



New South Wales

## Legal Profession Regulation 2002

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,  
Attorney General

### Explanatory note

The object of this Regulation is to replace, without substantial alteration, the *Legal Profession Regulation 1994*.

This Regulation deals with the following matters:

- (a) matters relating to practising certificates for legal practitioners, including the time within which applications for practising certificates must be made, late fees and the information to be provided in connection with such applications,
- (b) the keeping of registers of legal practitioners who hold practising certificates and the notification of changes in particulars affecting those registers,
- (c) notifications to be provided by interstate legal practitioners,
- (d) requirements in relation to foreign lawyers, including provisions relating to registration applications, scope of practice of foreign law and fidelity fund contributions,
- (e) requirements in relation to incorporated legal practices, including provisions relating to the keeping of accounts, auditing, costs and investigation and review of such practices,
- (f) the barristers and solicitors who are required to hold indemnity insurance,

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Explanatory note

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- (g) matters relating to the Solicitor's Fidelity Fund, including solicitors who are exempt from the requirement to contribute to the Fund, interest on claims against the Fund, time for appealing against failure to determine a claim and the operation of provisions of the Fund in relation to multidisciplinary partnerships,
- (h) legal fees and costs,
- (i) assessment of bills of costs and review of assessments,
- (j) requirements relating to trust accounts and controlled money (that is, certain money held by a solicitor on behalf of another person that is not held in the general trust account),
- (k) amounts to be deposited with the Law Society from trust funds held by a solicitor,
- (l) requirements that legal practitioners report irregularities suspected in relation to the way in which controlled money or trust money is dealt with by a solicitor,
- (m) reporting requirements relating to barristers and solicitors, including requirements that a barrister or solicitor report findings of guilt of certain offences committed by the barrister or solicitor and the commission of an act of bankruptcy by the barrister or solicitor,
- (n) the times within which show cause statements must be provided by barristers and solicitors in relation to the commission of certain offences or acts of bankruptcy,
- (o) requirements relating to certain advertising by barristers and solicitors,
- (p) the prevention of unlawful discriminatory practices by barristers and solicitors, including unlawful sexual harassment,
- (q) requirements for holders of practising certificates who are to undertake mandatory legal education to undertake certain courses,
- (r) interpretation provisions and savings and transitional provisions.

This Regulation is made under the *Legal Profession Act 1987* including section 216 (the general regulation-making power) and various other provisions of that Act specified in the Regulation.

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Clause 1            Legal Profession Regulation 2002

Part 1             Preliminary

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# Legal Profession Regulation 2002

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Legal Profession Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 September 2002.

**Note.** This Regulation replaces the *Legal Profession Regulation 1994* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

***appropriate Council*** means:

- (a) in relation to a person who is a barrister or applies for a practising certificate authorising the person to practise as a barrister—the Bar Council, or
- (b) in relation to a person who is a solicitor or applies for a practising certificate authorising the person to practise as a solicitor—the Law Society Council.

***associate*** of a solicitor has the same meaning as it has in Division 1 of Part 6 of the Act.

**Note.** See also clause 73 of this Regulation.

***controlled money*** has the same meaning as it has in section 61 (9) of the Act.

***costs review panel*** means a panel of 2 costs assessors constituted to conduct a review of a costs assessor's determination under Subdivision 4A of Division 6 of Part 11 of the Act.

***excluded offence*** means:

- (a) any offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999*) other than the following:

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- (i) an offence under section 42 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle negligently on a road or road related area if the barrister or solicitor concerned is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200,
  - (ii) an offence under section 42 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle on a road or road related area furiously, recklessly or at a speed or in a manner dangerous to the public,
  - (iii) any offence under section 19 (2) of the *Road Transport (General) Act 1999* (which relates to refusing to comply with a requirement to produce a driver licence, or to state name and home address, or stating a false name and home address),
  - (iv) any offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to driving etc while under the influence of alcohol or any other drug),
  - (v) any offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* (which relates to driving while unlicensed and other relevant matters),
  - (vi) any offence under section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to failing to stop and give assistance after an accident),
  - (vii) any offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to presence of prescribed concentration of alcohol in person's blood),
  - (viii) an offence under section 43 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to menacing driving),
  - (ix) any other offence under the road transport legislation if the court orders the disqualification of the barrister or solicitor concerned from holding a driver licence, or
- (b) any offence relating to the parking of motor vehicles.

**register** means a register kept by a Council under section 38C of the Act.

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*solicitor director* has the same meaning as it has in Division 2A of Part 3 of the Act.

*the Act* means the *Legal Profession Act 1987*.

*trust money* has the same meaning as it has in section 61 of the Act.

- (2) A reference in the definition of *excluded offence* in subclause (1):
- (a) to an offence under the road transport legislation includes a reference to an offence under the *Traffic Act 1909*, or the regulations under that Act, as previously in force, and
  - (b) a reference to an offence under a provision of an Act specified in paragraph (a) of that definition includes a reference to an offence under a corresponding provision of the *Traffic Act 1909*, or the regulations under that Act, as previously in force.
- (3) A reference in this Regulation to a legal practitioner's or solicitor's firm includes, in relation to a legal practitioner or solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice, a reference to the incorporated legal practice.
- (4) A reference in this Regulation to a form is a reference to a form in Schedule 1.

#### 4 Notes

The notes in this Regulation (except notes in a form) do not form part of this Regulation.

## Part 2 Practising certificates

### 5 Period for holder to apply for new certificate: sections 27 (3) and 28 (3)

- (1) For the purposes of section 27 (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 15 May before the current practising certificate expires.
- (2) For the purposes of section 28 (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 7 June before the current practising certificate expires.

### 6 Late fee: section 29 (3)

For the purposes of section 29 (3) of the Act, the prescribed late fee is an amount determined by the appropriate Council not exceeding 20 per cent of the fee payable in relation to the application concerned in accordance with the Act.

### 7 Information in application: section 30

- (1) An application by a legal practitioner for a practising certificate must be in a form that is approved by the appropriate Council, and signed by the practitioner, and must contain or be accompanied by the following:
  - (a) particulars of any partnership of which the practitioner is a member,
  - (b) particulars of any incorporated legal practice of which the practitioner is an officer or employee, including the name of the incorporated legal practice, its Australian Company Number and the names of the directors of the incorporated legal practice,
  - (c) the address of the office or offices at which the practitioner practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,
  - (d) in the case of a practitioner who is a member of, or employed by, a partnership or is an officer or employee of an incorporated legal practice—the address of the office or offices at which the partnership or legal practice practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,

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Part 2                      Practising certificates

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- (e) in the case of a practitioner who is employed otherwise than by a partnership or incorporated legal practice—the name of the employer and the address of the principal office of the employer,
  - (f) if the practitioner does not have in New South Wales an exchange box in a document exchange of Australian Document Exchange Pty. Limited, the name of the practitioner's Sydney agent (if any),
  - (g) if the practitioner has been found guilty of any offence (other than an excluded offence)—the nature of the offence,
  - (h) if the practitioner has committed an act of bankruptcy (within the meaning of section 3 (3) of the Act)—details of the act of bankruptcy,
  - (i) if the practitioner is a solicitor director of an incorporated legal practice and a financial report and director's report is required to be prepared in respect of the incorporated legal practice under section 292 of the *Corporations Act 2001* of the Commonwealth, a copy of those reports (being the reports most recently lodged with the Australian Securities and Investments Commission).
- (2) Subclause (1) (g):
- (a) applies to an offence whether or not committed in the course of practice as a legal practitioner, and
  - (b) applies to any finding of guilt of an offence whether or not the court proceeded to a conviction for the offence, and
  - (c) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and
  - (d) applies to a finding of guilt even if other persons are prohibited from disclosing the identity of the offender, and
  - (e) extends to an indictable offence committed before the commencement of this Regulation (and so extends whether the finding of guilt was made before or after that commencement), and
  - (f) extends to an offence (other than an indictable offence) committed after 8 March 1991, and

- (g) does not apply to a finding of guilt previously disclosed in an application for a practising certificate or under clause 133.
- (3) Subclause (1) (h) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under clause 134.
- (4) Subclause (1) (h) applies to acts of bankruptcy whether occurring before or after the commencement of this Regulation.
- (5) The appropriate Council may require the legal practitioner to furnish such further information as it considers relevant to its determination of the application within such time as it specifies.
- (6) In this clause, *offence* includes a tax offence.

## **8 Surrender of certificate**

- (1) The appropriate Council may accept from the holder of a current practising certificate the surrender of the certificate and an application for a new practising certificate and may issue a new practising certificate for the rest of the term of the surrendered certificate.
- (2) The appropriate Council may accept from the holder of a practising certificate the surrender of the certificate if:
  - (a) the Council is satisfied that there is a good reason for the surrender of the certificate (for example, that the holder is retiring from practising as a barrister or solicitor or no longer intends to practise as a barrister or solicitor in New South Wales), and
  - (b) the Council is not aware of any circumstances relating to the holder that would give rise to the conducting of an investigation, or the taking of disciplinary action, under the Act.
- (3) The Council may refund part of the fee paid in respect of a certificate surrendered under this clause if the Council considers that a refund should be made.

## **9 Refusal, cancellation or suspension**

- (1) If a Council refuses an application by a legal practitioner for a practising certificate or decides to cancel or suspend a legal practitioner's practising certificate, it must, within 14 days after its decision, serve written notice of the decision on the practitioner.

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Part 2                         Practising certificates

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- (2) If the practitioner is a solicitor director, the appropriate Council must also, within 14 days after its decision, serve written notice of the decision on the incorporated legal practice of which the practitioner is a solicitor director.
- (3) A decision of the Council to cancel or suspend the practising certificate of a legal practitioner has effect from the date on which service of notice of the decision on the legal practitioner was effected or at the expiration of a period following that date and specified in the notice.
- (4) A notice required to be served under subclause (1) on a legal practitioner must be served:
  - (a) personally, or
  - (b) by post addressed to the principal office at which the practitioner practises or provides legal services (as last notified under clause 7) or by delivering it to that office.

## Part 3 Registers of practising legal practitioners

### 10 Information included

- (1) The appropriate Council may include in a register information that the Council considers appropriate that was furnished by legal practitioners in their applications to the Council for practising certificates (or furnished by them in relation to the determination of their applications).
- (2) The appropriate Council is not to include in a register information supplied under clauses 7 (1) (g) or (h), 133 or 134.

### 11 Publication of information

- (1) The appropriate Council may publish, in circumstances which it considers appropriate, all or any of the following information:
  - (a) the name of any legal practitioner on the register,
  - (b) the name of the practitioner's firm (including a firm that is a partnership or an incorporated legal practice) and the address at which the practitioner or the practitioner's firm practises or provides legal services,
  - (c) any other relevant contact information.
- (2) Despite subclause (1), the appropriate Council is not to publish any such information that the legal practitioner concerned has requested the appropriate Council in writing not to publish.

### 12 Notification of change in particulars

- (1) A legal practitioner must notify the appropriate Council, in writing, of any change in the particulars relating to the practitioner as disclosed in the practitioner's last application for a practising certificate within 7 days after the change occurs.
- (2) A legal practitioner must, in accordance with any request from the appropriate Council, also notify the appropriate Council of the following particulars:
  - (a) particulars relating to any change to or dissolution of a partnership, formation of a new partnership, or acquisition of the practice of another legal practitioner, by the legal practitioner,

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Part 3                Registers of practising legal practitioners

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- (b) particulars relating to the formation of an incorporated legal practice, or the commencement of the provision of legal services by an incorporated legal practice, or any change to or winding up of an incorporated legal practice, including any change in the directors of the incorporated legal practice.
- (3) The request must be in the form of a notice served on the legal practitioner and must specify which particulars are requested.
- (4) For the purposes of this clause, a change in particulars includes a change in the information required to be disclosed under clause 7 (1) (g) or (h).

### **13 Provision of information to Prothonotary**

The appropriate Council must, if requested by the Prothonotary of the Supreme Court to do so, provide to the Prothonotary any information in relation to a legal practitioner or a legal practitioner's practice that is recorded on the register and any changes in that information that are notified to the Council from time to time.

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## Part 4 National practising certificates

### 14 Notification of establishment of office

Written notice under section 48T of the Act is to be given within 21 days after the interstate legal practitioner establishes an office in this State.

### 15 Requirements of written notice

A notice under section 48T (2) of the Act is to contain the following particulars:

- (a) the full name and residential address of the interstate legal practitioner,
- (b) the participating State in which the practitioner has been admitted to legal practice,
- (c) a description of the authority to practice conferred by the current practising certificate issued or given by a regulatory authority in that State,
- (d) any other State in which the practitioner has been admitted to legal practice or been issued with or given a current practising certificate,
- (e) the firm name, or the name of the employer, of the practitioner including:
  - (i) if the practitioner is a partner, the name of the partnership, and
  - (ii) if the practitioner is a solicitor director or an officer or employee of an incorporated legal practice, the name of the incorporated legal practice,
- (f) the address of the office established in this State by the practitioner,
- (g) the address of the sole or principal place of legal practice in the home State of the practitioner as well as the addresses of any other offices in Australia,
- (h) any other particulars requested in writing by the appropriate Council.

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Clause 16            Legal Profession Regulation 2002

Part 5                Foreign lawyers

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### Part 5 Foreign lawyers

**16 Period after which registration application is taken to be refused: section 48ZM (2)**

For the purposes of section 48ZM (2) of the Act, the prescribed period is 3 months.

**17 Period during which foreign lawyer may apply for renewal of registration: section 48ZN (3)**

For the purposes of section 48ZN (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 15 May before the current registration expires.

**18 Information in application to register or renew registration: section 48ZO (1) (b)**

(1) For the purposes of section 48ZO (1) (b) of the Act, an application to register, or renew the registration of, a foreign lawyer under Part 3C of the Act must contain or be accompanied by a New South Wales address for service for the foreign lawyer.

(2) The address referred to in subclause (1) may be an office or residential address but may not be a post office box address, an E-mail address or the number of an exchange box at a document exchange (DX).

**19 Cancellation of registration—time within which foreign lawyer must establish office or commercial presence: section 48ZQ (2) (d)**

For the purposes of section 48ZQ (2) (d) of the Act, the prescribed period is 3 months.

**20 Scope of practice of foreign law: section 48ZS (1) (b) and (d)**

(1) For the purposes of section 48ZS (1) (b) of the Act, a locally registered foreign lawyer may provide legal services (including appearances) in relation to all kinds of arbitration proceedings, including but not limited to services relating to the arbitration of industrial disputes undertaken in accordance with Chapter 3 of the *Industrial Relations Act 1996*.

(2) For the purposes of section 48ZS (1) (d) of the Act, a locally registered foreign lawyer may provide legal services in relation to all kinds of

conciliation, mediation and other forms of consensual dispute resolution, including but not limited to the following:

- (a) services relating to the conciliation of industrial disputes undertaken in accordance with Chapter 3 of the *Industrial Relations Act 1996*, and
- (b) services relating to mediation and neutral evaluation undertaken in accordance with the following provisions:
  - (i) Part 4A of the *Compensation Court Act 1984*,
  - (ii) Part 3A of the *District Court Act 1973*,
  - (iii) Part 5A of the *Land and Environment Court Act 1979*,
  - (iv) Part 3C of the *Local Courts (Civil Claims) Act 1970*,
  - (v) Part 7B of the *Supreme Court Act 1970*.

#### **21 Fidelity Fund contributions: sections 48ZAB and 78A**

- (1) This clause applies to a locally registered foreign lawyer practising foreign law in the State in partnership with, or as an employee of, a domestic lawyer, firm of domestic lawyers or incorporated legal practice.
- (2) A foreign lawyer to whom this clause applies must on registration by the domestic registration authority (being the Law Society Council) pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which the registration is to be in force.
- (3) The amount of a contribution to the Fidelity Fund is the amount determined by the Law Society Council and approved by the Attorney General in accordance with section 76 (2) of the Act in respect of solicitors (other than solicitors who are interstate legal practitioners).
- (4) The Law Society Council may permit a contribution to be paid by instalments under an arrangement approved by the Council.
- (5) If the foreign lawyer is registered after 31 December in a year ending on 30 June, the amount of the contribution that would otherwise be payable for that year is reduced by one-half.
- (6) If a foreign lawyer to whom this clause applies has paid a contribution for a year ending on 30 June and ceases to practise as a locally registered foreign lawyer at any time before 30 June in that year, the Law Society may refund a part of the contribution at a rate determined by the Law Society Council.

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Clause 22            Legal Profession Regulation 2002

Part 6                Incorporated legal practices

Division 1           Preliminary

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## Part 6 Incorporated legal practices

### Division 1           Preliminary

#### 22 Definitions

In this Part:

*ASIC* means the Australian Securities and Investments Commission.

*ASIC Act* means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

*non-legal services* means services provided by an incorporated legal practice that are not legal services, but does not include clerical or administrative services (such as typing, filing and photocopying) that are provided in connection with legal services.

#### 23 Exempt corporations

For the purposes of section 47C (3) (c) of the Act, the following corporations are exempt and are not incorporated legal practices:

- (a) the Law Society,
- (b) the Bar Association,
- (c) a community legal centre that complies with section 48H of the Act.

### Division 2           Disclosures to be made with respect to legal services

#### 24 Disclosures to be made with respect to legal services

- (1) If a client engages an incorporated legal practice to provide legal services, each solicitor director of the incorporated legal practice, and any solicitor who provides the legal services, must ensure that a disclosure is made to the client in connection with the provision of legal services.
- (2) The disclosure is to be made by giving the client a notice in writing setting out the following:
  - (a) a description of the legal services to be provided to the client,

- (b) advice that the provision of legal services by the incorporated legal practice, including by any officer or employee of the corporation who is a solicitor, is regulated by the *Legal Profession Act 1987*,
  - (c) a description of the non-legal services (if any) to be provided to the client,
  - (d) advice that the *Legal Profession Act 1987* does not regulate the provision of those non-legal services.
- (3) The disclosure is to be made before any legal services are provided to the client, or as soon as practicable afterwards.
  - (4) The disclosure is to be made on every occasion that the client retains the incorporated legal practice to provide legal services.
  - (5) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

### **Division 3      Application of Part 6 of the Act**

**Note.** Section 47L of the Act provides that Part 6 of the Act applies to incorporated legal practices and, for that purpose, authorises the regulations to modify the application of Part 6.

#### **25 Money received by incorporated legal practice for non-legal services**

- (1) This clause applies to money received by an incorporated legal practice, including by an officer or employee of an incorporated legal practice, in connection with or in the course of providing non-legal services.
- (2) Each solicitor director of an incorporated legal practice must ensure that any money to which this clause applies:
  - (a) is not deposited in a general trust account that is kept for the purposes of section 61 of the Act, and
  - (b) is not kept in the same account as any controlled money.
- (3) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

#### **26 Keeping of accounts: section 62**

- (1) Each solicitor director of an incorporated legal practice must ensure that section 62 of the Act, and the regulations under that section, are complied with:

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Clause 26                      Legal Profession Regulation 2002

Part 6                              Incorporated legal practices

Division 3                        Application of Part 6 of the Act

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- (a)    in respect of any money received by the incorporated legal practice on behalf of another person in connection with legal services provided by the practice, and
  - (b)    in respect of any money received by an officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (2) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.
- (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of officer or employee of an incorporated legal practice, for a failure to comply with section 62 of the Act, or the regulations under that section.

### 27 Audits

- (1) Section 63 of the Act, and the regulations under that section, apply to the records of an incorporated legal practice in the same way as they apply to a solicitor's records or the records relating to a solicitor's practice.
- (2) A reference in section 63 (2) of the Act to a solicitor is, in relation to an incorporated legal practice, a reference to each solicitor director of the incorporated legal practice and to any solicitor who is an officer or employee of the incorporated legal practice.

**Note.** The effect of subclause (2) is that the obligation under section 63 (2) of the Act to co-operate with an auditor falls on both the solicitor director of an incorporated legal practice and any solicitors who are officers or employees of the incorporated legal practice.

### 28 Application of section 64 of the Act to incorporated legal practices

Section 64 of the Act applies to each solicitor who is an officer or employee of an incorporated legal practice, and to money paid to a trust account kept by the incorporated legal practice, in the same way as it applies to a solicitor and a trust account kept by a solicitor.

