



New South Wales

# Legal Profession Uniform Law Application Bill 2014

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
<b>Part 2 Application of Uniform Law</b>	
<b>Division 1 General application provisions</b>	
4 Application of Legal Profession Uniform Law	4
5 Exclusion of legislation of this jurisdiction	4
6 Application of privacy and other legislation	4
7 Application of Public Finance and Audit Act 1983	5
8 Scrutiny and disallowance of Uniform Regulations	5
9 No double jeopardy	5
<b>Division 2 Further application provisions</b>	
10 Meaning of term used in Legal Profession Uniform Law (NSW)	5
11 Designation of local authorities and tribunals	5
12 Nomination of nominated fund and nominated trust authority	8
13 Specification of fund	8
14 Unclaimed money	8
15 Fidelity fund	8

---

---

	Page
16 Fidelity authority	8
17 Issuing authority for search warrants	9
18 Pecuniary penalties to be paid into Public Purpose Fund	9
<b>Part 3 Local regulatory authorities</b>	
<b>Division 1 Legal Profession Admission Board</b>	
19 Constitution of NSW Admission Board	10
20 Functions of NSW Admission Board	10
21 Entitlement to be represented, heard and make representations	10
<b>Division 2 Legal Services Commissioner</b>	
22 Appointment of NSW Commissioner	10
23 Acting NSW Commissioner	11
24 Functions of NSW Commissioner	11
25 NSW Commissioner may require Councils to provide information	12
26 Annual report of NSW Commissioner	12
27 Staff of NSW Commissioner	13
28 Delegation of functions of NSW Commissioner	13
<b>Division 3 Bar Council</b>	
29 Functions of Bar Council	13
30 Delegation of functions of Bar Council	13
<b>Division 4 Law Society Council</b>	
31 Functions of Law Society Council	14
32 Delegation of functions of Law Society Council	14
<b>Division 5 Miscellaneous</b>	
33 Lay representation on committees	14
34 Councils to submit annual report	15
35 Court appearances	15
<b>Part 4 Practising certificates and registration certificates</b>	
<b>Division 1 Australian practising certificates</b>	
36 Australian practising certificate fees and fidelity fund contributions	16
37 Timing of application for renewal of local practising certificate	16
38 Fee for practising certificate	16
39 Late fee	17
40 Late fee for certain applications for new practising certificates	17
41 Audit of Council activities	17
<b>Division 2 Australian registration certificates</b>	
42 Australian registration certificate fees, fidelity fund contributions, and costs and expenses	18
<b>Division 3 General</b>	
43 Attorney General	18
44 Crown Solicitor	18

---

	Page
45 Government lawyers	19
<b>Part 5 Trust accounts and Public Purpose Fund</b>	
<b>Division 1 Trust accounts—statutory deposits</b>	
46 Statutory deposits	20
47 Status and repayment of deposited money	20
<b>Division 2 Public Purpose Fund</b>	
48 Public Purpose Fund	20
49 Trustees of the Public Purpose Fund	20
50 Management and control of Fund	21
51 Arrangements with ADIs	21
52 Payments from Fund	21
53 Payment of certain costs from Fund	21
54 Submission of budgets and supplementary budgets to Secretary	23
55 Discretionary payments from Fund for other purposes	24
56 Payments from Fund for costs of uniform authorities	25
57 Performance audits	25
58 Information about Fund to be included in Law Society Council report	25
<b>Part 6 Legal costs—particular kinds of costs</b>	
59 Local regulations to provide for fixed costs	26
60 Provisions relating to local regulations on fixed costs	26
61 Maximum costs in personal injury damages matters	26
62 Costs in civil claims—no reasonable prospects of success	26
<b>Part 7 Legal costs—costs assessment</b>	
<b>Division 1 Preliminary</b>	
63 Definitions	27
<b>Division 2 Assessment of solicitor-client costs</b>	
64 Application and purpose of this Division	27
65 Costs assessment rules	27
66 Costs assessors	27
67 Review panels	27
68 Fees	28
69 Submissions	28
70 Determination of costs when agreed	28
71 Interest on amount outstanding	28
72 Recovery of amounts	28
73 Reference of special circumstances to Supreme Court—costs of costs determination	29
74 Costs determination to be final	29
<b>Division 3 Assessment of party-party costs</b>	
75 Application of this Division	29
76 Application of provisions relating to assessment of solicitor-client costs to assessment of party-party costs	29

---

	Page
77 Particular applications for assessment of party-party costs	29
78 Costs agreements not to be applied	29
79 Costs of costs assessment	29
80 Court or tribunal may determine matters	30
<b>Division 4 Appeals</b>	
81 Application of this Division to decisions of costs assessors and review panels	30
82 Appeal as to matter of law	30
83 Appeal by leave	30
84 Effect of appeal on application	30
85 Assessor can be party to appeal	31
86 Notices of appeal	31
87 Court may refer unreviewed determination to review panel	31
<b>Division 5 Costs assessment rules</b>	
88 Costs Assessment Rules Committee	31
89 Costs assessment rules	31
90 Provisions of rules about compliance with rules relating to documents, information, assistance and co-operation	32
<b>Division 6 Costs assessments—general</b>	
91 Costs assessors	33
92 Confidentiality	33
93 Part not to apply to interest on judgment debt	33
<b>Part 8 Professional indemnity insurance</b>	
<b>Division 1 Introduction</b>	
94 Purpose of this Part	34
95 Approved insurance policy	34
<b>Division 2 Barristers</b>	
96 Application of this Division	34
97 Evidence of policy	34
<b>Division 3 Solicitors</b>	
98 Application of this Division	35
99 Definitions	35
100 Evidence of policy	35
101 Solicitors Mutual Indemnity Fund	35
102 Separate account	36
103 Investment of Indemnity Fund	36
104 Payments from Indemnity Fund	36
105 Payments relating to defaulting insurers	36
106 Contributions	37
107 Levies	38
108 Failure to pay contribution or levy	38
109 Investigation of Indemnity Fund	38
110 Powers of investigators	38

---

	Page
<b>Division 4      Incorporated legal practices</b>	
111    Application of this Division	39
112    Professional indemnity insurance for incorporated legal practices	39
<b>Division 5      Miscellaneous</b>	
113    Application of Division 3 to other persons	39
114    Provisions relating to HIH insurance	39
<b>Part 9      Fidelity cover</b>	
<b>Division 1      Legal Practitioners Fidelity Fund</b>	
115    Establishment of Legal Practitioners Fidelity Fund	40
116    Establishment of separate Legal Practitioners Fidelity Fund Account	40
117    Investment of Fidelity Fund	40
118    Payments from Fidelity Fund	40
119    Management Committee	41
120    Audit	41
121    Insurance	41
<b>Division 2      Claims about defaults</b>	
122    Claims about defaults	42
123    Availability of property of Law Society	42
<b>Division 3      General</b>	
124    Application of provisions of Uniform Law	42
<b>Part 10     Mortgage practices</b>	
125    Definitions	43
126    State regulated mortgages—meaning	44
127    Conduct of mortgage practices	45
128    Nomination of practice as State regulated mortgage practice	45
129    Requirement to notify Law Society of State regulated mortgages	46
130    Solicitor to have fidelity cover in respect of regulated mortgages	46
131    Bar on claims against Fidelity Fund relating to regulated mortgages	46
132    Notification of insurance arrangements for regulated mortgage	46
133    Failure to obtain fidelity insurance for regulated mortgage	47
134    Part extends to pre-existing mortgages	47
<b>Part 11     Procedures of NCAT as designated tribunal for disciplinary matters</b>	
135    Purpose of this Part and definitions	48
136    Proceedings may involve one or more matters	48
137    Time for initiating proceedings	48
138    Hearings	48
139    Joinder	48
140    Variation of disciplinary application	49
141    Nature of allegations	49
142    Substitution of applicant	49
143    Interlocutory and interim orders	49

---

	Page	
144	Consent orders	49
145	Compliance with determinations and orders	50
146	Notification of progress and result of proceedings before Tribunal	51
147	Early termination of proceedings before Tribunal	51
<b>Part 12</b>	<b>Registers and publicising disciplinary action</b>	
148	Definition	52
149	Register of local practising certificates	52
150	Register of local registration certificates	53
151	Register of disqualification orders and approvals	53
152	Register of Disciplinary Action	53
153	Other means of publicising disciplinary action	54
154	Quashing of disciplinary action	54
155	Liability for publicising disciplinary action	54
156	Disciplinary action taken where infirmity, injury or illness is involved	55
157	Effect of secrecy provisions and non-disclosure orders	55
<b>Part 13</b>	<b>Miscellaneous</b>	
158	Information sharing	57
159	Liability of principals	57
160	Prohibition of official schemes for recognition of seniority or status	57
161	Defect or irregularity in person's appointment	57
162	Approved forms	57
163	Delegation	58
164	Protection from liability	58
165	Penalty notices	58
166	Local regulations	59
167	Repeals	60
<b>Schedule 1</b>	<b>Maximum costs in personal injury damages matters</b>	61
<b>Schedule 2</b>	<b>Costs in civil claims where no reasonable prospects of success</b>	65
<b>Schedule 3</b>	<b>Legal Profession Admission Board</b>	68
<b>Schedule 4</b>	<b>Legal Services Commissioner</b>	70
<b>Schedule 5</b>	<b>Trustees of the Public Purpose Fund</b>	72
<b>Schedule 6</b>	<b>Costs assessors</b>	76
<b>Schedule 7</b>	<b>Professional indemnity insurance—provisions relating to HIH insurance</b>	78
<b>Schedule 8</b>	<b>Mortgage practices and managed investment schemes—provisions relating to old mortgages</b>	80
<b>Schedule 9</b>	<b>Savings, transitional and other provisions</b>	82
<b>Schedule 10</b>	<b>Amendments</b>	84

---

	Page
<b>Note</b>	
<b>Legal Profession Uniform Law</b>	85
<b>Chapter 1 Preliminary</b>	
<b>Part 1.1 Introduction</b>	
1 Citation	85
2 Commencement	85
3 Objectives	85
4 Extraterritorial operation of this Law	85
5 Jurisdictional arrangements	86
<b>Part 1.2 Interpretation</b>	
6 Definitions	86
7 Interpretation generally	99
8 Meaning of pro bono basis	99
<b>Chapter 2 Threshold requirements for legal practice</b>	
<b>Part 2.1 Unqualified legal practice</b>	
9 Objectives	100
10 Prohibition on engaging in legal practice by unqualified entities	100
11 Prohibition on advertisements or representations by or about unqualified entities	100
12 Entitlement of certain persons to use certain titles, and presumptions with respect to other persons	100
13 Protection of lay associates	101
14 Functions of local regulatory authority with respect to offence	101
<b>Part 2.2 Admission to the Australian legal profession</b>	
<b>Division 1 Introduction</b>	
15 Objective	101
<b>Division 2 Admission</b>	
16 Admission	102
17 Prerequisites for compliance certificates	102
18 Exemption from certain prerequisites	102
19 Compliance certificates	103
20 Conditional admission of foreign lawyers	104
21 Declaration of early assessment of suitability for a compliance certificate	104
22 Supreme Court roll	104
23 Removal from Supreme Court roll	105
24 Notice to be given of interjurisdictional action	105
25 Australian lawyer is officer of Supreme Court	106
<b>Division 3 Appeals</b>	
26 Right of appeal about compliance certificates	106

---

	Page	
27	Right of appeal about early assessment of suitability for a compliance certificate	106
28	Provisions relating to appeals	106
<b>Division 4      Miscellaneous</b>		
29	Accreditation of law courses and providers of practical legal training	107
 <b>Chapter 3      Legal practice</b>		
<b>Part 3.1      Introduction</b>		
30	Objectives	108
31	Action in relation to certificates is taken locally	108
 <b>Part 3.2      Law practices—general provisions</b>		
32	Business structures	108
33	Obligations not affected by nature of business structures	108
34	Responsibilities of principals	108
35	Liability of principals	109
36	Discharge by legal practitioner associate of obligations of law practice	109
37	Involvement of practitioners	109
38	Privileges of practitioners	109
39	Undue influence	110
40	Approval of relationships regarding principals	110
41	Uniform Rules	110
 <b>Part 3.3      Australian legal practitioners</b>		
<b>Division 1      Introduction</b>		
42	Objectives	110
 <b>Division 2      Australian practising certificates</b>		
43	Entitlement to practise	110
44	Grant or renewal of Australian practising certificates in this jurisdiction	110
45	Prerequisites for grant or renewal of Australian practising certificates in this jurisdiction	111
46	Notification of principal place of practice	111
 <b>Division 3      Conditions of Australian practising certificates</b>		
47	Conditions—categories of practice and trust money	112
48	Statutory conditions—to comply with admission conditions and to hold only one practising certificate	113
49	Statutory condition—to engage in supervised legal practice	113
50	Statutory condition—barrister to undertake reading program	113
51	Statutory condition—to notify certain events	114
52	Statutory condition—continuing professional development	114
53	Discretionary conditions	114
54	Compliance with conditions	114



---

	Page
<b>Division 4      Miscellaneous</b>	
55   Alteration or substitution of varied certificate	115
56   Government lawyers	115
57   Uniform Rules for Australian practising certificates and associated matters	115
<b>Part 3.4   Foreign lawyers</b>	
<b>Division 1      Introduction</b>	
58   Objective	115
59   This Part does not apply to Australian legal practitioners	115
<b>Division 2      Limited practice without registration</b>	
60   Practice of foreign law without registration but for limited periods	115
<b>Division 3      Registration</b>	
61   Entitlement to practise	116
62   Grant or renewal of Australian registration certificates	116
63   Notification of principal place of practice	117
<b>Division 4      Conditions of Australian registration certificates</b>	
64   Conditions—trust money	118
65   Statutory condition—to hold only one Australian registration certificate	118
66   Statutory condition—to notify certain events	118
67   Discretionary conditions	118
68   Compliance with conditions	118
<b>Division 5      Scope and form of practice</b>	
69   Scope of practice	118
70   Form of practice	119
<b>Division 6      Miscellaneous</b>	
71   Uniform Rules for foreign lawyers	119
<b>Part 3.5   Variation, suspension and cancellation of, and refusal to renew, certificates</b>	
<b>Division 1      Introduction</b>	
72   Objectives	120
73   References to certificate	120
<b>Division 2      Variation, suspension or cancellation of certificates</b>	
74   Variation, suspension or cancellation for minor matters, or at request or with concurrence	120
75   Variation, suspension or cancellation at direction of tribunal	120
76   Variation, suspension or cancellation under Division 3 or 4	120
77   Immediate variation or suspension before or during consideration of proposed action	120
78   Lifting of suspension and renewal during suspension	121
79   Matters involving convictions	121

---

	Page
80 Notice to be given of interjurisdictional action	121
81 Notice to be given to certificate holder	122
<b>Division 3 Variation, suspension or cancellation on specific grounds</b>	
82 Grounds for action under this Division	122
83 Local regulatory authority to give notice before acting under this Division	123
84 Action taken after giving notice	123
<b>Division 4 Show cause procedure for variation, suspension or cancellation of, or refusal to renew, certificates</b>	
<b>Subdivision 1 Preliminary</b>	
85 Show cause events	123
<b>Subdivision 2 Automatic show cause events</b>	
86 Nature of automatic show cause events	124
87 Automatic show cause events—applicants	124
88 Automatic show cause events—holders	124
89 Automatic show cause events—action by local regulatory authority	125
<b>Subdivision 3 Designated show cause events</b>	
90 Nature of designated show cause events	125
91 Designated show cause events—holders	126
92 Designated show cause events—action by local regulatory authority	126
<b>Division 5 Miscellaneous</b>	
93 Events or matters occurring before admission or registration	127
94 Restriction on making further applications	127
95 Consideration and investigation of applicants or holders	127
96 Deferral of action or temporary renewal for limited purposes	128
97 Relationship of this Part with Chapter 5	128
98 Uniform Rules	128
<b>Part 3.6 Appeal or review about certificates</b>	
99 Objective	128
100 Right of appeal or review about Australian practising certificates	128
101 Right of appeal or review about Australian registration certificates	129
<b>Part 3.7 Incorporated and unincorporated legal practices</b>	
<b>Division 1 General</b>	
102 Application of this Division	130
103 Services that may be provided	130
104 Notice of intention to engage in or terminate legal practice	130
105 Principals	130
106 Law practice without principal	131
107 Disclosure obligations	131

---

	Page
<b>Division 2 Provisions applying to incorporated legal practices only</b>	
108 External administration proceedings under Corporations Act or other legislation	131
109 Incorporated legal practice that is subject to receivership under this Law and external administration under Corporations Act	132
110 Incorporated legal practice that is subject to receivership under this Law and external administration under other legislation	133
111 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices	133
112 Relationship of Law to constitution of, or legislation establishing, incorporated legal practice	134
113 Relationship of Law to Corporations legislation	134
<b>Division 3 Miscellaneous</b>	
114 Approval of business structures	134
115 Uniform Rules for incorporated and unincorporated legal practices	134
<b>Part 3.8 Community legal services</b>	
116 Status of community legal services	135
117 Supervising legal practitioner	135
118 Uniform Rules for community legal services	135
<b>Part 3.9 Disqualifications</b>	
<b>Division 1 Making of disqualification orders</b>	
119 Disqualification of individuals (other than practitioners)	135
120 Disqualification of entities from providing legal services	136
<b>Division 2 Prohibitions and other provisions regarding disqualified persons and disqualified entities</b>	
121 Contravention by law practice—disqualified or convicted person as lay associate	137
122 Contravention by disqualified person	137
123 Contravention by Australian legal practitioner	138
124 Disqualified entity ceases to be incorporated or unincorporated legal practice	138
125 Spent convictions	138
<b>Chapter 4 Business practice and professional conduct</b>	
<b>Part 4.1 Introduction</b>	
126 Objectives	139
<b>Part 4.2 Trust money and trust accounts</b>	
<b>Division 1 Preliminary</b>	
127 Objective	139
128 Definitions	139
129 Meaning of trust money	140
130 Application of this Part to law practices and trust money	141

---

	Page
131 Australian-registered foreign lawyers	141
132 Former practices, principals and associates	142
133 Receiving or holding money by or on behalf of barristers on account of legal costs for legal services	142
134 Provisions relating to certain money	142
<b>Division 2 Trust money and trust accounts</b>	
135 Dealing with trust money	142
136 General trust account for each jurisdiction	142
137 Certain trust money to be deposited in general trust account	143
138 Holding, disbursing and accounting for trust money in general trust account	143
139 Controlled money	143
140 Transit money	144
141 Trust money subject to specific powers	144
142 Trust money subject to a written direction	144
143 Trust money received in the form of cash	144
144 Withdrawal of trust money	145
145 Protection of trust money	145
146 Intermixing money	145
147 Keeping trust records	145
148 Deficiency in trust account	146
149 Authorised deposit-taking institutions	146
150 Authority to receive trust money	147
151 Disclosure of accounts used to hold money	147
152 Determinations about status of money	147
153 When, how and where money is received	147
154 Reporting irregularities and suspected irregularities	148
<b>Division 3 External examinations of trust records</b>	
155 Appointment of external examiner to conduct external examination of trust records	148
156 Qualifications of external examiners	149
157 External examinations	149
158 Carrying out external examination	149
159 External examiner's report	149
160 Costs of external examination	149
<b>Division 4 External investigations</b>	
161 Principal purposes of external investigation	150
162 Appointment of external investigators	150
163 External investigations	150
164 Carrying out external investigation	150
165 Investigator's report	150
166 Costs of external investigation	150
<b>Division 5 Miscellaneous</b>	
167 Unclaimed money	151
168 Uniform Rules for trust money and trust accounts	151

---

	Page
<b>Part 4.3 Legal costs</b>	
<b>Division 1 Introduction</b>	
169 Objectives	151
170 Commercial or government clients	151
171 Third party payers	153
<b>Division 2 Legal costs generally</b>	
172 Legal costs must be fair and reasonable	153
173 Avoidance of increased legal costs	154
<b>Division 3 Costs disclosure</b>	
174 Disclosure obligations of law practice regarding clients	154
175 Disclosure obligations if another law practice is to be retained	155
176 Disclosure obligations of law practice regarding associated third party payers	155
177 Disclosure obligations regarding settlement of litigious matters	156
178 Non-compliance with disclosure obligations	156
<b>Division 4 Costs agreements</b>	
179 Client's right to costs agreement	157
180 Making costs agreements	157
181 Conditional costs agreements	157
182 Conditional costs agreements involving uplift fees	158
183 Contingency fees are prohibited	158
184 Effect of costs agreement	158
185 Certain costs agreements are void	159
<b>Division 5 Billing</b>	
186 Form of bills	159
187 Request for itemised bills	159
188 Responsible principal for bill	159
189 Giving bills	159
190 Progress reports	160
191 Charging for bills prohibited	160
192 Notification of client's rights	160
193 Interim bills	160
<b>Division 6 Unpaid legal costs</b>	
194 Restriction on commencing proceedings to recover legal costs	160
195 Interest on unpaid legal costs	160
<b>Division 7 Costs assessment</b>	
196 Application of this Division generally	161
197 Application of this Division where complaint made	161
198 Applications for costs assessment	161
199 Costs assessment	162
200 Factors in a costs assessment	162
201 Reasons to be given	163
202 Referral for disciplinary action	163

---

	Page	
203	Admissibility determinations in disciplinary proceedings	163
204	Costs of costs assessment	163
205	Right of appeal or review	164
<b>Division 8      Miscellaneous</b>		
206	Security for legal costs	164
207	Unreasonable legal costs—disciplinary action	164
208	Uniform Rules for legal costs	164
<b>Part 4.4      Professional indemnity insurance</b>		
209	Objectives	165
210	Approved insurance policy	165
211	Australian legal practitioners	165
212	Incorporated legal practices	166
213	Community legal services	166
214	Australian-registered foreign lawyers	166
215	Exemptions	166
216	Notification of proposed change of jurisdiction in which professional indemnity insurance is obtained	168
217	Uniform Rules for professional indemnity insurance	168
<b>Part 4.5      Fidelity cover</b>		
<b>Division 1      Introduction</b>		
218	Objective	168
219	Definitions	168
220	Meaning of relevant jurisdiction	169
221	Defaults to which this Part applies	170
<b>Division 2      Fidelity funds and fidelity authorities</b>		
222	Fidelity fund for this jurisdiction	170
223	How this Part applies to this jurisdiction	170
<b>Division 3      Fidelity fund</b>		
224	Funding	170
225	Annual contributions	171
226	Levies	171
227	Failure to pay annual contribution or levy	171
228	Insurance	171
229	Borrowing	172
230	Caps on payments for claims	172
231	Sufficiency	172
232	Audit	173
<b>Division 4      Claims about defaults</b>		
233	Entitlement to make a claim	173
234	Making a claim	173
235	Advertisements	173
236	Time limit for making claims	173
237	Processing and investigation of claims	174

---

	Page
238 Advance payments	174
239 Claims by law practices or associates about notional defaults	174
<b>Division 5 Determination of claims</b>	
240 Determination of claims	175
241 Maximum amount allowable	175
242 Costs	176
243 Interest	176
244 Reduction of claim because of other benefits	176
245 Repayment of certain amounts	176
246 Subrogation	177
247 Right of appeal against decision on claim	177
248 Right of appeal against failure to determine claim	178
249 Court proceedings	178
<b>Division 6 Defaults involving interjurisdictional elements</b>	
250 Concerted interjurisdictional defaults	178
251 Default involving interjurisdictional elements if committed by one associate only	179
252 Interjurisdictional agency	179
<b>Division 7 Miscellaneous</b>	
253 Cooperation	180
254 Protection from liability	180
255 Uniform Rules for fidelity cover	180
<b>Part 4.6 Business management and control</b>	
256 Compliance audits	181
257 Management system directions	181
258 Prohibited services and business	181
259 Uniform Rules for legal services	182
<b>Chapter 5 Dispute resolution and professional discipline</b>	
<b>Part 5.1 Introduction</b>	
260 Objectives	183
261 References to lawyers	183
262 Application of this Chapter to conduct of lawyer or law practice	183
263 Application of this Chapter to lawyers and law practices	184
264 Jurisdiction of Supreme Courts	184
<b>Part 5.2 Complaints</b>	
<b>Division 1 Making complaints and other matters about complaints</b>	
265 What is a complaint?	184
266 Who may make a complaint?	185
267 How is a complaint made?	185
268 Matters in a complaint	185
269 Consumer matters (including costs disputes)	185
270 Disciplinary matters	185

