of the tribunal is to decide applications made under Part 4.7.

The tribunal comprises either 1 judicial member appointed by the Attorney-General or 1 judicial member together with 2 other members nominated under this Part.

A legal practitioner member of the tribunal is chosen from a list of people nominated by the relevant council, and 1 lay member must also be nominated by the judicial member from the list of lay members nominated by the Attorney-General.

Members may not be appointed for longer than 3 years, but a person may be reappointed.

Chapter 8 Professional bodies

Part 8.1 Bar council

Part 8.1 (clause 571) sets out the functions of the Bar council. The bar association is incorporated under the *Corporations Act 2001 (C'th)*.

Part 8.2 Law society and law society council

Part 8.2 (clauses 572 and 573) establishes the law society of the Australian Capital Territory.

The Part also sets out a number of functions of the law society, which are in addition to its other functions.

Part 8.3 Legal profession rules

Division 8.3.1 Preliminary

Division 8.3.1 (clause 574) states that the purpose of this Part is to promote the maintenance of high standards of professional conduct by legal practitioners by providing for the making and enforcement of rules.

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

Division 8.3.2 (clauses 575 – 579) provides for the making and subject matter of legal profession rules in relation to legal practice in the ACT.

The bar council may make rules relating to practice as a barrister, and the law society council may make rules relating to practice as a solicitor or as an Australian-registered foreign lawyer.

Provision is made for the bar council and the law society council to make joint rules

Clause 578 states that rules may relate to any aspect of legal practice, including standards of conduct expected of legal practitioners.

Clause 579 requires rules to be published in accordance with this Part. Under the *Legislation Act 2001*, rules are a disallowable instrument.

Division 8.3.3 Rules for incorporated legal practices and multidisciplinary partnerships

Division 8.3.3 (clause 580) sets out the matters in relation to which rules may be made for incorporated legal practices and multidisciplinary partnerships.

Division 8.3.4 General

Division 8.3.4 (clauses 581 and 582) provides that rules are binding on Australian legal practitioners and locally-registered foreign lawyers to whom they apply.

Rules have no effect to the extent to which they are inconsistent with the Act or regulations.

Chapter 9 General provisions

Chapter 9 (clauses 583 – 599) contains provisions of general application to the Act (including provisions for:

- the approval of forms for the purposes of this Act;
- liability of principals of a law practice;
- dealings with disqualified or convicted people;
- the obtaining and enforcement of injunctions;
- confidentiality and disclosure of information;
- legal professional and other privileges;
- review of decisions in the ACT Administrative Appeals Tribunal; and
- the review of the operation of this Act after 30 June 2010.

Chapter 10 Transitional

This Chapter (clauses 600 – 615) contains a number of transitional provisions to assist the implementation of this Act, in relation to:

- continuing the application of certain provisions of the *Legal Practitioners Act 1970* in relation to trust money and costs;
- the roll of legal practitioners;
- the recognition of existing legal practitioners;
- the status of pending applications for admission to the legal profession;
- the process for deciding applications for review of decisions;
- the process for dealing with pending complaints before the professional conduct board, or new complains about old conduct;
- the continuation of the statutory interest account;
- legal profession rules – see Schedule 1;
- the authorisation of compensation for solicitors who have paid compensation to clients, and were left uninsured by the collapse of HIH insurance;
- the application of provisions set out in Schedule 4 to mortgages entered into before the commencement of this Act;
- the power to make transitional regulations; and
- the expiry of this Chapter.

Chapter 11 Repeals and consequential amendments

This Chapter (clauses 616 and 617) provides for the repeal of the *Legal Practitioners Act 1970*, and for the amendment of legislation set out in Schedule 2.

Schedule 1 Legal profession rules

Part 1.1 Rules for solicitors

Part 1.2 Rules for barristers

Schedule 2 Consequential amendments

Part 2.1 Legal Aid Act 1977

Schedule 3 HIH provisions

Part 3.1 Definitions for Schedule 3

Part 3.2 Payments relating to HIH group insurance policies

Part 3.3 Special contributions and levies – HIH liabilities

Schedule 4 Mortgage practices and managed investment schemes – provisions about old mortgages

Part 4.1 Preliminary – sch 4

Part 4.2 Special provisions about old mortgages

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