## **Division 4      Application of Part 11 of the Act**

**Note.** Section 47J of the Act provides that Part 11 of the Act applies to legal services provided by an incorporated legal practice and, for that purpose, authorises the regulations to modify the application of Part 11.

### **29 Solicitor directors must ensure cost disclosure requirements are complied with**

- (1) Each solicitor director of an incorporated legal practice must ensure that Division 2 of Part 11 of the Act is complied with in respect of any legal services provided to a client by the incorporated legal practice (including by an officer or employee of the incorporated legal practice).
- (2) A failure by a solicitor director of an incorporated legal practice to ensure that Division 2 of Part 11 of the Act is complied with, in respect of such legal services, is capable of being unsatisfactory professional conduct or professional misconduct.
- (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of an officer or employee of an incorporated legal practice, for a failure to comply with Division 2 of Part 11 of the Act.

### **30 Costs assessment**

- (1) Sections 200 and 201 of the Act apply in respect of an incorporated legal practice.
- (2) However, an application:
  - (a) under section 200 of the Act for an assessment of a bill of costs given to an incorporated legal practice by a barrister or solicitor retained by the incorporated legal practice, or
  - (b) under section 201 of the Act for an assessment of a bill of costs given by the incorporated legal practice,may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.
- (3) Section 203 of the Act applies in respect of the application, but references to documents of or held by the applicant are taken to include references to documents of or held by the incorporated legal practice.

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Clause 30                      Legal Profession Regulation 2002

Part 6                            Incorporated legal practices

Division 4                      Application of Part 11 of the Act

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- (4) An application for a review of such an assessment under section 208KA of the Act may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.
- (5) Despite anything to the contrary in this clause, any certificate issued under Subdivision 4 or 4A of Division 6 of Part 11 of the Act in respect of an assessment or a review applied for by a solicitor director on behalf of an incorporated legal practice is enforceable against the incorporated legal practice and not the solicitor director.

### **31 Liability for overcharging and misrepresentations as to costs**

- (1) Section 208Q of the Act applies in respect of any conduct of an incorporated legal practice.
- (2) For that purpose, the deliberate charging of grossly excessive amounts of costs or a deliberate misrepresentation as to costs by an incorporated legal practice (including by an officer or employee of the incorporated legal practice) constitutes professional misconduct by:
  - (a) each solicitor director of the incorporated legal practice, and
  - (b) the solicitor (if any) involved in the conduct.

## **Division 5 Investigation and review of incorporated legal practices**

### **32 Purposes for which powers may be exercised**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred by this Division for the following purposes:
  - (a) an investigation referred to in section 55 or 152 of the Act (as applied by section 47O of the Act),
  - (b) a review conducted under section 47P of the Act.
- (2) The Law Society Council and the Legal Services Commissioner are not required to jointly exercise the powers conferred by this Division.
- (3) This Division does not limit any powers the Law Society Council and the Legal Services Commissioner have under the Act.

**33 Examination of persons**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by Division 2 of Part 3 of the ASIC Act.
- (2) Division 2 of Part 3 of the ASIC Act applies to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
  - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 of that Act is taken to be a reference to a matter that is being or is to be investigated or reviewed by the Law Society Council or the Legal Services Commissioner as referred to in clause 32,
  - (c) a reference in section 19 to a person is taken to be a reference to a solicitor or an incorporated legal practice,
  - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.
- (3) Sections 22 (2), 25 (2), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred on the Law Society Council and the Legal Services Commissioner by this clause.

**34 Inspection of books**

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by sections 30 (1), 34 and 37–39 of the ASIC Act.
- (2) Those provisions apply to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
  - (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice,

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- (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice,
- (d) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
- (e) a reference in section 37 to a proceeding is taken to be a reference to an investigation or review referred to in clause 32, or any proceedings under the Act that arise as a result of that investigation or review.

### 35 Power to hold hearings

- (1) The Law Society Council and the Legal Services Commissioner may hold hearings for the purpose of an investigation or review referred to in clause 32.

**Note.** Compare section 51 of the ASIC Act.

- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to and in respect of any such hearing, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
  - (b) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
  - (c) a reference to a person in section 58 is taken to be a reference to a solicitor or an incorporated legal practice,
  - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.

**36 Failure to comply with investigation or review**

The following acts or omissions are capable of being unsatisfactory professional conduct or professional misconduct:

- (a) a failure by a solicitor to comply with any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,
- (b) a contravention by a solicitor of any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division,
- (c) a failure by a solicitor director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:
  - (i) any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,
  - (ii) any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division.

**Division 6 Appointment of solicitor director**

**37 Appointment of new solicitor director**

For the purposes of section 48D (3) of the Act, the prescribed time (being the time in which a new solicitor director must be appointed for the purposes of that section) is the period of 7 days commencing when the incorporated legal practice ceases to have a solicitor director.

## 2002 No 631

Clause 38            Legal Profession Regulation 2002

Part 7                Indemnity insurance

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### Part 7 Indemnity insurance

#### 38 Insurable barristers

- (1) For the purposes of the definition of *insurable barrister* in section 38R (4) of the Act, a barrister is required to be an insured barrister if the barrister holds a practising certificate which entitles the holder to practise as a barrister on his or her own account.
- (2) However, a barrister is not required to be an insured barrister:
  - (a) if the barrister is exempted, or is a member of a class of barristers which is exempted, from that requirement by the Bar Council, or
  - (b) because of any practice referred to in section 38Q of the Act.
- (3) The Bar Council may exempt barristers or classes of barristers from the requirement to be insured on such grounds as the Council considers sufficient.

#### 39 Insurable solicitors

- (1) For the purposes of the definition of *insurable solicitor* in section 39 of the Act, a solicitor is required to be an insured solicitor if the solicitor holds a practising certificate which entitles the holder to practise as a solicitor on his or her own account.
- (2) However, a solicitor is not required to be an insured solicitor:
  - (a) if the solicitor has given a written undertaking to the Law Society Council that the solicitor will not practise during the period to which the practising certificate relates otherwise than in the course of the solicitor's employment by a body or person specified in the undertaking, or
  - (b) if the solicitor is exempted, or is a member of a class of solicitors which is exempted, from the requirement by the Law Society Council.
- (3) Subclause (2) (a) does not apply in respect of a solicitor who is employed by an incorporated legal practice.
- (4) The Law Society Council may exempt solicitors or classes of solicitors from the requirement to be insured on such grounds as the Council considers sufficient.

**40 Provision of information relating to insurance**

- (1) An insurable barrister or insurable solicitor must, on receipt of a request in writing from the appropriate Council, provide to the Council or its brokers (as the Council may direct) such information as to the conduct of the barrister's or solicitor's practice as the Council may require for any purpose related to the insurance of barristers or solicitors under the Act.
- (2) Without limiting the type of information that may be required under subclause (1), the information required may include the following:
  - (a) particulars of the income earned by the practice and the terms of employment of the persons employed in the practice,
  - (b) in relation to a solicitor director, information as to the conduct of an incorporated legal practice of which the solicitor is a solicitor director.
- (3) In this clause:

*insurable barrister* means a barrister required by clause 38 to be an insured barrister.

*insurable solicitor* means a solicitor required by clause 39 to be an insured solicitor.

## 2002 No 631

Clause 41            Legal Profession Regulation 2002

Part 8               Solicitors' fidelity fund

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### Part 8 Solicitors' fidelity fund

#### 41 Solicitors exempt from contributions: section 76 (5)

Each corporation that is:

- (a) an authority that is established by or under an Act and that is (or whose governing body is) constituted by persons appointed by the Governor or a Minister, or
- (b) a statutory body that represents the Crown,

is prescribed for the purposes of section 76 (5) of the Act.

#### 42 Interest on claims: section 85 (1)

The rate of interest prescribed for the purposes of section 85 (1) of the Act is 5 per cent per annum.

#### 43 Time for appeal against failure to determine claim: section 90D (3)

For the purposes of section 90D (3) of the Act, the prescribed period is the period of 28 days after the day on which the claim is received by the Law Society.

#### 44 Multidisciplinary partnerships: section 48G

A claim may not be made under Part 7 of the Act in respect of a failure to account or a dishonest default by a person who is in a partnership authorised under section 48G of the Act but who is not a barrister or solicitor unless the failure to account or dishonest default occurred in the course of the business of the partnership that is business of a barrister or solicitor.

**Note.** Section 48G (3) (e) of the Act applies Part 7 of the Act, subject to the regulations, in respect of a partnership in which a barrister or solicitor is authorised by that section to be a member.

## Part 9 Legal fees and costs

### Division 1 Bill of costs

#### 45 Particulars in bill of costs

- (1) For the purposes of section 193 (1) of the Act, the following particulars are to be included in a bill of costs:
- (a) a description of the legal service provided,
  - (b) the total amount of the costs charged,
  - (c) any intended claim for interest under section 190 of the Act if the costs are not paid (including the rate of interest),
  - (d) a statement that the client may apply to have the costs assessed under Part 11 of the Act, but that if the costs have been wholly or partly paid, the application must be made within 12 months after the client is given the bill of costs,
  - (e) the work done in providing the legal service,
  - (f) the period over which that work was done,
  - (g) the identity of the persons who did that work (including the position of the persons, for example, partner, associate),
  - (h) the basis on which the costs have been calculated and charged (whether on a lump sum basis, an hourly rate basis, an item of work basis, a part of proceedings basis or other basis),
  - (i) the facts relied on to justify the costs charged by reference to the above, the practitioner's skill, labour and responsibility, the complexity, novelty or difficulty of the matter, the quality of the work done or any other relevant matter.
- (2) However, the particulars referred to in subclause (1) (e)–(i) need not be included in the bill of costs if:
- (a) the total amount of costs charged is the amount, or an amount calculated on the basis, set out in a costs agreement for the legal service made under Division 3 of Part 11 of the Act or disclosed in accordance with Division 2 of that Part, and
  - (b) the bill of costs refers to the relevant costs agreement or disclosure document.

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Clause 45                      Legal Profession Regulation 2002

Part 9                            Legal fees and costs

Division 1                      Bill of costs

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- (3) A bill of costs may comprise more than 1 document.

**Note.** The above particulars are prescribed for a bill of costs required to be given by a practitioner before costs may be recovered from a client (see section 192 of the Act). A copy of the bill must be attached to an application for assessment of practitioner/client costs (see Forms 1 and 2). In an assessment of party/party costs, the particulars required are those set out in Form 3.

## Division 2                      Costs fixed by regulation

### 46    Prescribed costs for legal services in workers compensation matters: section 196 (1) (a)

- (1) This clause applies to costs for legal services provided in any workers compensation matter.
- (2) The fair and reasonable costs fixed for a legal service specified in Schedule 2 are the costs specified in relation to that service in that Schedule, calculated in accordance with that Schedule.
- (3) However, after calculating the costs for legal services specified in Parts 1 and 2 of Schedule 2, the total of all such costs is to be reduced by 10%.

**Note.** Section 208O (1) of the Act requires any assessment of costs for a legal service provided in any workers compensation matter to be made in accordance with the costs fixed by this clause. (Section 196 (2) of the Act provides that a barrister or solicitor may not charge a client more than the fixed cost for such a legal service.)

However, this clause is subject to the *Workplace Injury Management and Workers Compensation Act 1998* which includes provisions in relation to costs and the assessment of costs in workers compensation matters.

### 47    Prescribed costs for recovery of certain debts and enforcement of certain judgments: section 196 (1) (b) and (b1)

- (1) The costs payable for:
- (a)    the uncontested recovery of a lump sum debt, or
- (b)    the enforcement of a judgment by a judgment creditor,
- are the costs specified in Schedule 3.
- (2) The costs specified in Schedule 3 are inclusive of all attendances, copying, letters, perusals, searches and telephone calls by or on behalf of the legal practitioner (being the legal practitioner retained by the plaintiff) in relation to the action concerned.

**48 Prescribed costs for non-legal services in workers compensation matters: section 196 (1) (c)**

- (1) This clause applies to costs for a matter that is not a legal service but is related to proceedings in any workers compensation matter.
- (2) The amount of costs fixed for a service specified in Schedule 4 is the amount specified in relation to that service in that Schedule, calculated in accordance with that Schedule.

**Note.** Section 208O (2) of the Act requires an assessment of costs for a non-legal service to be made having regard to the costs fixed by this clause. (Section 196 (2) of the Act does not regulate the amount that a barrister or solicitor may charge a client for such a non-legal service.)

**49 Prescribed costs for probate matters (non-contentious): section 196**

A determination of the Legal Fees and Costs Board in force under section 179 of the Act immediately before the substitution of that section by the *Legal Profession Reform Act 1993* continues in force, on and from that repeal, as if it were a regulation under section 196 (1) (b2) of the Act but only to the extent that the determination:

- (a) applies to legal services relating to probate matters (other than the administration of estates), and
- (b) could have been made as a regulation if section 196 (1) (b2) (as inserted by the *Legal Profession Amendment Act 1996*) had been in force when the determination was made.

**50 GST may be added to costs**

- (1) Despite the other provisions of this Division, a cost fixed by this Division may be increased by the amount of any GST payable in respect of the legal or other service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Division.
- (2) This clause does not permit a legal practitioner to charge or recover, in respect of GST payable in respect of a legal or other service, an amount that is greater than:
  - (a) 10% of the maximum amount payable to the legal practitioner in respect of the legal or other service apart from this clause, or
  - (b) the amount permitted under the New Tax System Price Exploitation law,
 whichever is the lesser.

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Clause 50            Legal Profession Regulation 2002

Part 9                Legal fees and costs

Division 2            Costs fixed by regulation

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(3) In this clause:

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

**New Tax System Price Exploitation law** means:

- (a) the *New Tax System Price Exploitation Code*, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

## Division 3            Miscellaneous

### 51 Barristers may receive costs in advance

- (1) A barrister may, in the course of practising as a barrister, receive money in advance for costs to accrue due to, or to be paid by, the barrister.

**Note.** "Costs" includes barristers' fees as well as other charges by barristers (such as expenses and disbursements): section 3 of the Act.

- (2) This clause does not affect any trust to which money received by a barrister is subject, or any obligation of a barrister under such a trust.

## Part 10 Costs assessments

### Division 1 Assessment of bill of costs (other than party/party costs)

#### 52 Limitation period for applications by clients for cost assessment where bill paid or part paid

For the purposes of section 199 (2) of the Act, the prescribed period for making an application for an assessment of a bill of costs is:

- (a) except as provided by paragraph (b), the period of 12 months after the bill was given to the client, or
- (b) if a Council or the Commissioner applies for an assessment of costs for the purpose of investigating a complaint as referred to in section 153 (1) of the Act, the period of 12 months after the complaint was made.

#### 53 Form of, and fee for, application for assessment of bill of costs

- (1) For the purposes of section 203 (1) of the Act, the prescribed form of application for assessment (other than an application for assessment of party/party costs under section 202 of the Act) is:

- (a) in the case of an application by the client—Form 1, or
- (b) in any other case—Form 2.

The application is to be made to the Manager, Costs Assessment in duplicate.

- (2) For the purposes of section 203 (1) of the Act, the prescribed fee that is to accompany such an application is the greatest of the following amounts:

- (a) \$100,
- (b) 1 per cent of the amount remaining unpaid on the bill of costs at the time the application is made,
- (c) 1 per cent of the amount of costs in dispute at the time the application is made.

- (3) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.

## 2002 No 631

Clause 54                      Legal Profession Regulation 2002

Part 10                        Costs assessments

Division 1                    Assessment of bill of costs (other than party/party costs)

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### 54 Procedure before application for assessment of bill of costs referred to assessor

- (1) On receipt of an application for assessment of a bill of costs made under section 199 of the Act by a client or under section 200 of the Act by an instructing practitioner, the Manager, Costs Assessment is to deal with the application as follows:
  - (a) A copy of the application that is required by section 204 to be sent by the Manager, Costs Assessment to the practitioner who gave the bill of costs is to be accompanied by a notice advising the practitioner that any response to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the practitioner receives the notice.
  - (b) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant.
  - (c) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 206 of the Act as soon as practicable after any response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (a).
  - (d) Any relevant response, and any response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.
- (2) In subclause (1), *instructing practitioner* means a barrister or solicitor who retains another barrister or solicitor to act on behalf of a client.
- (3) On receipt of an application for assessment of a bill of costs made under section 201 of the Act by the barrister or solicitor giving the bill, the Manager, Costs Assessment is to deal with the application as follows:
  - (a) A copy of the application required by section 204 to be sent by the Manager, Costs Assessment to the person who was given the bill of costs is to be accompanied by a notice advising the person that any objection to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the person receives the notice.

- (b) A copy of any objection duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant with a notice advising the applicant that any response to the objection must be lodged with the Manager, Costs Assessment in writing within 21 days after the applicant receives the notice.
- (c) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the person who lodged the objection.
- (d) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 206 of the Act:
  - (i) if no objection is duly lodged with the Manager, Costs Assessment—as soon as practicable after the period referred to in paragraph (a), or
  - (ii) if an objection is duly lodged—as soon as practicable after a response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (b).
- (e) Any relevant objection or response, and any objection or response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.

**Note.** Section 204 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for practitioner/client costs) to be given to any barrister, solicitor or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify.

Section 207 of the Act enables the costs assessor to whom an application is referred to obtain further particulars about the application by notice served on a party.

## Division 2      Assessment of party/party costs

### 55    Form of, and fee for, application for assessment of party/party costs

- (1) For the purposes of section 203 (1) of the Act, the prescribed form of application for assessment of party/party costs under section 202 (1) of the Act is Form 3.
- (2) The application is to be made to the Manager, Costs Assessment in duplicate.

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Clause 55                    Legal Profession Regulation 2002

Part 10                      Costs assessments

Division 2                   Assessment of party/party costs

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- (3) For the purposes of section 203 (1) of the Act, the prescribed fee that is to accompany such an application is the greatest of the following amounts:
- (a) \$100,
  - (b) 1 per cent of the amount of costs remaining unpaid at the time the application is made,
  - (c) 1 per cent of the amount of costs in dispute at the time the application is made.
- (4) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.

### **56 Procedure before application for assessment of party/party costs**

- (1) The following procedure applies to an application for assessment of party/party costs made under section 202 (1) of the Act by the person to whom the costs are payable:
- (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the form of application in Form 3 and send a copy of the application to the person liable to pay the costs with a notice advising the person that any objection to the application must be lodged with the applicant in writing within 21 days after the person receives the notice.
  - (b) The applicant is to attach to the application any such objection received by the applicant before the application is lodged with the Manager, Costs Assessment. The applicant may attach to the application a response to any such objection.
  - (c) If no such objection is received, the applicant is to certify in the application that no objection was received by the applicant before the application was lodged with the Manager, Costs Assessment.
  - (d) The application may not be lodged with the Manager, Costs Assessment until after the applicant duly receives an objection or the period referred to in paragraph (a) expires (whichever first occurs).
  - (e) In accordance with section 204 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person who is liable to pay the costs.

- (f) Any objection that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred (together with any response that the applicant wishes to make).
- (2) The following procedure applies to an application for assessment of party/party costs made under section 202 (1) of the Act by the person liable to pay the costs:
- (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the relevant parts of the form of application in Form 3 and send the application to the person to whom the costs are payable with a notice advising the person that the information required by paragraph 5 of Form 3 is to be provided by the person and the completed application form returned to the applicant within 21 days after the person receives the notice (or within such longer period as the applicant and the person agree).
- (b) If the applicant wishes to object to the information provided, the applicant is to lodge the objection in writing with the person who provided the information with a notice advising the person that any response to the objection must be lodged with the applicant in writing within 21 days after the person receives the notice.
- (c) The applicant is to attach to the application any such objection made by the applicant and any response received by the applicant before the application is lodged with the Manager, Costs Assessment.
- (d) If no such response is received, the applicant is to certify in the application that no response to the objection made by the applicant was received by the applicant before the application was lodged with the Manager, Costs Assessment.
- (e) The application may not be lodged with the Manager, Costs Assessment until after the applicant receives the information referred to in paragraph (a) and, if an objection is duly made by the applicant, until:
- (i) if no response is duly lodged by the other person—after the period referred to in paragraph (b), or
- (ii) if a response is duly lodged—after the response is lodged.