---

	Page
271 Mixed complaints	185
272 Time limits on making complaints	186
273 Withdrawing complaints	186
274 Where complaint is dealt with	186
275 Other rights not affected	187
<b>Division 2 Preliminary assessment of complaints</b>	
276 Preliminary assessment of complaint	187
277 Closure of whole or part of complaint after preliminary assessment	187
278 Immediate suspension of practising or registration certificate	188
<b>Division 3 Notification to and submissions by respondents</b>	
279 Notification to respondent about complaint	188
280 Submissions by respondent	189
281 Exceptions to requirement for notification of complaint	189
<b>Division 4 Investigation of complaints</b>	
282 Power to investigate complaints	189
283 Extending scope of investigation	190
284 Referral of matters for costs assessment	190
<b>Part 5.3 Consumer matters</b>	
<b>Division 1 Preliminary</b>	
285 Application of this Part	190
<b>Division 2 Provisions applicable to all consumer matters</b>	
286 Prerequisite to resolution action by local regulatory authority	190
287 Informal resolution of consumer matters	190
288 Mediation	190
289 Settlement agreements	191
290 Determination of consumer matters by local regulatory authority	191
<b>Division 3 Further provisions applicable to costs disputes</b>	
291 General role of local regulatory authority in costs disputes	192
292 Binding determinations in costs disputes	192
293 Cases where binding determinations are not made in costs disputes	192
294 GST excluded in calculations	193
<b>Part 5.4 Disciplinary matters</b>	
<b>Division 1 Preliminary</b>	
295 Application of this Part	193
296 Unsatisfactory professional conduct	193
297 Professional misconduct	193
298 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct	193
<b>Division 2 Determination by local regulatory authority</b>	
299 Determination by local regulatory authority—unsatisfactory professional conduct	194



---

	Page
<b>Division 3     Role of designated tribunal</b>	
300   Initiation and prosecution of proceedings in designated tribunal	195
301   Procedure of designated tribunal	195
302   Determination by designated tribunal—disciplinary matters	196
303   Costs	197
304   Compliance with orders of designated tribunal	198
305   Power to disregard procedural lapses	198
<b>Part 5.5   Compensation orders</b>	
306   Making of compensation orders	198
307   Request by complainant for compensation order	198
308   Nature of compensation orders	198
309   Prerequisites for making of compensation orders	199
310   Enforcement of compensation orders	199
311   Other remedies not affected	199
<b>Part 5.6   Appeal or review</b>	
312   Finality of determinations of local regulatory authority	200
313   Internal review of decisions of local regulatory authority	200
314   Right of appeal or review of decisions of local regulatory authority	200
<b>Part 5.7   General duties of local regulatory authority</b>	
315   Duty to deal with complaints	200
316   Duty to exercise discretions fairly	200
317   Duty to deal with complaints efficiently and expeditiously	200
318   Notice of decisions and determinations	201
319   Rules of procedural fairness	201
<b>Part 5.8   Miscellaneous</b>	
320   Power to make orders includes power to make recommendations	201
321   Waiver of privilege or duty of confidentiality—complaints	201
322   Uniform Rules	202
<b>Chapter 6   External intervention</b>	
<b>Part 6.1   Introduction</b>	
323   Objectives	203
324   Further application of this Chapter	203
325   Operation of appointment of external intervener in another participating jurisdiction	203
<b>Part 6.2   Initiation of external intervention</b>	
326   Circumstances warranting external intervention	204
327   Determination to initiate external intervention	204
328   Appointment of external intervener may be general or limited	205
<b>Part 6.3   Supervisors of trust money</b>	
329   Appointment of supervisor of trust money	205

---

	Page	
330	Effect of service of notice of appointment	206
331	Role of supervisor of trust money	206
332	Records of and dealing with trust money of law practice under supervision	207
333	Termination of supervisor's appointment	208
<b>Part 6.4 Managers</b>		
334	Appointment of manager	208
335	Effect of service of notice of appointment	208
336	Role of managers	209
337	Records and accounts of law practice under management and dealings with trust money	211
338	Deceased estates	211
339	Lien for costs on regulated property	211
340	Termination of manager's appointment	211
<b>Part 6.5 Receivers</b>		
341	Appointment of receiver	212
342	Effect of service of notice of appointment	213
343	Role of receivers	213
344	Records and accounts of law practice under receivership and dealings with trust money	214
345	Power of receiver to take possession of regulated property	215
346	Power of receiver to take delivery of regulated property	215
347	Power of receiver to deal with regulated property	215
348	Power of receiver to require documents or information	216
349	Examinations about regulated property	216
350	Lien for costs on regulated property	216
351	Regulated property not to be attached	217
352	Recovery of regulated property where there has been a breach of trust etc.	217
353	Improperly destroying property etc.	218
354	Deceased estates	218
355	Termination of receiver's appointment	218
<b>Part 6.6 General</b>		
356	Conditions on appointment of external intervener	219
357	Status of acts of external intervener	219
358	Right of appeal or review about appointment of external intervener	220
359	Directions of designated tribunal	220
360	Manager and receiver appointed for law practice	220
361	ADI disclosure requirements	220
362	Confidentiality	221
363	Provisions relating to requirements under this Chapter	222
364	Obstruction of external intervener	222
365	Fees, costs and expenses	222
366	Protection from liability	222
367	Uniform Rules for external intervention	223

---

	Page
<b>Chapter 7</b>	<b>Investigatory powers</b>
<b>Part 7.1</b>	<b>Introduction</b>
368	Objective 224
369	References to lawyers 224
<b>Part 7.2</b>	<b>Requirements relating to documents, information and other assistance</b>
370	Requirements—trust records examinations, trust records investigations and compliance audits 224
371	Requirements—complaint investigations 224
372	Inspection and copying of documents 225
373	Retention and return of documents 225
<b>Part 7.3</b>	<b>Entry and search of premises</b>
374	Investigator’s power to enter premises—trust records investigations, compliance audits and complaint investigations 225
375	Powers of investigator while on premises 226
376	Provisions relating to entry and search with consent 227
377	Search warrants 228
378	Search warrants—announcement before entry 228
379	Search warrants—details of warrant to be given to occupier 228
380	Retention and return of things seized during search 229
381	Copies of seized things to be provided 229
<b>Part 7.4</b>	<b>Additional powers in relation to incorporated legal practices</b>
382	Application and operation of this Part 229
383	Examination of persons 230
384	Inspection of books 230
385	Power to hold hearings 230
<b>Part 7.5</b>	<b>Miscellaneous</b>
386	Report to local regulatory authority of disciplinary matters 231
387	Obstruction of investigator 231
388	Obligation of lawyers 231
389	Protection from liability 231
390	Uniform Rules 232
<b>Chapter 8</b>	<b>Regulatory authorities</b>
<b>Part 8.1</b>	<b>Standing Committee</b>
391	Role of Standing Committee 233
392	Decisions of Standing Committee 233
393	Reports for Standing Committee 233
<b>Part 8.2</b>	<b>Legal Services Council</b>
394	Establishment and objectives of Council 233

---

	Page
395 Provisions relating to Council	234
396 Functions of Council in relation to Commissioner	234
397 Delegation of Council's functions	234
<b>Part 8.3 Commissioner for Uniform Legal Services Regulation</b>	
398 Establishment and objectives of office of Commissioner	235
399 Provisions relating to Commissioner	235
400 Delegation of Commissioner's functions	235
401 Independence of Commissioner	235
<b>Part 8.4 Admissions Committee</b>	
402 Establishment and functions of Admissions Committee	235
403 Provisions relating to Admissions Committee	236
<b>Part 8.5 Local regulatory authorities</b>	
404 Independence of local regulatory authorities	236
405 Local regulatory authority for Chapter 5 functions to be independent entity	236
406 Delegation of functions of local regulatory authorities	236
407 Guidelines and directions by Council or Commissioner for local regulatory authorities	236
408 Guidelines and directions by local regulatory authorities for their delegates	237
409 Functions of Council in relation to local regulatory authorities	237
410 Functions of Commissioner in relation to Chapter 5 functions of local regulatory authorities	237
411 Power of local regulatory authority to take over exercise of delegated function	238
<b>Part 8.6 General</b>	
412 Exercise of functions generally	238
413 Registers of delegations	238
414 Documents lodged with Council or Commissioner instead of local regulatory authority	239
415 Limitation as to individual matters	239
416 Application of certain Acts of New South Wales	239
<b>Chapter 9 Miscellaneous</b>	
<b>Part 9.1 Legal Profession Uniform Regulations</b>	
417 Legal Profession Uniform Regulations	241
418 Publication of Uniform Regulations	241
<b>Part 9.2 Legal Profession Uniform Rules</b>	
419 Power to make Uniform Rules	241
420 Categories of Uniform Rules	242
421 Contents of Admission Rules	242
422 Contents of Legal Practice Rules	242
423 Contents of Legal Profession Conduct Rules	242

---

	Page	
424	Contents of Continuing Professional Development Rules	243
425	Development of general Uniform Rules	243
426	Development of Admission Rules	243
427	Development of Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules	244
428	Making of Uniform Rules	245
429	Cases where public consultation not required	245
430	Urgent matters	245
431	Publication of Uniform Rules	246
<b>Part 9.3 Legal Profession Registers</b>		
432	Australian Legal Profession Register	246
433	Public availability of Australian Legal Profession Register	246
434	Local legal profession register	246
435	Content of registers	246
<b>Part 9.4 Cooperative and other arrangements</b>		
436	Arrangements with authorities	246
437	Ad hoc communication with authorities	247
438	Disclosure of information to ASIC	247
439	Disclosure of information between relevant persons	247
440	Information, assistance and cooperation	247
441	Cooperation with Commonwealth, States and Territories	248
<b>Part 9.5 Notices and evidentiary matters</b>		
442	Service of notices on lawyers and law practices	248
443	Service of notices on Council, Commissioner, Admissions Committee, local regulatory authority or delegate	249
444	Service of notices on other persons	249
445	Time of service	249
446	Evidentiary matters	249
<b>Part 9.6 Injunctions</b>		
447	Injunctions to restrain contraventions of Law or Uniform Rules	250
448	Amendment or discharge of injunctions	250
449	Interim injunctions—undertakings about costs or damages	250
450	Supreme Court's other powers not limited	250
<b>Part 9.7 Criminal and civil penalties</b>		
<b>Division 1 Criminal penalties</b>		
451	Criminal penalties	251
<b>Division 2 Civil penalties</b>		
452	Civil penalties	251
453	Designated tribunal may order payment of pecuniary penalty	251
454	Contravening a civil penalty provision is not an offence	252
455	Persons involved in contravening civil penalty provision	252
456	Recovery of a pecuniary penalty	252

---

	Page
457 Civil proceedings after criminal proceedings	252
458 Criminal proceedings during civil proceedings	252
459 Criminal proceedings after civil proceedings	253
460 Evidence given in proceedings for penalty order not admissible in criminal proceedings	253
<b>Part 9.8 Interjurisdictional provisions relating to certain matters</b>	
461 Compliance with recommendations or orders made under corresponding laws	253
<b>Part 9.9 General</b>	
462 Prohibition on disclosure of information	254
463 Effect of decision on appeal or review	254
464 General provisions about appeal or review	255
465 Duty to report suspected offences	255
466 Provisions relating to certain requirements under this Law	256
467 Protection from liability	257
468 Non-compellability of certain witnesses	257
469 Investigation of offences	257
470 Contraventions by partnerships or other unincorporated bodies	257
471 Indexation of amounts	258
472 Supreme Court may order delivery up of documents etc.	258
473 Forms	259
474 Fees	259
475 Provisions applying in relation to non-participating jurisdictions	259
476 Transitional provisions	259
<b>Schedule 1 Provisions relating to Council</b>	260
<b>Schedule 2 Provisions relating to Commissioner</b>	267
<b>Schedule 3 Provisions applying in relation to non-participating jurisdictions</b>	270
<b>Schedule 4 Savings and transitional provisions</b>	276

*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2014*



New South Wales

## **Legal Profession Uniform Law Application Bill 2014**

Act No     , 2014

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An Act to apply the Legal Profession Uniform Law as a law of New South Wales; to provide for certain local matters to complement that Law; to repeal the *Legal Profession Act 2004*; to make transitional arrangements; to make consequential amendments to other Acts; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

---

The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Legal Profession Uniform Law Application Act 2014*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria.

### 3 Definitions

- (1) In this Act:

***appropriate Council*** means:

- (a) in relation to matters relating to barristers or former barristers (including an application for a practising certificate to practise as a barrister)—the Bar Council, or
- (b) in relation to matters relating to solicitors or former solicitors (including an application for a practising certificate to practise as a solicitor)—the Law Society Council.

***Bar Association*** means the New South Wales Bar Association.

***Bar Council*** means the Council of the Bar Association.

***Commissioner for Uniform Legal Services Regulation*** means the person appointed to or acting in the office of the Commissioner for Uniform Legal Services Regulation established by Part 8.3 of the Legal Profession Uniform Law as applied in the participating jurisdictions.

***Council*** means (except in relation to the Legal Services Council) the Bar Council or the Law Society Council.

***Fidelity Fund*** means the Legal Practitioners Fidelity Fund maintained under section 115.

***Law Society*** means the Law Society of New South Wales.

***Law Society Council*** means the Council of the Law Society.

***Legal Profession Uniform Law (NSW)*** means the provisions applying in this jurisdiction because of section 4.

***Legal Services Council*** means the Legal Services Council established by Part 8.2 of the Legal Profession Uniform Law as applied in the participating jurisdictions.

***local legal practitioner*** means an Australian legal practitioner whose home jurisdiction is New South Wales.

***local practising certificate*** means an Australian practising certificate issued under the *Legal Profession Uniform Law (NSW)* to an Australian legal practitioner whose home jurisdiction under that Law is New South Wales.

***local registration certificate*** means an Australian registration certificate issued under the *Legal Profession Uniform Law (NSW)* to a person whose home jurisdiction under that Law is New South Wales.

***local regulations*** means the regulations under section 166.



**Manager, Costs Assessment** means the person holding office as Manager, Costs Assessment in the Department of Attorney General and Justice, and includes a delegate of that person.

**NCAT** means the Civil and Administrative Tribunal of New South Wales.

**NSW Admission Board** means the NSW Legal Profession Admission Board constituted under Division 1 of Part 3.

**NSW Commissioner** means the person holding office or acting as NSW Legal Services Commissioner under Division 2 of Part 3.

**Public Purpose Fund** means the fund maintained under section 48.

**Register of Disciplinary Action**—see section 152.

**Secretary** means the Secretary of the Department of Attorney General and Justice.

**this jurisdiction** means the State of New South Wales.

- (2) Terms used in this Act and also in the *Legal Profession Uniform Law (NSW)* have the same meanings in this Act as they have in that Law.
- (3) Notes included in this Act do not form part of this Act.

## Part 2 Application of Uniform Law

### Division 1 General application provisions

#### 4 Application of Legal Profession Uniform Law

The Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria:

- (a) applies as a law of this jurisdiction, and
- (b) as so applying may be referred to as the *Legal Profession Uniform Law (NSW)*, and
- (c) so applies as if it were an Act.

#### 5 Exclusion of legislation of this jurisdiction

- (1) The following Acts of this jurisdiction do not apply to the *Legal Profession Uniform Law (NSW)* or to instruments made under that Law:
  - (a) the *Interpretation Act 1987* (except as provided by section 416 (6) of the *Legal Profession Uniform Law (NSW)* and section 8 of this Act),
  - (b) the *Subordinate Legislation Act 1989*.
- (2) To avoid doubt, this section does not limit the application of:
  - (a) the *Interpretation Act 1987* to a provision of this Act, or
  - (b) the *Subordinate Legislation Act 1989* to local regulations.

#### 6 Application of privacy and other legislation

- (1) In this section:

**government sector agency** means:

  - (a) a Public Service agency or other government sector agency within the meaning of the *Government Sector Employment Act 2013*, or
  - (b) a NSW Government agency (see section 13A of the *Interpretation Act 1987*), or
  - (c) an entity constituted by or under an Act or exercising public functions (such as a State owned corporation), being an entity that is prescribed by the local regulations for the purposes of this definition.

**government sector employee** means a person employed on any basis, or on secondment, in a government sector agency.

**relevant Acts** means the following Acts of New South Wales as in force from time to time:

  - (a) the *Privacy and Personal Information Protection Act 1998*,
  - (b) the *Government Information (Public Access) Act 2009*,
  - (c) the *State Records Act 1998*,
  - (d) the *Ombudsman Act 1974*.
- (2) The relevant Acts apply to the Legal Services Council and the Commissioner for Uniform Legal Services Regulation in the manner provided by section 416 of the *Legal Profession Uniform Law (NSW)* and do not apply by their own force.
- (3) However, the relevant Acts apply to a government sector agency or government sector employee exercising a function under the *Legal Profession Uniform Law (NSW)*.

## 7 Application of Public Finance and Audit Act 1983

- (1) The *Public Finance and Audit Act 1983* applies to the Legal Services Council and the Commissioner for Uniform Legal Services Regulation as if they were each an authority within the meaning of that Act.
- (2) The local regulations may modify the *Public Finance and Audit Act 1983* for the purposes of this section.
- (3) Without limiting subsection (2), the provisions of section 416 (5) of the *Legal Profession Uniform Law (NSW)* apply to the local regulations under this section in the same way as they apply to the Uniform Regulations.

## 8 Scrutiny and disallowance of Uniform Regulations

- (1) Sections 40 and 41 of the *Interpretation Act 1987* and the provisions of the *Legislation Review Act 1987* apply to a Uniform Regulation in the same way as they apply to a statutory rule.
- (2) However, if a Uniform Regulation is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority of the participating jurisdictions (and, in such a case, the regulation ceases to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).
- (3) In this section:

**Uniform Regulation** includes a provision of a Uniform Regulation.

**Note.** If there are only 2 participating jurisdictions, a majority would in that case consist of both jurisdictions.

## 9 No double jeopardy

If:

- (a) an act or omission is an offence against the *Legal Profession Uniform Law (NSW)* and is also an offence against a law of another participating jurisdiction, and
- (b) the offender has been punished for the offence under the law of the other jurisdiction,

the offender is not liable to be punished for the offence against the *Legal Profession Uniform Law (NSW)*.

## Division 2 Further application provisions

### 10 Meaning of term used in Legal Profession Uniform Law (NSW)

In the *Legal Profession Uniform Law (NSW)*:

**this jurisdiction** means the State of New South Wales.

### 11 Designation of local authorities and tribunals

- (1) A person or body specified in Column 2 of Table 1 is the designated local regulatory authority for the purposes of a provision of the *Legal Profession Uniform Law (NSW)* specified in Column 1 of that Table opposite that person or body.

**Note.** See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated local regulatory authority**.

**Table 1 Designated local regulatory authorities**

Column 1	Column 2
Provision of Legal Profession Uniform Law (NSW)	Designated local regulatory authority
Chapter 2, Part 2.1, section 14	Bar Council Law Society Council
Chapter 2, Part 2.2 (except section 23)	NSW Admission Board
Chapter 2, Part 2.2, section 23	Bar Council Law Society Council
Chapter 3 (except sections 49, 50, 119, 120 and 121 and Part 3.4)	Appropriate Council
Chapter 3, section 49	Law Society Council
Chapter 3, section 50	Bar Council
Chapter 3, Part 3.4 (sections 58–71)	Bar Council Law Society Council
Chapter 3, sections 119 and 120 (1)	Bar Council Law Society Council
Chapter 3, section 120 (4)	NSW Commissioner Bar Council Law Society Council
Chapter 3, section 121	Law Society Council
Chapter 4 (except sections 202, 256, 257 and 258)	Law Society Council
Chapter 4, section 202	NSW Commissioner
Chapter 4, sections 256 and 257	NSW Commissioner Appropriate Council
Chapter 4, section 258	Appropriate Council
Chapter 5	NSW Commissioner <b>Note.</b> Section 405 (2) of the <i>Legal Profession Uniform Law (NSW)</i> contemplates that the local regulatory authority (the NSW Commissioner) may delegate Chapter 5 functions to a professional association (the Bar Association or Law Society). See also sections 29 (c) and 31 (1) (c) of this Act.
Chapter 6 (except to the extent that it applies to trust money)	Appropriate Council
Chapter 6 to the extent that it applies to trust money	Law Society Council
Chapter 7 (except to the extent that it applies to complaint investigations)	NSW Commissioner Appropriate Council
Chapter 7 to the extent that it applies to complaint investigations	NSW Commissioner <b>Note.</b> These functions of the NSW Commissioner under Chapter 7 are “Chapter 5 functions” and therefore may be exercised by the Bar Association or Law Society by delegation. See the note in relation to Chapter 5 above.
Chapter 9, section 421 (2) (f)	NSW Admission Board

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Legal Profession Uniform Law (NSW)</b>	<b>Designated local regulatory authority</b>
Chapter 9, section 436 (1)	NSW Admission Board (in relation to admissions) NSW Commissioner (in relation to Chapter 5 functions) Appropriate Council
Chapter 9, section 436 (2)	NSW Admission Board
Chapter 9, sections 437, 446, 447, 448, 449 and 453	NSW Admission Board NSW Commissioner Bar Council Law Society Council
Chapter 9, section 466 (7)	Appropriate Council
Schedule 3 (except clause 14)	Appropriate Council
Schedule 3, clause 14	NSW Commissioner

- (2) The Prothonotary of the Supreme Court is the designated local roll authority for the purposes of sections 23, 24 and 462 of the *Legal Profession Uniform Law (NSW)*.

**Note.** See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated local roll authority**.

- (3) A body specified in Column 2 of Table 2 is the designated tribunal for the purposes of a provision of the *Legal Profession Uniform Law (NSW)* specified in Column 1 of that Table opposite that body.

**Note.** See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated tribunal**.

**Table 2 Designated tribunals**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Legal Profession Uniform Law (NSW)</b>	<b>Designated tribunal</b>
Chapter 2, section 23	NCAT
Chapter 3, sections 100 and 101	Supreme Court
Chapter 3, section 119	NCAT
Chapter 3, section 120	Supreme Court
Chapter 4, section 198	Supreme Court
Chapter 4, sections 247 and 248	Supreme Court
Chapter 5, Part 5.4, Division 3, Part 5.5 and Part 5.6, section 314	NCAT
Chapter 6, Parts 6.5 and 6.6	Supreme Court
Chapter 9, sections 453, 456 and 457	A court that would have jurisdiction to order payment of the pecuniary penalty if it were a debt
Chapter 9, section 474 (2)	Any designated tribunal referred to in this table

## 12 Nomination of nominated fund and nominated trust authority

For the purposes of section 149 (6) of the *Legal Profession Uniform Law (NSW)*:

- (a) the Public Purpose Fund is the nominated fund, and
- (b) the Trustees of the Public Purpose Fund are the nominated trust authority.

## 13 Specification of fund

The Public Purpose Fund is specified for the purposes of section 365 of the *Legal Profession Uniform Law (NSW)*.

## 14 Unclaimed money

- (1) This section provides for how unclaimed money in a trust account is to be dealt with, as contemplated by section 167 of the *Legal Profession Uniform Law (NSW)*.
- (2) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may:
  - (a) pay the money to the Treasurer for credit to the Consolidated Fund, and
  - (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the practice.
- (3) If a law practice pays money to the Treasurer under subsection (2), the practice is relieved from any further liability in relation to the money.
- (4) The Treasurer must pay money deposited under this section to a person who satisfies the Treasurer as to his or her entitlement to the money.
- (5) Payment of money to a person under subsection (4):
  - (a) discharges the Crown and the Treasurer from any liability in relation to the money, and
  - (b) does not discharge the person from any liability to another person who establishes a right to the money.
- (6) The Treasurer may require any person to provide information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this section and attempts made to locate the person.
- (7) A person of whom a requirement is made under subsection (6):
  - (a) must comply with the requirement, and
  - (b) must not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

Maximum penalty (subsection (7)): 20 penalty units.

## 15 Fidelity fund

The Legal Practitioners Fidelity Fund maintained under Division 1 of Part 9 is nominated as the fidelity fund of this jurisdiction for the purposes of Part 4.5 of the *Legal Profession Uniform Law (NSW)*.

**Note.** See section 222 of the *Legal Profession Uniform Law (NSW)*.

## 16 Fidelity authority

The Law Society Council is specified as the fidelity authority for the purposes of the definition of *fidelity authority* in section 6 of the *Legal Profession Uniform Law (NSW)*.

**17 Issuing authority for search warrants**

- (1) Any person holding or acting in the office of Magistrate is the issuing authority for the purposes of section 377 of the *Legal Profession Uniform Law (NSW)*.
- (2) Except as provided by the *Legal Profession Uniform Law (NSW)* or this Act, Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to search warrants under section 377 of the *Legal Profession Uniform Law (NSW)*.

**18 Pecuniary penalties to be paid into Public Purpose Fund**

For the purposes of section 456 (a) of the *Legal Profession Uniform Law (NSW)*, a penalty referred to in that paragraph is to be paid into the Public Purpose Fund.