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Division 2                     Assessment of party/party costs

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- (f)     However, if the information referred to in paragraph (a) is not provided within the period specified in that paragraph, the application may be lodged with the Manager, Costs Assessment at any time after that period has expired.
  - (g)     In accordance with section 204 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person to whom the costs are payable.
  - (h)     Any response that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred.
- (3) On receipt of a direction by a court or tribunal under section 202 (2) of the Act for assessment of party/party costs, the Manager, Costs Assessment is to deal with the direction as if it were an application referred to in subclause (2) made by the person liable to pay the costs and as if the Manager, Costs Assessment were the applicant.

**Note.** Section 204 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for party/party costs) to be given to any barrister, solicitor or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify.

Section 207 of the Act enables the costs assessor to whom an application is referred to obtain further particulars about the application by notice served on a party.

### 57 Determination of costs of party/party assessment

In determining under section 208F (4) of the Act by whom and to what extent the costs of the assessment of party/party costs are to be paid, the costs assessor may have regard to the following:

- (a)     the extent to which the determination of the amount of fair and reasonable party/party costs differs from the amount of those costs claimed in the application for assessment,
- (b)     whether or not, in the opinion of the costs assessor, either or both of the parties to the application made a genuine attempt to agree on the amount of the fair and reasonable costs concerned,

- (c) whether or not, in the opinion of the costs assessor, a party to the application unnecessarily delayed the determination of the application for assessment.

**Note.** Section 208F (5) of the Act provides that the costs under any such determination, to the extent that it relates to the costs of the costs assessor, are to be paid to the Manager, Costs Assessment of the Supreme Court. A certificate of such a determination may, under section 208J (3) of the Act, be filed in a court of competent jurisdiction and operates as a judgment debt.

### Division 3 Assessment of costs (general provisions)

#### 58 Information relating to assessment of costs

- (1) In addition to the requirements of section 208 of the Act, the costs assessor to whom an application for assessment of costs is referred is to give due consideration to the information in the application and the information provided in accordance with clause 54 or 56.

**Note.** Section 208 of the Act imposes an obligation on the costs assessor to give the parties a reasonable opportunity to make written submissions to the costs assessor in relation to the application for assessment and to give due consideration to any submission so made.

- (2) The costs assessors' rules committee may, for the purpose of assisting costs assessors in assessing costs, distribute to costs assessors any of the following:
- (a) information that has been published about market rates for legal costs,
  - (b) information about comparative assessments of costs previously made by costs assessors,
  - (c) relevant judgments of the Supreme Court on appeal from costs assessors' determinations,
  - (d) information about relevant provisions of the Act and this Regulation relating to costs assessment,
  - (e) any other relevant information.

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Clause 59                      Legal Profession Regulation 2002

Part 10                         Costs assessments

Division 3                      Assessment of costs (general provisions)

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### 59 Settlement of matter by consent

A costs assessor may determine that the amount of fair and reasonable costs is the amount agreed to by the parties if during the course of the assessment the parties notify the costs assessor that they have agreed on the amount of those costs.

**Note.** In the case of party/party costs, section 208F (4) of the Act provides that the costs assessed are to include, in addition to the fair and reasonable amount of costs, the costs of the assessment (including the costs of the costs assessor).

### 60 Delivery of application for assessment and related documents

- (1) This clause applies to an application for assessment of costs, and any notice, information, objection, response or other document in relation to the application.
- (2) A document to which this clause applies may be given to a party to a costs assessment in the same way as a bill of costs may be given under section 195 of the Act.
- (3) A document to which this clause applies may be given to a costs assessor:
  - (a) in the same way as a bill of costs may be given under section 195 of the Act, or
  - (b) in any other manner that the costs assessor authorises.
- (4) A document to which this clause applies may be given to the Manager, Costs Assessment in any of the following ways:
  - (a) by filing it with the Manager, Costs Assessment,
  - (b) by sending it by post to the Manager, Costs Assessment, or
  - (c) by delivering it to the appropriate place in a document exchange in which the Manager, Costs Assessment has receiving facilities, or
  - (d) in any other manner that the Manager, Costs Assessment authorises.

**61 Certificate of determination of costs and statement of reasons**

- (1) A costs assessor is to give to the Manager, Costs Assessment a copy of the certificate required to be given under section 208J of the Act.

**Note.** Section 208J of the Act requires a costs assessor, on making a determination, to issue to each party a certificate that sets out the determination.

- (2) A statement of reasons for a costs assessor's determination that is required by section 208JAA of the Act to accompany a certificate issued under section 208J of the Act must be accompanied by the following information:
- (a) the total amount of costs for providing legal services determined to be fair and reasonable,
  - (b) the total amount of disbursements determined to be fair and reasonable,
  - (c) each disbursement varied by the determination,
  - (d) in respect of any disputed costs, an explanation of:
    - (i) the basis on which the costs were assessed, and
    - (ii) how the submissions made by the parties were dealt with,
  - (e) if the costs assessor declines to assess a bill of costs under section 208C of the Act—the basis for doing so,
  - (f) if the costs assessor determines that a term of a costs agreement is unjust—the basis for doing so,
  - (g) a statement of any determination under section 208E of the Act that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.
- (3) A statement of reasons to which this clause applies may be accompanied by such further information as the costs assessor concerned considers is necessary to clarify the determination of the application for a costs assessment.

**62 Circumstances in which assessor may not refuse to issue certificate**

Section 208J (5) of the Act does not apply in respect of the issue of a certificate by a costs assessor under section 208J of the Act if the fee for the application for the costs assessment has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

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Part 10                         Costs assessments

Division 3                      Assessment of costs (general provisions)

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### **63 Reference of applications to assessors**

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for assessment to costs assessors, group costs assessors in panels according to expertise, location and jurisdiction.
- (2) The Manager, Costs Assessment is to refer applications for assessment of costs to the most suitable costs assessor having regard to the following:
  - (a) the availability of costs assessors,
  - (b) the nature of the matter,
  - (c) in the case of an assessment of party/party costs—the jurisdiction of the court or tribunal in which the order for costs was made,
  - (d) the location of the parties and the legal practitioners acting for the parties concerned,
  - (e) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment must inform the parties to an application for assessment of the name, address and other contact details of the costs assessor to whom the application has been referred.

### **Division 4                      Review of costs assessments by costs review panel**

#### **64 Application for review by costs review panel**

- (1) For the purposes of section 208KA (2) (a) of the Act, an application for a review of a determination of a costs assessor is to be in Form 4 and is to be filed in triplicate.
- (2) For the purposes of section 208KA (2) (b) of the Act, the prescribed fee that is to accompany such an application is \$275.

#### **65 Settlement of review application by consent**

A costs review panel reviewing the determination of a costs assessor may determine that the amount of fair and reasonable costs is the amount agreed to by the parties to the review if during the course of the review the parties notify the panel that they have agreed on the amount of those costs.

**66 Delivery of application for review and related documents**

- (1) An application under section 208KA of the Act for a review by a costs review panel of a determination of a costs assessor is to be accompanied by (in addition to the prescribed fee required by that section):
  - (a) an affidavit that notice of the application has been given to the other parties, and
  - (b) a copy of all the costs assessor's certificates of determination relating to the assessment that is the subject of the application, and
  - (c) a copy of the costs assessor's statement of the reasons for the determination.
- (2) The applicant must give a copy of the application to the other parties.
- (3) Any other document in relation to the application that is required or permitted to be given to the Manager, Costs Assessment or a costs review panel may be given to the Manager, Costs Assessment or to the review panel in any of the following ways:
  - (a) by filing it with the Manager, Costs Assessment,
  - (b) by sending it by post to the Manager, Costs Assessment, or to a place nominated by the review panel,
  - (c) by delivering it to the appropriate place in a document exchange in which the Manager, Costs Assessment has receiving facilities,
  - (d) in any other way that a member of the panel on behalf of the panel directs.

**67 Copy of certificate of determination to be given to Manager, Costs Assessment**

The panel is to give to the Manager, Costs Assessment of the Supreme Court a copy of a certificate setting out the determination by the panel of an application for the review of a determination of a costs assessor.

**68 Statement of reasons**

- (1) A statement of reasons for a costs review panel's determination that is required by section 208KG of the Act to accompany a certificate issued under section 208KF of the Act must be accompanied by the following information:

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- (a) the total amount of costs for providing legal services determined to be fair and reasonable,
  - (b) the total amount of disbursements determined to be fair and reasonable,
  - (c) each disbursement varied by the determination,
  - (d) in respect of any disputed costs, an explanation of:
    - (i) the basis on which the costs were assessed, and
    - (ii) how the submissions made by the parties were dealt with,
  - (e) a statement of any determination as to the person by whom and the extent to which either the fee paid or payable for the application for review or the costs of the costs assessor, or both, are to be paid,
  - (f) if the determination relates to costs other than party/party costs:
    - (i) if the panel declines to assess a bill of costs under section 208C of the Act, the basis for doing so,
    - (ii) if the panel determines that a term of a costs agreement is unjust, the basis for doing so,
    - (iii) a statement of any determination under section 208E of the Act that interest is not payable on the amount of costs (or any part of the amount) assessed, or, if payable, of the rate of interest payable.
- (2) A statement of reasons to which this clause applies may be accompanied by such further information as the costs review panel concerned considers is necessary to clarify the review of a costs assessor's determination.

### **69 Circumstances in which costs review panel may not refuse to issue certificate in respect of determination of review**

Section 208KF (4) of the Act does not apply in respect of the issue of a certificate by a costs review panel under section 208KF of the Act if the fee for the application for a review by the panel has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

**70 Qualification for membership of costs review panels**

- (1) A costs assessor is qualified to be a member of a costs review panel only if the assessor's name appears on the list compiled under subclause (2).
- (2) The Chief Justice of New South Wales may compile a list of costs assessors considered by the Chief Justice to be suitably qualified to be members of costs review panels.
- (3) The Chief Justice may amend or revoke any list compiled under this clause for any reason that the Chief Justice considers appropriate.
- (4) The Chief Justice may delegate any of his or her functions under this clause (other than this power of delegation) to:
  - (a) a Judge of the Supreme Court, or
  - (b) a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

**71 Reference of applications to costs review panels**

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for reviews of determinations by costs review panels under section 208KB of the Act, group costs assessors in panels according to factors including expertise, location and jurisdiction.
- (2) The Manager, Costs Assessment is to refer an application for a review by a costs review panel to a panel of the most suitable costs assessors having regard to the following:
  - (a) the availability of costs assessors,
  - (b) the nature of the matter,
  - (c) the location of the parties and the legal practitioners acting for the parties concerned,
  - (d) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment is:
  - (a) to issue a notice advising all parties directly affected by the review of the names of the costs assessors who constitute the costs review panel, and
  - (b) to direct that all correspondence to the panel be addressed care of the Manager, Costs Assessment unless a member of the panel on behalf of the panel directs otherwise.

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Part 11                        Trust accounts and controlled money

Division 1                    General

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## Part 11 Trust accounts and controlled money

### Division 1                    General

#### 72 Definitions

(1) In this Part:

*bill of costs* has the same meaning as it has in section 173 (1) of the Act.

*computer control records* means the records required to be kept under clause 75.

*controlled money records* means a Controlled Money Register maintained under clause 89, a controlled money ledger maintained under clause 90, a listing of accounts under clause 91 and any pass books, statements (including duplicate copies of statements of account kept under clause 77 (7)) or other documents relating to controlled money.

*Investments Register* means the register kept under Division 5.

*run-out mortgage* has the same meaning as it has in Part 9 of the Act.

*trust records* includes records of the following:

- (a) original receipts (if not delivered to the person from whom trust money is received, or if cancelled) and duplicate receipts,
- (b) bank, building society or credit union deposits,
- (c) cheques,
- (d) withdrawals by electronic funds transfer,
- (e) bank, building society or credit union statements,
- (f) daily receipt and cheque transactions,
- (g) ledger account journal transfers and adjustments,
- (h) ledger transactions,
- (i) ledger trial balance statements,
- (j) monthly reconciliations,
- (k) duplicate copies of statements of account kept under clause 77 (7),
- (l) authorities obtained under clause 102 (1).

***visible form*** means any record of information by means of which the information can be produced on demand in permanent legible form in the English language.

- (2) A reference in this Part to money received by a solicitor has the same meaning as it has in section 60 (4) of the Act.
- (3) A reference in this Part to an account or deposit of controlled money includes a reference to:
  - (a) an account established in respect of controlled money at a bank, building society, credit union or other financial institution, and
  - (b) an interest bearing deposit or other deposit of controlled money.

### 73 “Associate”—extended meaning

For the purposes of paragraph (g) of section 60 (2) of the Act, an incorporated legal practice is an associate of a solicitor who is a solicitor director of the incorporated legal practice or an officer or employee of the incorporated legal practice.

### 74 Keeping of records

- (1) A solicitor must maintain, or cause to be maintained, in visible form at an office at which the solicitor’s practice is conducted and of which the Law Society has been notified (under clause 7):
  - (a) trust records and controlled money records, and
  - (b) if those records are maintained by means of a computer system—computer control records.
- (2) A solicitor may, at any other office at which the solicitor’s practice is conducted and of which the Law Society has been notified (under clause 7), maintain, or cause to be maintained, for that office in visible form separate records of the kind referred to in subclause (1).
- (3) A solicitor who maintains records under subclause (2) must, within 21 days after the end of each named month:
  - (a) compile with the records kept under subclause (1) the original, or a true copy, of each trial balance statement prepared by the solicitor in accordance with clauses 85 and 91 for that month, and
  - (b) maintain a monthly summary of the total of trust money and controlled money disclosed in the trial balance statements.

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- (4) A solicitor who has maintained, or caused to be maintained, a record, statement or summary referred to in subclause (1), (2) or (3) or who has lawfully acquired possession of any such record, statement or summary must retain it for not less than 6 years after it is made.
- (5) However, subclause (4) does not apply to the solicitor if the record, statement or summary has passed to the lawful possession of another solicitor as a consequence of the disposal of the solicitor's practice.

### 75 Computer systems control

- (1) Without limiting any other provision of this Part, if a solicitor maintains trust records or controlled money records by means of a computer system, the solicitor must comply with this clause in relation to the records.
- (2) The solicitor must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:
  - (a) the name of person for whom or on whose behalf trust money or controlled money is held,
  - (b) the address of the person,
  - (c) the matter number,
  - (d) matter description,
  - (e) the identification number of the person,
  - (f) the bank account number.
- (3) The solicitor must ensure in respect of any journal that:
  - (a) entries balance before entries are made to the ledger, and
  - (b) any journal reference numbers are allocated in sequence under program control.
- (4) The solicitor must ensure in respect of any ledger that no program is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.
- (5) The solicitor must ensure that no program enables the deletion of a ledger account unless:

- (a) a permanent record of the account, as it was immediately before its deletion, is retained in visible form, and
  - (b) in the case of a trust ledger account, the balance of the account is zero.
- (6) The solicitor must ensure that any entry in a record produced in visible form appears in chronological sequence.
- (7) The solicitor must ensure that a report, or each page or entry in a report, is numbered sequentially under program control in a manner that enables the completeness of the records required to be kept by this Part to be conveniently verified.
- (8) The solicitor must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.
- (9) The solicitor must ensure that each program requires input in each field of a data entry screen that is intended to receive information required by this Part to be included in trust records or controlled money records.
- (10) The solicitor must ensure that:
  - (a) a back-up copy of all records to which this clause refers is made not less frequently than once each month, and
  - (b) the most recent back-up copy is kept in a separate location such that any incident that could adversely affect the records would not also affect the back-up copy.

**76 Money in transit**

- (1) A solicitor who is authorised or instructed by another person, from whom or on whose behalf the solicitor has received money, to pay or deliver the money to a third party (not an associate of the solicitor) free of the solicitor's control must comply with subclause (2).
- (2) The solicitor complies with this subclause if the money is paid or delivered:
  - (a) before the end of the next banking day or, if that is not practicable, as soon as practicable after the next banking day, or
  - (b) no later than the day allowed by the solicitor's authority or instructions if it is a day that is later than the day allowed under paragraph (a).

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### 77 Statements of account

- (1) A solicitor who is required to maintain a trust ledger or a controlled money ledger must deliver to each person for whom, or on whose behalf, money is held or controlled by the solicitor, a separate statement of account in respect of each ledger account maintained for the person.
- (2) A statement of account is to contain particulars of the following:
  - (a) the money received and held or controlled by the solicitor for or on behalf of the person,
  - (b) the disbursement of the money,
  - (c) the remaining balance (if any) of the money.
- (3) A statement of account is to be delivered as soon as practicable after:
  - (a) completion of the matter to which the ledger account relates, or
  - (b) the solicitor receives a written request for the statement from the person for whom, or on whose behalf, the money is held or controlled, or
  - (c) except as provided by subclause (4), 30 June in each year.
- (4) A solicitor is not required to furnish a statement of account under subclause (3) (c) in respect of a ledger account if, at 30 June:
  - (a) the ledger account has been open for less than 6 months, or
  - (b) the balance of the ledger account is zero and no transaction affecting the account has taken place within the last preceding 12 months, or
  - (c) a statement of account has been delivered within the last preceding 12 months and there has been no subsequent transaction affecting the account.
- (5) If a statement of account has been delivered in respect of the same ledger account within the preceding 12 months, the opening balance of the new statement of account may be the closing balance of the previous statement of account.
- (6) A statement of account is to be delivered in the same way in which a bill of costs may be given to a person under section 195 of the Act.
- (7) A solicitor must retain a copy of a statement of account delivered under this clause.

**78 Receipt and withdrawal of money for costs and disbursements**

- (1) For the purposes of section 61 (3) (b) of the Act, the prescribed procedure to be followed by a solicitor for withdrawing or receiving, from trust money or controlled money:
- (a) reimbursement for disbursements paid by the solicitor, or
  - (b) money for disbursements to be paid by the solicitor, or
  - (c) money due, or to accrue due, to the solicitor for costs,
- is the procedure set out in this clause.
- (2) A solicitor who has disclosed information about the costs of legal services in accordance with section 175 of the Act to a person from whom the solicitor has received trust money or controlled money, or who can reasonably claim, in terms of section 180 of the Act, that the disclosure was not required because, in the circumstances, it was not reasonably practicable, may withdraw or receive, from that money, money for a purpose referred to in subclause (1) if any of the following circumstances apply:
- (a) the solicitor has delivered to the person a bill of costs in accordance with Part 11 of the Act and the person has authorised the withdrawal or receipt,
  - (b) the solicitor has delivered to the person a bill of costs in accordance with Part 11 of the Act, together with written notice that, unless the person objects, the solicitor intends to withdraw the money and to apply it towards payment of the bill at the expiration of 30 days after the delivery, and that period has expired without an objection being made to the solicitor,
  - (c) an objection has been made in the circumstances referred to in paragraph (b), neither the person nor the solicitor has referred the bill of costs for assessment within the time limited by section 192 (1) or 201 (2) of the Act and at least 30 days have passed since the objection was made to the solicitor,
  - (d) a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and all review and appeal rights in relation to the determination have been exhausted or can no longer be exercised.

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- (3) In any case other than a case referred to in subclause (2), a solicitor must not withdraw or receive, from trust money or controlled money, money for a purpose referred to in subclause (1) unless a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and all appeal and review rights in relation to the determination have been exhausted or can no longer be exercised.

## **Division 2            Trust accounts**

### **79    Deposits**

- (1) A solicitor who receives trust money must pay it into his or her trust bank account:
- (a) before the end of the next banking day after the day of its receipt, if that is practicable, or
  - (b) if that is not practicable, as soon as practicable after that day.
- (2) A solicitor who makes a deposit to his or her trust bank account must ensure that:
- (a) a bank deposit record is produced to the bank at the time the deposit is made, and
  - (b) the particulars referred to in subclause (3) are then entered in the record.
- (3) A bank deposit record must include provision for the entry of particulars of the following:
- (a) the date of the deposit,
  - (b) the amount of the deposit,
  - (c) whether the deposit consists of cheques, notes or coins, and
  - (d) in the case of cheques, the name of the drawer, bank and branch and the amount of each cheque.
- (4) A bank deposit record is not required in the case of money credited directly to a bank account electronically or otherwise.

### **80    Receipts**

- (1) A solicitor must, as soon as practicable after receipt of trust money (not being a transfer by journal entry), make out, or cause to be made out, a receipt that complies with subclause (2).

- (2) Receipts must be in duplicate, must be machine numbered in series, must contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c" and must include provision for, and on being made out must include, the following:
  - (a) the date of the receipt,
  - (b) the amount of money received and the form in which it is received,
  - (c) the name of the person from whom, and of the person on whose behalf, the money is received,
  - (d) details identifying the ledger account to be credited,
  - (e) particulars sufficient to identify the purpose for which the money is received.
- (3) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a receipt is made out) causes the particulars required by subclause (2) to be entered in the cash book required to be kept under clause 82, the entry of the particulars in the cash book is a sufficient compliance with the requirement of subclause (2) for a duplicate receipt.
- (4) A solicitor must issue receipts in the numerical order of the series to which they belong.
- (5) The original of a receipt is to be delivered, on demand, to the person from whom the trust money is received.
- (6) A solicitor must retain the following:
  - (a) any original receipt that is not delivered to the person from whom the trust money is received,
  - (b) any original receipt that is cancelled after issue,
  - (c) duplicate receipts.

**81 Payment of trust money by cheque or electronic funds transfer**

- (1) Trust money must not be drawn from a solicitor's trust bank account otherwise than by cheque or electronic funds transfer in accordance with this clause.
- (2) A cheque must:
  - (a) be machine numbered in series, and
  - (b) include a crossing that has effect as a direction to the drawee bank not to pay the cheque otherwise than to a bank, and

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- (c) be payable to a named payee and not drawn to cash, and
  - (d) contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c".
- (3) A cheque must be signed by:
  - (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor or 2 persons authorised under clause 86 (1) to sign the cheque, or
  - (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 86 (1) to sign the cheque.
- (4) A solicitor is to draw cheques in the numerical order of the series to which they belong and, in respect of each cheque drawn, must make and retain a record of the following:
  - (a) the number and date of the cheque, the name of the payee and the amount for which the cheque is drawn,
  - (b) details identifying the ledger account to be debited and the name of the person on whose behalf the cheque is drawn,
  - (c) particulars of the purpose for which the cheque is drawn.
- (5) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (4) to be entered directly in the cash book required to be kept under clause 82, the entry of the particulars in the cash book is a sufficient compliance with subclause (4).
- (6) An electronic funds transfer is to be effected by, or under the direction or with the authority of:
  - (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor, or 2 persons authorised under clause 86 to effect an electronic funds transfer from the trust account concerned, or
  - (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 86 to effect an electronic funds transfer from the trust account concerned.

- (7) The solicitor must ensure that, for each electronic funds transfer, a record is kept of the following particulars:
- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose direction or with whose authority the transfer is effected,
  - (b) details identifying the ledger account debited and the name of the person on whose behalf the amount is transferred,
  - (c) brief particulars of the subject-matter and purpose for which the money is transferred,
  - (d) the reference number or other means of identification of the transfer,
  - (e) the name or style of the bank account to which the money is paid, its number and the identifying numbers of the receiving bank and its branch,
  - (f) the date of the transfer and the amount transferred.

**82 Daily receipt and payment transactions**

- (1) A solicitor must keep a record of daily receipt and payment transactions.
- (2) The records must be in the nature of a cash book the pages of which are consecutively numbered and on the respective pages of which are shown the consecutive numbers of receipts issued or cancelled or cheques drawn or cancelled or, in the case of money received or disbursed by means of electronic funds transfer, the reference number or other means of identification of the transfer.
- (3) The solicitor must:
- (a) in respect of receipt of money—enter in the cash book the particulars required by clause 80 (2) to be entered in a receipt for the money together with the date of the deposit of the money to the trust bank account and the amount of the deposit, and
  - (b) in respect of a payment of money—enter in the cash book the particulars required by clause 81 (4) to be recorded for a cheque or required by clause 81 (7) (b)–(f) to be recorded for an electronic funds transfer.

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Clause 82                      Legal Profession Regulation 2002

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- (4) At the end of each named month, the solicitor must balance the cash book and:
  - (a) carry forward the balance to the commencement of the next month, or
  - (b) carry forward the balance to a ledger account, entitled the “Cash Book Control Account”, provided for the purpose.
- (5) The solicitor must, at the end of each named month, prepare a statement reconciling the balance of his or her trust bank account with the balance of the related cash book.

### 83 Journal

- (1) A solicitor must record in a journal, maintained exclusively for his or her trust account, all transfers between accounts in the trust account ledger that are not effected by cheque.
- (2) The recording must include the following:
  - (a) the date of the transfer,
  - (b) the amount transferred to and from each ledger account,
  - (c) the names of all ledger accounts to be debited or credited,
  - (d) the relevant reference number or other identification,
  - (e) sufficient particulars to identify the transfer and the reason for the transfer.
- (3) The pages of the journal are to be numbered consecutively, and the record of each transfer, when entered in the journal, is to be numbered consecutively.

### 84 Ledger

- (1) A solicitor must maintain a separate ledger account for each matter for each person for whom, or on whose behalf, trust money is held.
- (2) The ledger account must include the name of the person, a reference number or other identification and particulars of each transaction affecting trust money in relation to the matter, including the following:
  - (a) the date of the transaction,
  - (b) a description of the transaction,
  - (c) particulars sufficient to identify the trust record originating the transaction,
  - (d) the amount of the transaction,

- (e) the resulting current balance of account arising from the transaction.
- (3) The name of the person entered in the ledger account must be the name that the person claims is the person's name or the name that the person usually uses in the conduct of his or her business or professional affairs and must not be a name that the solicitor knows:
  - (a) is false, or
  - (b) is calculated to prevent the identification of the person for whom, or on whose behalf, the money credited to the account is held.
- (4) A solicitor must maintain in a separate account in his or her trust ledger for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act and the solicitor must record in the account particulars of all transactions affecting it.

**85 Ledger trial balance statement**

- (1) A solicitor must, within 21 days after the end of each named month, prepare a trial balance statement disclosing each account in his or her trust ledger (including an account for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act), effective as at the end of that month.
- (2) However, a solicitor is not required to disclose in the trial balance an entry of account particulars in respect of any account that has a zero balance at the end of the month concerned.
- (3) The trial balance statement must:
  - (a) state the month to which it refers and the date of its preparation, and
  - (b) list each ledger account at the end of that month by stating the name of the person for whom the account is maintained, the reference number or other identification and the balance of the account at the end of that month, and
  - (c) show the total of the ledger account balances at the end of that month, and
  - (d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust bank account as required by clause 82 (5).

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Clause 86                      Legal Profession Regulation 2002

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### 86 Delegation

- (1) A solicitor who complies with the requirements of this clause may delegate his or her authority to sign a cheque drawn on, or to effect an electronic funds transfer from, a trust bank account maintained under section 61 of the Act:
  - (a) if the solicitor is practising on his or her own account and is unable to sign the cheque or effect the transfer with due expedition because of his or her illness, injury or absence for good reason, or
  - (b) if the solicitor is practising in partnership and neither the solicitor nor any partner of the solicitor is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor and any partner of the solicitor, or
  - (c) if the solicitor is a solicitor director of an incorporated legal practice and neither the solicitor nor any other solicitor director is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor or any other solicitor director.
- (2) The delegation must be in writing signed by the solicitor, and may be to any 2 of the following persons only:
  - (a) a solicitor holding a current practising certificate,
  - (b) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth,
  - (c) the manager of the branch of the bank at which the solicitor's trust bank account is maintained,
  - (d) a person approved of or nominated by the Law Society Council for the purposes of the delegation before the delegation is made.
- (3) The delegation may authorise the signing of a cheque or the effecting of an electronic funds transfer by 2 delegates only.
- (4) A solicitor must give the Law Society written notice of the delegation immediately it is made.
- (5) A delegation ceases to have effect if the Law Society Council resolves that the delegation should be cancelled and serves notice of the resolution on the delegates and the branch of the bank at which the trust bank account, the subject of the delegation, is maintained.

- (6) Sufficient service of the resolution is effected on the delegates if a copy of the resolution is delivered to the office that the delegating solicitor has notified the Law Society is the principal place at which the solicitor carries on business.

### **87 Account in the name of a solicitor**

- (1) A solicitor may maintain in his or her trust ledger an account in his or her name:
- (a) for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the solicitor for costs and disbursements, and
  - (b) in respect of money in which the solicitor has a personal and beneficial interest as a vendor, purchaser, mortgagor, mortgagee, lessor, lessee or other similar capacity.
- (2) A solicitor must withdraw the money held in an account under subclause (1) (a) not later than 7 days after the day on which the money is transferred to the account.
- (3) A solicitor must withdraw money held in an account under subclause (1) (b):
- (a) at the conclusion of any matter to which the money relates, or
  - (b) if it comprises rent, interest, instalments of principal or other periodic payment—not later than 6 months after the date on which the money was credited to the account.

## **Division 3 Controlled money**

### **88 Notice to person on whose behalf controlled money is received**

- (1) A solicitor must, as soon as practicable after receiving controlled money, issue to the person on whose behalf it was received, a notice that is in or to the effect of Part 1 of Form 5 and contains the particulars required to complete the Form.
- (2) If the solicitor, as authorised or instructed by the person, pays any controlled money to a third party while continuing to control the money directly or through an associate, the solicitor must, as soon as practicable after the payment, complete in duplicate, and issue to the person the original of, a notice that is in or to the effect of Part 2 of Form 5 and contains the particulars required to complete the Form.

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Clause 88                      Legal Profession Regulation 2002

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Division 3                      Controlled money

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- (3) A notice under subclause (2) must, if appropriate and practicable, be included as part of and be issued at the same time as the notice under subclause (1).
- (4) If:
- (a) a solicitor pays controlled money to a third party as referred to in subclause (2), and
  - (b) while the solicitor continues to control the money directly or through an associate, a change occurs in the arrangements under which the money is held or deposited,
- the solicitor must, as soon as practicable after the change, complete in duplicate, and issue to each person on whose behalf the controlled money was received, the original of a notice in or to the effect of Form 5 containing such of the particulars specified in Parts 1 and 2 of the Form as are applicable.
- (5) Forms of notice kept by a solicitor for issue under this clause:
- (a) must comprise both Parts 1 and 2 of Form 5, and
  - (b) must be in duplicate, and
  - (c) must be machine numbered in series.
- (6) A solicitor need not issue to a person a notice under subclause (1) or (2) in respect of money received by way of interest or for deposit if:
- (a) the money is, as soon as practicable, credited to, or deposited in, an account for which an initial notice has been issued and for which a ledger account has been opened, and
  - (b) the particulars of the money received are recorded in the ledger account as soon as practicable.

### 89 Controlled Money Register

A solicitor must maintain a Controlled Money Register comprising a compilation in numerical sequence of the duplicate copies of the notices issued under clause 88.

### 90 Controlled money ledger

- (1) A solicitor must, for each person on whose behalf controlled money is received and in accordance with this clause, open and maintain a separate ledger account for each account or deposit of controlled money received on behalf of, or held for, the person.

- (2) The ledger account must bear the name of the person and any relevant reference number or other identification.
- (3) If the controlled money received is a specific sum, the initial entry to the ledger account must record:
  - (a) the amount of money, its source and the date of receipt, and
  - (b) the date and amount of any payment or deposit from the money to or with a third party, the identity of the third party and the terms on which the money was so paid or deposited.
- (4) The entry made under subclause (3) (b) must include particulars of the following:
  - (a) the term and duration of the deposit,
  - (b) the rate of interest,
  - (c) the date from which the interest is calculated and the dates on which interest is payable,
  - (d) a description of the security (if any) held for the deposit.
- (5) If controlled money is comprised in one or more accounts or deposits in respect of which a solicitor or an associate has a power or authority exercisable independently of the person on whose behalf the solicitor has received the controlled money, or jointly and severally with the person or a nominee of the person, the initial entry to the ledger account must record particulars of the nature, description and date of the power or authority and particulars of the accounts or deposits including:
  - (a) the name and address of the person holding each account or deposit, and
  - (b) the name in which each account or deposit is maintained and any relevant identifying number, and
  - (c) if applicable, the particulars required by subclause (4).
- (6) All transactions affecting the receipt or disbursement of controlled money by the solicitor or an associate must be recorded in the ledger by the entry in the relevant account of the following:
  - (a) the date of each transaction,
  - (b) a description of each transaction,
  - (c) a reference to the source of each transaction,
  - (d) the amount of each transaction,

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Clause 90                      Legal Profession Regulation 2002

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- (e) if it is ascertainable from the solicitor's records, the current balance of the account.
- (7) If controlled money is deposited with a person who issues to the solicitor a document of record or pass book that remains in the possession of the solicitor and in which are recorded all transactions affecting the money in a manner that, together with other written records of the solicitor, shows the required particulars of the transactions, those documents collectively may constitute a ledger account for the purposes of this clause.

### 91 Listing of accounts

- (1) A solicitor must, within 21 days after the end of each named month, prepare a statement in the nature of a trial balance statement that relates to the ledger accounts required to be maintained under clause 90 and is effective at the end of that month.
- (2) The statement must:
  - (a) state the period to which it refers and the date of preparation, and
  - (b) list each ledger account by the name of the person on whose behalf the controlled money is received, the reference number or other identification and, in the case of an account relating to a specific amount over which the solicitor has sole control, the balance of account at the end of the month.
- (3) If controlled money is deposited with a person who issues periodical statements of account, those statements:
  - (a) must be maintained with the trial balance statements prepared for the periods to which they relate, and
  - (b) form part of the solicitor's controlled money records.

### 92 Payment of controlled money by cheque or electronic funds transfer

Controlled money must not be withdrawn or received from any account in which it is held or deposited otherwise than by cheque or electronic funds transfer.

### 93 Delegation

Clause 86 applies in relation to an account in which controlled money is held or deposited by a solicitor in the same way as it applies in relation to a trust bank account maintained by the solicitor.

## **Division 4      Accountant's report**

### **94    Accountant's report to be lodged with Law Society**

- (1) If a solicitor received, held or disbursed money to which section 61 (1) of the Act applies at any time during the year ending on 31 March that last preceded an application by the solicitor for the issue or renewal of a practising certificate, the solicitor must ensure that, on or before the making of the application, there is lodged with the Law Society an accountant's report in respect of:
  - (a) each practice conducted by the solicitor as a sole practitioner, and
  - (b) each firm of which the solicitor was a partner, at any time during that year, and
  - (c) each incorporated legal practice of which the solicitor was a solicitor director, at any time during that year.
- (2) The accountant's report is to be in or to the effect of Form 6, and is to be prepared by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (3) If the Law Society Council so requires, a solicitor must:
  - (a) obtain, and pay for, another report that complies with subclause (2), and
  - (b) forthwith, on its receipt, lodge the report with the Law Society.
- (4) The Law Society Council may require the report under subclause (3) to be made by a registered company auditor nominated by the Law Society Council.
- (5) It is a sufficient compliance with this clause by a solicitor practising in partnership if one accountant's report is lodged for the partnership.
- (6) It is a sufficient compliance with this clause by a solicitor practising as a solicitor director of an incorporated legal practice if one accountant's report is lodged for the incorporated legal practice.

### **95    Check list to be provided**

The registered company auditor who makes a report under clause 94 must, at the time of making the report, complete and leave in the custody of the solicitor a check list in a form approved by the Law Society Council.

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Clause 96                      Legal Profession Regulation 2002

Part 11                         Trust accounts and controlled money

Division 4                     Accountant's report

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### 96 Duties regarding check list

A solicitor must:

- (a) retain a completed check list provided under clause 95 with his or her trust account records and controlled money records for the same period of time as those records are required to be retained, and
- (b) permit a trust account inspector of the Law Society to inspect the check list at any time.

### 97 Adverse or qualified reports

A registered company auditor who makes an adverse or qualified report under clause 94 must, within 7 days after completing the report, forward a copy to the Chief Trust Account Inspector of the Law Society.

### 98 Cessation of practice or change in practice arrangements

- (1) This clause applies to a solicitor who:
  - (a) ceases to practice as a solicitor, or
  - (b) enters into partnership with another solicitor, or
  - (c) is a party to a dissolution or change of partnership, or
  - (d) ceases to be a solicitor director of an incorporated legal practice, or
  - (e) becomes a solicitor director of another incorporated legal practice, or
  - (f) is a party to a dissolution of an incorporated legal practice.
- (2) If a solicitor to whom this clause applies:
  - (a) ceases to operate a trust account and the trust account is not continued, or
  - (b) ceases to hold or control controlled money and the controlled money is not held or controlled by a former partner who is, or the former partners of the solicitor who are, continuing to practise, or

- (c) ceases to hold or control controlled money and the controlled money is not held or controlled by a person or persons who were solicitor directors of the incorporated legal practice of which the solicitor was a solicitor director and who are continuing to practise in that role,

the solicitor must, within the next 21 days, lodge with the Law Society a report by a registered company auditor that complies with clause 94 in respect of all trust money and controlled money held or controlled by the solicitor on behalf of another person.

- (3) The report must be lodged in addition to the notification of change of practice under clause 12.

#### 99 Information to be provided to Law Society Council

A solicitor must, at such time as the Law Society Council determines, furnish to the Law Society such information as the Law Society requires with respect to the following:

- (a) the amount of trust money or controlled money held or controlled by the solicitor,  
(b) the accounts or institutions in which the money is held,  
(c) the solicitor's records and books of account that relate to the money.

### Division 5 Mortgage transactions

#### 100 Definitions

- (1) In this Division:

*borrower* has the same meaning as it has in Part 9 of the Act.

*contributor* has the same meaning as it has in Part 9 of the Act.

*contributory mortgage* has the same meaning as it has in Part 9 of the Act.

*lender* has the same meaning as it has in Part 9 of the Act.

*mortgage* has the same meaning as it has in Part 9 of the Act.

*mortgagee* includes anyone who takes a mortgage or proposes to take a mortgage to secure money lent to a borrower.

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Clause 100            Legal Profession Regulation 2002

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Division 5            Mortgage transactions

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*nominee* means a person who holds a mortgage, as mortgagee, as a trustee for or on behalf of one or more persons.

*registered valuer* means a practising real estate valuer registered under the *Valuer's Registration Act 1975*.

*regulated mortgage* has the same meaning as it has in Part 9 of the Act.

*responsible entity* has the same meaning as it has in Part 9 of the Act.

*run-out mortgage* has the same meaning as it has in Part 9 of the Act.

*solicitor's nominee company* means a corporation of which each member and each director is a solicitor, a partner of a solicitor or a person approved by the Law Society Council.

*State regulated mortgage* has the same meaning as it has in Part 9 of the Act.

*Summary of Mortgage* means the Summary of Mortgage required to be prepared and issued under clause 108.

*valuation* means a valuation of a kind required to be obtained under clause 111.

- (2) For the purposes of this Division, 2 or more persons who are lenders on a joint account are to be regarded as one person.

### 101 Application of Division

This Division applies to a solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage.

### 102 Authority to secure by regulated mortgage

- (1) A solicitor must provide a contributor or lender lending, or proposing to lend, money secured by a regulated mortgage with a form of disclosure notice approved by the Law Society Council for the purposes of this clause and a lending authority in the form of Form 7.
- (2) A solicitor must not, whether alone or by an associate or otherwise, cause or permit the application to a loan secured by a regulated mortgage of:
- (a) any money to which section 61 (1) of the Act applies, or
  - (b) any money that is advanced, or to be advanced, where the borrower is introduced to the lender or contributor by:
    - (i) the solicitor or an associate of the solicitor, or

- (ii) an agent of the solicitor, or
- (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors,

unless the solicitor has previously obtained from the lender or contributor for whom or on whose behalf the money is to be applied a lending authority in the form of Form 7 in respect of that money.

- (3) Subclause (2) does not apply if:
- (a) the money is applied pursuant to the written instructions of a lender or contributor who has nominated the borrower and specified the security, its priority and the terms of the loan independently of any advice given by the solicitor to the lender, and
  - (b) the lender or contributor has not been introduced to the borrower by:
    - (i) the solicitor or an associate of the solicitor, or
    - (ii) an agent of the solicitor, or
    - (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors.
- (4) A solicitor who is the attorney under power of a lender or contributor must not:
- (a) apply the funds of the lender or contributor to a loan not authorised in accordance with subclause (2), or
  - (b) execute, on the lender's or contributor's behalf, an authority referred to in subclause (2) unless subclause (5) is complied with.
- (5) This subclause is complied with only if:
- (a) the instrument granting the power was executed before 1 January 1987, or
  - (b) the instrument granting the power contains a specific power enabling the solicitor to make the loan to which the authority relates, or
  - (c) at the time the instrument granting the power was executed, the signature of the donor was witnessed by a solicitor instructed independently of the donee and that solicitor certified in writing on the instrument that he or she had explained to the donor the donee's power of investment and that the donee had a discretion to choose the security and the terms for any investment.