## Part 3 Local regulatory authorities

### Division 1 Legal Profession Admission Board

#### 19 Constitution of NSW Admission Board

- (1) There is constituted by this Act a corporation with the corporate name of the Legal Profession Admission Board.  
**Note.** The Legal Profession Admission Board is referred to in this Act as the **NSW Admission Board**. See the definition of that term in section 3.
- (2) The NSW Admission Board is not and does not represent the Crown.
- (3) The NSW Admission Board is a continuation of and the same legal entity as the Legal Profession Admission Board constituted under the *Legal Profession Act 2004*.
- (4) Schedule 3 contains provisions relating to the membership and procedure of the NSW Admission Board.

#### 20 Functions of NSW Admission Board

- (1) The NSW Admission Board has the functions conferred on it by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.
- (2) The NSW Admission Board has all the powers necessary to perform its functions, including the powers conferred on it by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.

#### 21 Entitlement to be represented, heard and make representations

- (1) The Bar Council, the Law Society Council and the applicant concerned are entitled:
  - (a) to make representations in writing to the NSW Admission Board in relation to any matter under consideration by the Board under Part 2.2 of the *Legal Profession Uniform Law (NSW)*, and
  - (b) to be represented and heard at any inquiry or appeal under that Part.
- (2) The NSW Admission Board must notify each Council in accordance with the admission rules of:
  - (a) any application for a declaration under section 21 (Declaration of early assessment of suitability for a compliance certificate) of the *Legal Profession Uniform Law (NSW)*, and
  - (b) any declaration made under that section.
- (3) The NSW Admission Board may notify a Council of any application for admission.
- (4) The NSW Admission Board is entitled to be represented and heard at any appeal referred to in section 28 of the *Legal Profession Uniform Law (NSW)*.

### Division 2 Legal Services Commissioner

#### 22 Appointment of NSW Commissioner

- (1) The Governor may, on the recommendation of the Attorney General, appoint a person to be the NSW Legal Services Commissioner.  
**Note.** The Legal Services Commissioner is referred to in this Act as the **NSW Commissioner**. See the definition of that term in section 3.



- (2) The person so appointed is to be a person who, in the opinion of the Attorney General:
  - (a) is familiar with the nature of the legal system and legal practice (but need not be an Australian legal practitioner), and
  - (b) possesses sufficient qualities of independence, fairness and integrity.
- (3) Schedule 4 contains provisions relating to the NSW Commissioner.

### **23 Acting NSW Commissioner**

- (1) The Attorney General may, from time to time, appoint a person to act in the office of the NSW Commissioner during the illness or absence of the NSW Commissioner (or during a vacancy in the office of NSW Commissioner) and a person, while so acting, has all the functions of the NSW Commissioner.
- (2) The Attorney General may, at any time, remove a person from the office of acting NSW Commissioner.
- (3) The acting NSW Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine.

### **24 Functions of NSW Commissioner**

- (1) The NSW Commissioner has the functions conferred on him or her by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.
- (2) The NSW Commissioner has all the powers necessary to perform his or her functions, including the powers conferred by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.
- (3) Without limitation, the functions of the NSW Commissioner include the following functions:
  - (a) to assist and advise complainants and potential complainants in making and pursuing complaints (including assisting complainants to clarify their complaints and to put their complaints in writing),
  - (b) to conduct regular surveys of, and report on, the views and levels of satisfaction of complainants and respondent Australian lawyers with the complaints handling and disciplinary system,
  - (c) to assist the Bar Council and Law Society Council to promote community education about the regulation and discipline of the legal profession,
  - (d) to assist the Bar Council and Law Society Council in the enhancement of professional ethics and standards, for example, through liaison with legal educators or directly through research, publications or educational seminars,
  - (e) to report on the NSW Commissioner's activities under the *Legal Profession Uniform Law (NSW)* or this Act.
- (4) The NSW Commissioner may appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under the *Legal Profession Uniform Law (NSW)*, this Act or otherwise in relation to Australian lawyers.

## **25 NSW Commissioner may require Councils to provide information**

- (1) The NSW Commissioner may, for the purpose of exercising the NSW Commissioner's functions, do any of the following:
  - (a) require the Bar Council or Law Society Council to provide information received by the Council that gives the Council reason to believe that an Australian legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct,
  - (b) require the Bar Council or Law Society Council to provide information relating to an application for an Australian practising certificate,
  - (c) require the Bar Council or Law Society Council to provide information relating to a notification made by an Australian lawyer or an Australian-registered foreign lawyer for the purpose of complying with the *Legal Profession Uniform Law (NSW)*, the Uniform Rules, this Act or the regulations,
  - (d) require the Bar Council or Law Society Council to notify the NSW Commissioner of the Council's intention to grant, refuse to grant, cancel or suspend an Australian practising certificate.
- (2) A requirement by the NSW Commissioner under this section may relate to a specific case or may be made in general terms so as to relate to all cases or to a class of cases.
- (3) The Bar Council or Law Society Council must take into account any representations made by the NSW Commissioner on a matter under the *Legal Profession Uniform Law (NSW)*, the Uniform Rules or this section.

## **26 Annual report of NSW Commissioner**

- (1) As soon as practicable after 30 June (but before 31 December) in each year, the NSW Commissioner is to prepare and forward to the Attorney General a report on his or her activities for the 12 months ending on 30 June in that year.
- (2) The Attorney General is to lay the annual report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) The NSW Commissioner is to include the following matters in the annual report:
  - (a) information on the operation of the complaints process during the year and any recommendations for legislative or other improvements to the complaints process,
  - (b) information about the financial affairs and accounts of the Office of the NSW Legal Services Commissioner (including costs incurred by the NSW Commissioner) during the year,
  - (c) a copy of a certificate of an auditor as to the outcome of any audit carried out under subsection (4) in relation to the year or any previous year if a copy of the certificate has not been included in an earlier annual report under this section,
  - (d) other information or matters that the NSW Commissioner considers appropriate to be included or that the Attorney General directs to be included.
- (4) Information referred to in subsection (3) (b) is to be audited at least every 2 years. The NSW Commissioner and the Secretary are to enter into arrangements for the audit of the information.
- (5) Matters included in an annual report must not identify individual clients, Australian lawyers or Australian-registered foreign lawyers unless their names have already lawfully been made public under another provision of this Act or under the *Legal Profession Uniform Law (NSW)*.

- (6) The annual report need not include information forwarded to the Commissioner for Uniform Legal Services Regulation and included or intended to be included in the Commissioner's annual report under Part 4 of Schedule 2 to the *Legal Profession Uniform Law (NSW)*.

**Note.** Section 440 of that Law deals with the provision of information by local regulatory authorities.

#### **27 Staff of NSW Commissioner**

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the NSW Commissioner to exercise his or her functions.

**Note.** Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the NSW Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the NSW Commissioner. Section 47A of the *Constitution Act 1902* precludes the NSW Commissioner from employing staff.

- (2) The NSW Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency or other public authority.
- (3) The NSW Commissioner may, with the approval of the Attorney General, engage consultants or other persons for the purpose of getting assistance.

#### **28 Delegation of functions of NSW Commissioner**

The NSW Commissioner may delegate any of his or her functions under this Act (other than this power of delegation) to any member of the staff of the NSW Commissioner or to a person of a class prescribed by the regulations.

**Note.** Delegation of functions under the *Legal Profession Uniform Law (NSW)* of the NSW Commissioner as a local regulatory authority is provided for by section 406 of that Law. See also section 166 for the prescription by the local regulations of delegates or classes of delegates for that purpose.

### **Division 3 Bar Council**

#### **29 Functions of Bar Council**

In addition to its other functions, the Bar Council may exercise functions conferred or imposed on it or the Bar Association:

- (a) by the *Legal Profession Uniform Law (NSW)*, or
- (b) by this Act, or
- (c) as delegate of the NSW Commissioner.

#### **30 Delegation of functions of Bar Council**

The Bar Council may delegate any of its functions under this Act (other than this power of delegation) to any of its committees, to an officer of the Bar Association or to an employee of the Bar Association.

**Note.** Delegation of functions under the *Legal Profession Uniform Law (NSW)* of the Bar Council as a local regulatory authority is provided for by section 406 of that Law. See also section 166 for the prescription by the local regulations of delegates or classes of delegates for that purpose.

## **Division 4 Law Society Council**

### **31 Functions of Law Society Council**

- (1) In addition to its other functions, the Law Society Council may exercise functions conferred or imposed on it or the Law Society:
  - (a) by the *Legal Profession Uniform Law (NSW)*, or
  - (b) by this Act, or
  - (c) as delegate of the NSW Commissioner.
- (2) The Law Society Council also has the function of disseminating information to increase public awareness of the requirements of this Act, the *Legal Profession Uniform Law (NSW)* and the *Corporations Act 2001* of the Commonwealth relating to solicitors who:
  - (a) are involved in managed investment schemes, or
  - (b) negotiate the making of or act in respect of regulated mortgages.

### **32 Delegation of functions of Law Society Council**

The Law Society Council may delegate any of its functions under this Act (other than this power of delegation and the functions referred to in section 119 (Management Committee)) to any of its committees, to an officer of the Law Society or to an employee of the Law Society.

**Note.** Delegation of functions under the *Legal Profession Uniform Law (NSW)* of the Law Society Council as a local regulatory authority is provided for by section 406 of that Law. See also section 166 for the prescription by the local regulations of delegates or classes of delegates for that purpose.

## **Division 5 Miscellaneous**

### **33 Lay representation on committees**

- (1) The Attorney General may do either or both of the following:
  - (a) after consultation with the Bar Council, direct, by written order, that any specified committees or kinds of committees of the Bar Association or Bar Council must include in their membership a specified or determinable number of lay members,
  - (b) after consultation with the Law Society Council, direct, by written order, that any specified committees or kinds of committees of the Law Society or Law Society Council must include in their membership a specified or determinable number of lay members.
- (2) Except as provided by subsection (3), a direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay members.
- (3) The membership of any professional conduct committee must include at least 3 lay members.
- (4) A lay member has the voting and other rights and the obligations that are provided in the constitution of the committee or as are provided by the local regulations. Those regulations prevail to the extent of any inconsistency with the constitution of the committee.
- (5) For the purposes of this section, a lay member is a person who is not an Australian lawyer.

#### **34 Councils to submit annual report**

- (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Bar Council and the Law Society Council are each required to prepare and forward to the Attorney General a report of their work and activities under this Act for the 12 months ending on 30 June in that year.
- (2) The Attorney General is to lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A Council is to include the following information in its annual report:
  - (a) information about the costs incurred by the Council during the reporting year in relation to its regulatory functions, as certified by an auditor,
  - (b) in the case of the Law Society Council—the total amount paid from the Public Purpose Fund and the Fidelity Fund during the year,
  - (c) such other information as may be prescribed by the regulations or as the Attorney General directs to be included.
- (4) Matters included in a report must not identify individual Australian lawyers unless their names have already lawfully been made public under Part 12.
- (5) This section does not affect any other provision of this Act requiring a report to be made to the Attorney General.

#### **35 Court appearances**

A local regulatory authority for this jurisdiction may appear by barrister or solicitor before, and be heard by, any court in any matter affecting the local regulatory authority (or, without limitation, its members in the case of the Bar Association or Law Society Council) in which the local regulatory authority is concerned or interested.

## Part 4 Practising certificates and registration certificates

### Division 1 Australian practising certificates

#### 36 Australian practising certificate fees and fidelity fund contributions

An application for the grant or renewal of an Australian practising certificate in which the applicant states that New South Wales is the jurisdiction that he or she reasonably intends will be his or her principal place of practice in Australia must be accompanied by:

- (a) the appropriate fee for the certificate, and
- (b) the required contribution to the fidelity fund (if any).

**Note.** Applications are made under section 44 of the *Legal Profession Uniform Law (NSW)*. See sections 38 and 39 of this Act for fees for practising certificates, and section 225 of the *Legal Profession Uniform Law (NSW)* for fidelity fund contributions.

#### 37 Timing of application for renewal of local practising certificate

- (1) An application for the renewal of a local practising certificate must be made within:
  - (a) the period prescribed by the regulations as the standard renewal period, or
  - (b) a later period prescribed by the regulations as the late fee period.
- (2) Those periods must be within the currency of the local practising certificate being renewed.
- (3) The appropriate Council may reject an application for renewal made during the late fee period, and must reject an application for renewal made outside those periods.

**Note.** Section 39 authorises the charging of a late fee for applications received during the late fee period. If an application is rejected under subsection (3), the applicant will have to apply for the grant of a new practising certificate.

#### 38 Fee for practising certificate

- (1) A fee is payable for the grant or renewal of a local practising certificate of such amount as is determined by the appropriate Council and approved by the Attorney General.
- (2) A Council may determine different practising certificate fees according to different factors that are specified in the determination and approved by the Attorney General.
- (3) A Council may waive or postpone payment of the practising certificate fee or any part of the fee.
- (4) Subject to the local regulations (if any), a Council is to determine the practising certificate fee on a cost recovery basis, with the fee being such amount as is required from time to time for the purpose of recovering the costs of or associated with the regulatory functions of the Council or of the Bar Association or Law Society, as the case requires.
- (5) The regulatory functions of a Council, the Bar Association or the Law Society are its functions under this Act, and any other functions it exercises that are associated with the regulation of legal practice or maintaining professional standards of legal practice.
- (6) The practising certificate fee is not to include any charge for membership of the Bar Association or Law Society and is not to include any amount that is required for the purpose of recovering any costs of or associated with providing services or benefits to which local legal practitioners become entitled as members of the Bar Association or Law Society.

- (7) In addition, in determining the practising certificate fee, a Council must exclude costs that are otherwise recoverable under this Act (for example, costs payable from the Public Purpose Fund under this Act).
- (8) The local regulations may make provision for or with respect to the determination of practising certificate fees, including by specifying the costs that may or may not be recovered by the charging of practising certificate fees.
- (9) In this section:  
*costs* includes expenses.

### **39 Late fee**

- (1) This section applies if an application for a local practising certificate is made during the late fee period.
- (2) Payment of a late fee prescribed by or determined under the regulations may, if the Council thinks fit, be required as a condition of acceptance of the application.

### **40 Late fee for certain applications for new practising certificates**

- (1) This section applies if an application for the grant of a local practising certificate to have effect during a financial year is made to a Council by a person who was the holder of a local practising certificate granted by the Council in respect of the previous financial year.
- (2) Payment of an additional fee prescribed by or determined under the regulations may, if the Council thinks fit, be required as a condition of acceptance of the application.

### **41 Audit of Council activities**

- (1) The Attorney General may appoint an appropriately qualified person to conduct an audit of all or any particular activities of a Council for the purpose of determining the following:
  - (a) whether any activities the costs of which are recoverable, or are proposed to be recovered, by the charging of a practising certificate fee are being carried out economically and efficiently and in accordance with the relevant laws,
  - (b) whether practising certificate fees are being expended for the purpose of defraying the costs in respect of which the fees are charged.
- (2) A Council is to provide all reasonable assistance to the person appointed to conduct the audit.
- (3) The person appointed to conduct the audit is to report to the Attorney General on the result of the audit.
- (4) An audit may be conducted under this section whenever the Attorney General considers it appropriate.
- (5) In this section:  
*audit* includes an examination and inspection.  
*costs* includes expenses.  
*Council* includes the Bar Association and the Law Society.

## **Division 2 Australian registration certificates**

### **42 Australian registration certificate fees, fidelity fund contributions, and costs and expenses**

- (1) An application to a Council for the grant or renewal of an Australian registration certificate must be accompanied by:
  - (a) the appropriate fee for the certificate, and
  - (b) the required contribution to the fidelity fund (if any).

**Note.** Applications are made under section 62 of the *Legal Profession Uniform Law (NSW)*. See section 225 of the *Legal Profession Uniform Law (NSW)* for fidelity fund contributions.
- (2) Different fees may be set according to different factors determined by the relevant Council.
- (3) The fees are not to be greater than the maximum fees for a local practising certificate.
- (4) A Council may waive or postpone payment of a fee or any part of a fee.
- (5) A Council may also require the applicant to pay any reasonable costs and expenses incurred by the relevant Council in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.
- (6) The fees, costs and expenses must not include any component for compulsory membership of any professional association.

## **Division 3 General**

### **43 Attorney General**

The Attorney General, while admitted to the legal profession in this or any other jurisdiction, is entitled to an unconditional practising certificate. The Attorney General may elect to hold a practising certificate as a barrister or as a solicitor.

### **44 Crown Solicitor**

- (1) The Crown Solicitor may, in his or her official capacity, act as solicitor for:
  - (a) the State of New South Wales, or
  - (b) a person suing or being sued on behalf of the State of New South Wales, or
  - (c) a Minister of the Crown in his or her official capacity as such a Minister, or
  - (d) a body established by an Act or other law of New South Wales, or
  - (e) an officer or employee of the Public Service or any other service of the State of New South Wales or of a body established by an Act or other law of New South Wales, or
  - (f) a person holding office under an Act or other law of New South Wales or because of the person's appointment to that office by the Governor or a Minister of the Crown, or
  - (g) any other person or body, or any other class of persons or bodies, approved by the Attorney General.
- (2) The Crown Solicitor may act under subsection (1):
  - (a) with or without charge, or
  - (b) for a party in a matter that is not the subject of litigation, even if also acting under that subsection for another party in the matter.



- (3) The Crown Solicitor may, in his or her official capacity, act as agent for:
  - (a) another State or a Territory, or
  - (b) at the request of another State or a Territory—an instrumentality of, or a person in the service of, that State or Territory.
- (4) If, under subsection (1) (g), the Crown Solicitor is given approval to act as solicitor for a Minister of the Crown (otherwise than in his or her official capacity as such a Minister), the following must be included in the annual report under the *Annual Reports (Departments) Act 1985* of the Crown Solicitor's activities:
  - (a) the name of the Minister,
  - (b) the matter in which the Crown Solicitor acted (but without disclosure of any confidential client information),
  - (c) the costs incurred by the Crown Solicitor in acting for the Minister and the amount charged to the Minister for so acting.
- (5) In this section, a reference to a State or a Territory includes a reference to the Crown in right of the State or Territory and to the Government of the State or Territory.

#### **45 Government lawyers**

- (1) The local regulations may make provision for or with respect to:
  - (a) exempting persons or classes of persons from the requirement to hold Australian practising certificates, either generally or for specified periods, in respect of their official functions as government lawyers, and
  - (b) without limitation, excluding or modifying the operation of specified provisions of the *Legal Profession Uniform Law (NSW)* (including provisions of Parts 2.2 and 3.3 of that Law) to the extent that any of those provisions would otherwise be applicable to any persons, or classes of persons, as government lawyers.

**Note.** See section 56 of the *Legal Profession Uniform Law (NSW)*.
- (2) Government lawyers (including Crown prosecutors, public defenders, parliamentary counsel or other statutory Crown law officers) may be granted an Australian practising certificate with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

## Part 5 Trust accounts and Public Purpose Fund

### Division 1 Trust accounts—statutory deposits

#### 46 Statutory deposits

- (1) The local regulations may require a law practice to pay amounts out of a general trust account of the law practice into an ADI account maintained by the Law Society.
- (2) Without limiting subsection (1), the local regulations may provide for the following:
  - (a) the type of account to be maintained by the Law Society,
  - (b) the amount of the payments to be made.
- (3) All interest on the money in a general trust account is payable to the Law Society on account of the Public Purpose Fund.
- (4) This section applies despite any other provision of this Part or Part 4.2 of the *Legal Profession Uniform Law (NSW)*.

#### 47 Status and repayment of deposited money

- (1) Money paid under section 46 into an ADI account maintained by the Law Society:
  - (a) is held by the Law Society in trust for the law practice depositing the money, and
  - (b) is repayable on demand.
- (2) Subsection (1) does not excuse a failure to comply with section 46.
- (3) Until repaid, money deposited under section 46 may be invested by the Law Society:
  - (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
  - (b) on deposit with the Treasurer, or
  - (c) in an account with any ADI.
- (4) All interest on investments made under this section is payable to the Law Society on account of the Public Purpose Fund.

### Division 2 Public Purpose Fund

#### 48 Public Purpose Fund

- (1) There is to be established a fund called the Public Purpose Fund.
- (2) The following amounts are to be paid to the credit of the Fund:
  - (a) interest payable to the Law Society on account of the Public Purpose Fund under sections 46, 47 and 50,
  - (b) such other amounts as are payable to the Fund by or under this Act.

#### 49 Trustees of the Public Purpose Fund

- (1) There are to be Trustees of the Public Purpose Fund (in this Part, *the Trustees*).
- (2) The Trustees consist of:
  - (a) 3 persons appointed by the Attorney General, of whom:
    - (i) 2 are to be members of the Law Society Council nominated by the President of the Law Society, and

- (ii) 1 is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and
- (b) the Secretary.
- (3) Schedule 5 contains provisions relating to the Trustees.

#### **50 Management and control of Fund**

- (1) The Trustees are to manage and control the Public Purpose Fund.
- (2) The Trustees may invest any amount standing to the credit of the Fund in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds.
- (3) The Trustees may enter into any agreement or arrangement with a person or body under which:
  - (a) the person or body provides the Trustees with advice concerning the investment of any amount standing to the credit of the Fund, or
  - (b) the person or body agrees to invest any such amount on behalf of the Trustees.
- (4) The Law Society is to administer the Fund on behalf of, and in accordance with the directions of, the Trustees.

#### **51 Arrangements with ADIs**

The Trustees are, without limitation, authorised to enter into arrangements with an ADI that are of the kind referred to in section 149 (1) (b) of the *Legal Profession Uniform Law (NSW)*.

#### **52 Payments from Fund**

- (1) The Trustees are to pay from the Public Purpose Fund the following:
  - (a) any amounts payable from the Fund for a purpose referred to in section 53 (Payment of certain costs from Fund), in accordance with the approval of the Secretary under that section,
  - (b) any amounts that the Trustees, with the concurrence of the Attorney General, determine should be paid from the Fund for a purpose referred to in section 55 (Discretionary payments from Fund for other purposes),
  - (c) any amounts required to be paid from the Fund in accordance with an order of NCAT under clause 23 (3) of Schedule 5 to the *Civil and Administrative Tribunal Act 2013*,
  - (d) any costs or expenses incurred in collecting the interest payable to the Fund and in the management or administration of the Fund.
- (2) Payments from the Public Purpose Fund may be made from the capital or income of the Fund, at the discretion of the Trustees.
- (3) The fact that money is paid out of the Public Purpose Fund under this section does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Public Purpose Fund.

#### **53 Payment of certain costs from Fund**

- (1) Payments are to be made from the Public Purpose Fund, in accordance with this section and subject to section 55, for the purpose of meeting the following costs and expenses:
  - (a) the costs of a Council in making representations, or being represented or heard, under section 21,

- (b) the costs of a Council in exercising functions under Part 3.3 of the *Legal Profession Uniform Law (NSW)*, including in responding to any appeal or review arising in relation to functions under that Part,
- (c) the costs of a Council in exercising functions under Parts 3.4, 3.5 and 3.6 of the *Legal Profession Uniform Law (NSW)*, including in responding to any appeal or review arising in relation to functions under those Parts,
- (d) the costs of the NSW Commissioner or a Council in taking action under Part 9.6 of the *Legal Profession Uniform Law (NSW)*,
- (e) the costs of the NSW Commissioner or a Council relating to compliance with a condition to which an Australian registration certificate is subject under Division 4 of Part 3.4 of the *Legal Profession Uniform Law (NSW)*,
- (f) the costs of a Council in exercising functions under:
  - (i) section 80 and Parts 3.7, 3.9 and 4.5 of the *Legal Profession Uniform Law (NSW)*, and
  - (ii) Part 9 of this Act,
- (g) the costs of the Law Society Council (including its members, employees or agents) in respect of an external examination or external investigation under Part 4.2 of the *Legal Profession Uniform Law (NSW)*, to the extent that those costs are not recoverable under section 160 or 166 of that Law,
- (h) the costs of the NSW Admission Board in connection with an appeal under Division 3 of Part 2.2 of the *Legal Profession Uniform Law (NSW)*,
- (i) the costs of a Council in connection with an external intervention in relation to a law practice (including costs in connection with an application under section 341 of the *Legal Profession Uniform Law (NSW)* or an appeal or review under section 358 of that Law) and any fees, costs and expenses payable from the Fund under section 365 of that Law,
- (j) the costs of the NSW Commissioner or NCAT in relation to the administration of Chapter 5 of the *Legal Profession Uniform Law (NSW)*,
- (k) the costs of the NSW Commissioner or Council in exercising functions for the purposes of Chapter 5 of the *Legal Profession Uniform Law (NSW)*,
- (l) the costs of the NSW Commissioner or a Council in relation to any proceedings in or on appeal from the Supreme Court with respect to the discipline of an Australian legal practitioner or an Australian-registered foreign lawyer, including in relation to proceedings concerning the inherent jurisdiction and powers of the Supreme Court as referred to in section 264 of the *Legal Profession Uniform Law (NSW)*,
- (m) the costs of the NSW Commissioner or a Council in connection with the provision of mediators for the mediation of consumer disputes under Chapter 5 of the *Legal Profession Uniform Law (NSW)*, including costs disputes,
- (n) the costs of the Costs Assessment Rules Committee in exercising functions for the purposes of this Act,
- (o) the costs of a Council or the NSW Commissioner in connection with a compliance audit of a law practice under section 256 of the *Legal Profession Uniform Law (NSW)*,
- (p) without limiting any other paragraph of this subsection, the costs of a Council or the NSW Commissioner in exercising functions in relation to restrictions on advertising and other marketing of services under the *Legal Profession Uniform Law (NSW)* or the Uniform Rules.