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Clause 102            Legal Profession Regulation 2002

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- (6) A solicitor who obtains the execution, by or on behalf of a lender or contributor, of a lending authority in the form of Form 7 must not delete any of the contents of the Form (except if an alternative is provided in the Form) and must ensure that any clauses in the Form are not varied or contravened, whether directly or indirectly, by the mortgage documents or any associated documents.
- (7) An authority in the form of Form 7 is taken to be an authority for the purposes of section 122 (2) (b) of the Act.

### 103 Loan applications

- (1) A solicitor must advise a lender or contributor whose loan is proposed to be secured by a regulated mortgage as to the effect of any applicable provisions of the *Consumer Credit (New South Wales) Code* and the *Farm Debt Mediation Act 1994*.
- (2) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage do the following:
  - (a) verify the identity of the borrower, so as to ensure that the person executing the mortgage as the mortgagor is identical with, and the same person as, the registered proprietor of the property secured by the mortgage,
  - (b) satisfy himself or herself as to the borrower's ability to meet his or her obligations under the mortgage,
  - (c) check the credit record of the borrower through the Credit Reference Association of Australia (CRAA) and disclose any default record of the borrower to the lender or contributor in the disclosure statement given under clause 102,
  - (d) carry out appropriate enquiries in relation to any property to be secured by the mortgage, including a title search, land tax search, a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* and an identification survey report if the security comprises improved land (other than strata title).
- (3) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage obtain written approval to the advance or extension from:
  - (a) in the case of a firm of solicitors, each principal of the firm (if there are 3 or fewer principals) or 3 principals of the firm (if there are more than 3 principals), or

- (b) in the case of an incorporated legal practice, each solicitor director of the practice (if there are 3 or fewer solicitor directors) or 3 solicitor directors of the practice (if there are more than 3 solicitor directors).
- (4) A solicitor's letter of offer relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.
- (5) A solicitor's loan approval letter relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.

**104 Identity of borrower**

A solicitor must ensure that, in relation to loans secured by a regulated mortgage:

- (a) there is a standard process for verifying the identity of borrowers, and
- (b) records are kept of the method of verification of identity for the duration of the mortgage.

**105 Independent advice**

- (1) A solicitor must if:
  - (a) a borrower does not have a solicitor acting for the borrower in relation to a loan secured by a regulated mortgage, or
  - (b) the solicitor is also acting for the borrower,obtain from the borrower a certificate by another solicitor to the effect that the other solicitor has explained the effect of the mortgage to the borrower.
- (2) A solicitor must obtain from any guarantor of a loan secured by a regulated mortgage a certificate by another solicitor to the effect that the other solicitor has explained the effect of the guarantee to the guarantor.
- (3) A certificate obtained under this clause must be retained by the solicitor.
- (4) A solicitor must not act for both the borrower and the lender or contributor in respect of a regulated mortgage unless the solicitor has complied with subclause (1).

## **2002 No 631**

Clause 106            Legal Profession Regulation 2002

Part 11                Trust accounts and controlled money

Division 5            Mortgage transactions

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### **106 Insurance of secured property**

- (1) A solicitor must ensure that, in the case of mortgaged property under a regulated mortgage that is improved land (other than strata title property), an insurance policy is in force, in the name of the mortgagee and the mortgagor, for the full replacement value of the improvements.
- (2) The solicitor must sight a Certificate of Currency for the insurance policy at or before the time of settlement and must retain a copy of it.
- (3) A solicitor must, in the case of property that is a strata title property, sight a Certificate of Currency relating to building insurance for the property at or before the time of settlement and must retain a copy of it.

### **107 Registration of mortgages**

- (1) A solicitor must ensure that the regulated mortgage, and any variation of the mortgage, is registered.
- (2) Subclause (1) applies to a variation of the term of the mortgage, an increase in the principal secured by the mortgage or a variation of the interest rate.

### **108 Summary of Mortgage**

- (1) A solicitor must comply with this clause within 21 days after the date on which any of the following occurs:
  - (a) when money is first advanced under a regulated mortgage on behalf of a lender or contributor (including a contributor who becomes a contributor in addition to, or in substitution for, any other contributor to the loan),
  - (b) on the transfer of a regulated mortgage,
  - (c) on being authorised to collect the principal and interest due under a regulated mortgage except on any discharge or partial discharge of a mortgage,
  - (d) on any variation of a regulated mortgage.
- (2) A solicitor must:
  - (a) prepare and issue to each lender and contributor whose money has been lent or will be lent under a regulated mortgage a Summary of Mortgage in respect of the money and its application that is in the form of Form 8, and

- (b) include a copy of the Summary of Mortgage, in alphabetical order according to the name of the mortgagor, in the Investments Register kept by the solicitor.

**109 Investments Register**

- (1) A solicitor must keep and maintain an Investments Register in accordance with this clause.
- (2) The Investments Register must include the following:
  - (a) copies of all Summaries of Mortgage required to be prepared by the solicitor for regulated mortgages, in alphabetical order according to the mortgagor's names, with separate sections for undischarged and discharged mortgages,
  - (b) a mortgage history register for each regulated mortgage,
  - (c) a record for each lender or contributor,
  - (d) a list of undischarged regulated mortgages, capable of being produced on demand from the Register, disclosing for each mortgage the mortgage reference number, the name of the mortgagor and the total amount of the mortgage,
  - (e) a list of the following:
    - (i) all regulated mortgages arranged, varied and discharged, including details of the mortgagor, mortgagee, principal contributed by each lender or contributor and the date of each mortgage, variation or discharge,
    - (ii) the names of all lenders or contributors who have invested in regulated mortgages, the mortgages in which they have invested, the date of investment and repayment and the amount of principal secured by each mortgage.
- (3) The mortgage history register for a regulated mortgage is to contain the following:
  - (a) the mortgage reference number,
  - (b) the name and address of the mortgagor,
  - (c) the address of the property subject to the mortgage,
  - (d) the date the mortgage is repayable,
  - (e) the date of, and details of, any variations of the mortgage,
  - (f) the name and address of each lender or contributor and the principal amount contributed by each lender or contributor.

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- (4) The record for each lender or contributor is to contain the following:
  - (a) the mortgage reference number,
  - (b) the name and address of the lender or contributor,
  - (c) the amounts invested and the date of the mortgage or substitution,
  - (d) the amounts repaid and the date of discharge of the mortgage or substitution,
  - (e) a resulting balance after each entry.
- (5) On the discharge of a regulated mortgage, the solicitor must ensure that the date of discharge is recorded on the Summary of Mortgage in the Investments Register and that the Summary is relocated with the Summaries applying to discharged mortgages.

### 110 Investment restrictions

- (1) Money received by a solicitor for investment in a regulated mortgage must not be invested in the following regulated mortgages:
  - (a) any mortgage where the total amount of money secured by all current regulated mortgages arranged by the solicitor and any associate of the solicitor exceeds \$7.5 million,
  - (b) any mortgage where the total amount of money secured by the mortgage exceeds \$1 million,
  - (c) any mortgage where the loan to valuation ratio exceeds 75% of a valuation based on the unencumbered present day value of the property,
  - (d) a mortgage that is subject to a prior mortgage,
  - (e) any mortgage securing a loan or advance under which the borrower is in default.
- (2) A solicitor must not:
  - (a) publicly advertise seeking money for investment in mortgages, or
  - (b) offer a loan to any person whose usual address is outside New South Wales, except for a local offer in a border area.

### **111 Valuation**

- (1) A solicitor must, before any money is advanced under a loan secured by a regulated mortgage, obtain:
  - (a) for the lender or contributor, a current valuation of the mortgaged property by a registered valuer, and
  - (b) evidence that the valuer holds current professional indemnity insurance to a value that is not less than \$500,000 and that covers valuations made for the purposes of regulated mortgages.
- (2) The valuation must be expressed to be for the purpose of establishing the unencumbered present day value of the property, not taking into account any future proposed development, and must address the matters contained in the solicitor's request for the valuation.
- (3) The solicitor's request for a valuation must contain the form of words approved by the Law Society Council for the purposes of this clause.
- (4) A valuation prepared for the borrower may be assigned to a lender or contributor for the purposes of this clause, but only if the valuer and the valuation meet the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (5) If a mortgage is varied and the lender or contributor previously relied on a valuation prepared for the borrower, the lender or contributor may continue to rely on that valuation if it meets the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (6) A valuation obtained under this clause must be not more than 6 months old when money is first advanced under the loan and, in the case of a loan that is rolled-over, must be not more than 3 years old when the loan is rolled-over.

### **112 Appointment of accountant**

A solicitor must:

- (a) appoint an accountant to audit the solicitor's mortgage practice, and
- (b) appoint the accountant on terms that require the accountant to carry out annual compliance examinations in accordance with a work program approved by the Law Society Council, and

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- (c) ensure that the accountant lodges with the Law Society, within 21 days of completing the examination, a report on the examination in the form approved by the Law Society Council.

### 113 Notification of State regulated mortgages to Law Society Council

- (1) For the purposes of section 119 (1) of the Act, a solicitor must notify the Law Society Council in writing of the following matters on a quarterly basis:
  - (a) a list of current State regulated mortgages in respect of which the solicitor has acted for the lender or contributor and the total amount secured by all those mortgages,
  - (b) the name of each mortgagor and mortgagee,
  - (c) the amount secured by each mortgage.
- (2) The notice is to be given within 28 days of the end of each quarter.

### 114 Mortgage held by nominee

- (1) A solicitor must not, whether alone or by an associate or otherwise, cause or permit an application to a loan secured by a regulated mortgage of any money referred to in clause 102 (2) if the loan is to be secured by a regulated mortgage to be held by a nominee, unless the nominee is one of the following:
  - (a) the solicitor,
  - (b) one or more of the solicitor's partners, with or without the solicitor,
  - (c) a solicitor's nominee company maintained by the solicitor and the solicitor's partners (if any) in the manner prescribed by clause 115.
- (2) Except in the case of a mortgage to be held by a solicitor's nominee company or an incorporated legal practice, a solicitor must not arrange or agree to arrange a regulated mortgage that is intended to be held in the name of a corporation (other than a public trustee company) of which that solicitor is a member or director if the mortgage is to be held by that corporation as a trustee for the beneficial owner.

**115 Solicitor's nominee company**

- (1) If a solicitor's nominee company is a nominee, a solicitor who is a member or director of the company must not, while the company holds a regulated mortgage for another person:
- (a) cause or permit any person to become a member or director of the company unless the person is a partner of the solicitor or, in the case of a sole practitioner, a person who is approved by the Law Society Council, holds only 1 share in the company and holds the share in trust for the solicitor as beneficial owner, or
  - (b) cause or permit the company to act otherwise than as a nominee company holding regulated mortgages, or an interest in regulated mortgages, on trust for the beneficial owners, or
  - (c) receive, or cause or permit the company to receive, any financial benefit from its activities other than any professional costs or management fees properly chargeable by the solicitor in respect of a regulated mortgage held by the company, or
  - (d) cause or permit the constitution of the company, while any of its members or directors are persons other than the solicitor or his or her partner or partners, to contain a provision that:
    - (i) denies the solicitor a casting vote at a meeting of its directors, or
    - (ii) entitles a director to appoint an alternate director or attorney to act in the place of the director, or
    - (iii) entitles a shareholder to appoint a proxy other than the solicitor.
- (2) A solicitor who has obtained from a lender or contributor an authority under clause 102 must not prepare a transfer of any regulated mortgage to a company of which the solicitor is a member or director unless:
- (a) the company is the solicitor's nominee company, an incorporated legal practice, a public trustee company or a responsible entity, and
  - (b) the mortgage is to be held by the company as trustee for the beneficial owner of the mortgage.

**116 Dealing with money through trust account**

- (1) A solicitor must apply money for a loan secured by a regulated mortgage, or paid as principal or interest in respect of any such loan, only in accordance with this clause.

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- (2) The money to be advanced must first be credited to an account in the name of the lender or contributor established in the solicitor's trust account ledger.
- (3) Before any money is advanced under the regulated mortgage, the solicitor must:
  - (a) establish in his or her trust account ledger an account in respect of the mortgage in the mortgagor's name or, if the mortgage is held in the name of a nominee, in the name of the nominee and the mortgagor, and
  - (b) transfer to that account from the accounts of the lender, or of the contributors in the case of a contributory mortgage, the money to be lent.
- (4) If the regulated mortgage is held by a nominee, then a separate account in the solicitor's trust account ledger must be established in the name of the nominee in respect of each mortgage loan held or intended to be held in the name of the nominee.
- (5) All payments under the regulated mortgage in respect of interest and the repayment of principal:
  - (a) are to be received by the solicitor, and
  - (b) must be paid to the credit of the account in the trust account ledger relating to the regulated mortgage.
- (6) An amount credited to the account in the trust account ledger relating to a regulated mortgage must be transferred, as soon as is practicable:
  - (a) to the lender's account in the solicitor's trust account ledger, or
  - (b) in the case of a contributory mortgage, to the account of the contributors in the solicitor's trust account ledger in the proportions to which the contributors are entitled.

### 117 Notice of variation of mortgage

A solicitor must, within 21 days after the day on which a variation of a regulated mortgage is executed by a borrower:

- (a) give written notice of the particulars of the variation to each lender or contributor, and
- (b) record the particulars of the variation in the solicitor's Investments Register.

**118 Additional or substituted contributions**

The requirements of this Division apply to a new contributor to a contributory mortgage and to money advanced by a new contributor in the same way as they apply to the original contributors to the contributory mortgage and to money advanced by the original contributors.

**119 Declaration of trust**

A solicitor who is required to prepare and issue a Summary of Mortgage must, within 21 days after the obligation to do so arises in relation to a mortgage held by a nominee, prepare and have executed by the nominee an instrument in writing sufficient to manifest and declare the trust on which the mortgage is held by the nominee in accordance with section 23C (1) (b) of the *Conveyancing Act 1919*.

**120 Retention of documents**

- (1) A solicitor must retain at his or her principal place of practice any regulated mortgage together with all other mortgage documents and instruments declaring trusts related to the mortgage until:
  - (a) the mortgage is discharged, or
  - (b) the solicitor is directed otherwise in writing by the lender or, in the case of a contributory mortgage, by all the contributors.
- (2) The requirements of clause 74 as to the retention by a solicitor of trust records and controlled money records apply to an Investments Register maintained under this Division. The particulars of a mortgage recorded in the Investments Register must be retained in the Register during the currency of the mortgage and for 6 years following its discharge.
- (3) For the purposes of subclause (1), mortgage documents include title documents, lending authorities, valuations, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given.
- (4) The mortgage and documents referred to in subclause (1) must be kept together in a deed packet filed in the name of the mortgagor and, if the mortgagor has more than one loan, the particular mortgage is to be identified on the deed packet by indicating the address of the security property.
- (5) A solicitor must maintain a current register of mortgage deed packets.

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- (6) The mortgage deed packet may be retained in a normal safe custody register and must be cross-referenced to the matter file to which it relates. The matter file must also be cross-referenced to the mortgage deed packet.

### 121    **Practicability of completion of Summary of Mortgage and Investments Register**

A solicitor who for any good reason is unable to record within the prescribed time all of the prescribed particulars in a Summary of Mortgage required by this Division to be given to a lender or contributor or in an entry to be made in the Investments Register must:

- (a) record the portion of the prescribed particulars that is then available in the required Summary of Mortgage and in an entry in the Investments Register, and
- (b) as soon as practicable after the omitted particulars are available, issue a duly completed Summary of Mortgage to any person who is entitled to receive it and complete the required entry in the Investments Register.

### 122    **Default procedures**

- (1) A solicitor must maintain systems to enable the early detection of defaults in the payment of principal or interest secured by a regulated mortgage or under the terms of a regulated mortgage.
- (2) The solicitor is to ensure that the following steps are taken if a default in the repayment of a loan secured by a regulated mortgage occurs:
  - (a) the borrower must be contacted within 7 days of the solicitor becoming aware of the default and the reason for the default ascertained,
  - (b) the borrower must be requested to pay the penalty rate of interest and any such interest is to be paid to the lender or contributor,
  - (c) the lender or contributor must be advised of the default and the action being taken with respect to the default,
  - (d) unless the lender or contributor instructs otherwise, action is to be commenced to recover outstanding principal, interest and costs if there is a default in payment of more than 2 months (in the case of interest) or 2 weeks (in the case of principal),

- (e) if a default continues for more than 2 months, the solicitor must notify the Law Society Council in writing of the default and the action taken to rectify the default.

### 123 Run-out mortgages

- (1) The provisions of Division 5 of Part 7A of the *Legal Profession Regulation 1994*, as in force immediately before 7 September 2001, continue to apply in respect of run-out mortgages.

**Note.** Division 4 of Part 9 of the Act limits the actions that a solicitor may take in respect of run-out mortgages.

- (2) The provisions of this Division (other than this clause) do not apply to run-out mortgages.

### 124 Managed investment schemes

A solicitor must ensure that the office of a responsible entity for a managed investment scheme is not located on the same part of any premises on which the legal practice of the solicitor is conducted.

### 125 Certain mortgages not regulated mortgages

The following mortgages are exempt from the definition of *regulated mortgage* in section 115 of the Act:

- (a) a mortgage of which a solicitor, or an associate of a solicitor, is the sole beneficial owner,
- (b) a mortgage held by a solicitor or an associate of a solicitor as the trustee of a will or settlement or a mortgage that, when executed or transferred, will be so held,
- (c) a mortgage to a mortgagee who is the subject of a notice given by the Law Society Council to a solicitor that exempts a mortgage to that mortgagee from the definition,
- (d) except as provided by clause 124, a mortgage that is part of a managed investment scheme that is operated by a responsible entity.

## **2002 No 631**

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Part 11                Trust accounts and controlled money

Division 6            Crown Solicitor

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### **Division 6            Crown Solicitor**

#### **126    Application of Regulation to Crown Solicitor**

This Part (other than this Division) does not apply to the Crown Solicitor.

#### **127    Crown Solicitor's Trust Account**

- (1) A Crown Solicitor's Trust Account must be established in a bank in New South Wales.
- (2) The Crown Solicitor:
  - (a) must cause to be kept in his or her office such records in relation to the Crown Solicitor's Trust Account, and
  - (b) must follow, or cause to be followed, such procedures in relation to operations on the Crown Solicitor's Trust Account, as the Attorney General directs.

#### **128    Report by Auditor-General**

- (1) An application by the Crown Solicitor for a practising certificate must be accompanied by a report of the Auditor-General stating:
  - (a) that the Auditor-General has inspected the trust records kept under clause 127 during the year that ended on the last preceding 31 March, and
  - (b) whether the Auditor-General is of the opinion that the trust records have been kept as directed under clause 127.
- (2) A report under this clause may be provided by the Deputy Auditor-General or an Assistant Auditor-General if the Auditor-General so approves.

## Part 12 Deposits with Law Society

### 129 Definition

- (1) In this Part, *applicable period* means a period of 12 months ending on 31 March.
- (2) However, in relation to a solicitor, firm of solicitors or incorporated legal practice that commences practice or provides legal services after 1 April in any year, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending on 31 March next following.

### 130 Amount of deposit: section 64

- (1) The amount to be deposited and kept deposited with the Law Society for the purposes of section 64 of the Act in respect of an applicable period is an amount that is not less than the sum of:
  - (a) the lowest balance recorded in the trust account kept by the solicitor, firm of solicitors or incorporated legal practice during the previous applicable period, and
  - (b) the amount (if any) on deposit by the solicitor, firm or incorporated legal practice with the Law Society under section 64 of the Act on the day on which that lowest balance is recorded.
- (2) Despite subclause (1), if, in the case of a particular solicitor, firm or incorporated legal practice, on any day during the period beginning with the end of the previous applicable period and ending with the 15th banking day after the end of that period, the sum of the lowest balance recorded in the trust account during that 15-day period and the amount (if any) on deposit with the Law Society on that day is less than the sum of the amounts referred to in subclause (1) (a) and (b), the amount that the solicitor, firm or incorporated legal practice is to deposit and keep deposited with the Law Society is the amount that is equivalent to 80% of the lesser sum.
- (3) Despite subclauses (1) and (2), if during an applicable period money is repaid to the solicitor, firm or incorporated legal practice under section 65 of the Act, the amount to be deposited and kept deposited with the Law Society in respect of that period becomes an amount that is not less than the sum of:

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- (a) the lowest balance recorded in the trust account kept by the solicitor, firm or incorporated legal practice during the period beginning with the start of that applicable period and ending with the 15th banking day after the repayment, or the lowest balance recorded in that trust account during the previous applicable period (whichever of those balances is the lower), and
  - (b) the amount (if any) on deposit by the solicitor, firm or incorporated legal practice with the Law Society under section 64 of the Act on the day on which the lower of those balances is recorded.
- (4) Despite this clause, if the sum referred to in subclause (1), (2) or (3) is less than \$10,000, the amount to be deposited and kept deposited with the Law Society in respect of an applicable period is nil.
  - (5) If, during an applicable period, money is repaid to the solicitor, firm or incorporated legal practice under section 65 of the Act on more than one occasion, subclause (3) operates in relation to each such repayment.
  - (6) Despite this clause, if a particular solicitor, firm or incorporated legal practice is unable to comply with the requirements of clause 131 (1) or (2), the solicitor, firm or incorporated legal practice must request the Law Society, in a form approved by the Society, to determine the amount that the solicitor, firm or incorporated legal practice is to deposit and keep deposited with the Society.
  - (7) A reference in this clause to the lowest balance recorded in the trust account during a period is a reference to the lowest balance recorded during that period in a statement of account issued by a bank in relation to the trust account.

### 131 Time for deposit

- (1) The solicitor, firm of solicitors or incorporated legal practice must have the amount calculated under clause 130 (1) or (2) in respect of an applicable period on deposit with the Law Society not later than 20 banking days after the end of the previous applicable period.
- (2) The solicitor, firm of solicitors or incorporated legal practice must have the amount calculated under clause 130 (2) on deposit with the Law Society not later than 20 banking days after the day on which the money was repaid under section 65 of the Act.

- (3) The solicitor, firm of solicitors or incorporated legal practice must have the amount determined by the Law Society under clause 130 (6) on deposit with the Law Society not later than 5 banking days after the Law Society notifies the solicitor, firm or incorporated legal practice of its determination.

## **2002 No 631**

Clause 132            Legal Profession Regulation 2002

Part 13                Reporting requirements

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### **Part 13 Reporting requirements**

#### **132 Duty to report irregularities**

- (1) If a legal practitioner has reasonable grounds for suspecting that a solicitor (other than the legal practitioner) or an associate of the solicitor has dealt with controlled money or trust money in a manner that may be dishonest or irregular, the legal practitioner must, as soon as practicable, notify the president of the Law Society, in writing, of the name and address of the solicitor or associate and of the grounds on which the suspicion is based.
- (2) The president must cause the matter to be investigated by the Law Society.

#### **133 Duty to report offences**

- (1) If a barrister or solicitor is found guilty of an offence (other than an excluded offence), the barrister or solicitor must:
  - (a) notify the appropriate Council in writing of the finding and the nature of the offence, and
  - (b) furnish to the appropriate Council, within the time specified by the appropriate Council, such further information as it requires relating to the finding or the commission of the offence.
- (2) Subclause (1):
  - (a) applies to an offence whether or not committed in the course of practice as a legal practitioner, and
  - (b) applies to a finding of guilt of an offence whether or not the court proceeded to a conviction for the offence, and
  - (c) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and
  - (d) applies to a finding of guilt even if other persons are prohibited from disclosing the identity of the offender, and
  - (e) extends to an indictable offence committed before the commencement of this Regulation (and so extends whether the finding of guilt was made before or after that commencement), and

- (f) extends to an offence (other than an indictable offence) committed after 8 March 1991.
- (3) A notification under subclause (1) must be made within 7 days after the finding was made.
- (4) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.
- (5) In this clause, *offence* includes a tax offence.

**134 Duty to report bankruptcy**

- (1) A barrister or solicitor who commits an act of bankruptcy (within the meaning of section 3 (3) of the Act) must notify the appropriate Council in writing of the details of the act of bankruptcy.
- (2) A notification under subclause (1) must be made within 7 days after the act of bankruptcy was committed.
- (3) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.

**135 Show cause statements relating to bankruptcy and indictable and tax offences**

- (1) For the purposes of section 38FB (1) of the Act, the written statement required to be provided by an applicant for a practising certificate must be provided to the appropriate Council within 14 days after the application is made.
- (2) For the purposes of section 38FB (3) of the Act, the written statement required to be provided by a barrister or solicitor must be provided to the appropriate Council within 14 days after the appropriate date.
- (3) In this clause:
  - appropriate date* means:
    - (a) for a statement that relates to an act of bankruptcy—the first date on which the act of bankruptcy was committed, or
    - (b) for a statement that relates to a finding of guilt—the date on which the finding of guilt was made.

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Clause 136            Legal Profession Regulation 2002

Part 13                Reporting requirements

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### 136 Show cause statements relating to failures to notify

- (1) For the purposes of section 38FB (2) and (4) of the Act, the written statement required to be provided by an applicant for a practising certificate, or a barrister or solicitor, who has failed to notify a matter as required by this Regulation must be provided to the appropriate Council within 7 days after the appropriate date.
- (2) In this clause:  
*appropriate date* means:
  - (a) if the applicant, barrister or solicitor notifies the matter after the period in which the notification was required to be made by this Regulation and the last day of that period occurs on or after the commencement of this Regulation—the date on which the notification was made, or
  - (b) if the Council has given notice in writing under section 38FC (2) to the applicant, barrister or solicitor in relation to the act of bankruptcy or finding of guilt that should have been notified—the date on which the notice was given.

### 137 Failures to notify—professional misconduct

Each of the following failures to notify is declared to be professional misconduct:

- (a) a failure to notify, without reasonable cause, information in relation to a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 7 (1) (g),
- (b) a failure to notify, without reasonable cause, information in relation to an act of bankruptcy as required by clause 7 (1) (h),
- (c) a failure to notify, without reasonable cause, a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 133 in the time and manner specified in that clause,
- (d) a failure to notify, without reasonable cause, an act of bankruptcy as required by clause 134 in the time and manner specified in that clause.

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## Part 14 Advertising of personal injury services

### 138 Definitions

In this Part:

***hospital*** means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act, or
- (c) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988* or a nursing home within the meaning of the *Nursing Homes Act 1988*,

and any land or building occupied or used in connection with any such hospital, establishment or nursing home.

***personal injury*** includes:

- (a) death, and
- (b) pre-natal injury, and
- (c) psychological or psychiatric injury, and
- (d) disease.

***printed publication*** means a newspaper, magazine, journal, periodical, directory or other printed publication.

***public place*** means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

### 139 Restriction on advertising personal injury services

- (1) A barrister or solicitor must not advertise personal injury services except by means of a statement that:
  - (a) states only the name and contact details of the barrister or solicitor, together with information as to any area of practice or specialty of the barrister or solicitor, and
  - (b) is published by an allowable publication method, as provided by subclause (4).

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- (2) A contravention of subclause (1) is capable of being professional misconduct.
- (3) Subclause (2) applies only in respect of contraventions that occur after the commencement of this clause.
- (4) Subject to subclause (5), each of the following is an allowable publication method:
  - (a) publication of the statement in a printed publication,
  - (b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as published in that printed publication and the printed publication is published independently of the barrister or solicitor,
  - (c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the barrister or solicitor,
  - (d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place,
  - (e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle,
  - (f) display of the statement on any printed document provided to a person as a receipt or record in respect of a transaction or bet.
- (5) Each of the following is not an allowable publication method for the purposes of this clause:
  - (a) public exhibition of the statement in or on a hospital,
  - (b) display of the statement on any printed document gratuitously sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital.
- (6) This clause does not prevent a barrister or solicitor from advertising personal injury services:
  - (a) to any person who is already a client of the barrister or solicitor,  
or
  - (b) to any person at a place of business of the barrister or solicitor,  
or

- (c) in accordance with any order by a court.
- (7) This clause does not apply to or in respect of a disclosure made by a barrister or solicitor under Division 2 of Part 11 of the Act.
- (8) A printed publication, directory or database is considered to be published or maintained independently of a barrister or solicitor only if:
  - (a) it is not published or maintained by the barrister or solicitor or by a partner, employee or member of the practice of the barrister or solicitor, and
  - (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

**140 What constitutes advertising of personal injury services**

- (1) For the purposes of this Part, a person advertises personal injury services when the person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person:
  - (a) to make a claim for compensation or damages under any Act or law in respect of a personal injury, or
  - (b) to use the services of a barrister or solicitor in connection with the making of any such claim.
- (2) It does not matter that the statement also relates to other matters.
- (3) For the purposes of this clause, a statement is published if it is:
  - (a) published in a printed publication, or
  - (b) disseminated by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
  - (c) broadcast by radio or television, or
  - (d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet, or
  - (e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or

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Clause 140            Legal Profession Regulation 2002

Part 14                Advertising of personal injury services

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- (f)    displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle, or
- (g)    displayed on any document provided to a person as a receipt or record in respect of a transaction or bet.

## Part 15 Miscellaneous provisions

### 141 Discriminatory conduct (including sexual harassment) prohibited

A legal practitioner must not, in connection with the practice of law, engage in any conduct, whether consisting of an act or omission, that constitutes unlawful discrimination (including unlawful sexual harassment) under the *Anti-Discrimination Act 1977* against any person.

### 142 Mandatory continuing legal education—special requirement

- (1) If the holder of a practising certificate is required to undertake continuing legal education, that continuing legal education must include a course in connection with the management of the practice of law that deals only with the following issues:
  - (a) equal employment opportunity,
  - (b) unlawful discrimination (including unlawful sexual harassment),
  - (c) occupational health and safety.
- (2) The course is to be undertaken at least once in every relevant period and is to comprise at least one-fifth of the minimum number of units of courses to be undertaken in the year concerned.
- (3) In this clause:

*continuing legal education* means courses of continuing legal education that the holder of a practising certificate is required to undertake under the conditions attached to the certificate.

*relevant period* means:

- (a) in relation to a person who is the holder of a practising certificate at the commencement of this Regulation—the period of 3 years after the commencement of this Regulation (the “initial period”) and every period expiring on the third anniversary after the expiration of that initial period, or
- (b) in relation to a person who becomes the holder of a practising certificate after the commencement of this Regulation—the period of 3 years after the person becomes the holder of a practising certificate (the “initial period”) and every period

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Part 15                Miscellaneous provisions

---

expiring on the third anniversary after the expiration of that  
initial period.

**143 Savings and transitional provisions**

Schedule 5 has effect.

**Schedule 1 Forms**

(Clause 3 (4))

**Form 1 Application by client for assessment of costs  
(other than party/party costs)**

(Clause 53 (1) (a))

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES  
AT SYDNEY  
COMMON LAW DIVISION

No of 20

.....  
*[Applicant]*

.....  
*[Respondent]*

1 I wish to object to the bill of costs given to me by my legal practitioner. I apply to have this matter referred to a costs assessor.

2 The costs which are the subject of this application were included in the bill of costs (or request for payment where costs paid without bill) dated , a copy of which is attached.

There is a costs agreement between myself and my legal practitioner (copy attached)/There is no costs agreement between myself and my legal practitioner\*.

I seek to have the costs agreement (or part) set aside as unjust under section 208D of the Act and provide the following details to support the request:\*

.....

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I make the following objections to the bill of costs:

**Note.** Objections on the ground that it does not comply with any costs agreement, or that it does not comply with any practitioner's disclosures as to costs, to be so identified.

.....

The following additional information is provided that is relevant to the assessment of fair and reasonable costs in this matter:\*

.....

3      The costs have been fully paid/partly paid\* in the sum of \$      /not paid\*.  
*[In the case of part payment, a copy of any receipt given for that payment is to be attached.]*

4      The amount of costs in dispute is the whole bill/is the costs for the following services (being \$      ):  
..... \*

*[The amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the party liable to pay them.]*

5      The address for the service of notices on the applicant, respondent and any interested parties are the following:

Applicant: .....

Respondent: .....

Other: .....

6      I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

7      I declare that there is no reasonable prospect of settlement of the matter by mediation.

Date: .....

Applicant: .....  
*[or Applicant's Practitioner]*

\* *Cross out whichever is inapplicable.*

**Form 2 Application by practitioner for assessment of costs (other than party/party costs)**

(Clause 53 (1) (b))

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES  
AT SYDNEY  
COMMON LAW DIVISION  
No of 20

.....  
[Applicant]

.....  
[Respondent]

- 1 I apply to have this matter referred to a costs assessor.
- 2 \*COSTS OF RETAINED PRACTITIONER WHERE APPLICATION FOR ASSESSMENT MADE BY INSTRUCTING PRACTITIONER
  - (a) The costs which are the subject of this application were included in the retained practitioner’s bill of costs dated , a copy of which is attached.
  - (b) There is no costs agreement between the client and the retained practitioner.
  - (c) There is a costs agreement between the instructing and retained practitioners (copy attached)/There is no costs agreement between the instructing and retained practitioners\*.
  - (d) I make the following objections to the bill of costs:
 

**Note.** Objections on the ground that it does not comply with any costs agreement to be so identified.

.....
  - (e) The following additional information is provided that is relevant to the assessment of fair and reasonable costs in this matter:\*

**OR**

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2      **\*COSTS OF PRACTITIONER WHERE THAT PRACTITIONER IS THE APPLICANT**

(a) The costs which are the subject of this application were included in my bill of costs dated \_\_\_\_\_, a copy of which is attached. The bill was given to the client on \_\_\_\_\_ in the following manner:

.....

(b) \*The bill of costs was given at least 30 days prior to the making of this application.

**OR**

(b) \*An application for assessment of the bill of costs has already been made by

.....

(c) There is a costs agreement between myself and the client (copy attached)/There is no costs agreement between myself and the client\*.

(d) The following disclosures about costs were made to the client in accordance with the Act:

.....

3      The costs have been fully paid/partly paid\* in the sum of \$ \_\_\_\_\_ /not paid\*.

*[In the case of part payment, a copy of any receipt given for that payment is to be attached.]*

4      The amount of costs in dispute is the whole bill/is the costs for the following services (being \$ \_\_\_\_\_):

..... \*

*[The amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the party liable to pay them.]*

5 The addresses for the service of notices on the applicant, respondent and any interested parties are the following:

Applicant: .....

.....

Respondent: .....

.....

Other: .....

.....

6 I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

7 I declare that there is no reasonable prospect of settlement of the matter by mediation.

Date: .....

Applicant: .....  
*[or Applicant's Practitioner]*

\* Cross out whichever is inapplicable.



- (c) The relevant work done in those proceedings and the period over which that work was done: .....
- (d) The identity of the persons who did that work (including the position of the persons eg partner, associate): .....
- (e) The basis on which the costs have been calculated and charged (whether on a lump sum basis, an hourly rate basis, an item of work basis, on a part of proceedings basis or other basis): .....
- (f) The facts relied on to justify the costs charged as fair and reasonable by reference to the above, the practitioner’s skill, labour and responsibility, the complexity, novelty or difficulty of the matter, the quality of the work done or any other relevant matter: .....

*[The above information may be given by attaching a separate statement containing the information, or by attaching a copy of a bill of costs containing the information that has been given to a client or instructing practitioner.]*

- 6 A copy of this application was sent to the respondent on .....
- 7 Attached are objections to this application, and any response, made in accordance with clause 56 of the Regulation.\*

I certify that:

- (a) no objection to this application by the respondent was received by me before the lodging of the application.\*  
*[where application made by person to whom costs are payable]*
- (b) no response by the respondent to the objections made by me was received by me before the lodging of the application.\*  
*[where application made by person by whom costs are payable]*

- 8 The addresses for the service of notices on the applicant, respondent and any interested parties are the following:

Applicant: .....

.....

Respondent: .....

.....

Other: .....

.....

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9      I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

Date: .....

Applicant: .....

*[or Applicant's Practitioner]*

*\* Cross out whichever is inapplicable.*

*\*\* If this application is made by the person by whom the costs are payable, the information in para. 5 is to be completed by the person to whom the costs are payable after a copy of this application is sent to that person.*

**Form 4 Application for review of costs assessment**

(Clause 64)

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES  
AT SYDNEY

COMMON LAW DIVISION

No of

.....  
[Applicant]

.....  
[Respondent]

- 1 I apply to have a determination of a costs assessor reviewed by a costs review panel.
- 2 The determination to be reviewed was set out in the certificate(s) of determination issued on [date] by Costs Assessor
- 3 A copy of the certificate(s) of determination and the statement of reasons given by the costs assessor are attached to this application.
- 4 The grounds for making the application for review are set out in the space provided on the back of this form.
- 5 I certify that:
  - (a) this application is made within 28 days after the issue of the certificate(s) of determination to be reviewed, and
  - (b) notice of this application was served on the respondent on [date].  
(being not less than 7 days before this application was made).
- 6 An affidavit proving service of notice of this application on the respondent is attached to this application.
- 7 This application relates to the assessment of:
 

*party/party costs	*practitioner/client costs
*client/ practitioner/client costs	*practitioner/practitioner costs

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8      \* I am responsible for payment/ \* Another person is responsible for payment of the costs the subject of the determination to be reviewed.

9      I declare that there is no reasonable prospect of settlement of the matter by mediation.

10     The addresses for the service of notices on the applicant and the respondent are:

Applicant: .....

.....

.....

.....

Applicant's legal practitioner, if any:

.....

.....

.....

.....

Telephone:

Fax:

**Note.** If the application is signed by a legal practitioner acting for the applicant, the name, address, telephone and facsimile numbers of the legal practitioner's firm are to be stated.

Respondent: .....

.....

.....

.....

Respondent's legal practitioner, if any:

.....

.....

.....

.....

Telephone:

Fax:

**Note.** If the respondent is represented by a legal practitioner, the name, address, telephone and facsimile numbers of the legal practitioner's firm are to be stated.

Date:

Applicant:

*[or Applicant's legal practitioner]*

**This form is to be filed in triplicate**

*\* Cross out whichever is inapplicable*

**The grounds for making the application for review are as follows:**

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**Form 5 Notice to person on whose behalf controlled money is received**

(Clause 88)

(Legal Profession Act 1987)

**Part 1**

**Note.** This notice is issued when a solicitor acquires control of a person's money or deposits or invests money for a person and retains control of the money.

1 Name and address of person on whose behalf controlled money is received:

2 *[Where specific sum of money received]*

(a) Amount of money received:

(b) When money received:

(c) From whom money received:

(d) How/where money is held by solicitor:  
or

*[Where solicitor has power or authority over money in person's accounts/deposits]*

(e) Names and numbers of accounts/deposits:

(f) Names and addresses of financial institutions or persons where or with whom accounts or deposits are held:

(g) Date, registration particulars (if any) and nature of instrument granting power or authority to solicitor:

3 Solicitor's instructions received from:

on:

to deal with money received or held in accounts/deposits noted in paragraph 2, as follows:

## Part 2

Particulars as to the payment or investment of money referred to in Part 1 of this notice (or in Part 1 of Notice No    dated    ).

Name and address of person on whose behalf controlled money is received:

- 1 Amount of money paid/invested:
- 2 Date of payment/deposit:
- 3 Name and address of person or institution holding the money paid or deposited:
- 4 Name and number of the account or deposit:
- 5 Terms on which money is deposited or invested:
  - (a) Term or maturity date of deposit:
  - (b) The rate of interest:
  - (c) Date from which interest is computed:
  - (d) The deposit or investment is unsecured:  
or  
The deposit or investment is secured and particulars of the security are:
  - (e) Special terms (if any):

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**Form 6 Accountant's report for the period**  
**/    /    to    /    /**

(Clause 94)

(Legal Profession Act 1987)

To: The Law Society of New South Wales

1      (a) Practice Name:

The name(s) of the solicitor(s) who at any time during the period carried on practice solely or in partnership under the above name or as solicitor director(s) of the above incorporated legal practice and the period of practice are as follows:

Name	Period
.....	From ..... To .....