- (2) Those payments are to be made by the Trustees in accordance with the approval of the Secretary.
- (3) The Secretary is to approve the payment from the Fund of such amounts as the Secretary considers necessary for the purpose of meeting any reasonable costs and expenses referred to in subsection (1), having regard to any budget submitted under section 54.
- (4) If a local regulatory authority requests payment of any of their costs in commencing or maintaining proceedings taken in relation to the exercise of any functions referred to in subsection (1), the Secretary may, before approval is given or payment is made, request:
  - (a) information from the authority about whether attempts have been made to recover any or all of those costs from another party to the proceedings and, if no attempt was made, the reasons for not making an attempt, and
  - (b) further information from the authority if the Secretary is of the opinion that additional information is required in response to a previous request under this subsection.
- (5) If the amount of costs or expenses actually expended or incurred by a beneficiary in or in respect of a relevant period:
  - (a) exceeds the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Secretary is to approve payment from the Fund of such additional amount as the Secretary considers necessary and reasonable for the purpose of meeting or contributing to any underpayment, or
  - (b) is less than the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Secretary is to require the beneficiary to repay to the Fund such amount already paid to the beneficiary as the Secretary specifies for the purpose of recouping the whole or a part of any overpayment.
- (6) Instead of dealing with an underpayment or overpayment in accordance with subsection (5), the Secretary may deal with all or part of the underpayment or overpayment by way of adjustment of amounts approved under that subsection for payment to the beneficiary in or in respect of a future period.
- (7) An approval is subject to such conditions as the Secretary specifies in the approval.
- (8) Payments under this section may be made in advance of or by way of reimbursement of the relevant cost or expense.

#### **54 Submission of budgets and supplementary budgets to Secretary**

- (1) For the purpose of determining the amount to be paid from the Public Purpose Fund for a purpose referred to in section 53, the Secretary may require the beneficiary of the payment to prepare and submit a budget or supplementary budget to the Secretary, in respect of such period as the Secretary directs, relating to the costs or expenses of the beneficiary (including projected costs and expenses).
- (2) Without limiting subsection (1), a budget or supplementary budget may relate wholly or partly to a past period if the Secretary so directs or approves, whether or not any cost or expense has already been incurred or met by the beneficiary.
- (3) The budget or supplementary budget is to include such information as the Secretary directs. In particular, the Secretary may require the provision of information about the administration of the beneficiary.
- (4) The Secretary may refuse to approve a payment under section 53 if the beneficiary has failed to submit a budget or supplementary budget as required under this section.

(5) In this section:

*beneficiary* of a payment means the person or body to whom or in respect of whom a payment from the Fund may be made.

#### 55 Discretionary payments from Fund for other purposes

(1) The Trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from the Public Purpose Fund for any of the following purposes:

- (a) the supplementation of any of the following funds:
  - (i) the Legal Aid Fund,
  - (ii) the Fidelity Fund,
  - (iii) the Law and Justice Foundation Fund,
- (b) the promotion and furtherance of legal education in New South Wales,
- (c) the advancement, improvement and extension of the legal education of members of the community,
- (d) the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
- (e) the furtherance of law reform,
- (f) the establishment and improvement of law libraries and the expansion of the community's access to legal information,
- (g) the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal services,
- (h) the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,
- (i) the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services.

(2) The Trustees are to invite applications for payments from the Fund for the purposes referred to in this section at such intervals as the Secretary directs.

(3) Before making a payment from the Fund for a purpose other than the supplementation of the Legal Aid Fund, the Trustees are to consider whether adequate provision has been made from the Fund for the purpose of supplementation of the Legal Aid Fund.

(4) The Trustees may approve the making of a payment in advance under this section, but the period with respect to which the payment is made must not exceed 3 years.

(5) A determination of the Trustees under this section may be made only by a unanimous decision of the Trustees. A unanimous decision is a decision supported unanimously at a meeting of the Trustees at which all the Trustees for the time being are present and vote.

(6) This section does not require the Trustees to distribute all of the income or any of the capital of the Public Purpose Fund.

(7) In this section:

*Law and Justice Foundation Fund* means the Law and Justice Foundation Fund established under the *Law and Justice Foundation Act 2000*.

*Legal Aid Fund* means the Legal Aid Fund established under the *Legal Aid Commission Act 1979*.

**56 Payments from Fund for costs of uniform authorities**

The Trustees may, at the request of the Attorney General, pay from the Public Purpose Fund amounts for such part of the costs of the Legal Services Council and the Commissioner for Uniform Legal Services Regulation as the Attorney General is satisfied cannot be reasonably recovered through admission fees.

**57 Performance audits**

- (1) The Auditor-General may conduct a performance audit under Division 2A of Part 3 of the *Public Finance and Audit Act 1983* of:
  - (a) the activities of the NSW Commissioner, the Bar Council and the Law Society Council for which costs and expenses may be paid from the Public Purpose Fund, and
  - (b) the present and future liability of the Fund for the payment of those costs and expenses.
- (2) The performance audit may be conducted whenever the Auditor-General considers it appropriate.
- (3) For the purposes of the performance audit, Division 2A of Part 3 of the *Public Finance and Audit Act 1983* applies as if the Attorney General were the head of the relevant authority.

**58 Information about Fund to be included in Law Society Council report**

- (1) As soon as practicable after 30 June in each year, the Trustees are to provide the Law Society Council with a report about the income and expenditure of the Public Purpose Fund for the period of 12 months ending on 30 June in that year.
- (2) The Law Society Council is to include a copy of the report of the Trustees in its annual report for the same period under section 34.

## Part 6 Legal costs—particular kinds of costs

### 59 Local regulations to provide for fixed costs

- (1) The local regulations may make provision for or with respect to the following:
  - (a) fixing fair and reasonable costs for legal services provided in any workers compensation matter,
  - (b) fixing the costs payable for legal services provided in connection with any claim for personal injury damages (within the meaning of the *Civil Liability Act 2002*),
  - (c) fixing the costs payable for legal services provided in connection with small claims applications (within the meaning of section 379 of the *Industrial Relations Act 1996*),
  - (d) fixing the costs payable for the enforcement of a lump sum debt or liquidated sum for damages,
  - (e) fixing the costs payable for the enforcement of a judgment by a judgment creditor,
  - (f) fixing the costs payable for legal services provided in respect of probate or the administration of estates,
  - (g) fixing an amount of costs for a matter that is not a legal service but is related to proceedings (for example, expenses for witnesses).
- (2) A law practice is not entitled to be paid or recover for a legal service an amount that exceeds the fair and reasonable cost fixed for the service by the regulations under this section.

**Note.** Section 172 (3) of the *Legal Profession Uniform Law (NSW)* provides as follows:

(3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the Uniform Rules and any fixed costs legislative provisions.

The term **fixed costs legislative provision** is defined in section 6 of that Law.

### 60 Provisions relating to local regulations on fixed costs

- (1) The local regulations may fix a cost under section 59 for a particular legal service, for a class of legal services or for any part of a legal service.
- (2) The local regulations may fix a cost under section 59:
  - (a) as a gross amount for legal services, or
  - (b) as an amount for specified elements in the legal services provided (for example, documents prepared), or
  - (c) in any other manner.

### 61 Maximum costs in personal injury damages matters

Schedule 1 contains provisions relating to maximum costs in personal injury damages matters.

### 62 Costs in civil claims—no reasonable prospects of success

Schedule 2 contains provisions relating to costs in civil claims where there are no reasonable prospects of success.



## **Part 7 Legal costs—costs assessment**

### **Division 1 Preliminary**

#### **63 Definitions**

In this Part:

*costs assessment rules* means rules under Division 5.

*costs assessor* means a person appointed to be a costs assessor under section 91.

*review panel* means a review panel referred to in section 67.

### **Division 2 Assessment of solicitor-client costs**

#### **64 Application and purpose of this Division**

- (1) This Division applies to legal costs payable on a solicitor-client basis.
- (2) Part 4.3 of the *Legal Profession Uniform Law (NSW)* provides for assessments and determinations of legal costs payable on a solicitor-client basis to be conducted by costs assessors and for associated matters. The purpose of this Division is to supplement that Part.

#### **65 Costs assessment rules**

Subject to this Act and the *Legal Profession Uniform Law (NSW)*, assessments of legal costs are to be conducted in accordance with the costs assessment rules.

#### **66 Costs assessors**

Costs assessors are appointed under section 91. Their functions are provided for under this Part, Part 4.3 of the *Legal Profession Uniform Law (NSW)* and the costs assessment rules.

#### **67 Review panels**

- (1) Review panels are established under the costs assessment rules and are each constituted by 2 costs assessors appointed under those rules. A review panel may be established for one or more costs reviews.
- (2) A party to a costs assessment who is dissatisfied with a determination of a costs assessor may apply for a review of the determination by a review panel in accordance with the costs assessment rules.
- (3) A review panel may, on application made under subsection (2), review the determination of a costs assessor and may:
  - (a) affirm the costs assessor's determination, or
  - (b) set aside the costs assessor's determination and substitute its own determination in relation to the costs assessment.
- (4) The review panel has, in relation to the application for assessment, all the functions of a costs assessor under this Part and is to determine the application, subject to this Part and the costs assessment rules, in the manner that a costs assessor would be required to determine an application for costs assessment.

- (5) However, the assessment is to be conducted on the evidence that was received by the costs assessor who made the determination that is the subject of the assessment and, unless the panel determines otherwise, the panel is not:
  - (a) to receive submissions from the parties to the assessment, or
  - (b) to receive any fresh evidence or evidence in addition to or in substitution for the evidence received by the costs assessor.
- (6) If the costs assessors who constitute the review panel are unable to agree on a determination in relation to an application, the panel is to affirm the determination of the costs assessor.

#### **68 Fees**

An application for a costs assessment or costs review is to be accompanied by the appropriate fee (if any) payable under the costs assessment rules.

#### **69 Submissions**

A costs assessor must give an applicant, and any law practice or client or other person concerned, a reasonable opportunity to make written submissions to the costs assessor in relation to the application, and give due consideration to any submissions so made.

#### **70 Determination of costs when agreed**

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 or proceedings before the panel, the parties notify the assessor or panel (as the case may be) that they have agreed on the amount of those costs.

#### **71 Interest on amount outstanding**

- (1) A costs assessor may determine that interest is not payable on the amount of costs assessed or on any part of that amount or determine the rate of interest (not exceeding the rate referred to in section 195 (4) of the *Legal Profession Uniform Law (NSW)*).
- (2) This section applies despite any costs agreement or anything else in section 195 of the *Legal Profession Uniform Law (NSW)*.
- (3) This section does not authorise the giving of interest on interest.

#### **72 Recovery of amounts**

- (1) After a costs determination is made by a costs assessor or review panel, the amount of costs paid (if any) that exceeds the amount specified in the certificate of the determination may be recovered as a debt in a court of competent jurisdiction.
- (2) After a costs determination is made, the certificate of the determination is, on being filed in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs. The rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.
- (3) The Manager, Costs Assessment may take action to recover the costs of a costs assessor, the review panel or the Manager, Costs Assessment.

**73 Reference of special circumstances to Supreme Court—costs of costs determination**

- (1) For the purpose of determining the costs of a costs assessment, the costs assessor or review panel may refer to the Supreme Court any special circumstances relating to the costs assessment.
- (2) The Supreme Court may make any order it thinks fit concerning those costs.

**74 Costs determination to be final**

A costs determination is binding on all parties and no appeal or other assessment lies in respect of the determination, except as provided by this Part.

**Division 3 Assessment of party-party costs**

**75 Application of this Division**

This Division applies to legal costs payable on a party-party basis.

**76 Application of provisions relating to assessment of solicitor-client costs to assessment of party-party costs**

- (1) Subject to this Division and to any modifications prescribed by the costs assessment rules, the following provisions apply to legal costs payable on a party-party basis:
  - (a) Division 7 of Part 4.3 of the *Legal Profession Uniform Law (NSW)*,
  - (b) Divisions 2 and 4 of this Part.
- (2) In conducting an assessment of legal costs payable as a result of an order made by a court or tribunal, the assessment or review by the costs assessor or review panel must be made in accordance with the rules of the relevant court or tribunal that made the order for costs and any relevant regulations.
- (3) If a court or a tribunal has ordered that costs are to be assessed on an indemnity basis, the costs assessor must assess the costs on that basis, having regard to any relevant rules of the court or tribunal and relevant regulations.

**77 Particular applications for assessment of party-party costs**

- (1) An application for an assessment of costs payable on a party-party basis may not be made in relation to costs arising out of criminal proceedings in a court except as provided by section 257G of the *Criminal Procedure Act 1986*.
- (2) An application for an assessment of costs payable on a party-party basis may be made in relation to an application for and the issue of an apprehended violence order within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

**78 Costs agreements not to be applied**

A costs assessor must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or tribunal.

**79 Costs of costs assessment**

Subject to any order of or the rules of the relevant court or tribunal, the costs assessor may determine by whom and to what extent the costs of an assessment referred to in section 204 of the *Legal Profession Uniform Law (NSW)*, as applied by this Division, are payable and include the determination in any certificate issued under the costs assessment rules in relation to the assessment.

**80 Court or tribunal may determine matters**

This Part does not limit any power of a court or a tribunal to determine in any particular case the amount of costs payable or that the amount of the costs is to be determined on an indemnity basis.

**Division 4 Appeals**

**81 Application of this Division to decisions of costs assessors and review panels**

- (1) This Division applies to decisions of costs assessors and review panels in relation to the assessment of legal costs.
- (2) A reference in this Division to a costs assessor includes a reference to a review panel, and a reference to an application for a costs assessment includes a reference to an application for a costs review.

**82 Appeal as to matter of law**

- (1) An applicant for a costs assessment or the law practice concerned may, in accordance with the rules of the District Court, appeal to the District Court against a decision of the costs assessor as to a matter of law arising in the proceedings before the costs assessor.
- (2) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

**83 Appeal by leave**

- (1) An applicant for a costs assessment or the law practice concerned may, in accordance with the rules of the District Court, seek leave of the Court to appeal to the Court against a decision of a costs assessor.
- (2) A party to an application for a costs assessment relating to costs payable as a result of an order made by a court or a tribunal may, in accordance with the rules of the court or tribunal, seek leave of the court or tribunal to appeal to the court or tribunal against a decision of a costs assessor.
- (3) The District Court or other court or tribunal may, in accordance with its rules, grant leave to appeal and may hear and determine the appeal.
- (4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.
- (5) After deciding the questions the subject of the appeal, the District Court or court or tribunal may, unless it affirms the costs assessor's decision, substitute its own determination in relation to the costs assessment.
- (6) A reference in sections 82–85 to an appeal includes a reference (however expressed) to an application seeking leave to appeal.

**84 Effect of appeal on application**

- (1) Either the costs assessor or the court or tribunal concerned may suspend the operation of a decision of a costs assessor that is the subject of an appeal under section 82 or 83.
- (2) The costs assessor or the court or tribunal may end a suspension made by the costs assessor. The court or tribunal may end a suspension made by the court or tribunal.

- (3) A suspension ends when the appeal or application for leave:
  - (a) is determined, or
  - (b) is refused, discontinued or struck out or lapses.

**85 Assessor can be party to appeal**

A costs assessor can be made a party to any appeal against a decision of the costs assessor by the District Court.

**86 Notices of appeal**

A copy of every document initiating an appeal against a decision of a costs assessor must be served on the Manager, Costs Assessment by the party making the appeal.

**87 Court may refer unreviewed determination to review panel**

- (1) If leave to appeal is sought under section 83 against a determination of a costs assessor and the determination to which the appeal relates was not made or has not been reviewed by a review panel, the court or tribunal to which the application is made may refer the matter for review by a review panel.
- (2) The referral of a matter by a court or tribunal under subsection (1) is taken to be a duly made application for a review.

**Division 5 Costs assessment rules**

**88 Costs Assessment Rules Committee**

- (1) There is to be a Costs Assessment Rules Committee consisting of the following persons appointed by the Chief Justice of New South Wales:
  - (a) a Judge of the Supreme Court,
  - (b) a Judge of the District Court nominated by the Chief Judge of the District Court,
  - (c) a barrister nominated by the Bar Council,
  - (d) a solicitor nominated by the Law Society Council,
  - (e) a person nominated by the NSW Commissioner,
  - (f) costs assessors chosen by the Chief Justice.
- (2) The Committee has any of the functions conferred or imposed on the Committee by or under this or any other Act.
- (3) The Committee is to regulate its own proceedings for the calling of meetings and the conduct of its business.
- (4) The Manager, Costs Assessment is the Secretary of the Committee.
- (5) Any amount payable from the Public Purpose Fund for the purpose of meeting the costs of the Committee is to be paid, in accordance with section 53, to the Treasurer for credit of the Consolidated Fund.

**89 Costs assessment rules**

- (1) The Costs Assessment Rules Committee may make rules (*costs assessment rules*), not inconsistent with the *Legal Profession Uniform Law (NSW)* or this Act, for or with respect to costs assessments and determination reviews, including without limitation:
  - (a) the making, timing and processing of applications for costs assessments and determination reviews, and

- (b) the fees for making applications for costs assessments and determination reviews, and the waiver, refund or postponement of any of those fees, and
  - (c) the conduct of costs assessments and determination reviews, including:
    - (i) the practice and procedure for costs assessments and determination reviews, and
    - (ii) the appointment of costs assessors to conduct costs assessments, and
    - (iii) the establishment of review panels and the appointment of costs assessors to review panels, and
    - (iv) matters relating to the interests of costs assessors in particular matters, and
    - (v) the determination and payment of the costs of costs assessments and determination reviews, and
    - (vi) the issue of certificates of determinations, and
    - (vii) the giving of reasons for determinations and the provision of supplementary information to accompany the reasons, and
    - (viii) the suspension of a costs determination in the event of an application for a costs review, and
  - (d) requiring a person (including an applicant, the law practice concerned, any other law practice or client, or a costs assessor) to produce documents, to provide information (verified by statutory declaration if the requirement so states), or otherwise to assist in, or co-operate with, the determination or finalisation of an assessment or review, and
  - (e) requiring documents produced in response to a requirement referred to in paragraph (d) to be returned or otherwise disposed of within a period specified in or determined in accordance with the rules, and
  - (f) the correction of errors in a determination.
- (2) A rule for or with respect to fees may be made only with the concurrence of the Attorney General.
- (3) A rule may do any of the following:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind,
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (4) The rules must be published on the NSW legislation website.
- (5) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to the rules in the same way as they apply to a statutory rule.

**90 Provisions of rules about compliance with rules relating to documents, information, assistance and co-operation**

- (1) This section applies to a requirement referred to in section 89 (1) (d).
- (2) A person who is subject to a requirement to which this section applies must comply with the requirement.

Maximum penalty: the penalty specified in the costs assessment rules in relation to a contravention of the requirement (not exceeding 50 penalty units).

- (3) If a person fails, without reasonable excuse, to comply with a requirement to which this section applies, the costs assessor or panel may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (4) A failure by an Australian legal practitioner to comply with a requirement to which this section applies without reasonable excuse is capable of being unsatisfactory professional conduct or professional misconduct.

## **Division 6 Costs assessments—general**

### **91 Costs assessors**

- (1) The Chief Justice of New South Wales may appoint persons to be costs assessors.
- (2) A costs assessor has the functions that are conferred on the costs assessor by or under this or any other Act or the *Legal Profession Uniform Law (NSW)*.
- (3) A costs assessor is not an officer of the Supreme Court when acting as a costs assessor.
- (4) Proceedings relating to anything done or omitted to be done by the Chief Justice of New South Wales in respect of the appointment or removal of a costs assessor (including terms of appointment and any other incidental matters) may not be instituted against the Chief Justice of New South Wales but may be instituted against “The Manager, Costs Assessment” as nominal defendant.
- (5) Schedule 6 contains provisions relating to costs assessors.

### **92 Confidentiality**

A costs assessor must not disclose any information obtained in connection with the exercise of the costs assessor’s functions (including any functions as a member of a review panel) unless the disclosure is made:

- (a) in connection with the exercise of those functions or the administration or execution of this Act or the *Legal Profession Uniform Law (NSW)*, or
- (b) for the purposes of any legal proceedings arising out of this Act or the *Legal Profession Uniform Law (NSW)*, or of any report of any such proceedings, or
- (c) in the case of information relating to an Australian legal practitioner or other person—with the consent of the practitioner or other person, or
- (d) with other lawful excuse.

Maximum penalty: 20 penalty units.

### **93 Part not to apply to interest on judgment debt**

This Part does not apply to an amount of interest payable on a judgment debt (being an order for the payment of costs) under section 101 of the *Civil Procedure Act 2005*.

## **Part 8 Professional indemnity insurance**

### **Division 1 Introduction**

#### **94 Purpose of this Part**

The purpose of this Part is to supplement Part 4.4 of the *Legal Profession Uniform Law (NSW)*.

#### **95 Approved insurance policy**

- (1) A policy of professional indemnity insurance that complies with this section is an approved insurance policy for this jurisdiction for the purposes of Part 4.4 of the *Legal Profession Uniform Law (NSW)* in relation to an entity that:
  - (a) is required to hold or be covered by an approved policy of professional indemnity insurance, and
  - (b) is of a class of entities to which an order under subsection (2) applies.
- (2) A policy of professional indemnity insurance complies with this section if:
  - (a) the Attorney General has, by order in writing (given to the Bar Council in the case of professional indemnity insurance for a barrister or to the Law Society Council in any other case), approved of:
    - (i) the type of policy, and
    - (ii) the level of insurance provided by the policy, and
    - (iii) the terms and conditions of the policy, and
  - (b) any conditions imposed by the order are complied with, and
  - (c) the policy is not to expire before the expiration of the term of the Australian practising certificate of the entity to whom the policy relates.
- (3) An order may apply to a class or classes of those entities. An order that does not expressly or impliedly apply to any particular class of entities is taken to apply to all classes of entities.
- (4) This section applies despite anything to the contrary in section 210 (1) of the *Legal Profession Uniform Law (NSW)*.

### **Division 2 Barristers**

#### **96 Application of this Division**

This Division applies to barristers who are required by Part 4.4 of the *Legal Profession Uniform Law (NSW)* to hold or be covered by an approved insurance policy for this jurisdiction and who are not exempt from that requirement under that Part.

#### **97 Evidence of policy**

The Bar Council is entitled to accept as evidence that there is, or will be, in force with respect to a barrister an approved insurance policy:

- (a) evidence in the form of written advice from an insurer, provider or insurance broker to the effect that an insurer or provider has issued the policy, or
- (b) evidence that the local regulations provide is acceptable evidence for the purposes of this section.



## Division 3 Solicitors

### 98 Application of this Division

This Division applies to solicitors who are required by Part 4.4 of the *Legal Profession Uniform Law (NSW)* to hold or be covered by an approved insurance policy for this jurisdiction and who are not exempt from that requirement under that Part.

### 99 Definitions

In this Division:

**Company** means the company that, immediately before the commencement of this section, was managing the Solicitors Mutual Indemnity Fund established by the *Legal Practitioners Act 1898*.

**Indemnity Fund** means the Solicitors Mutual Indemnity Fund maintained by the Company.

**insurable solicitor** means a solicitor to whom this Division applies, other than a solicitor who 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 (not being employment by an incorporated legal practice).

### 100 Evidence of policy

The Law Society Council is entitled to accept as evidence that there is, or will be, in force with respect to a solicitor an approved insurance policy:

- (a) evidence in the form of written advice from an insurer, provider or insurance broker to the effect that an insurer or provider has agreed to issue the policy, or
- (b) evidence that the premium for the policy has been received and accepted by the insurer or provider for the purposes of the issue of the policy, or
- (c) evidence that the local regulations provide is acceptable evidence for the purposes of this section.

### 101 Solicitors Mutual Indemnity Fund

- (1) The Company must maintain and manage a Solicitors Mutual Indemnity Fund.
- (2) The Indemnity Fund consists of:
  - (a) all money (including invested money) forming part of the Solicitors Mutual Indemnity Fund under the *Legal Profession Act 2004* immediately before the commencement of this section, and
  - (b) the money paid on account of the Indemnity Fund as annual contributions or as levies under this Division, and
  - (c) the interest or other income accruing from investment of the money in the Indemnity Fund, and
  - (d) any other money lawfully paid into the Indemnity Fund, and
  - (e) investments made under section 103, and
  - (f) other assets acquired as part of the Indemnity Fund.
- (3) The Company may arrange with an insurer for insurance of the Indemnity Fund or any part of it.
- (4) The Indemnity Fund is the property of the Law Society and may be used only for the purposes of this Division.