- (b) The Trust Records referred to in this report relate to the Bank Account(s) conducted under the above practice name and described in Schedule 1 to this report.
- (c) The Controlled Money Records referred to in this report relate to the accounts and money recorded in any controlled money ledger accounts closed during the 12 months ended 31/3/20 and in any controlled money ledger accounts current at that date and described in Schedule 2 to this report.

- 2      The limited examination of the Trust Records and Controlled Money Records conducted for the purpose of completing this Report does not constitute an audit.
- 3      Particulars of any letter of credit issued in respect of the deposit made under the provisions of section 64 of the Act are contained in Schedule 3 to this report.
- 4      I have completed and signed the Reporting Accountant's Check List in the form approved by the Council of the Law Society of New South Wales.

- 
- 5 A true copy of the Summary of Breaches of Regulation from the Reporting Accountant's Check List is Schedule 4 to this report.
- 6 The Summary Review Memorandum is Schedule 5 to this Report.
- 7 In my opinion, based on appropriate examinations and sampling techniques, throughout the period covered by the report, and subject to the qualifications noted below.\*\*\*

Qualifications:\*\*\*

**Note.** If qualifications are made/an adverse report is given, a copy of this report is to be forwarded direct to the Chief Trust Account Inspector c/- Law Society of NSW

(1) **Trust money**

- (a) The accounting systems and internal controls used by the solicitor(s) to ensure that trust money has been properly accounted for were:
- (i) Appropriate/inappropriate for the practice conducted, and \*\*\*
  - (ii) Operated/did not operate satisfactorily.\*\*\*
- (b) Trust money recorded as received, held and/or disbursed during the period has/had not been accurately recorded in the manner prescribed.\*\*\*
- (c) The records prescribed for the recording of trust money have/have not been maintained regularly and properly.\*\*\*

(2) **Controlled money**

- (a) The accounting system and internal controls used by the solicitor(s) to ensure that controlled money has been properly accounted for were:
- (i) Appropriate/inappropriate for the practice conducted, and \*\*\*
  - (ii) Operated/did not operate satisfactorily.\*\*\*
- (b) Controlled money recorded as received, held and/or disbursed during the period has/has not been accurately recorded in the manner prescribed.\*\*\*
- (c) The records prescribed for the recording of controlled money have/have not been maintained regularly and properly.\*\*\*

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\*\*\*      Delete as appropriate.

Date: .....

Signed: .....

Full name: *[Block letters]* .....

Company Auditor's Registration No: .....

Firm Name (if any): .....

Postal Address: .....

Phone No: .....

**Schedule 1 Trust money**

1 Trust Bank Account Number: .....

Bank: .....

Branch Address: .....

BSB Number: .....

Period from: .....

to .....

Bank statement balance as at 31/3/20 \$ .....

Total client funds as at 31/3/20 \$ .....

(ie Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/20 (excluding zero  
balances): .....

  

2\* Trust Bank Account number: .....

Bank: .....

Branch Address: .....

BSB Number: .....

Period from: .....

to .....

Bank statement balance as at 31/3/20 \$ .....

Total client funds as at 31/3/20 \$ .....

(ie Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/20 (excluding zero balances): .....

*\* Delete where appropriate/attach separate list if space is insufficient.*

**Schedule 2 Controlled money/mortgages**

*[Where appropriate, show "NIL" or "NOT APPLICABLE"]*

Controlled Money Ledger

- (1) Listing of accounts total as at 31/3/20 \$ .....
- (2) Number of Ledger Accounts as at 31/9/20 .....

Investments Register

- (1) Listing of Mortgages total as at 31/3/20 \$ .....
- (2) Number of Mortgages as at 31/9/20 .....

**Schedule 3 Letter of credit details**

*[Where appropriate, show "NIL" or "NOT APPLICABLE"]*

(a) Letter of Credit Details as at 31 March 20 .

Bank	Letter of Credit Number	\$
.....		
.....		
.....		
		\$ _____

(b) Movement Schedule Balance at 31 March 20 .

Date	\$
Adjustment during period: .....	
.....	



**Form 7 Lending authority**

(Clause 102)

(Legal Profession Act 1987)

To: *[insert name of legal firm]* .....  
I/we: *[insert name(s) of investors]* .....  
of: *[insert address(es)]* .....

authorise and instruct you to invest on my/our behalf the sum of \$            on the terms and conditions contained in the Disclosure Notice (given under clause 102 of the *Legal Profession Regulation 2002*) dated            and subject to the terms and conditions in this application form.

**Full details of lender(s)**

1 My/Our full name(s) and address(es) for the description on the mortgage document is/are:

**Applicant**

Mr/Mrs/Miss/Ms .....  
Surname .....  
Other names .....  
Company name ..... ACN .....  
Address .....  
Suburb/Postcode .....  
Contact name (if company) .....  
Email address .....  
Date of birth .....  
Occupation .....

*[or]*

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The mortgage is to be registered in the following name as Mortgagee:

**Applicant**

Mr/Mrs/Miss/Ms .....  
Surname .....  
Other names .....  
Company name .....      ACN .....  
Address .....  
Suburb/Postcode .....  
Contact name (if company) .....  
Email address .....  
Date of birth .....  
Occupation .....

**Details of Borrower**

2 Full name and address of the Borrower is .....

**Value of security**

3 The estimated value of the security at the date of the loan will be at least \$  
The value will be evidenced by .....  
4 Total principal sum to be lent under the mortgage \$ .....

**Security information**

5 The total principal sum must be secured by way of a first registered mortgage over the security described in this Authority.  
6 Details of the security:  
(a) Term of Mortgage      months  
(b) Address of the property .....  
(c) Nature of improvements .....  
7 Name and address of Guarantor .....  
8 There are to be no prior mortgages or charges affecting security.

**Contribution of lender**

9 My/Our contribution to the loan \$ .....

**Authority**

- 10 (a) Unless otherwise specified in paragraph 19 of this Authority, I am/we are not entitled to the repayment of my/our contribution until the mortgage is discharged.
- (b) Unless I/we notify the firm in writing at least 14 days before the maturity date that I/we wish to withdraw from the investment, the firm may permit the investment to continue until the mortgage is renewed or paid in full.
- (c) Unless I/we notify the firm in writing within 14 days of receipt of a request of a renewal confirmation that I/we wish this investment to end on the review date, the firm may renew the investment for a further term set out in the renewal confirmation.

**Payment of principal and interest**

- 11 Payments of interest and principal are to be:
    - \* (a) paid by cheque to: .....
    - [or]*
    - \* (b) by direct payment to the following account:
      - Account name .....
      - Bank details .....
      - Account number .....
      - Branch (BSB) number .....
- \* *Strike out whichever is not applicable*

**Interest**

- 12 \* (a) The interest rate must not be varied during the term of the loan,
    - [or]*
    - \* (b) The interest rate may be varied during the term of the loan on the following basis:
- \* *Strike out whichever is not applicable*
- 13 The interest rate applicable to the loan is to be \_\_\_\_\_ per cent per annum payable \_\_\_\_\_ in advance/arrears subject to a reduction to \_\_\_\_\_ per cent per annum for any payment that is made within \_\_\_\_\_ days after the due date for that payment.

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**Fees and charges**

14 I/we authorise *[insert name of legal firm]* to deduct the following fees:

- (a) a management fee of      % from the interest paid by the borrower,
- (b) an exit fee of      % of the value of the contribution.

The firm pays commission to brokers and licensed dealers as follows:

.....

**Tax file number**

15 I/we have/have not supplied tax file numbers to *[insert name of legal firm]*.

**Early repayment by Borrower**

16 The Borrower may in some circumstances repay the loan before the expiration of the period specified in paragraph 6 (a) of this Authority on the following conditions .....

**Limitations to Authority**

17 This Authority is given on the understanding that at the date of the making of the loan:

- (a) the Borrower will not be you or an associate, by which term is meant a person or company associated with a solicitor (as defined in section 60 (2) of the *Legal Profession Act 1987*), and
- (b) you or any such associate will have no financial interest in the Borrower unless you disclose the relationship or interest to me/us and I/we have received written advices from an independent solicitor in the prescribed form,
- (c) I am/We are aware that, in respect of any mortgage loan to which my/our money may be applied, you may also/will not act as solicitor for the Borrower.

**Fidelity coverage**

- 18 (a) I/We are aware that the fidelity insurance policy of *[insert name of legal firm]* is limited to \$4 million.
- (b) I/We are also aware that under a State regulated mortgage we are not entitled to make a claim against the Fidelity Fund for the purposes of obtaining compensation for pecuniary loss if a claim relates to a regulated mortgage for which the solicitor is required to have fidelity insurance.

**Special conditions**

19 Special conditions or instructions not relating to the security.

I/We acknowledge having received, read and understood the information contained in the Disclosure Notice (given under clause 102 of the *Legal Profession Regulation 2002*), this Authority and the valuation(s) relating to the security property(s) and declare that the decision to invest in this mortgage is a decision based on my/our enquiries and is not based on any advice of the *[insert name of legal firm]*.

Before I/we signed this Authority all of the required particulars had been inserted and all blank spaces had been filled up or ruled out.

**Signature of investors**

This form must be signed by the investor. All joint investors must sign. If the investor is a corporation, partnership, firm or unincorporated association, the person(s) authorised by its constitution must sign and state the capacity in which they are signing (eg director, secretary). If signed under power of attorney, the attorney must state that no notice of cancellation of the power has been received. The power of attorney must be produced if it has not already been noted by the firm.

Date: .....

Signed:

.....	.....
<i>[Full name]</i>	<i>[Signature]</i>

.....  
*[And capacity if applicable]*

.....	.....
<i>[Full name]</i>	<i>[Signature]</i>

.....  
*[And capacity if applicable]*

.....	.....
<i>[Full name]</i>	<i>[Signature]</i>

.....  
*[And capacity if applicable]*

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**Form 8 Summary of mortgage**

(Clause 108)

(Legal Profession Act 1987)

- 1 Mortgagor: .....  
Postal address: .....
- 2 Mortgagee: .....  
Postal address: .....  
*[Where principal sum contains contributions of more than one lender]*  
Name and address of Mortgagee to whom this summary is sent .....  
.....  
Amount advanced by him/her .....  
Total principal sum .....
- 3 Principal \$ .....
- 4 Repayable .....
- 5 Interest      per cent per annum (reducible to      per cent per annum if paid  
within 14 days after due dates).
- 6 Special conditions .....  
.....  
.....
- 7 Particulars of security:
  - (a) General description: .....
  - (b) Date of execution: .....
  - (c) Registered number or dealing number: .....
  - (d) Standing in order of priority to other mortgages or charges: .....
  - (e) Total loan secured: .....

- 8 Particulars of property comprising security:
  - (a) Real property: .....
    - (i) Address: .....
    - (ii) Shire/Municipality: .....
    - (iii) Title reference: .....
    - (iv) Improved/unimproved: .....
    - (v) Nature of improvements: .....
    - (vi) Assessment of value: .....
      - Issued by: .....
      - Dated: .....
    - (vii) Special conditions as to progress payments: .....
  - (b) Other:
    - (i) Description of property: .....
    - (ii) Assessment of value: .....
      - Issued by: .....
      - Dated: .....
  - (c) Other relevant particulars: .....
- 9 Prior encumbrances:
  - (a) Encumbrances (described): .....
  - (b) Amount secured: .....
  - (c) Parties: .....
  - (d) Date: .....

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This Notice/Summary is issued to .....  
on *[date]* .....

.....  
*[Signature]*

.....  
*[Name of Solicitor]*

.....  
*[Firm]*

.....  
*[Address]*

---

## Schedule 2 Costs for legal services in workers compensation matters

(Clause 46)

### Part 1 Schedule of practitioners' costs

#### 1 Preparing process

Drawing/typing/checking originating process, notice of appeal to the court, notice of application for leave to make an appeal to the court, or third or subsequent party notice \$56

#### 2 Preparing other documents

Drawing/typing/checking any document, including any notice of subpoena or document necessarily or properly filed or delivered to another party or to counsel or the court, but excluding a certificate of readiness, per page \$17

Drawing/typing/checking certificate of readiness where required \$39

If the certificate of readiness is special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page \$17

#### 3 Letters (including drafting, typing and checking)

Short letter (up to one folio in length) \$17

Circular, being identical (save for address details) with any other letter \$8

Any other letter, per folio \$17

#### 4 Telephone calls

Not requiring skill \$14

Requiring skill or legal knowledge:

(a) not more than six minutes \$20

(b) more than six minutes—per six minute unit after the first \$14

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Schedule 2 Costs for legal services in workers compensation matters

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### 5 Perusal of documents

Perusal of Court documents (being any document filed in court), per page or part of a page	\$15
Perusal of other documents, including correspondence, per folio	\$56
Where it is not necessary to peruse but it is necessary to scan a document, per page	\$3

### 6 Copying

Being a photographic reproduction, carbon or other copy of a document including copies for use in court, copies of doctors' reports for use on hearing, sending or receiving facsimile transmission, including the time reasonably spent by a legal practitioner or clerk in preparing, sorting and collating such documents for copying, per page	\$1
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**Note.** In respect of facsimile transmissions, STD and IDD transmission fees may be claimed as disbursements.

### 7 Attendance

Time reasonably spent by a legal practitioner (not being time spent at a conciliation conference) including travelling, waiting time, other than work referred to in items 1–6 inclusive, per quarter hour or part of a quarter hour	\$35
Time spent by a legal practitioner at a conciliation conference, per hour or part of an hour	\$250
Time reasonably spent by a clerk including travelling, waiting time on work other than work referred to in items 1–6 inclusive, per six minute unit	\$4

**Note.**

1. Where the hearing of any proceedings is not reached, or is adjourned on payment of the costs of the day, there may be allowed in respect of any time lost in awaiting the commencement of the hearing an amount not exceeding the amount that would have been allowed under item 7 if that time had been spent in the hearing of the proceedings.
2. Where the legal practitioner is engaged in any other proceedings on the same day, the amount under item 7 will be such proportion only as the registrar thinks reasonable, having regard to all the circumstances.
3. Where a party is not notified of any payment, withdrawal or discontinuance in time to prevent attendance at Court, there may be allowed for that attendance an amount in the discretion of the registrar not exceeding the amount claimable under item 7 for one hour's attendance appropriate to the proceedings.

### 8 Specific skill, care and responsibility

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Where any individual item merits any particular skill or attention an additional allowance is to be made in addition to any general allowance under item 9.

### **9 Skill, care and responsibility**

Such sum as may be reasonable, having regard to all of the circumstances of the case and in particular to:

- (a) the complexity of the matter,
- (b) the difficulty or novelty of the questions involved in the matter,
- (c) the skill, specialised knowledge and responsibility involved and the time and labour extended by the legal practitioner,
- (d) the number and importance of the documents prepared and perused, however brief,
- (e) the general care and conduct of the legal practitioner having regard to his/her instructions and all relevant circumstances, including the preparation for hearings generally and for hearing of taxation/assessment of a bill of costs specifically.

### **10 Disbursements**

Any disbursement necessarily incurred is to be allowed except in so far as any such disbursement is of an unreasonable amount or has been unreasonably incurred and any doubts which the taxing officer/costs assessor may have as to whether any disbursement was reasonably incurred or was reasonable in amount are to be resolved in favour of the receiving party.

### **11 Definitions**

An allowance under items 1, 2 and 3 includes any file copy.

In this Part:

*folio* means 100 words.

*page* means a page typewritten or printed and which is a page of a nature or kind usual for the particular document and includes part of a page.

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Schedule 2 Costs for legal services in workers compensation matters

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### Part 2 Advocates' fees

- 1 Briefs on hearing—Brief Fees are to be calculated on the nature of the relief obtained, in accordance with the following scale:

Scale A	\$620
Scale B	\$850
Scale C	\$980

The scale appropriate for the relief obtained is to be as follows:

- |     |  |   |
|-----|--|---|
| (a) | Property damage  | A |
| (b) | Medical, hospital etc  | A |
| (c) | Commutations and redemptions   | A |
| (d) | Lump sum loss of faculties under <i>Workers' Compensation Act 1926</i>   | A |
| (e) | Lump sum for compensation under s 66 of <i>Workers Compensation Act 1987</i> , including any claim for pain and suffering                                  | C |
| (f) | Lump sum for pain and suffering  | C |
| (g) | Weekly payments (closed period)  | B |
| (h) | Weekly payments (continuing period)  | C |
| (i) | Death claims   | C |
| (j) | Death claims where respondent admits liability subject only to formal proof of marriage, dependency or other similar issue, only if certified by the Court | A |
| (k) | Review of decisions of Commissioners (substantive matters)   | C |
| (l) | Review of decisions of Registrars or of Commissioners (procedural matters)   | A |
| (m) | Appeals to the Court   | C |
- 
- |   |   |             |
|---|---|-------------|
| 2 | To appear in respect of any motion, or at any conciliation conference, where the court certifies that the matter is appropriate for an advocate | \$370       |
| 3 | To attend any second or subsequent conference in respect of the applicant, if certified   | \$125–\$310 |
| 4 | To advise on evidence   | \$125–310   |

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- 5 For drawing, settling any necessary document, conferences, advice (not including advice on evidence), pleadings or for any work involving an advocate in his or her chambers or offices, views, including travelling time, taking a reserved judgment, appearing at call overs, mentions and adjournments, other than any work referred to in items 1–3 inclusive—per hour \$140
- 6
- (a) In respect of items 1 to 4 for senior counsel: an amount to be decided at the discretion of the taxing officer/costs assessor.
  - (b) Fees for senior counsel or more than one advocate will not be allowed without an order of the court.
  - (c) The court may in a special case order that fees additional to those provided in this Schedule be payable to an advocate.
- 7 Refreshers:
- (a) Where the hearing is not concluded on the date on which it is begun, there will be allowed, unless the court otherwise orders, in respect of each further day on which the hearing continues—for more than 3 hours, a refresher of 75%, or for 3 hours or less, a refresher fee of 65% of the brief fee.
  - (b) In respect of hearings outside the Sydney metropolitan area:
    - (i) a full refresher of 75% will be allowed in respect of any subsequent day on which the hearing continues at a town other than that at which it commenced, and
    - (ii) unless the court otherwise orders no refresher fee will be allowed in respect of a hearing which continues at another town on the day on which it commenced, and
    - (iii) no loading will be taken into account in calculating any refresher.
  - (c) Where the hearing is adjourned on an order for payment of the costs of the day—the fee equal to a refresher of 65% of the brief fee.
  - (d) Where the matter is not reached on a day on which it is listed for hearing—a fee equal to a refresher of 75% of the brief fee (if certified by the court).
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### Legal Profession Regulation 2002

#### Schedule 2 Costs for legal services in workers compensation matters

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- 8 Loadings:
- (a) An advocate whose principal chambers or offices are in the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in a town outside that area, to a loading in accordance with Part 3 of this Schedule for that town. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
  - (b) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan area, to a loading in accordance with Part 3 of this Schedule for that town.
  - (c) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard at another such town, to a loading in accordance with Part 3 of this Schedule for that other town. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
  - (d) For the purposes of this item, if a town is not included in Part 3 of this Schedule, the loading for that town is to be the loading for the nearest town that is so included.
  - (e) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this item, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.
- 9 A solicitor providing an advocacy service is entitled to only 66% of the fee calculated under this Part when the service is provided to his or her own client or to a client of his or her employer.