#### **102 Separate account**

The Indemnity Fund is to be kept in a separate account with an ADI in New South Wales with the name “Solicitors Mutual Indemnity Fund”.

#### **103 Investment of Indemnity Fund**

Money in the Indemnity Fund that is not immediately required for the purposes of the Fund may be invested:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer, or
- (c) in the purchase of securities or shares listed for quotation on a prescribed financial market (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth), or
- (d) in the acquisition of an interest in real estate in Australia, or
- (e) in bills of exchange drawn, accepted or endorsed by an ADI.

#### **104 Payments from Indemnity Fund**

- (1) There is payable from the Indemnity Fund in such order as the Company decides:
  - (a) the expenses incurred by the Company in carrying on its business, and
  - (b) premiums in respect of any approved insurance policy, and
  - (c) amounts determined by the Company towards meeting any difference between the indemnity provided by an approved insurance policy and the liability of a person insured under the policy, and
  - (d) other amounts determined by the Company.
- (2) The Company is required to pay from the Indemnity Fund the costs of an investigation of the Indemnity Fund, as referred to in section 109, in accordance with a direction given by the Attorney General under that section.
- (3) The Company may make determinations under subsection (1):
  - (a) that differ according to different circumstances, or
  - (b) that are subject to compliance with conditions imposed by the Company, or that do both.
- (4) The Company may:
  - (a) divide solicitors into classes approved by the Law Society Council, and
  - (b) under subsection (1) (c), make a different determination for each of the classes.

#### **105 Payments relating to defaulting insurers**

- (1) Payments may be made by the Company from the Indemnity Fund for the purpose of indemnifying any person who is insured under an approved insurance policy that was issued or renewed by a defaulting insurer, in accordance with arrangements approved from time to time by the Attorney General.
- (2) The Law Society and the Company may enter into an agreement with a defaulting insurer (including a provisional liquidator or liquidator of a defaulting insurer), or with any insured person, in connection with the payment of amounts from the Indemnity Fund under this section.

- (3) In particular, an agreement may provide for the following:
  - (a) the assignment or subrogation to the Company of the rights and remedies of a defaulting insurer or the insured person (or both) under or in connection with the approved insurance policy,
  - (b) the recovery by the Company from a defaulting insurer of any amount paid from the Indemnity Fund under this section.
- (4) Any payment made from the Indemnity Fund under this section, and any agreement entered into with an insured person under this section, does not prevent the recovery by the Company from a defaulting insurer of any amount that would have been recoverable by the insured person under or in connection with the approved insurance policy had the payment not been made or the agreement not been entered into.
- (5) Any amount recovered by the Company as a result of the exercise of its functions under this section (including its functions under an agreement referred to in this section) is to be paid into the Indemnity Fund. This does not apply to any amount that is payable to another person:
  - (a) under any other Act or law, or
  - (b) under any agreement referred to in this section, or
  - (c) under the local regulations.
- (6) Payments may be made from the Indemnity Fund for the purpose of meeting any reasonable costs and expenses incurred by the Company in exercising its functions under this section, including its functions under an agreement referred to in this section.
- (7) For the purposes of this section, an insurer under an approved insurance policy is a ***defaulting insurer*** if the Company is satisfied that:
  - (a) the insurer is unwilling or unable to meet any claims or other liabilities under the approved insurance policy, or
  - (b) a liquidator or provisional liquidator has been appointed in respect of the insurer, or
  - (c) the insurer has been dissolved.

#### **106 Contributions**

- (1) An insurable solicitor is liable to pay to the Indemnity Fund an annual contribution of an amount determined by the Company and approved by the Law Society Council. An insurable solicitor is also liable to pay to the Indemnity Fund such further amounts in respect of the annual contribution as may be determined by the Company and approved by the Law Society Council.
- (2) The Company may make a different determination under subsection (1) for a particular solicitor or class of solicitors.
- (3) If a solicitor applies for a practising certificate that will be in force for part only of a year commencing on 1 July, the contribution is such proportion of the total amount determined for the solicitor under subsection (1) as is borne to 1 year by the number of days for which the practising certificate will be in force.
- (4) A contribution required to be paid under this section must be paid to the Company on account of the Indemnity Fund.
- (5) The Company may permit a contribution to be paid by instalments under an arrangement approved by the Law Society Council.

#### 107 Levies

- (1) If the Company is at any time of the opinion that the assets of the Indemnity Fund may be insufficient to meet its liabilities, the Company may impose on each insurable solicitor a levy payable to the Company on account of the Indemnity Fund.
- (2) A levy is to be of such amount as the Company determines and may differ according to the different factors in relation to which contributions under this Division have been determined.
- (3) A levy is payable at the time, and in the manner, fixed by the Company which may, in a special case, allow time for payment.

#### 108 Failure to pay contribution or levy

- (1) If, after being given written notice, an insurable solicitor fails to pay a contribution, instalment of a contribution, or levy in accordance with section 106 or 107 or Schedule 7, the Company must report the failure to the Law Society Council.
- (2) The Law Society Council may, after receiving the report, suspend the insurable solicitor's Australian practising certificate while the failure continues.

#### 109 Investigation of Indemnity Fund

- (1) The Attorney General may at any time appoint an appropriately qualified person to conduct an investigation in relation to the Indemnity Fund, including in relation to any of the following:
  - (a) the state and sufficiency of the Indemnity Fund,
  - (b) the adequacy of the amount or rate of any contributions or levies paid or payable under this Division,
  - (c) the management of the Indemnity Fund by the Company, and the adequacy of the investment strategies being adopted by the Company,
  - (d) other matters relating to the Indemnity Fund as determined by the Attorney General.
- (2) The Company is to provide all reasonable assistance to the person appointed to conduct the investigation.
- (3) The person appointed to conduct the investigation is to report to the Attorney General on the result of the investigation.
- (4) The Attorney General may, by notice in writing served on the Company, require the Company to pay from the Indemnity Fund the costs of the investigation.
- (5) In this section, the *costs of the investigation* means:
  - (a) the reasonable costs and expenses incurred in connection with the investigation by the person appointed to conduct the investigation, and
  - (b) the reasonable cost of any remuneration paid to that person in connection with the investigation.

#### 110 Powers of investigators

- (1) For the purpose of conducting an investigation under section 109, an investigator may, by notice in writing served on any person, require the person to provide to the investigator the information or records relating to the Indemnity Fund or the Company's management of the Indemnity Fund that the investigator specifies in the notice.

- (2) The notice must specify the manner in which information or records are required to be provided and a reasonable time by which the information or records are required to be provided.
- (3) A person who, without reasonable excuse, neglects or fails to comply with a requirement made of the person under this section is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (4) A person who provides any information in purported compliance with a requirement made under this section, knowing that it is false or misleading in a material particular, is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (5) In this section:  
*investigator* means a person appointed by the Attorney General under section 109 to conduct an investigation in relation to the Indemnity Fund.

#### **Division 4      Incorporated legal practices**

##### **111    Application of this Division**

This Division applies to incorporated legal practices that are required by Part 4.4 of the *Legal Profession Uniform Law (NSW)* to hold or be covered by an approved insurance policy for this jurisdiction and that are not exempt from that requirement under that Part.

##### **112    Professional indemnity insurance for incorporated legal practices**

- (1) Division 3 applies to an incorporated legal practice in the same way as it applies to insurable solicitors, subject to any modifications determined by the Law Society Council or prescribed by the local regulations. The local regulations prevail over a determination of the Law Society Council under this subsection to the extent of any inconsistency.
- (2) Nothing in this section affects any obligation of an Australian legal practitioner who is an associate of an incorporated legal practice.

#### **Division 5      Miscellaneous**

##### **113    Application of Division 3 to other persons**

- (1) The Company may apply Division 3 (except any provisions prescribed by the local regulations) to others who:
  - (a) are not insurable solicitors, and
  - (b) are within a class of persons approved by the Law Society Council for the purposes of this section, and
  - (c) are insured under a policy of insurance that, if the persons were insurable solicitors, would be an approved insurance policy, and
  - (d) pay to the Indemnity Fund such contributions and levies as the Company determines and the Law Society Council approves.
- (2) Terms used in this section and also in Division 3 have the same meanings in this section as they have in that Division.

##### **114    Provisions relating to HIH insurance**

Schedule 7 contains provisions relating to HIH insurance.

## Part 9 Fidelity cover

### Note.

- The Legal Practitioners Fidelity Fund maintained under Division 1 of this Part is nominated as the fidelity fund of this jurisdiction for the purposes of Part 4.5 of the *Legal Profession Uniform Law (NSW)*—see section 15 of this Act.
- The Law Society Council is specified as the fidelity authority for the purposes of the definition of **fidelity authority** in section 6 of the *Legal Profession Uniform Law (NSW)*—see section 16 of this Act.

## Division 1 Legal Practitioners Fidelity Fund

### 115 Establishment of Legal Practitioners Fidelity Fund

- (1) The Law Society must maintain and manage a Legal Practitioners Fidelity Fund.
- (2) The Fidelity Fund consists of:
  - (a) all money (including invested money) forming part of the Legal Practitioners Fidelity Fund under the *Legal Profession Act 2004* immediately before the commencement of this section, and
  - (b) the money paid on account of the Fidelity Fund as annual contributions or as levies under Part 4.5 of the *Legal Profession Uniform Law (NSW)*, and
  - (c) the interest or other income accruing from investment of the money in the Fidelity Fund, and
  - (d) money paid to the Fidelity Fund from the Public Purpose Fund, and
  - (e) any other money lawfully paid to the Fidelity Fund.
- (3) The amount of an annual contribution or levy under Part 4.5 of the *Legal Profession Uniform Law (NSW)* requires the approval of the Attorney General despite that Part.
- (4) The Fidelity Fund is the property of the Law Society and is to be applied in accordance with this Part.

### 116 Establishment of separate Legal Practitioners Fidelity Fund Account

- (1) The Law Society must maintain with an ADI in New South Wales a separate account with the name “Legal Practitioners Fidelity Fund Account” and must pay to the credit of the account all money received on account of the Fidelity Fund.
- (2) The account is to be operated in the manner determined by the Law Society Council.

### 117 Investment of Fidelity Fund

Money in the Fidelity Fund that is not immediately required for the purposes of the Fund may be invested:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer.

### 118 Payments from Fidelity Fund

There is to be paid from the Fidelity Fund in such order as the Law Society Council decides:

- (a) premiums for insurance of the Fidelity Fund, and
- (b) legal expenses incurred in investigating or defending claims made against the Fidelity Fund, or against the Law Society in relation to the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund, and
- (c) the amount of a claim (including interest and costs) allowed or established against the Law Society in respect of the Fidelity Fund, and

- (d) the expenses of administering the Fidelity Fund, including allowances and travelling expenses for members of the Law Society Council and the Fidelity Fund Management Committee in connection with the exercise of their functions in relation to the Fidelity Fund, and
- (e) the costs of the Law Society Council in exercising its function under section 31, and
- (f) any other money payable from the Fidelity Fund under this Part or in respect of amounts paid or payable for the purposes of Chapter 6 (External intervention) of the *Legal Profession Uniform Law (NSW)* or under rules or regulations made under this Act.

**Note.** Section 240 (1) of the *Legal Profession Uniform Law (NSW)* provides that the fidelity authority (which is the Law Society Council) must ensure that claims against the Fidelity Fund are determined independently, at arm's length from the legal profession.

### **119 Management Committee**

- (1) The Law Society Council may by resolution delegate all or any of its functions in relation to the Fidelity Fund to a Management Committee consisting of:
  - (a) 3 or more persons who are members of the Council, and
  - (b) not more than 8 persons who are not members of the Council but are members of the Law Society.
- (2) The Law Society Council may by resolution rescind or vary a resolution made under subsection (1).
- (3) The Law Society Council may terminate a person's membership of the Committee and may fill the subsequent or any other vacancy.
- (4) At a meeting of the Committee, 3 members, including at least 1 member of the Law Society Council, constitute a quorum.
- (5) At a meeting of the Committee:
  - (a) a member of the Committee appointed for the purpose by the Law Society Council is to preside, or
  - (b) if he or she is absent from the meeting, another member of the Committee elected for the purpose by those present at the meeting is to preside.
- (6) The decision of a majority of the members present and voting at a meeting of the Committee is a decision of the Committee and, in the event of an equality of votes, the member presiding at the meeting is entitled to an additional vote as a casting vote.
- (7) The Committee may call, adjourn, and regulate the conduct of its meetings as it thinks fit.

### **120 Audit**

The Law Society Council must cause the accounts relating to the Fidelity Fund to be audited annually by a firm of accountants approved by the Attorney General.

### **121 Insurance**

- (1) The Law Society Council may arrange with an insurer for the insurance of the Fidelity Fund.
- (2) Without limiting subsection (1), the Law Society Council may arrange for the insurance of the Fidelity Fund against particular claims or particular classes of claims.

- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the Fidelity Fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.
- (4) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the Fidelity Fund.
- (5) In this section:  
*protected person* means:
  - (a) the Law Society or a member of the Law Society Council or the Fidelity Fund Management Committee, or
  - (b) a member of staff of or a person acting at the direction of the Law Society, Law Society Council or Fidelity Fund Management Committee.

## **Division 2 Claims about defaults**

### **122 Claims about defaults**

- (1) A person who suffers pecuniary loss because of a default to which Part 4.5 of the *Legal Profession Uniform Law (NSW)* applies may make a claim against the Fidelity Fund to the Law Society about the default.
- (2) A claim is to be made in writing in a form approved by the Law Society Council.
- (3) The Law Society Council may require the person who makes a claim to do either or both of the following:
  - (a) to give further information about the claim or any dispute to which the claim relates,
  - (b) to verify the claim, or any further information, by statutory declaration.
- (4) The Law Society Council must investigate a claim made to it, including the default to which it relates, and may do so in any manner it considers appropriate.

### **123 Availability of property of Law Society**

The Fidelity Fund is the only property of the Law Society available for the satisfaction of a successful claim.

## **Division 3 General**

### **124 Application of provisions of Uniform Law**

Part 4.5 of the *Legal Profession Uniform Law (NSW)* does not apply to a default of a law practice consisting of a barrister.



## Part 10 Mortgage practices

### 125 Definitions

(1) In this Part:

**ASIC exemption** means an exemption from the *Corporations Act 2001* of the Commonwealth given by the Australian Securities and Investments Commission under that Act.

**associate** of a solicitor—see subsection (2).

**borrower** means a person who borrows from a lender or contributor money that is secured by a mortgage.

**client** of a solicitor means a person who:

- (a) receives the solicitor's advice about investment in a regulated mortgage or managed investment scheme, or
- (b) gives the solicitor instructions to use money for a regulated mortgage or managed investment scheme.

**contributor** means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a solicitor.

**contributory mortgage** means a mortgage to secure money lent by 2 or more contributors as tenants in common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for or on behalf of those contributors.

**financial institution** means:

- (a) an ADI, or
- (b) a body that, immediately before 1 July 1999, was a society within the meaning of the *Friendly Societies (NSW) Code* or a body that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth, or
- (c) a trustee company within the meaning of the *Trustee Companies Act 1964*, or
- (d) a property trust or other body corporate established by or in respect of a church that may invest money in accordance with an Act, or
- (e) a corporation or other body, or a corporation or body of a class, prescribed by the local regulations for the purpose of this definition.

**lender** means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

**member** of a managed investment scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**regulated mortgage** means a mortgage (including a contributory mortgage) other than:

- (a) a mortgage under which the lender is a financial institution, or
- (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the solicitor who acts for the lender or contributors or by:
  - (i) an associate of the solicitor, or
  - (ii) an agent of the solicitor, or
  - (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors, or
- (c) a mortgage, or a mortgage of a class, that the local regulations prescribe as exempt from this definition.

**responsible entity** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**run-out mortgage** means a regulated mortgage that was entered into before 7 September 2001 (the date of commencement of section 117 of the *Legal Profession Act 1987*, as inserted by the *Legal Profession Amendment (Mortgage Practices) Act 2000*), which is not:

- (a) a State regulated mortgage, or
- (b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the *Corporations Act 2001* of the Commonwealth (as modified by any ASIC exemption or the regulations under that Act).

**State regulated mortgage** is defined in section 126.

**State regulated mortgage practice** means a solicitor's practice in respect of which a nomination made in accordance with section 128 is in force.

- (2) In this Part, a reference to an associate of a solicitor is a reference to:
  - (a) a partner of the solicitor, whether or not the partner is a solicitor, or
  - (b) an employee or agent of the solicitor, or
  - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the solicitor or a person referred to in paragraph (a), (b) or (e) has a beneficial interest, or
  - (d) a co-trustee of the solicitor, or
  - (e) a person who bears a prescribed relationship to the solicitor or to a person referred to in paragraphs (a)–(d), or
  - (f) a corporation that (if the solicitor or a person referred to in paragraphs (a)–(e) were, or is, a corporation) would be, or is, a subsidiary of the solicitor or person within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (g) a person prescribed by the local regulations as an associate of the solicitor.
- (3) For the purposes of subsection (2) (e), a person bears a prescribed relationship to a solicitor or other person if the relationship is that of:
  - (a) a spouse, or
  - (b) a de facto partner, or
  - (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
  - (d) a kind prescribed by the local regulations for the purposes of this section.

**Note.** "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

## 126 State regulated mortgages—meaning

For the purposes of this Part, a **regulated mortgage** is a State regulated mortgage, in relation to a solicitor, if:

- (a) the solicitor's practice is a State regulated mortgage practice, and
- (b) the regulated mortgage does not form part of a managed investment scheme or, if it does form part of a managed investment scheme, the managed investment scheme is not required to be operated by a responsible entity under the *Corporations Act 2001* of the Commonwealth (as modified by any ASIC exemption or the regulations under the *Corporations Act 2001* of the Commonwealth).

## 127 Conduct of mortgage practices

- (1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage unless:
  - (a) the mortgage is a State regulated mortgage, or
  - (b) the mortgage is a run-out mortgage, or
  - (c) the mortgage forms part of a managed investment scheme that is operated by a responsible entity.
- (2) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage except in accordance with:
  - (a) the *Corporations Act 2001* of the Commonwealth, or that Act as modified by any ASIC exemption or the regulations under that Act, and
  - (b) this Act and the local regulations.
- (3) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage that forms part of a managed investment scheme unless the solicitor complies with any ASIC exemption that applies to managed investment schemes that:
  - (a) have more than 20 members, and
  - (b) are operated under the supervision of the Law Society in accordance with that exemption.

This subsection applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.
- (4) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.
- (5) A solicitor who knows that an associate has contravened a requirement referred to in subsection (1), (2) or (3) must notify the Law Society Council of that fact in writing within 21 days after becoming aware of the contravention.
- (6) A contravention of this section is capable of being professional misconduct.

## 128 Nomination of practice as State regulated mortgage practice

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage, or who proposes to do so, may, by notice in writing given to the Law Society Council, nominate the solicitor's practice as a State regulated mortgage practice.
- (2) A nomination may, with the approval of the Law Society Council, be made for a solicitor by another solicitor (for example, by a solicitor on behalf of members of a firm of solicitors).
- (3) A nomination of a solicitor's practice as a State regulated mortgage practice takes effect on the date the notice of the nomination is given to the Law Society Council.
- (4) A nomination ceases to be in force in respect of a solicitor if:
  - (a) the solicitor revokes the nomination by notice in writing given to the Law Society Council, or
  - (b) the solicitor ceases to be an Australian legal practitioner, or
  - (c) the Law Society Council, by notice in writing served on the solicitor, rejects the nomination of the solicitor's practice.
- (5) A nomination under this section is to include such information as may be required by the local regulations.

**129 Requirement to notify Law Society of State regulated mortgages**

- (1) 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 State regulated mortgage must give the Law Society Council notice in writing of that fact in accordance with the local regulations.  
Maximum penalty: 50 penalty units.
- (2) A contravention of this section is capable of being professional misconduct.

**130 Solicitor to have fidelity cover in respect of regulated mortgages**

- (1) 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 must ensure that an approved insurance policy of fidelity insurance is in force in respect of the solicitor for the purpose of compensating persons who suffer pecuniary loss because of any dishonest failure to pay money payable under the mortgage.
- (2) A policy of fidelity insurance is an approved policy of fidelity insurance if:
  - (a) the Law Society Council is of the opinion that the terms of the policy comply with agreed national standards for fidelity insurance for solicitors, and
  - (b) the policy is not to expire before the expiration of the local practising certificate of the solicitor to whom the policy relates, and
  - (c) the insurer and the terms of the policy have been approved by the Attorney General by order in writing given to the Law Society, and
  - (d) any conditions imposed by the order are complied with.
- (3) 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 without ensuring that an approved policy of fidelity insurance is in force in respect of the solicitor in accordance with this section is guilty of an offence.  
Maximum penalty: 50 penalty units.
- (4) A contravention of this section is capable of being professional misconduct.
- (5) A contravention of this section does not limit the operation of section 131 (Bar on claims against Fidelity Fund relating to regulated mortgages).
- (6) This section does not apply in respect of any regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

**131 Bar on claims against Fidelity Fund relating to regulated mortgages**

A person who is a lender or contributor under a regulated mortgage is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for a pecuniary loss if the claim relates to a regulated mortgage in respect of which a solicitor is required to have fidelity insurance under section 130 (Solicitor to have fidelity cover in respect of regulated mortgages).

**132 Notification of insurance arrangements for regulated mortgage**

- (1) If a client entrusts money to a solicitor and the money, or part of the money, is proposed to be advanced to a borrower for a regulated mortgage, the solicitor must, within 7 days after the money is entrusted to the solicitor, give the client a notice in writing that:
  - (a) advises the client of the effect of section 131, and
  - (b) includes details of the policy of fidelity insurance referred to in section 130 (1).

- (2) The solicitor must not advance any of the money to a borrower for a regulated mortgage unless:
  - (a) the client has been given the notice referred to in subsection (1), and
  - (b) after having been given that notice, the client has given the solicitor a specific authority in writing to advance the money for that mortgage.
- (3) A contravention of this section is capable of being professional misconduct.
- (4) A contravention of this section does not limit the operation of section 131.
- (5) This section does not apply in respect of a regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

**133 Failure to obtain fidelity insurance for regulated mortgage**

- (1) The Law Society Council must not grant a practising certificate to an Australian lawyer who is or will be required to comply with section 130 unless it is satisfied that:
  - (a) there is, or will be, in force with respect to the Australian lawyer an approved insurance policy within the meaning of Part 8 of this Act and Part 4.4 of the *Legal Profession Uniform Law (NSW)*, and
  - (b) the policy is, or will be, in force with respect to the Australian lawyer during the currency of the lawyer's practising certificate.
- (2) The Law Society Council must suspend the local practising certificate of a solicitor who is required to comply with section 130 if it is not satisfied that:
  - (a) there is in force with respect to the solicitor an approved policy of fidelity insurance within the meaning of section 130, and
  - (b) the policy is in force with respect to the solicitor during the currency of the solicitor's practising certificate.

**134 Part extends to pre-existing mortgages**

Schedule 8 contains provisions of a savings and transitional nature in connection with the operation of this Part.

## **Part 11 Procedures of NCAT as designated tribunal for disciplinary matters**

### **135 Purpose of this Part and definitions**

- (1) The purpose of this Part is to provide for the procedures of the designated tribunal as contemplated by section 301 of the *Legal Profession Uniform Law (NSW)*. Some procedures are covered by the *Civil and Administrative Tribunal Act 2013*.
- (2) In this Part:  
*disciplinary application* means an application made to the Tribunal (as designated tribunal) under section 300 of the *Legal Profession Uniform Law (NSW)* with respect to a respondent lawyer.  
*Tribunal* means NCAT.
- (3) A reference in this Part to the NSW Commissioner (as designated local regulatory authority) in a particular context includes, where relevant in that context, a reference to a delegate of the NSW Commissioner.

### **136 Proceedings may involve one or more matters**

Proceedings initiated in the Tribunal may relate to one or more matters that involve or may involve unsatisfactory professional conduct or professional misconduct.

### **137 Time for initiating proceedings**

- (1) A disciplinary application may be made to the Tribunal at any time within 6 months after the NSW Commissioner decides to initiate proceedings in the Tribunal with respect to the alleged conduct.
- (2) Despite subsection (1), the Tribunal may, on application in writing by the NSW Commissioner, extend the time for making a disciplinary application.
- (3) In exercising the power to extend the time for making a disciplinary application, the Tribunal is to have regard to all the circumstances of the case, and without limitation the Tribunal is to have regard to the following:
  - (a) the public interest,
  - (b) the extent to which, having regard to the delay, there is or may be prejudice to the lawyer concerned because evidence that would have been available if the application had been made within the 6-month period is no longer available,
  - (c) the reasonableness of the applicant's explanation for the delay in making the application.
- (4) The time for making a disciplinary application may be extended under subsection (2) even if that time has expired.
- (5) An official record or notification of a decision referred to in subsection (1) and stating the date the decision was made is evidence that the decision was made and of the date the decision was made.