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### Part 3 Country loadings

- 1 For the purposes of item 8 of Part 2 of this Schedule, the loading for attending a hearing at any of the following towns, for the first day is:

Town	Loading
	\$
Albury	723
Armidale	663
Bateman's Bay	662
Bathurst	525
Bega	799
Bourke	1141
Broken Hill	1232
Campbelltown	63
Casino	745
Cessnock	411
Cobar	1049
Coffs Harbour	584
Condobolin	889
Cooma	882
Coonamble	850
Cootamundra	603
Cowra	464
Deniliquin	777
Dubbo	615
Forbes	615

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Schedule 2 Costs for legal services in workers compensation matters

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<b>Town</b>	<b>Loading</b>
	<b>\$</b>
Glen Innes	584
Gosford	176
Goulburn	434
Grafton	715
Griffith	588
Gundagai	690
Gunnedah	680
Hay	761
Inverell	683
Katoomba	239
Kempsey	629
Lismore	658
Lithgow	273
Maitland (including East Maitland)	411
Moree	616
Moruya	516
Moss Vale	284
Mudgee	490
Murwillumbah	761
Muswellbrook	436
Narrabri	572
Narrandera	568
Newcastle	411

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Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

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<b>Town</b>	<b>Loading</b>
	<b>\$</b>
Nowra	411
Nyngan	977
Orange	468
Parkes	633
Penrith	63
Port Macquarie	530
Queanbeyan	526
Singleton	632
Tamworth	613
Taree	490
Tweed Heads	714
Wagga Wagga	544
Wentworth	1154
Wollongong	260
Yass	463
Young	603

- 2 If the advocate is a senior counsel—add \$75 per day to the relevant loading.
- 3 For each additional day attending a hearing at any of the towns listed above—add \$163.
- 4 Where the NRMA car rental discount is applicable, the amount of the loading is to be reduced by an amount that is calculated by subtracting the discount amount paid from the amount allowed in the loading of \$99.

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Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

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### Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

(Clause 47)

#### Part 1 Supreme Court

- |   |  |        |
|---|--|--------|
| 1 | Costs of taking instructions, preparing documents and filing statement of claim for uncontested recovery of lump sum debt including drawing/typing/checking of originating process, being first page of document ((Form 1), statement of claim (Form 5) and affidavit verifying statement of claim (Form 20A), and cheque to pay account of process server | \$858  |
| 2 | Costs of service—for each additional defendant   | \$50   |
| 3 | Costs of substituted service including drawing/typing/checking of affidavit (Form 49), minute of order (Form 51) and cheque to pay account of process server   | \$488  |
| 4 | Costs of service in another jurisdiction:  |        |
|   | (a) within Australia under the <i>Supreme Court Rules</i> —including obtaining leave to proceed and drawing/typing/checking affidavit (Form 49)  | \$187  |
|   | (b) outside Australia in a country where English is the official language—including drawing/typing/checking of request for service (Form 15) and notice to defendant to be served (Form 13A)   | \$128  |
|   | (c) outside Australia in a country where English is not the official language—including drawing/typing/checking of request for special service (Form 14) and notice to defendant to be served (Form 13A)   | \$578  |
| 5 | Costs on entering a default judgment for recovery of lump sum debt including all matters listed in Item 1 plus drawing/typing/checking of affidavit of service (Form 49), minute of judgment (Form 50) and affidavit of debt (Form 20C)  | \$1246 |
| 6 | Costs on obtaining certificate of judgment under section 13 of the <i>Foreign Judgments Act 1973</i> including drawing/typing/checking of minute of judgment (Form 50), certificate under section 13 of the <i>Foreign Judgments Act 1973</i> (Form 51A) and affidavit of facts (Form 49):   |        |

Legal Profession Regulation 2002

Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

Schedule 3

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(a)	if a solicitor is required to attend the court to settle judgment	\$687
(b)	if a solicitor is not so required	\$481
7	Costs of taking instructions, preparing documents and filing a writ of execution (whether or not the matter was contested) including drawing/typing/checking of writ for levy of property (Form 57), affidavit (Form 49) and cheque for payment of proceeds to plaintiff	\$530

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Legal Profession Regulation 2002

Schedule 3      Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

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### Part 2 District Court

1	Costs to be entered on statement of claim signed by a solicitor in respect of the solicitor's costs of taking instructions, preparing documents and filing the statement of claim including drawing/typing/checking of originating process, being first page of document (Form 1), ordinary statement of claim (Form 8) or statement of liquidated claim (Form 9) and cheque to pay account of process server	\$642
2	Costs of service—for each additional defendant	\$50
3	Costs of substituted service including drawing/typing/checking of application (Form 14), affidavit (Form 5), order (Form 39) and cheque to pay account of process server	\$462
4	Costs on obtaining an order for judgment on ordinary statement of claim or entering a default judgment on statement of liquidated claim including all matters listed in Item 1 plus drawing/typing/checking of affidavit of debt (Form 29) and checking of Forms 24 and 25	\$956
5	Costs on obtaining judgment in undefended action in which order for judgment has been made (unless the Court otherwise orders) including all matters listed in Items 1 and 4	\$1335
6	Costs on examination summons including drawing/typing/checking of examination summons (Form 76) and cheque to pay account of process server	\$506
7	Costs on issue of warrant for apprehension of judgment debtor including drawing/typing/checking of affidavit for issue of warrant (Form 79) and warrant (Form 80)	\$217
8	Costs on issue of writ of execution including drawing/typing/checking of affidavit to ground writ (Form 93), writ (Form 94) and cheque to plaintiff	\$388
9	Costs on issue of writ against the person including drawing/typing/checking of affidavit in support of summons (Form 5), summons to show cause why writ should not issue (Form 109), order authorising issue of writ (Form 110), praecipe for issue of writ (Form 111)	\$855

Legal Profession Regulation 2002

Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

Schedule 3

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### Part 3 Local Court

If the amount at issue in the action in the Court:

- (a) does not exceed \$1,000—the costs are 40% of the amount specified for the relevant Item, or
- (b) exceeds \$1,000 but does not exceed \$5,000—the costs are 60% of the amount specified for the relevant Item, or
- (c) exceeds \$5,000 but does not exceed \$20,000—the costs are 80% of the amount specified for the relevant Item, or
- (d) exceeds \$20,000—the costs are the full amount specified for the relevant Item.

However, Items 1, 2, 3 and 4 are alternatives. Only one of those Items is applicable in any matter.

1	Costs of taking instructions, preparing documents and filing and issue of a statement of claim including drawing/typing/checking of ordinary statement of claim and affidavit of service (Form 8) or statement of liquidated claim and affidavit of service (Form 9) and cheque to pay account of process server	\$491
2	Costs on entry of default judgment including all matters listed in Item 1 plus drawing/typing/checking of affidavit of debt and minute of judgment (Form 22)	\$712
3	Costs on obtaining order of judgment on ordinary statement of claim including all matters listed in Item 1 plus drawing/typing/checking of application for order for judgment (Form 19A), order for judgment (Forms 19 and 20) and affidavit of evidence (Form 6)	\$810
4	Costs on obtaining judgment by the Court in an undefended action including all matters listed in Item 1 plus drawing/typing/checking certificate of readiness (Form 20A) and statement as to particulars in personal injuries matter	\$1228
5	Costs on issue of examination summons including drawing/typing/checking of examination summons and affidavit of service (Form 60), request for examination of judgment creditor (Form 61) and cheque to pay account of process server	\$293
6	Costs on examination of judgment debtor by solicitor if no request for examination by the Registrar has been filed	\$213

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Schedule 3      Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

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- |   |   |       |
|---|---|-------|
| 7 | Costs on issue of warrant for apprehension of judgment debtor including drawing/typing/checking of judgment creditor's affidavit for issue of warrant (Form 64) | \$155 |
| 8 | Costs on issue of writ of execution including drawing/typing/checking of application to issue execution (Form 72)   | \$198 |

## Schedule 4 Costs for other services in workers compensation matters

(Clause 48)

### Allowances to witnesses

1	Barristers, solicitors, accountants, medical practitioners, surveyors, architects, pharmacists and other professional persons attending to give evidence	\$160–300
	or per hour	\$125–200
2	Whenever a barrister, solicitor, accountant, surveyor, architect, pharmacist, or other professional person (not being a medical practitioner) prepares a report, the fee for the preparation of the report is to be allowed at a rate per hour or part of an hour	\$125–200
3	Whenever the persons mentioned in item 1 are called to give expert evidence and not evidence of fact:	
	(a) attending to give expert evidence, including travelling to Court, where period from departure from home, hospital, place of practice, office, place of employment or other place to return to that place from attendance at Court does not exceed one and a half hours	\$250–400
	(b) for every full hour after the first hour and a half or a proportion of an hour if not for a full hour	\$125–200
	(c) the maximum amount payable per day under item (1) and paragraphs (a) and (b) is the total of the number of hours that reasonably involved a witness at the rates applicable in item (1) and paragraphs (a) and (b)	
4	Travelling and other allowances:	
	(a) payment to be made at the rate of \$0.90 per kilometres one way after the first kilometre up to and including 80 kilometres, plus reasonable parking fees,	
	(b) exceeding 80 kilometres—the reasonable costs of travelling plus the costs of reasonable accommodation, meals and parking	

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### Legal Profession Regulation 2002

#### Schedule 4 Costs for other services in workers compensation matters

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- 5 Other witnesses:
- (a) such allowance as is commensurate with the witnesses' remuneration or circumstances, but not exceeding the allowances provided under items (1) and (3),
  - (b) such additional amount as is reasonable for travelling expenses and sustenance and, in cases where accommodation is required, such further amount as having regard to all the circumstances is reasonable and has been paid in respect of accommodation

#### Medical examinations and reports

- 6 The following fees may vary within the stated range, depending on the complexity of the matter, the number of documents to be studied and the amount of research needed to give the medical opinion:
- (a) Report made by an attending general practitioner:
    - (i) in respect of an initial consultation and examination of a patient \$120–160
    - (ii) in respect of any further consultation and examination after the first \$80–120
    - (iii) where a re-examination of the patient is not required \$60–80
  - (b) Report made by an attending specialist:
    - (i) in respect of an initial consultation and examination of a patient \$200–300
    - (ii) in respect of any further consultation and examination after the first \$150–250
    - (iii) where a re-examination of the patient is not required \$100–175
  - (c) Report made by a specialist who has not previously treated the patient:
    - (i) in respect of an initial consultation and examination of a patient \$220–500
    - (ii) in respect of any further consultation and examination after the first \$200–450
    - (iii) where a re-examination of the patient is not required \$100–215
- 7 Attending a joint examination (including travelling time where the distance does not exceed 8 kilometres):
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Costs for other services in workers compensation matters

Schedule 4

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- |     |  |           |
|-----|--|-----------|
| (a) | as an examining practitioner (including provision of report)                               | \$300–500 |
| (b) | as a non-examining practitioner where the examination is conducted by another practitioner | \$130–175 |
| (c) | provision of report by non-examining practitioner [see paragraph (b)]                      | \$100–175 |
- 8 Where special circumstances are shown to exist, eg, as in the case of a psychiatrist or psychologist necessitating prolonged or repeated attendances in a particular case, fees may be charged in accordance with item (1)

**Interpreters**

- 9 Allowances for interpreters:
- |     |   |       |
|-----|---|-------|
| (a) | amounts reasonably paid to an interpreter attending court in respect of hearing   |       |
|     | not exceeding per day   | \$250 |
| (b) | in respect of attending any conference or medical examination:                    |       |
|     | (i) for the first two hours or part of two hours                                  | \$80  |
|     | (ii) for every hour or part of an hour after the initial two hours                | \$30  |
| (c) | in respect of a translation of any document—per folio of 100 words                | \$22  |
| (d) | travelling—as per amounts allowed under item (5), [Other witnesses] of this scale |       |

## Schedule 5 Savings and transitional provisions

(Clause 143)

### Part 1 Preliminary

#### 1 Definitions

(1) In this Schedule:

*former*, in relation to a provision of the Act, is defined in subclause (2).

*former Board* means the Legal Profession Standards Board constituted under former Part 10 of the Act.

*former Review Panel* means the Legal Profession Conduct Review Panel constituted under former Part 10 of the Act.

*former taxation principles* means any principles that were applied in the taxation of costs before 1 July 1994 (including any relevant scales and determinations).

*former taxation provisions* means the provisions of Division 5 of Part 11 of the Act as in force immediately before 1 July 1994 and any relevant rules of court as in force immediately before that date.

*former Tribunal* means the Legal Profession Disciplinary Tribunal constituted under former Part 10 of the Act.

*new*, in relation to a provision of the Act, is defined in subclause (3).

*new Tribunal* means the Legal Services Tribunal constituted under new Part 10 of the Act.

*the Act* means the *Legal Profession Act 1987*.

(2) A reference in this Schedule to a former provision of the Act is a reference to that provision as in force immediately before 1 July 1994.

(3) A reference in this Schedule to a new provision of the Act is a reference to that provision as in force on or after 1 July 1994.

## Part 2 Complaints and appeals

### 2 Complaints made under former Part 10 and not yet subject to proceedings

- (1) This clause and clause 3 apply in respect of a complaint made under former Part 10 of the Act.
- (2) If a complaint made before 1 July 1994 has not, before that date, been the subject of proceedings before the former Board or the former Tribunal, the complaint is to be dealt with as if it had been made under new Part 10 of the Act. A matter that has been referred under former Part 10 of the Act to the former Board or the former Tribunal by a Council, but has not, by 1 July 1994, been the subject of proceedings before the former Board or former Tribunal, is taken to be a matter referred to the new Tribunal under new Part 10 of the Act.
- (3) If a complaint has been made to a Council (or is the subject of a notice given to a Council by the former Review Panel under former section 140 (2) of the Act) before 1 July 1994, but the Council has made no decision in response to the complaint or notice, as the case may be, before that day, the complaint is to be dealt with by the Council as if it had been made under new Part 10 of the Act.
- (4) Anything done under former Part 10 of the Act in respect of a complaint to which this clause applies is taken to have been done under new Part 10 of the Act.

### 3 Complaints made under former Part 10 and already subject to proceedings

- (1) If a complaint is the subject of proceedings before the former Board or the former Tribunal that are pending on 1 July 1994, those proceedings may be continued before, and determined by, that Board or that Tribunal as if former Part 10 of the Act were still in force.
- (2) If a complaint made under former Part 10 of the Act has (whether before, on or after 1 July 1994) been the subject of proceedings before the former Board or the former Tribunal resulting in a determination in relation to the complaint or the termination of the proceedings, any

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Legal Profession Regulation 2002

Schedule 5 Savings and transitional provisions

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further action in respect of the complaint that is taken on or after 1 July 1994 is to be taken under new Part 10 of the Act. In that case, the determination or termination is to be treated as if it had been made under new Part 10 of the Act by the new Tribunal.

**Note.** Examples of further action are a review of the determination, a reference of the complaint to the Tribunal or an appeal.

- (3) To the extent that a complaint has been the subject of proceedings before the former Tribunal, this clause applies to the complaint whether the proceedings are in relation to the review of the determination of a complaint by the former Board or they are in relation to a complaint referred directly to the former Tribunal.
- (4) A reference in this clause to a determination:
  - (a) is a reference to a determination that continues to have effect after 30 June 1994, and
  - (b) includes a determination that, because of this clause, is made under a provision of former Part 10 of the Act on or after 1 July 1994, and
  - (c) includes any reprimand or order made as a result of a determination.

#### 4 Continuation of former Board and former Tribunal

- (1) The former Board continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any proceedings under clause 3.
- (2) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Board continue to apply to the former Board while it continues in existence under this clause.
- (3) The former Tribunal continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any proceedings under clause 3.
- (4) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Tribunal continue to apply to the former Tribunal while it continues in existence under this clause.

**5 Former Review Panel**

- (1) If an application has been made to the former Review Panel under former Part 10 of the Act for a review of a Council's decision to dismiss a complaint, the review is to be conducted as if that Part were still in force.
- (2) If the former Review Panel has made a recommendation under former Part 10 of the Act to the Attorney General in connection with a complaint, the Attorney General is to treat the recommendation as if former Part 10 of the Act were still in force (but as if a reference to the former Board or to the former Tribunal in the recommendation to the Attorney General were a reference to the new Tribunal).
- (3) A reference in former section 140 (3) (b) of the Act to the referral of a matter by a Council to the former Board or the former Tribunal is taken, if the referral is made on or after 1 July 1994, to be a reference to the institution of proceedings in relation to the matter by the Council in the new Tribunal.
- (4) The former Review Panel continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any review under this clause.
- (5) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Review Panel continue to apply to the former Review Panel while it continues in existence under this clause.
- (6) If a Council has decided to dismiss a complaint under former Part 10 of the Act, and no application has been made to the former Review Panel for a review of the decision to dismiss the complaint, but, as at 1 July 1994, the period specified in former section 137 (2) of the Act for applications for review has not passed, the complainant may apply for a review of the decision under Division 6 of new Part 10 of the Act. The application may be made at any time after 30 June 1994 and before the period of 2 months after the decision was made (or, according to former Part 10 of the Act, is deemed to have been made) has passed.

**6 Appeals to Supreme Court**

- (1) An appeal to the Supreme Court under former Part 10 of the Act that has not been heard before 1 July 1994 is to be heard under new Part 10 of the Act as if it had been made to the Supreme Court under new Part 10.

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Legal Profession Regulation 2002

Schedule 5

Savings and transitional provisions

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- (2) An appeal to the Supreme Court under former Part 10 of the Act that has been partly heard (or has been completely heard but not determined) before 1 July 1994 may continue to be heard, and may be determined, as if that Part were still in force.

### Part 3 Legal fees and other costs

#### 7 Disclosures as to costs

- (1) Division 2 of new Part 11 of the Act does not apply in respect of legal services provided by a legal practitioner on or after 1 July 1994 if the practitioner was retained to provide those services before 1 July 1994.
- (2) Nothing in this clause prevents a legal practitioner from making a disclosure in accordance with that Division in respect of legal services referred to in subclause (1).

#### 8 Disclosures by incorporated legal practices

Clauses 24 and 29 do not apply in respect of legal services provided to a client by an incorporated legal practice if the solicitor who provides those services (in the capacity of an officer or employee of the incorporated legal practice) was retained by the client to provide those services before 1 July 2001 and made any disclosure required by Division 2 of Part 11 of the Act.

#### 9 Agreements as to costs

- (1) Division 3 of new Part 11 of the Act does not apply in respect of legal services provided by a legal practitioner on or after 1 July 1994 if the practitioner was retained to provide those services before 1 July 1994.
- (2) However, if Division 2 of that Part is complied with by a legal practitioner in relation to the provision of legal services, and the practitioner and the relevant client agree to the application of Division 3 of that Part in respect of those services, this clause does not prevent that application.

#### 10 Assessments where bills or orders on or after 1 July 1994, but costs incurred before

- (1) This clause applies in respect of costs which are the subject of a bill given to a client (or which are the subject of an order of a court or tribunal made) on or after 1 July 1994.

- (2) An assessment of those costs under Division 6 of new Part 11 of the Act, to the extent that the costs relate to any work done by a solicitor or barrister, or action taken, before 1 July 1994, is to be made by a costs assessor in accordance with new Part 11 of the Act. However, the former taxation principles apply to any such assessment and that Part is to be construed accordingly.

#### **11 Bills or orders before 1 July 1994**

- (1) This clause applies to costs which were the subject of a bill given to a client (or which were the subject of an order of a court or tribunal made) before 1 July 1994.
- (2) The former taxation provisions continue to apply (and new Part 11 of the Act does not apply) in respect of costs if application is made before 1 July 1995, whether for the taxation or assessment of the costs.
- (3) If, however, application is made on or after 1 July 1995 (whether for the taxation or assessment of the costs), the costs are to be assessed in accordance with new Part 11 of the Act. However, the former taxation principles apply to any such assessment and that Part is to be construed accordingly.

### **Part 4 Statutory deposits**

#### **12 Statutory deposits by solicitors**

Anything done under section 64 of the Act in accordance with the *Legal Profession Regulation 1994* before the commencement of this Regulation is taken to have been done in accordance with this Regulation.

### **Part 5 Provisions relating to practice**

#### **13 Provisions relating to solicitors corporations**

For the purposes of clause 81 of Schedule 8 to the Act, and despite the repeal of the *Legal Profession (Solicitors Corporations) Regulation 1996*, the provisions of that Regulation continue to apply to solicitor corporations to which that clause applies.

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Schedule 5 Savings and transitional provisions

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**Part 6 Miscellaneous**

**14 Fidelity Fund claims**

- (1) Clause 44 does not affect any claim made under Part 7 of the Act before the commencement of that clause.
- (2) Clause 44 does not apply to a failure to account or dishonest default that occurred before the commencement of that clause.

**15 Saving of certain matters**

Subject to any other provision of this Schedule, anything that had effect under, or was done for the purposes of, a provision of the *Legal Profession Regulation 1994* continues to have effect under, or is taken to have been done for the purposes of, the corresponding provision of this Regulation.

BY AUTHORITY