### **138 Hearings**

The Tribunal is to conduct a hearing into each allegation particularised in a disciplinary application made to the Tribunal.

### **139 Joinder**

The Tribunal may, subject to its rules and the rules of procedural fairness, order the joinder of more than one disciplinary application against the same or different respondent lawyers.

#### **140 Variation of disciplinary application**

- (1) The Tribunal may vary a disciplinary application, on the application of the person who made the disciplinary application or on its own motion, so as to omit allegations or to include additional allegations, if satisfied that it is reasonable to do so having regard to all the circumstances.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary a disciplinary application, the Tribunal is to have regard to whether varying the disciplinary application will affect the fairness of the proceedings.
- (3) The inclusion of an additional allegation is not precluded on any or all of the following grounds:
  - (a) the additional allegation has not been the subject of a complaint,
  - (b) the additional allegation has not been the subject of an investigation,
  - (c) the alleged conduct concerned occurred more than 3 years ago.

#### **141 Nature of allegations**

- (1) A disciplinary application in respect of a complaint cannot be challenged on the ground that the allegations contained in the application do not deal with all of the matters raised in the complaint or deal differently with matters raised in the complaint or deal with additional matters.
- (2) This section applies whether the allegations were included in the disciplinary application as made to the Tribunal or were included by way of variation of the application.

#### **142 Substitution of applicant**

- (1) If a disciplinary application was made by the NSW Commissioner (but not a delegate of the NSW Commissioner), the Tribunal may, on the application of the NSW Commissioner or the Bar Council or Law Society Council, and if satisfied that it is appropriate to do so, direct that a Council is to be regarded as the applicant in connection with the disciplinary application.
- (2) If a disciplinary application was made by a delegate of the NSW Commissioner, the Tribunal may, on the application of the NSW Commissioner or the delegate, and if satisfied that it is appropriate to do so, direct that the NSW Commissioner is to be regarded as the applicant in connection with the disciplinary application.
- (3) This section has effect even if a hearing of the matter has commenced before the Tribunal.

#### **143 Interlocutory and interim orders**

The Tribunal may make interlocutory or interim orders as it thinks fit before making its final decision about a complaint against a respondent lawyer.

#### **144 Consent orders**

- (1) The Tribunal may, with the consent of the respondent lawyer contained in a written instrument, make orders without conducting or completing a hearing in relation to the complaint.
- (2) Consent may be given before or after the proceedings were initiated in the Tribunal with respect to the complaint.

- (3) If consent is given before the proceedings were initiated, an investigation of the complaint (whether commenced or not) may be dispensed with, and any investigation of the complaint already being conducted may be suspended or terminated.
- (4) This section does not apply to consent given by the respondent lawyer unless the lawyer and the NSW Commissioner have agreed on the terms of an instrument of consent.
- (5) Without limiting what may be included in the instrument of consent, the instrument is to contain an agreed statement of facts (including as to the grounds of complaint) and may contain undertakings on the part of the respondent lawyer.
- (6) The instrument of consent must be filed with the Tribunal.
- (7) Nothing in this section affects the procedures regarding the initiation of proceedings in the Tribunal where consent was given before the proceedings are initiated.
- (8) If consent was given before the proceedings are initiated, the proceedings are nevertheless to be initiated with respect to the complaint in the same way as if the consent had not yet been given.
- (9) The Tribunal is to be constituted in the same way as for the conduct of a hearing into the complaint.
- (10) In deciding whether to make orders pursuant to an instrument of consent, the Tribunal may make such inquiries of the parties as it thinks fit and may, despite any such consent, conduct or complete a hearing in relation to the complaint if it considers it to be in the public interest to do so.

#### **145 Compliance with determinations and orders**

- (1) Persons and bodies having relevant powers or functions under this Act or the *Legal Profession Uniform Law (NSW)* must:
  - (a) give effect to any order of the Tribunal made under the provisions of this Part or Division 3 of Part 5.4 of the *Legal Profession Uniform Law (NSW)* that requires official implementation in this jurisdiction, and
  - (b) enforce any order of the Tribunal made under any of those provisions that requires compliance by an Australian legal practitioner (except to the extent that the order relates to the practitioner's practice of law in another jurisdiction).

**Note.** Section 461 of the *Legal Profession Uniform Law (NSW)* contains provisions relating to compliance in this jurisdiction with recommendations or orders made under corresponding laws.
- (2) The applicant that made the disciplinary application concerned must ensure that persons and bodies having relevant powers or functions under a corresponding law of another jurisdiction are notified of the making and contents of:
  - (a) any order of the Tribunal made under the provisions of this Part or Division 3 of Part 5.4 of the *Legal Profession Uniform Law (NSW)* that requires official implementation in the other jurisdiction, and
  - (b) any order of the Tribunal made under any of those provisions that requires compliance by an Australian legal practitioner (except to the extent that the order relates to the practitioner's practice of law in another jurisdiction).
- (3) If the Tribunal makes an order that an Australian legal practitioner pay a fine, a copy of the order may be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount of the fine and the order may be enforced as if it were an order of the court.



- (4) Any fine imposed by the Tribunal must be paid in the manner and within the period specified by the Tribunal and is to be paid to the Public Purpose Fund.

**146 Notification of progress and result of proceedings before Tribunal**

- (1) The applicant in connection with a disciplinary application made to the Tribunal must cause the complainant to be notified in writing of the determination of the Tribunal.
- (2) This section does not apply in relation to a complaint made by the NSW Commissioner.

**147 Early termination of proceedings before Tribunal**

- (1) Proceedings before the Tribunal with respect to a complaint cannot be terminated, whether by withdrawal of the disciplinary application or otherwise, before the Tribunal makes its final decision about the complaint, without the leave of the Tribunal.
- (2) The Tribunal may give leave for the purposes of this section if it is satisfied that continuation of the proceedings is not warranted in the public interest.

## Part 12 Registers and publicising disciplinary action

### 148 Definition

In this Part:

**disciplinary action** against an Australian legal practitioner means any of the following actions taken under a law of this or another jurisdiction, whether or not taken under Chapter 5 of the *Legal Profession Uniform Law (NSW)* or under provisions of a corresponding law that correspond to that Chapter:

- (a) the suspension or cancellation of the Australian practising certificate of the practitioner (other than a suspension or cancellation at the request or with the concurrence of the holder of the certificate that is not connected with a disciplinary matter),
- (b) the refusal to grant or renew an Australian practising certificate applied for by the practitioner (other than a refusal on the ground that the practitioner is not eligible to apply for the grant or renewal),
- (c) the removal of the name of the practitioner from a roll of persons admitted as lawyers in Australia,
- (d) the making of an order by a court or tribunal, or by another person or body, for or following a finding of unsatisfactory professional conduct or professional misconduct by the practitioner, other than an order cautioning the practitioner,
- (e) the reprimanding of the practitioner, or the making of a compensation order against the practitioner, by a person or body without a formal finding of unsatisfactory professional conduct or professional misconduct,
- (f) the appointment of a manager or receiver for a legal practice of which the practitioner is a legal practitioner associate, where the associate is specified or referred to in the notice of appointment served on the law practice.

### 149 Register of local practising certificates

- (1) The appropriate Council must keep a register of the names of Australian lawyers to whom it grants local practising certificates.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the following:
  - (a) the information that may or must be included in the register,
  - (b) the notification by local legal practitioners to the appropriate Council of changes of particulars,
  - (c) the notification by the appropriate Council to other authorities of particulars contained in the register,
  - (d) the removal of information from the register relating to former holders of certificates.
- (4) The register must state the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice.
- (5) A condition imposed on a local practising certificate relating to infirmity, injury or mental or physical illness is not to be stated on the register unless:
  - (a) the condition restricts the holder's right to engage in legal practice, or
  - (b) the holder consents to the condition being stated on the register.

- (6) The register may be kept in a form determined by the appropriate Council.
- (7) The appropriate Council may publish, in circumstances that it considers appropriate, the names of persons kept on the register and any other information included in the register concerning those persons.
- (8) The register must be available for inspection, without charge, at the appropriate Council's office during normal business hours.

**150 Register of local registration certificates**

- (1) The appropriate Council must keep a register of the names of persons to whom it grants local registration certificates.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register must state the conditions (if any) imposed on a foreign lawyer's registration.
- (5) The register may be kept in a form determined by the appropriate Council.
- (6) The register must be available for inspection, without charge, at the appropriate Council's office during normal business hours.

**151 Register of disqualification orders and approvals**

- (1) The appropriate Council must keep a register of:
  - (a) orders made under section 119 or 120 of the *Legal Profession Uniform Law (NSW)* on its application, and
  - (b) approvals given by it under section 121 (2) of that Law.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)*. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register may be kept in a form determined by the appropriate Council.
- (5) The register must be available for inspection, without charge, at the appropriate Council's office during normal business hours, but only if the inspection is made by an Australian legal practitioner.

**152 Register of Disciplinary Action**

- (1) The NSW Commissioner must keep a register (in this Act referred to as the ***Register of Disciplinary Action***) of:
  - (a) disciplinary action taken under a law of this jurisdiction against Australian legal practitioners, and
  - (b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred, and

- (c) disciplinary action taken under a corresponding law against Australian legal practitioners who are enrolled or practising in this jurisdiction if the disciplinary action was recorded on a register of disciplinary action kept under the corresponding law when the practitioner became enrolled or commenced to practise in this jurisdiction.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register may be kept in a form determined by the NSW Commissioner.
- (5) The register is to be made available for public inspection on:
  - (a) the internet site of the NSW Commissioner, or
  - (b) an internet site identified on the internet site of the Commissioner.
- (6) Information recorded in the register may be provided to members of the public in any other manner approved by the NSW Commissioner.
- (7) The NSW Commissioner may cause any error in or omission from the register to be corrected.
- (8) The requirement to keep the register applies only in relation to disciplinary action taken after the commencement of section 577 of the *Legal Profession Act 2004*, but details relating to earlier disciplinary action may be included in the register.
- (9) A Council or NCAT must provide to the NSW Commissioner sufficient information to enable the Commissioner to exercise the Commissioner's functions in respect of the register.

**153 Other means of publicising disciplinary action**

- (1) The NSW Commissioner or a Council may publicise disciplinary action taken against an Australian legal practitioner in any manner the Commissioner or Council thinks fit.
- (2) Nothing in this section affects the provisions of this Part relating to the Register of Disciplinary Action.

**154 Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register of Disciplinary Action.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the NSW Commissioner or a Council under section 153, the result of the appeal or review must be publicised with equal prominence by the Commissioner or Council.

**155 Liability for publicising disciplinary action**

- (1) No liability is incurred by a protected person in respect of anything done, or omitted to be done, in good faith for the purpose of:
  - (a) publicising disciplinary action taken against an Australian legal practitioner, or

- (b) exercising the powers or functions of the NSW Commissioner or a Council under sections 151–153, or
  - (c) keeping, publishing or enabling access to the Register of Disciplinary Action.
- (2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith:
- (a) information about disciplinary action:
    - (i) recorded in the Register of Disciplinary Action, or
    - (ii) otherwise publicised by the NSW Commissioner or a Council under this Part,or matter purporting to contain information of that kind where the matter is incorrect in any respect, or
  - (b) a fair report or summary of that information.
- (3) In this section:
- protected person*** means:
- (a) the State, or
  - (b) the NSW Commissioner, or
  - (c) a Council, or
  - (d) a person responsible for keeping the whole or any part of the Register of Disciplinary Action, or
  - (e) an internet service provider or internet content host, or
  - (f) a member of staff of or a person acting at the direction of an authority of the State or any person or body referred to in this definition.

#### **156 Disciplinary action taken where infirmity, injury or illness is involved**

- (1) Disciplinary action taken against a person is not to be recorded in the Register of Disciplinary Action or otherwise publicised under this Part if the action was taken because of the person's inability properly to carry out the requirements of legal practice and the inability arises wholly or principally from infirmity, injury or mental or physical illness.
- (2) Subsection (1) does not apply where the disciplinary action involves:
  - (a) the suspension or cancellation of the person's Australian practising certificate, or
  - (b) a refusal to grant or renew an Australian practising certificate applied for by the person, or
  - (c) a restriction or prohibition on the person's right to engage in legal practice, but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register of Disciplinary Action or otherwise publicised under this Part without the person's consent.

#### **157 Effect of secrecy provisions and non-disclosure orders**

- (1) The provisions of this Part apply despite any confidentiality or secrecy provisions of this Act or the *Legal Profession Uniform Law (NSW)*.
- (2) The provisions of this Part are subject to any order made by:
  - (a) NCAT in relation to disciplinary action taken under the *Legal Profession Uniform Law (NSW)*, or

- (b) a corresponding authority in relation to disciplinary action taken under provisions of a corresponding law that correspond to that Law, or
  - (c) a court or tribunal of this or another jurisdiction,  
so far as the order prohibits or restricts the disclosure of information.
- (3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register of Disciplinary Action in accordance with the requirements of this Part and may be otherwise publicised under this Part.

## Part 13 Miscellaneous

### 158 Information sharing

The NSW Commissioner and the Councils may share information for the purposes of performing their functions under this Act and the *Legal Profession Uniform Law (NSW)*.

### 159 Liability of principals

Section 35 of the *Legal Profession Uniform Law (NSW)* applies in relation to a contravention by a law practice of a provision of this Act imposing an obligation on the law practice in the same way as it applies in relation to a contravention by a law practice of a provision of the *Legal Profession Uniform Law (NSW)* imposing an obligation on the law practice.

### 160 Prohibition of official schemes for recognition of seniority or status

- (1) Any prerogative right or power of the Crown to appoint persons as Queen's Counsel or to grant letters patent of precedence to counsel remains abrogated.
- (2) Nothing in this section affects the appointment of a person who was appointed as Queen's Counsel before the commencement of this section.
- (3) Nothing in this section abrogates any prerogative right or power of the Crown to revoke such an appointment.
- (4) No law or practice prevents a person who was Queen's Counsel immediately before the commencement of this section from continuing to be Queen's Counsel while a barrister or solicitor.
- (5) Executive or judicial officers of the State have no authority to conduct a scheme for the recognition or assignment of seniority or status among legal practitioners.
- (6) Nothing in subsection (5) prevents the publication of a list of legal practitioners in the order of the dates of their admission, or a list of barristers or solicitors in the order of the dates of their becoming barristers or solicitors, or a list of Queen's Counsel in their order of seniority.
- (7) In this section:  
*executive or judicial officers* includes the Governor, Ministers of the Crown, Parliamentary Secretaries, statutory office holders, persons employed in the Public Service or by the State, an authority of the State or another public employer, and also includes judicial office holders or persons acting under the direction of the Chief Justice of New South Wales or other judicial office holder.

*Queen's Counsel* means one of Her Majesty's Counsel learned in the law for the State of New South Wales and extends to King's Counsel where appropriate.

### 161 Defect or irregularity in person's appointment

A defect or irregularity in the appointment of any person exercising, or purporting to exercise, a function under this Act or the *Legal Profession Uniform Law (NSW)* does not invalidate an act or omission done or omitted by the person in good faith.

### 162 Approved forms

- (1) An authority having a function under this Act may approve forms for use in connection with that function.
- (2) The local regulations may make provision for or with respect to the approval of forms for use under or in connection with this Act or the local regulations.

### 163 Delegation

- (1) A person or body having functions under this Act may delegate in writing all or any of those functions to a person or persons if the local regulations authorise the delegation of the functions to the person or persons.
- (2) Subsection (1) does not apply in respect of the functions of the NSW Commissioner, Bar Council or Law Society Council under this Act.

**Note.** Sections 28, 30 and 32 provide for the delegation of functions of the NSW Commissioner, Bar Council and Law Society Council.

### 164 Protection from liability

- (1) No liability attaches to a relevant person for any act or omission done or omitted in good faith and in the exercise or purported exercise of functions under this Act or the local regulations.
- (2) In this section:  
*relevant person* means:
  - (a) the NSW Admission Board or a member of the Board, or
  - (b) the NSW Commissioner, or
  - (c) the Bar Association or the Bar Council, or their committees, or a member of the Bar Council, or
  - (d) the Law Society or the Law Society Council, or their committees, including a Management Committee to which a function is delegated under section 119, or a member of the Law Society Council, or
  - (e) the Company referred to in Part 8 (Professional indemnity insurance) or its directors, or
  - (f) the Trustees of the Public Purpose Fund, or
  - (g) NCAT or any member of NCAT, or
  - (h) a registrar of NCAT, or
  - (i) a delegate of any of the entities referred to in paragraphs (a)–(h), to the extent delegation is permitted under this Act or the *Legal Profession Uniform Law (NSW)*, or
  - (j) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a)–(i).

### 165 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, the local regulations or the *Legal Profession Uniform Law (NSW)*, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the local regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.



- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The local regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (10) In this section, **authorised officer** means a person who is designated by the local regulations as an authorised officer for the purposes of this section.

#### 166 Local regulations

- (1) The Governor may make regulations (**local regulations**), not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the local regulations may make provision for or with respect to:
  - (a) fixing fees for admission to the Australian legal profession in New South Wales, including:
    - (i) the manner of paying fees (including the person or body to whom they are payable), and
    - (ii) the manner of allocating the proceeds of fees between the NSW Admission Board and the Department of Attorney General and Justice, and
    - (iii) the waiver, postponement or refund of fees, and
  - (b) prescribing delegates or classes of delegates of local regulatory authorities, as contemplated by section 406 of the *Legal Profession Uniform Law (NSW)*, and
  - (c) exempting an industrial or similar organisation that is registered under prescribed legislation of a jurisdiction or of the Commonwealth, and that is engaged in legal practice in this jurisdiction, from section 10 (1) of the *Legal Profession Uniform Law (NSW)* but only to the extent (if any) specified in the relevant local regulation.
- (3) A local regulation may create an offence punishable by a penalty not exceeding:
  - (a) 20 penalty units in the case of an individual, and
  - (b) 100 penalty units in any other case.
- (4) The local regulations may make provision for or with respect to any matters for or with respect to which costs assessment rules may be made under Part 7. References in that Part to the costs assessment rules include references to any provisions of the local regulations so made, but provisions made prevail over the costs assessment rules to the extent of any inconsistency.

- (5) The local regulations may provide that an application may be made to NCAT for an administrative review under the *Administrative Decisions Review Act 1997* of a specified decision or class of decisions made by a specified person or body in the exercise of functions conferred or imposed by or under this Act, the local regulations, the *Legal Profession Uniform Law (NSW)* or the Uniform Rules as they apply in this jurisdiction.

**167 Repeals**

The following are repealed:

- (a) the *Legal Profession Act 2004* No 112,
- (b) the *Legal Profession Regulation 2005*.

## Schedule 1 Maximum costs in personal injury damages matters

### 1 Interpretation and application

- (1) In this Schedule:
- defendant* means a person against whom a claim for personal injury damages is or may be made.
- party* means plaintiff or defendant.
- personal injury damages* has the same meaning as in Part 2 of the *Civil Liability Act 2002*.
- plaintiff* means a person who makes or is entitled to make a claim for personal injury damages.
- (2) This Schedule does not apply to the following costs:
- (a) costs for legal services provided in respect of a claim under the *Motor Accidents Act 1988* or *Motor Accidents Compensation Act 1999*,
  - (b) costs for legal services provided in respect of a claim for work injury damages (as defined in the *Workplace Injury Management and Workers Compensation Act 1998*),
  - (c) costs for legal services provided in respect of a claim for damages in proceedings of the kind referred to in section 11 (Claims for damages for dust diseases etc to be brought under this Act) of the *Dust Diseases Tribunal Act 1989*.

### 2 Maximum costs fixed for claims up to \$100,000

- (1) If the amount recovered on a claim for personal injury damages does not exceed \$100,000, the maximum costs for legal services provided to a party in connection with the claim are fixed as follows:
- (a) in the case of legal services provided to a plaintiff—maximum costs are fixed at 20% of the amount recovered or \$10,000, whichever is greater,
  - (b) in the case of legal services provided to a defendant—maximum costs are fixed at 20% of the amount sought to be recovered by the plaintiff or \$10,000, whichever is greater.
- (2) The local regulations may prescribe an amount to replace the amount of \$100,000 or \$10,000 in subclause (1) and may prescribe a percentage to replace the percentage of 20% in subclause (1). When such a replacement amount or percentage is prescribed, it applies for the purposes of subclause (1) in place of the amount or percentage that it replaces.
- (3) The local regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this clause.
- (4) When the maximum costs for legal services provided to a party are fixed by this Schedule the following provisions apply (subject to clauses 4–6):
- (a) a law practice is not entitled to be paid or recover for those legal services an amount that exceeds those maximum costs,
  - (b) a court or tribunal cannot order the payment by another party to the claim of costs in respect of those legal services in an amount that exceeds that maximum,
  - (c) in assessing the amount of those costs that is a fair and reasonable amount, a costs assessor cannot determine an amount that exceeds the maximum set by this clause.

- (5) In this Schedule:
  - (a) a reference to legal services provided to a party is a reference to legal services provided to the party by a law practice (including by an associate of the law practice), and
  - (b) a reference to costs for legal services does not include costs charged as disbursements for services provided by any other person or other disbursements.
- (6) If proceedings are commenced on a claim, the amount sought to be recovered by the plaintiff is taken to be the amount sought to be proved by the plaintiff at the hearing of the claim.
- (7) Maximum costs fixed by this Schedule apply despite local regulations under section 59 (1) (b) fixing those costs.

### **3 Maximum costs increased by additional amount for certain claims heard by District Court**

- (1) This clause applies to a claim for personal injury damages in respect of which the amount recovered does not exceed \$100,000 that is made by proceedings heard by the District Court.
- (2) If the District Court has referred the proceedings to arbitration and, following the arbitration, made an order for a full or limited rehearing of the proceedings concerned on the application of a party, the maximum costs fixed by this Schedule for legal services provided in connection with the claim to the other party are increased by the additional amount.
- (3) If the decision of the District Court in respect of a claim is the subject of an appeal, the maximum costs fixed by this Schedule for legal services provided in connection with the claim to the party who is the respondent to the appeal are increased by the additional amount or, if subclause (2) also applies to legal services provided to the respondent, by 2 times the additional amount.
- (4) For the purposes of this section, the *additional amount* is:
  - (a) in the case of legal services provided to the plaintiff—15% of the amount recovered, or \$7,500, whichever is the greater, and
  - (b) in the case of legal services provided to the defendant—15% of the amount sought to be recovered by the plaintiff, or \$7,500, whichever is the greater.
- (5) The local regulations may prescribe a percentage to replace the percentage of 15% in subclause (4) and may prescribe an amount to replace the amount of \$7,500 in subclause (4). When such a replacement percentage or amount is prescribed, it applies for the purposes of subclause (4) in place of the percentage or amount that it replaces.
- (6) The local regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this clause.

### **4 Maximum costs do not affect solicitor-client costs under costs agreements**

- (1) This Schedule does not apply to the recovery of costs payable as between a law practice and the practice's client to the extent that recovery of those costs is provided for by a costs agreement that complies with Division 4 of Part 4.3 of the *Legal Profession Uniform Law (NSW)*.
- (2) The local regulations may make provision for or with respect to requiring disclosure by a law practice to the practice's client of information in relation to the effect of a costs agreement in connection with the operation of this Schedule.

- (3) The local regulations may provide that a failure by a law practice to comply with the requirements of the local regulations under this clause disentitles the law practice to the benefit of this clause, and in such a case this Schedule applies in respect of the claim concerned despite the terms of any costs agreement.

**5 Costs can be awarded on indemnity basis for costs incurred after failure to accept offer of compromise**

- (1) If a party to a claim for personal injury damages makes a reasonable offer of compromise on the claim that is not accepted, this Schedule does not prevent the awarding of costs against another party to be assessed on an indemnity basis in respect of legal services provided after the offer is made.
- (2) An offer of compromise on a claim by a party is reasonable if the court determines or makes an order or award on the claim in terms that are no less favourable to the party than the terms of the offer.
- (3) The local regulations may make provision for or with respect to requiring disclosure by a law practice to the practice's client of information in relation to the operation of this clause in respect of any refusal by the client to accept an offer of compromise.
- (4) If it appears to the court in which proceedings are taken on a claim for personal injury damages that a law practice has failed to comply with any provision of the local regulations under this clause, and that the client of the practice has incurred an increased liability for costs as a result of refusing a reasonable offer of compromise in connection with the claim concerned, the court may of its own motion or on the application of the client make either or both of the following orders:
  - (a) an order directing the law practice to repay to the client the whole or any part of those increased costs that the client has been ordered to pay to any other party,
  - (b) an order directing the law practice to indemnify any party other than the client against the whole or any part of the costs payable by the party indemnified in respect of legal services provided after the offer is refused.

**6 Court may order certain legal services to be excluded from maximum costs limitation**

A court hearing a claim for personal injury damages may by order exclude from the operation of this Schedule legal services provided to a party to the claim if the court is satisfied that the legal services were provided in response to any action on the claim by or on behalf of the other party to the claim that in the circumstances was not reasonably necessary for the advancement of that party's case or was intended or reasonably likely to unnecessarily delay or complicate determination of the claim.

**7 Apportionment of maximum costs between law practices**

- (1) If more than one law practice provides legal services to a party in connection with a claim, the maximum costs fixed by this Schedule are to be apportioned between them as agreed by them or (failing agreement) as ordered by the court hearing proceedings on the claim.

**Note.** For example, this provision would apply in relation to the provision of legal services by both a firm of solicitors and a barrister.
- (2) The maximum then applicable to a particular law practice is the law practice's apportioned share of those maximum costs.

**8 Meaning of "amount recovered" on a claim**

- (1) A reference in this Schedule to the amount recovered on a claim includes any amount paid under a compromise or settlement of the claim (whether or not legal proceedings have been instituted).

- (2) In determining the amount recovered on a claim for personal injury damages, no regard is to be had to any part of the amount recovered that is attributable to costs or to the addition of interest.

## **Schedule 2 Costs in civil claims where no reasonable prospects of success**

### **1 Application of Schedule**

#### **(1) Schedule extends to appeals**

This Schedule extends to legal services in connection with proceedings in a court on appeal as well as a court at first instance.

#### **(2) Legal services provided by both barrister and solicitor**

If legal services in relation to a particular matter are provided by both a solicitor and a barrister instructed by the solicitor, any function imposed by this Schedule on a law practice in respect of the provision of the services is to be read as imposing the function on both the solicitor and barrister.

### **2 Law practice not to act unless there are reasonable prospects of success**

- (1) A law practice must not provide legal services on a claim or defence of a claim for damages unless a legal practitioner associate responsible for the provision of the services concerned reasonably believes on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.
- (2) A fact is provable only if the associate reasonably believes that the material then available to him or her provides a proper basis for alleging that fact.
- (3) This Schedule applies despite any obligation that a law practice or a legal practitioner associate of the practice may have to act in accordance with the instructions or wishes of the client.
- (4) A claim has reasonable prospects of success if there are reasonable prospects of damages being recovered on the claim. A defence has reasonable prospects of success if there are reasonable prospects of the defence defeating the claim or leading to a reduction in the damages recovered on the claim.
- (5) Provision of legal services in contravention of this clause constitutes for the purposes of this Schedule the provision of legal services without reasonable prospects of success.

### **3 Preliminary legal work not affected**

This Schedule does not apply to legal services provided as a preliminary matter for the purpose of a proper and reasonable consideration of whether a claim or defence has reasonable prospects of success.

### **4 Restrictions on commencing proceedings without reasonable prospects of success**

- (1) The provision of legal services by a law practice without reasonable prospects of success does not constitute an offence but is capable of being unsatisfactory professional conduct or professional misconduct by a legal practitioner associate of the practice who is responsible for the provision of the service or by a principal of the practice.
- (2) A law practice cannot file court documentation on a claim or defence of a claim for damages unless a principal of the practice, or a legal practitioner associate responsible for the provision of the legal service concerned, certifies that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.

- (3) Court documentation on a claim or defence of a claim for damages, which has been lodged for filing, is not to be filed in a court or court registry unless accompanied by the certification required by this clause. Rules of court may make provision for or with respect to the form of that certification.
- (4) In this clause:  
*court documentation* means:
  - (a) an originating process (including for example, a statement of claim, summons or cross-claim), defence or further pleading, or
  - (b) an amended originating process, defence or further pleading, or
  - (c) a document amending an originating process, defence or further pleading, or
  - (d) any other document of a kind prescribed by the local regulations.*cross-claim* includes counter-claim and cross-action.

#### **5 Costs order against law practice acting without reasonable prospects of success**

- (1) If it appears to a court in which proceedings are taken on a claim for damages that a law practice has provided legal services to a party without reasonable prospects of success, the court may of its own motion or on the application of any party to the proceedings make either or both of the following orders in respect of the practice or of a legal practitioner associate of the practice responsible for providing the services:
  - (a) an order directing the practice or associate to repay to the party to whom the services were provided the whole or any part of the costs that the party has been ordered to pay to any other party,
  - (b) an order directing the practice or associate to indemnify any party other than the party to whom the services were provided against the whole or any part of the costs payable by the party indemnified.
- (2) The Supreme Court may on the application of any party to proceedings on a claim for damages make any order that the court in which proceedings on the claim are taken could make under this clause.
- (3) An application for an order under this clause cannot be made after a final determination has been made under Part 7 by a costs assessor of the costs payable as a result of an order made by the court in which the proceedings on the claim concerned were taken.
- (4) A law practice or legal practitioner associate of the practice is not entitled to demand, recover or accept from a client any part of the amount for which the practice or associate is directed to indemnify a party pursuant to an order under this clause.

#### **6 Onus of showing facts provided reasonable prospects of success**

- (1) If the court (the *trial court*) hearing proceedings on a claim for damages finds that the facts established by the evidence before the court do not form a basis for a reasonable belief that the claim or the defence had reasonable prospects of success, there is a presumption for the purposes of this Schedule that legal services provided on the claim or the defence (as appropriate) were provided without reasonable prospects of success.
- (2) If the Supreme Court (when the Supreme Court is not the trial court) is satisfied, either as a result of a finding of the trial court or otherwise on the basis of the judgment of the trial court, that the facts established by the evidence before the trial court do not form a basis for a reasonable belief that the claim or the defence had reasonable prospects of success, there is a presumption for the purposes of this Schedule that legal services provided on the claim or the defence (as appropriate) were provided without reasonable prospects of success.



- (3) A presumption arising under this clause is rebuttable and a person seeking to rebut it bears the onus of establishing that at the time legal services were provided there were provable facts (as provided by clause 2 (Law practice not to act unless there are reasonable prospects of success)) that provided a basis for a reasonable belief that the claim or the defence on which they were provided had reasonable prospects of success.
- (4) A law practice or legal practitioner associate of the practice may, for the purpose of establishing that at the time legal services were provided there were provable facts (as provided by clause 2 (Law practice not to act unless there are reasonable prospects of success)) that provided a basis for a reasonable belief that the claim or the defence on which they were provided had reasonable prospects of success, produce information or a document despite any duty of confidentiality in respect of a communication between the law practice or a legal practitioner associate of the practice and a client, but only if:
  - (a) the client is the client to whom the legal services were provided or consents to its disclosure, or
  - (b) the court is satisfied that it is necessary for the law practice or associate to do so in order to rebut a presumption arising under this clause.

## **Schedule 3 Legal Profession Admission Board**

### **1 Membership of NSW Admission Board**

- (1) The NSW Admission Board is to consist of 11 members, being:
  - (a) the Chief Justice of New South Wales, and
  - (b) 3 Judges of the Supreme Court for the time being nominated by the Chief Justice of New South Wales, and
  - (c) the Attorney General or a person for the time being nominated by the Attorney General, and
  - (d) 2 persons for the time being nominated by the Council of Australian Law Deans, being members from New South Wales, and
  - (e) 2 barristers for the time being nominated by the Bar Council, and
  - (f) 2 solicitors for the time being nominated by the Law Society Council.
- (2) A member of the NSW Admission Board who holds office on the nomination of a person or body ceases to hold office if the person or body by whom the member was nominated withdraws the nomination.

### **2 Reserve members**

- (1) For each member of the Admission Board, one or more reserve members may be nominated to act in the office of the member during the member's illness or absence, and the reserve member, while so acting, has and may exercise all the functions of the member and is taken to be a member of the Admission Board.
- (2) For a member who is the Attorney General or a nominee of the Attorney General, the reserve member or members may be nominated by the Attorney General.
- (3) For any other member, the reserve member or members are to be nominated by the person or body that nominated the member and must be qualified for nomination in the same way as the member.
- (4) A person may be removed, by the nominating person or body, from any office for which the person was nominated under this clause.

### **3 General procedure**

The procedure for the calling of meetings of the Admission Board and for conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

### **4 Quorum**

The quorum for a meeting of the Admission Board is 6 members including the member presiding at the meeting.

### **5 Nomination of presiding and deputy presiding member**

The Chief Justice of New South Wales may from time to time nominate one of the judicial members of the Admission Board to be the presiding member of the Board and another of the judicial members of the Board to be the deputy presiding member of the Board.

### **6 Presiding member**

- (1) The Chief Justice of New South Wales is to preside at a meeting of the Admission Board if electing to be present and electing to preside.

- (2) Otherwise:
- (a) the presiding member, or
  - (b) in the absence of the presiding member—the deputy presiding member, or
  - (c) in the absence of both—a member elected by and from the members present and voting,
- is to preside at the meeting.
- (3) The member presiding at a meeting of the Admission Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**7 Voting**

A decision supported by a majority of the votes cast at a meeting of the Admission Board at which a quorum is present is the decision of the Board.

**8 Minutes**

The Admission Board is to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**9 Seal**

The local regulations may make provision for or with respect to the custody and use of the seal of the Admission Board.

## **Schedule 4 Legal Services Commissioner**

### **1 Term of office**

- (1) The NSW Commissioner holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as NSW Commissioner (whether or not consecutive terms).

### **2 Full-time office**

The office of NSW Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

### **3 Employment and remuneration**

- (1) The employment of the NSW Commissioner is (subject to this Schedule) to be governed by a contract of employment between the NSW Commissioner and the Minister.
- (2) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the NSW Commissioner (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

### **4 Vacancy in office**

- (1) The office of NSW Commissioner becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) has held the office for more than 10 years in total, as referred to in clause 1, or
  - (h) is removed from office under clause 5.
- (2) If the office of NSW Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **5 Removal from office**

The Governor may remove the NSW Commissioner from office, but only for incompetence, incapacity or misbehaviour.

**6 NSW Commissioner not Public Service employee**

The office of NSW Commissioner is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

## **Schedule 5 Trustees of the Public Purpose Fund**

### **1 Definitions**

In this Schedule:

*appointed Trustee* means a person appointed under section 49 (2) (a).

*Trustee* means a Trustee of the Public Purpose Fund.

### **2 Terms of office of Trustees**

Subject to this Schedule, an appointed Trustee holds office for such period (not exceeding 3 years) as is specified in the Trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

An appointed Trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the Trustee.

### **4 Deputies**

- (1) The Attorney General may, from time to time, appoint a person to be the deputy of a Trustee, and the Attorney General may revoke any such appointment.
- (2) In the absence of a Trustee, the Trustee's deputy may, if available, act in the place of the Trustee.
- (3) While acting in the place of a Trustee, a person:
  - (a) has all the functions of the Trustee and is taken to be a Trustee, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a Trustee is taken to be an absence of the Trustee.

### **5 Vacancy in office of appointed Trustee**

- (1) The office of an appointed Trustee becomes vacant if the Trustee:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Attorney General, or
  - (d) is removed from office by the Attorney General under this clause, or
  - (e) is absent from 4 consecutive meetings of the Trustees of which reasonable notice has been given to the Trustee personally or by post, except on leave granted by the Attorney General or unless the Trustee is excused by the Attorney General for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) in the case of a Trustee referred to in section 49 (2) (a) (i), ceases to be a member of the Law Society Council.
- (2) The Attorney General may at any time remove an appointed Trustee from office.

## **6 Filling of vacancy in office of Trustee**

If the office of an appointed Trustee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson**

- (1) The chairperson of the Trustees is the person elected to the office of chairperson from time to time by the Trustees from among their number.
- (2) The office of chairperson:
- (a) commences on the day the person elected to the office is declared to be so elected, and
  - (b) becomes vacant when the person's successor is declared to be elected to the office or when the person so elected ceases to hold office as a Trustee (whichever happens first).

## **8 Disclosure of pecuniary interests**

- (1) If:
- (a) a Trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trustees, and
  - (b) the interest appears to raise a conflict with the proper performance of the Trustee's duties in relation to the consideration of the matter,
- the Trustee must, as soon as possible after the relevant facts have come to the Trustee's knowledge, disclose the nature of the interest at a meeting of the Trustees.
- (2) A Trustee is not to be regarded as having a direct or indirect pecuniary interest in a matter merely because he or she is a local legal practitioner or a member of the Law Society, the Bar Association or a Council.
- (3) A disclosure by a Trustee at a meeting of the Trustees that the Trustee:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (4) Particulars of any disclosure made under this clause must be recorded by the Trustees in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trustees.
- (5) After a Trustee has disclosed the nature of an interest in any matter, the Trustee must not, unless the Attorney General or the Trustees otherwise determine, take part in any decision of the Trustees with respect to the matter.

- (6) For the purposes of the making of a determination by the Trustees under subclause (5), a Trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not take part in the making by the Trustees of the determination.
- (7) If a Trustee is prevented from taking part in a decision by virtue of this clause and the determination relates to a matter that requires a unanimous decision of the Trustees under section 55 (5), the decision is unanimous for the purposes of that section if it is supported by all of the Trustees who are entitled to take part in the determination.
- (8) A contravention of this clause does not invalidate any decision of the Trustees.

#### **9 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a Trustee.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a Trustee or from accepting and retaining any remuneration payable to the person under this Act as a Trustee.

#### **10 General procedure**

The procedure for the calling of meetings of the Trustees and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trustees.

#### **11 Quorum**

The quorum for a meeting of the Trustees is 3 Trustees.

#### **12 Presiding member**

- (1) The chairperson or, in the absence of the chairperson, a Trustee elected by the Trustees present at the meeting, is to preside at a meeting of the Trustees.
- (2) The person presiding at a meeting of the Trustees has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) Subclause (2) does not affect the requirement under section 55 (5) that certain decisions of the Trustees be unanimous.

#### **13 Voting**

- (1) A decision supported by a majority of the votes cast at a meeting of the Trustees at which a quorum is present is the decision of the Trustees.
- (2) This clause does not apply in respect of a decision that is required to be unanimous by section 55 (5).

#### **14 Transaction of business outside meetings or by telephone**

- (1) The Trustees may, if they think fit, transact any of their business by the circulation of papers among all the Trustees for the time being and a resolution in writing has effect as a decision of the Trustees if it is approved in writing by a majority of those



Trustees and, for the purposes of section 55 (5), has effect as a unanimous decision of the Trustees if it is approved in writing by all the Trustees for the time being.

- (2) The Trustees may, if they think fit, transact any of their business at a meeting at which the Trustees (or some Trustees) participate by telephone, closed-circuit television or other means, but only if any Trustee who speaks on a matter before the meeting can be heard by the other Trustees.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson and each Trustee have the same voting rights as they have at an ordinary meeting of the Trustees.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trustees.
- (5) Papers may be circulated among the trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **15 Minutes**

The Trustees are to cause full and accurate minutes to be kept of the proceedings of each meeting of the Trustees.

## **Schedule 6 Costs assessors**

### **1 Eligibility for appointment**

A person is not eligible to be appointed as a costs assessor unless the person is an Australian legal practitioner of at least 5 years' standing.

### **2 Terms of office**

- (1) Subject to this Schedule, a costs assessor holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the costs assessor, but is eligible (if otherwise qualified) for re-appointment.
- (2) A costs assessor may, with the consent of the Chief Justice of New South Wales, continue in office after the expiry of his or her term of office for the purpose of making a determination in respect of, or otherwise completing, any application for costs assessment that was referred to the costs assessor before the expiry of his or her term of office.

### **3 Remuneration**

A costs assessor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the costs assessor.

### **4 Vacancy in office of costs assessor**

- (1) A costs assessor vacates office if the costs assessor:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (f) resigns the office by instrument in writing addressed to the Attorney General, or
  - (g) ceases to be eligible to be a costs assessor, or
  - (h) is removed from office by the Chief Justice of New South Wales, under subclause (2).
- (2) The Chief Justice of New South Wales may remove a costs assessor from office.

### **5 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a costs assessor.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

- (b) prohibiting the person from engaging in employment outside the duties of that office,  
that provision does not operate to disqualify the person from holding that office and also the office of a costs assessor or from accepting and retaining any remuneration payable to the person under this Act as a costs assessor.

## **Schedule 7 Professional indemnity insurance—provisions relating to HIH insurance**

### **1 Interpretation and construction**

- (1) In this Schedule:  
*HIH group member* means:
  - (a) HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited, or
  - (b) any corporation that is, with respect to one of the corporations referred to in paragraph (a), a related body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.
- (2) Expressions used in this Schedule and defined in Part 8 (Professional indemnity insurance) have the same meanings as in that Part.
- (3) Part 8 has effect as if it included, and is taken to include, the provisions of this Schedule.

### **2 Payments relating to HIH group insurance policies**

- (1) Payments must be made by the Company from the Indemnity Fund for the purpose of indemnifying any person who is insured under an approved insurance policy that was issued or renewed by an HIH group member, to the extent of the indemnity provided by the approved insurance policy.  
**Note.** HIH Casualty and General Insurance Limited (HIH) was the insurer under the approved insurance policy for the period from 1 July 1998 to 1 July 2001. HIH, together with other HIH group members, were also insurers under approved policies that pre-date that period. A provisional liquidator was appointed in respect of the HIH and other HIH group members on 15 March 2001.
- (2) On the making of such a payment from the Indemnity Fund, the Company is subrogated to the rights and remedies of the insured person under the approved insurance policy, in connection with the subject matter of the payment, subject to the terms of any agreement entered into under this clause.
- (3) Subclause (2) extends, but is not limited to, a right or remedy against any of the following:
  - (a) an HIH group member,
  - (b) any insurer or re-insurer of an HIH group member,
  - (c) any person who, under any Act or other law, is liable for a failure of an HIH group member to satisfy its obligations under or in connection with an approved insurance policy.
- (4) The Company may exercise its rights and remedies under this clause in its own name or in the name of an insured person.
- (5) If the Company exercises its rights and remedies under this clause in the name of an insured person, the Company is to indemnify the insured person against any liability incurred by the insured person as a result of the exercise of those rights and remedies.
- (6) The Law Society and the Company may enter into an agreement with an HIH group member (including a provisional liquidator or liquidator of an HIH group member), or with any insured person, in connection with the payment of amounts from the Indemnity Fund under this clause.

- (7) In particular, any such agreement may provide for the following:
  - (a) the assignment or subrogation to the Company of the rights and remedies of an HIH group member or the insured person (or both) under or in connection with the approved insurance policy,
  - (b) the recovery by the Company from an HIH group member of any amount paid from the Indemnity Fund under this clause.
- (8) Any payment made from the Indemnity Fund under this clause, and any agreement entered into with an insured person under this clause, does not prevent the recovery by the Company from an HIH group member of any amount that would have been recoverable by the insured person under or in connection with the approved insurance policy had the payment not been made or the agreement not been entered into.
- (9) Any amount recovered by the Company as a result of the exercise of its functions under this clause (including its functions under a subrogation or agreement referred to in this clause) is to be paid into the Indemnity Fund. This does not apply to any amount that is payable to another person:
  - (a) under any other Act or law, or
  - (b) under any agreement referred to in this clause, or
  - (c) under the local regulations.
- (10) Payments may be made from the Indemnity Fund for the purpose of meeting any reasonable costs and expenses incurred by the Company in exercising its functions under this clause, including its functions under a subrogation or agreement referred to in this clause.

### **3 Special contributions and levies: HIH liabilities**

- (1) The Company may, for the purposes of ensuring that the Indemnity Fund, or any part of the Indemnity Fund, is sufficient to meet the purposes for which it may be used under Division 3 of Part 8:
  - (a) require any insurable solicitor who is or was insured under an approved insurance policy issued or renewed by an HIH group member to pay a special annual contribution to the Indemnity Fund, or
  - (b) require any solicitor or former solicitor who is or was insured under an approved insurance policy issued or renewed by an HIH group member to pay a special levy to the Indemnity Fund.
- (2) Any such special annual contribution or levy is to be of an amount determined by the Company and approved by the Law Society Council.
- (3) The Company may make a different determination under subclause (2) in relation to particular classes of solicitors or former solicitors.
- (4) The special annual contribution or levy is to be paid within the time and in the manner specified by the Company by notice in writing to the solicitor or former solicitor concerned.
- (5) A special annual contribution or levy that is payable under this clause:
  - (a) is to be paid to the Company on account of the Indemnity Fund, and
  - (b) is recoverable by the Company as a debt in a court of competent jurisdiction, and
  - (c) if payable by an insurable solicitor, is payable in addition to any contribution or levy that is payable under section 106 or 107.

## **Schedule 8 Mortgage practices and managed investment schemes—provisions relating to old mortgages**

### **Part 1 Preliminary**

#### **1 Interpretation**

Expressions used in this Schedule have the same meanings as in Part 10 of this Act.

#### **2 Mortgage practices and managed investment schemes**

- (1) Without limiting Part 2 of this Schedule, Part 10 of this Act extends to mortgages that were entered into before the commencement of that Part.
- (2) Anything done or omitted to be done under Part 9 of the *Legal Profession Act 1987* before the commencement of Part 10 of this Act continues to have the same effect as if done or omitted to be done under Part 10 of this Act.
- (3) Part 10 of this Act has effect and is to be construed as if it included the provisions of this Schedule.

### **Part 2 Special provisions regarding mortgages entered into before 7 September 2001**

**Note.** This Part substantially re-enacts the provisions of Division 4 of Part 9 of the *Legal Profession Act 1987* and Schedule 8 to the *Legal Profession Act 2004*.

#### **3 Part 10 of this Act extends to mortgages entered into before 7 September 2001**

Except as provided by this Part, Part 10 of this Act extends to mortgages that were entered into before 7 September 2001 (the date of commencement of section 117 of the *Legal Profession Act 1987*, as inserted by the *Legal Profession Amendment (Mortgage Practices) Act 2000*).

#### **4 Requirement to obtain fidelity insurance in respect of pre-existing mortgages**

- (1) Section 130 (Solicitor to have fidelity cover in respect of regulated mortgages) does not apply in respect of a regulated mortgage that was entered into before the relevant commencement date.
- (2) Despite subclause (1), section 130 applies in respect of a solicitor if money entrusted to the solicitor by a client (whether before, on or after the relevant commencement date) is advanced or proposed to be advanced on or after the relevant commencement date to a borrower for a regulated mortgage entered into before the relevant commencement date. In such a case:
  - (a) the solicitor must ensure that a policy of fidelity insurance is in force in respect of the advance in accordance with section 130, and comply with section 132 (Notification of insurance arrangements for regulated mortgage), and
  - (b) section 131 (Bar on claims against Fidelity Fund relating to regulated mortgages) applies to any claim against the Fidelity Fund in so far as it relates to such an advance.
- (3) For the purpose of applying section 132 (1) in such a case, the date that money is entrusted to the solicitor by a client is taken to be the relevant commencement date, or the date on which the money is entrusted to the solicitor, whichever is the later.
- (4) This clause is subject to clause 6 (Substitution of lender or contributor under run-out mortgage) (which allows solicitors to substitute lenders under a run-out mortgage without obtaining fidelity insurance).

- (5) In this clause:

*the relevant commencement date* means the date of commencement of section 120 of the *Legal Profession Act 1987*, as inserted by the *Legal Profession Amendment (Mortgage Practices) Act 2000* (7 September 2001).

#### **5 No further action to be taken in respect of run-out mortgages**

- (1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor:
- (a) advance any money entrusted to the solicitor to a borrower for a run-out mortgage, or
  - (b) do any work for the purpose of extending the term of a run-out mortgage, or
  - (c) accept any money from a client for the purpose of advancing that money to a borrower for a run-out mortgage, or
  - (d) do anything else with respect to a run-out mortgage in contravention of the regulations or the solicitor's rules relating to run-out mortgages.
- (2) A contravention of this clause is capable of being professional misconduct.

#### **6 Substitution of lender or contributor under run-out mortgage**

- (1) A solicitor may, despite clause 5 (No further action to be taken in respect of run-out mortgages), accept money from a client, and do any other work that is necessary, solely for the purpose of substituting a lender or contributor under a run-out mortgage.
- (2) Section 130 does not apply in respect of such action. Accordingly, the solicitor is not required to obtain fidelity insurance for the purpose of compensating the substitute lender or contributor for any pecuniary loss.
- (3) If a client entrusts or proposes to entrust money to a solicitor for the purpose of substituting a lender or contributor under a run-out mortgage, the solicitor must give the client a notice in writing that advises the client:
- (a) of the effect of clause 7 (No claims against Fidelity Fund by substitute lenders), and
  - (b) that the solicitor is not required to have fidelity insurance in respect of the run-out mortgage.
- (4) The solicitor must not advance the money to a borrower for a run-out mortgage unless the solicitor has given the client the notice referred to in subclause (3).
- (5) A contravention of this clause is capable of being professional misconduct.

#### **7 No claims against Fidelity Fund by substitute lenders**

A person who becomes a lender or contributor under a run-out mortgage on or after 7 September 2001 (the commencement of section 117 of the *Legal Profession Act 1987*, as inserted by the *Legal Profession Amendment (Mortgage Practices) Act 2000*), is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for a pecuniary loss if the claim relates to that mortgage.

#### **8 Continuation of any existing entitlements against Fidelity Fund**

The provisions of Part 9 of the *Legal Profession Act 1987* continue to apply in respect of a claim against the Fidelity Fund in so far as the claim relates to:

- (a) a pecuniary loss resulting from an act or omission that occurred before the repeal of that Part, or
- (b) money entrusted to a solicitor before the repeal of that Part.

## **Schedule 9 Savings, transitional and other provisions**

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The local regulations may contain provisions of a savings or transitional nature consequent on:
  - (a) the enactment of this Act or any Act that amends this Act, or
  - (b) the enactment of any Act of Victoria that amends the Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria.
- (2) Any such provision may, if the local regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The local regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definition**

In this Part:

*repealed Act* means the *Legal Profession Act 2004*.

#### **3 General savings and transitional provisions**

- (1) This clause has effect subject to this Act and the *Legal Profession Uniform Law (NSW)*.
- (2) Each person, body, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of relevant provisions of the *Legal Profession Uniform Law (NSW)* continues to have the same status, operation and effect as it would have had if this Act had not been enacted.
- (3) Any act, matter or thing subsisting immediately before the commencement of relevant provisions of the *Legal Profession Uniform Law (NSW)* that:
  - (a) was done or omitted under the repealed Act, and
  - (b) could have been done or omitted under that Law (with any necessary modifications) if that Law had been in force when it was done or omitted,is taken to have been done or omitted under that Law.



- (4) Any act, matter or thing subsisting immediately before the commencement of relevant provisions of this Act that:
  - (a) was done or omitted under the repealed Act, and
  - (b) could have been done or omitted under this Act (with any necessary modifications) if this Act had been in force when it was done or omitted, is taken to have been done or omitted under this Act.
- (5) Without limitation, subclause (2) extends to bodies in existence or continuing under the repealed Act, except the costs assessors' rules committee under section 394 of that Act.

#### **4 References to repealed Act**

A reference to the repealed Act in any Act (other than this Act or the *Legal Profession Uniform Law (NSW)*) or in any subordinate instrument, agreement, deed or other document, so far as the reference relates to any period on or after the date of the repeal and if not inconsistent with the subject-matter, is to be construed as:

- (a) a reference to the *Legal Profession Uniform Law (NSW)*, if the reference relates to a matter that is dealt with by that Law, or
- (b) a reference to this Act, if the reference relates to a matter that is dealt with by this Act but not by the *Legal Profession Uniform Law (NSW)*.

#### **5 Term of office of NSW Commissioner**

For the purposes of clause 1 of Schedule 4, any term for which a person was appointed as Legal Services Commissioner under the repealed Act is taken to be a term of office as NSW Commissioner.

#### **6 Approved insurance policies for professional indemnity insurance**

Any order of the Attorney General under section 403 or 406 of the repealed Act that is in force immediately before the commencement of section 95 of this Act is, with any necessary modifications, taken to be an order of the Attorney General under section 95 (2) of this Act.

## Schedule 10 Amendments

### 10.1 Interpretation Act 1987 No 15

#### Section 21 Meanings of commonly used words and expressions

Omit “*Legal Profession Act 2004*” from section 21 (1) wherever occurring.

Insert instead “*Legal Profession Uniform Law (NSW)*”.

### 10.2 Public Notaries Act 1997 No 98

#### [1] Section 3 Definitions

Omit the definition of *Admission Board*. Insert instead:

*Admission Board* means the NSW Legal Profession Admission Board constituted under Division 1 of Part 3 of the *Legal Profession Uniform Law Application Act 2014*.

#### [2] Section 3, definitions of “barrister”, “legal practitioner” and “solicitor”

Omit “*Legal Profession Act 2004*” wherever occurring.

Insert instead “*Legal Profession Uniform Law (NSW)*”.

#### [3] Section 7 Roll of public notaries

Omit “*Legal Profession Act 2004*” from section 7 (5) (b).

Insert instead “*Legal Profession Uniform Law (NSW)*”.

#### [4] Section 14

Omit the section. Insert instead:

##### 14 Application of Legal Profession Uniform Law (NSW) regarding dispute resolution and professional discipline

- (1) Chapters 5 and 7 of the *Legal Profession Uniform Law (NSW)* apply to public notaries in the same way as they apply to Australian lawyers, subject to any modifications prescribed by the regulations.
- (2) Without limitation, the power of NCAT to make orders under section 302 of the *Legal Profession Uniform Law (NSW)* includes the power to make an order that the name of a person be removed from the roll.

#### [5] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act

## **Note**                      **Legal Profession Uniform Law**

**Note.** The text of the Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria is set out below. The Uniform Law (as in force from time to time) is applied as a law of New South Wales.

## **Chapter 1 Preliminary**

### **Part 1.1 Introduction**

#### **1 Citation**

This Law may be cited as the Legal Profession Uniform Law.

#### **2 Commencement**

This Law commences in a jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

#### **3 Objectives**

The objectives of this Law are to promote the administration of justice and an efficient and effective Australian legal profession, by—

- (a) providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession; and
- (b) ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
- (c) enhancing the protection of clients of law practices and the protection of the public generally; and
- (d) empowering clients of law practices to make informed choices about the services they access and the costs involved; and
- (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
- (f) providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

#### **4 Extraterritorial operation of this Law**

The operation of this Law is, as far as possible, to include operation, according to its terms, in relation to the following—

- (a) things situated within or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring within or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

## 5 Jurisdictional arrangements

- (1) The arrangements set out in this section have effect, and are to be observed, in relation to this Law.
- (2) The host jurisdiction for this Law is Victoria.
- (3) The host Attorney-General for this Law is the Attorney-General of Victoria.
- (4) The host jurisdiction for the Council and the Commissioner is New South Wales.
- (5) The host Attorney-General for the Council and the Commissioner is the Attorney-General of New South Wales.
- (6) The primary office of the Council and the primary office of the Commissioner are to be located in New South Wales.

## Part 1.2 Interpretation

### 6 Definitions

- (1) In this Law—

**ADI** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth;

**admission** or **admission to the Australian legal profession** means—

- (a) admission by the Supreme Court of a participating jurisdiction as a lawyer (however expressed), whether before, on or after the commencement of this Law in that jurisdiction; or
- (b) admission by the Supreme Court of a non-participating jurisdiction as a lawyer, a legal practitioner, a barrister, a solicitor, a barrister and solicitor, or a solicitor and barrister, whether before, on or after the commencement of this Law in any jurisdiction, otherwise than by the grant or issue of a practising certificate.

Without limiting the meaning of the terms **admission** or **admission to the Australian legal profession**, those terms include readmission;

**Admission Rules** means the provisions of the Uniform Rules that are designated as Admission Rules (see section 420);

**Admissions Committee** means the Admissions Committee established under section 402;

**affairs** of a law practice includes the following—

- (a) all accounts and records required by or under this Law or the Uniform Rules to be maintained by the law practice or an associate or former associate of the law practice;
- (b) other records of the law practice or an associate or former associate of the law practice;
- (c) any transaction—
  - (i) to which the law practice or an associate or former associate of the law practice was or is a party; or
  - (ii) in which the law practice or an associate or former associate of the law practice has acted for a party;

**another jurisdiction** means a jurisdiction other than this jurisdiction;

**another Supreme Court** means the Supreme Court of another jurisdiction;

**APRA** means the Australian Prudential Regulation Authority;

**ASIC** means the Australian Securities and Investments Commission;

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

**associate** of a law practice means a person who is one or more of the following—

- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) an Australian legal practitioner who is a consultant to the law practice;

**associated third party payer**—see section 171;

**Australian Accounting Standards** means the standards issued by the Australian Accounting Standards Board;

**Australian Bar Association** means the association named The Australian Bar Association;

**Australian financial services licence** has the same meaning as it has in Chapter 7 of the Corporations Act;

**Australian lawyer** means a person admitted to the Australian legal profession in this jurisdiction or any other jurisdiction;

**Australian legal practitioner** means an Australian lawyer who holds a current Australian practising certificate;

**Australian Legal Profession Register** means the register referred to in section 432;

**Australian practising certificate** means—

- (a) a practising certificate granted to an Australian lawyer under Part 3.3 of this Law as applied in a participating jurisdiction; or
- (b) a practising certificate granted to an Australian lawyer under a law of a non-participating jurisdiction entitling the lawyer to engage in legal practice;

**Australian-registered foreign lawyer** means a person who holds a current Australian registration certificate;

**Australian registration certificate** means—

- (a) a registration certificate granted to a foreign lawyer under Part 3.4 of this Law as applied in a participating jurisdiction; or
- (b) a registration certificate granted to a foreign lawyer, or a document acknowledging the registration of a foreign lawyer, under a law of a non-participating jurisdiction entitling the lawyer to practise foreign law;

**authorised ADI**—see section 128;

**authorised principal** means a principal who is authorised by his or her Australian practising certificate to supervise others;

**Note** Section 47(6) provides that an Australian practising certificate authorises the holder to supervise legal practice by others, unless the certificate is subject to a condition requiring the holder to engage in supervised legal practice or a condition to the effect that the holder may not supervise legal practice by others.

**authorised representative** has the same meaning as it has in Chapter 7 of the Corporations Act;

**automatic show cause event**—see section 86;

**Bankruptcy Act** means the *Bankruptcy Act 1966* of the Commonwealth;

**bankruptcy-related event**, in relation to a person, means—

- (a) his or her becoming bankrupt under the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory); or
- (b) his or her being served with notice of a creditor's petition presented to a court under section 43 of the Bankruptcy Act; or

- (c) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the Bankruptcy Act of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (d) his or her applying to take the benefit of any law (whether Australian or otherwise) for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit;

**barrister** means an Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only;

**business day** means a day that is not a Saturday, Sunday, public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

**certificate** (in Part 3.5)—see section 73;

**Chair** of the Council—see clause 1 of Schedule 1;

**Chapter 5 functions** means—

- (a) functions under Chapter 5; or
- (b) functions under another provision of this Law relating to Chapter 5; or
- (c) functions under the Uniform Rules relating to Chapter 5;

**civil penalty** and **civil penalty provision**—see section 452;

**claim** (in Part 4.5)—see section 219;

**client** includes a person to whom or for whom legal services are provided;

**commercial or government client**—see section 170;

**Commissioner** means the person appointed to or acting in the office of the Commissioner for Uniform Legal Services Regulation established by Part 8.3;

**Commissioner of Police** includes a person of equivalent status specified in jurisdictional legislation;

**community legal service** means an organisation (whether incorporated or not) that—

- (a) holds itself out as—
  - (i) a community legal service; or
  - (ii) a community legal centre; or
  - (iii) an Aboriginal and Torres Strait Islander Legal Service;whether or not it is a member of a State or Territory association of community legal centres, and whether or not it is accredited or certified by the National Association of Community Legal Centres; and
- (b) is established and operated on a not-for-profit basis; and
- (c) provides legal or legal-related services that—
  - (i) are directed generally to people who are disadvantaged (including but not limited to being financially disadvantaged) in accessing the legal system or in protecting their legal rights; or
  - (ii) are conducted in the public interest;

**complaint**—see section 265;

**complaint investigation** means an investigation of a complaint under section 282;

**compliance audit** means an audit under section 256;

**compliance certificate** means a certificate issued under section 19;

**Note** Section 26(5) provides that, on a successful appeal against a refusal to issue a compliance certificate, the order of the Supreme Court may include a direction that the order

has the same effect as a compliance certificate provided to the Court by the designated local regulatory authority.

**concerted interjurisdictional default**—see section 219;

**conditional costs agreement**—see section 181;

**conditions** includes terms, limitations and restrictions;

**consumer matter**—see section 269;

**Continuing Professional Development Rules** means the provisions of the Uniform Rules that are designated as Continuing Professional Development Rules (see section 420);

**controlled money**—see section 128;

**conviction** includes a finding of guilt, or the acceptance of a guilty plea by the court, whether or not a conviction is recorded;

**corporate legal practitioner** means an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a related entity, but does not include a government legal practitioner;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**corresponding authority** means—

- (a) a person or body having functions under a corresponding law; or
- (b) when used in the context of a person or body having functions under this Law in this jurisdiction—a person or body having corresponding functions under a corresponding law;

**corresponding law** means—

- (a) a law of another jurisdiction that—
  - (i) corresponds to the relevant provisions of this Law as applied in this jurisdiction; or
  - (ii) is the principal legislation in the other jurisdiction for the regulation of the legal profession; or
  - (iii) is declared by the Uniform Regulations to be a law within this definition; but
- (b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction—a previous law applying to legal practice in the other jurisdiction;

**costs assessment** means an assessment of legal costs under Part 4.3;

**costs assessor** means—

- (a) a person appointed by a court, judicial officer or other official to have the responsibility of conducting costs assessments; or
- (b) a person or body designated by jurisdictional legislation to have that responsibility;

**costs dispute**—see section 269;

**Council or Legal Services Council** means the Legal Services Council established by Part 8.2;

**default** (in Part 4.5)—see section 219;

**designated local regulatory authority** means a person or body specified or described in a law of this jurisdiction for the purposes of a provision, or part of a provision, of this Law in which the term is used;

**designated local roll authority** means a person or body specified or described in a law of this jurisdiction for the purposes of a provision, or part of a provision, of this Law in which the term is used;

**designated show cause event**—see section 90;

**designated tribunal** means—

- (a) a court or tribunal specified or described in a law of this jurisdiction for the purposes of a provision, or part of a provision, of this Law in which the term is used; or
- (b) a member or officer so specified or described of such a court or tribunal;

**disqualified entity** means an entity that is disqualified under section 120;

**disqualified person** means—

- (a) a person whose name has been removed from a Supreme Court roll and who has not subsequently been admitted or readmitted by the Supreme Court of any jurisdiction; or
- (b) a person who has been refused the grant or renewal of an Australian practising certificate and who has not been granted an Australian practising certificate at a later time; or
- (c) a person whose Australian practising certificate is suspended (for the period of the suspension); or
- (d) a person whose Australian practising certificate has been cancelled and who has not been granted an Australian practising certificate at a later time; or
- (e) a person who is the subject of a decision under section 94 that the person is not entitled to apply for a certificate for a specified period; or
- (f) a person who is disqualified under section 119;

**engage in legal practice** includes practise law or provide legal services, but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy);

**entity** includes—

- (a) an individual, an incorporated body and an unincorporated body or other organisation; and
- (b) in the case of a partnership—
  - (i) the partnership as currently constituted from time to time; or
  - (ii) the assignee or receiver of the partnership;

**exercise** of a function includes, where the function is a duty, the performance of the duty;

**external examiner** means a person appointed as such under Part 4.2;

**external intervener** means a supervisor, manager or receiver under Chapter 6;

**external intervention** means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under Chapter 6;

**external investigator** means a person appointed as such under Part 4.2;

**fee, gain or reward** includes any form of, and any expectation of, a fee, gain or reward;

**fidelity authority** means an entity specified in jurisdictional legislation for the purposes of this definition;

**Note** See clause 15 of Schedule 3 regarding the fidelity authority for a non-participating jurisdiction.

**fidelity fund**—see sections 222 and 223;

**Note** See clause 15 of Schedule 3 regarding the fidelity fund of a non-participating jurisdiction.

**financial service** has the same meaning as it has in Chapter 7 of the Corporations Act;



**financial services business** has the same meaning as it has in Chapter 7 of the Corporations Act;

**financial year** means a year ending on 30 June;

**fixed costs legislative provision** means a determination, scale, arrangement or other provision fixing the costs or maximum costs of any legal services that is made by or under the Uniform Rules or any other legislation;

**foreign country** means—

- (a) a country other than Australia; or
- (b) a state, province or other part of a country other than Australia;

**foreign law** means law of a foreign country;

**foreign lawyer** means an individual who is properly registered or authorised to engage in legal practice in a foreign country by the foreign registration authority for the country;

**foreign lawyer associate** of a law practice means an associate of the law practice who is an Australian-registered foreign lawyer;

**foreign registration authority** means an entity in a foreign country having the function, conferred by the law of the foreign country, of registering or authorising persons to engage in legal practice in the foreign country;

**function** includes a power, authority or duty, and without limitation includes jurisdiction in relation to a court;

**general trust account**—see section 128;

**government authority** includes a Minister, government department or public authority of the Commonwealth or of a jurisdiction, and includes a body or organisation (or a class of bodies or organisations) declared in the Uniform Rules to be within this definition;

**government lawyer** means a person who engages in legal practice only—

- (a) as an officer or employee of a government authority; or
- (b) as the holder of a statutory office of the Commonwealth or of a jurisdiction; or
- (c) in another category specified in the Uniform Rules;

**government legal practitioner** means a government lawyer who is an Australian legal practitioner;

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

**home jurisdiction** means—

- (a) in the case of an applicant for or the holder of an Australian practising certificate granted in a participating jurisdiction—the jurisdiction last notified under section 46 as applying in that or another participating jurisdiction; or
- (b) in the case of an applicant for or the holder of an Australian registration certificate granted in a participating jurisdiction—the jurisdiction last notified under section 63 as applying in that or another participating jurisdiction; or
- (c) in the case of the holder of an Australian practising certificate or Australian registration certificate granted in a non-participating jurisdiction—see Schedule 3; or
- (d) in the case of an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer—
  - (i) where only one jurisdiction is the home jurisdiction for the only legal practitioner associate of the law practice or for all the legal practitioner associates of the law practice—that jurisdiction; or

- (ii) where no single jurisdiction is the home jurisdiction for all the legal practitioner associates of the law practice—
  - (A) the jurisdiction in which the office is situated at which the associate performs most of his or her duties for the law practice; or
  - (B) if a jurisdiction cannot be determined under sub-subparagraph (A)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at Australian government elections for the jurisdiction; or
  - (C) if a jurisdiction cannot be determined under sub-subparagraph (A) or (B)—the jurisdiction of the associate’s place of residence in Australia or (if he or she does not have a place of residence in Australia) the jurisdiction of his or her last place of residence in Australia; or
- (d) in any other case—the jurisdiction determined in accordance with the Uniform Rules;

**host**—see section 5;

**incorporated legal practice** means a corporation that satisfies the following criteria—

- (a) it is—
    - (i) a company within the meaning of the Corporations Act; or
    - (ii) a corporation, or a corporation of a kind, approved by the Council under section 114 or specified in the Uniform Rules for the purposes of this definition;
  - (b) it has given notice under section 104 that it intends to engage in legal practice in Australia and that notice is still operative;
  - (c) the legal services it provides or proposes to provide are not limited to either or both of the following services—
    - (i) in-house legal services for the corporation or a related entity;
    - (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner;
- Note** The Uniform Rules under section 10(3) may provide that certain entities are exempt from the operation of section 10(1), which provides that an entity must not engage in legal practice in this jurisdiction unless it is a qualified entity.
- (d) it is not excluded by the Uniform Rules from being an incorporated legal practice—

but does not include a community legal service;

**independent entity** means an independent statutory body (not being a professional association) or an independent statutory office holder;

**indexed** means indexed in accordance with section 471;

**insolvent under administration** has the same meaning as it has in the Corporations Act;

**Inter-Governmental Agreement** means the Bilateral Agreement on the Legal Profession Uniform Framework between New South Wales and Victoria dated 5 December 2013, and any successor agreement, as respectively in force from time to time;

**investigator** (in Chapter 7)—see section 368;

**jurisdiction** means a State of the Commonwealth, the Australian Capital Territory or the Northern Territory of Australia;

**jurisdictional legislation** means legislation of a jurisdiction;

**Law Council of Australia** means Law Council of Australia Limited;

**law firm** means a partnership consisting only of—

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers;

**law practice** means—

- (a) a sole practitioner; or
- (b) a law firm; or
- (c) a community legal service; or
- (d) an incorporated legal practice; or
- (e) an unincorporated legal practice;

**lawyer**—

- (a) in Part 4.5—see section 219; and
- (b) when used alone in Chapter 5, Chapter 7, section 461 or Schedule 3—see section 261, section 369, section 461(3) or clause 1 of Schedule 3, respectively;

**lay associate** of a law practice means a person who is not an Australian legal practitioner and who is—

- (a) an associate of the law practice; or
- (b) a consultant to the law practice (however described) who provides services related to legal services to the law practice, other than services of a kind specified in the Uniform Rules for the purposes of this definition; or
- (c) a person who shares the receipts, revenue or other income arising from the law practice;

**legal costs** means—

- (a) amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services; or
- (b) without limitation, amounts that a person has been or may be charged, or is or may become liable to pay, as a third party payer in respect of the provision of legal services by a law practice to another person—

including disbursements but not including interest;

**Legal Practice Rules** means the provisions of the Uniform Rules that are designated as Legal Practice Rules (see section 420);

**legal practitioner associate** of a law practice means an associate of the law practice who is an Australian legal practitioner;

**Legal Profession Conduct Rules** means the provisions of the Uniform Rules designated as Legal Profession Conduct Rules (see section 420);

**Legal Profession Uniform Law Act** of a jurisdiction means the Act of that jurisdiction that applies this Law (whether with or without modification) as a law of that jurisdiction;

**Note** It is intended that the Inter-Governmental Agreement will provide for permissible modifications of the Uniform Law.

**legal services** means work done, or business transacted, in the ordinary course of legal practice;

**litigious matter** means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal;

**Note** A matter is a litigious matter when proceedings are initiated or at any stage when proceedings are reasonably likely.

**local legal profession register** means the register (if any) maintained under jurisdictional legislation of this jurisdiction (see section 434);

**local regulations** means regulations made under the Legal Profession Uniform Law Act of this jurisdiction;

**local regulatory authority**, in the context of a reference to “a local regulatory authority” or “local regulatory authorities” in a provision of this Law, means any designated local regulatory authority;

**managed investment scheme** has the same meaning as it has in the Corporations Act;

**management system direction** means a direction under section 257;

**member** includes an acting member;

**member of the staff** of the Council, the Commissioner or a local regulatory authority means a person employed, engaged or assigned to provide assistance in the exercise of the respective functions of the Council, Commissioner or authority;

**modifications** includes modifications by way of alteration, omission, addition or substitution;

**mortgage** means an instrument or proposed instrument under which an interest in real property is charged, encumbered or transferred as security for the payment or repayment of money;

**mortgage financing** means facilitating a loan secured or intended to be secured by mortgage by—

- (a) acting as an intermediary to match a prospective lender and borrower; or
  - (b) arranging the loan; or
  - (c) receiving or dealing with payments for the purposes of, or under, the loan—
- but does not include providing legal advice or preparing an instrument for the loan;

**non-associated third party payer**—see section 171;

**non-participating jurisdiction** means a jurisdiction that is not a participating jurisdiction;

**obstruct** includes hinder, delay, resist and attempt to obstruct;

**officer** of a law practice includes a principal of the law practice;

**operational term** of the Council—see section 395;

**Parliament** of a jurisdiction includes, in the case of the Australian Capital Territory or the Northern Territory of Australia, the Legislative Assembly of the Territory;

**participating jurisdiction** means—

- (a) a jurisdiction in which this Law applies as a law of the jurisdiction and on behalf of which the Inter-Governmental Agreement has been signed; or
- (b) a jurisdiction in respect of which the Standing Committee decides that a law of the jurisdiction substantially corresponds to the provisions of this Law;

**partnership** includes a limited partnership;

**pecuniary loss** (in Part 4.5)—see section 219;

**penalty unit** means an amount equal to the value of a penalty unit under an Act of Victoria for an offence, and has that meaning in a provision of this Law regardless of whether the provision gives rise to a criminal offence or is a civil penalty provision;

**Note** The meaning of penalty units for offences in Victorian Acts is contained in section 110 of the *Sentencing Act 1991* of Victoria. The value of a penalty unit for a financial year is fixed by the Victorian Treasurer under the *Monetary Units Act 2004* of Victoria.

**permanent form**, in relation to a trust record—see section 128;

**power**, in relation to trust money, includes an authority;

**practical legal training** means either or both of the following—

- (a) legal training by participation in course work;
- (b) supervised legal training, whether involving articles of clerkship or otherwise;

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

- (a) in the case of a sole practitioner—is the sole practitioner; or
- (b) in the case of a law firm—is a partner in the firm; or
- (c) in the case of a community legal service—is a supervising legal practitioner of the service referred to in section 117; or
- (d) in the case of an incorporated legal practice or an unincorporated legal practice—
  - (i) holds an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice; and
  - (ii) is—
    - (A) if the law practice is a company within the meaning of the Corporations Act—a validly appointed director of the company; or
    - (B) if the law practice is a partnership—a partner in the partnership; or
    - (C) if the law practice is neither—in a relationship with the law practice that is of a kind approved by the Council under section 40 or specified in the Uniform Rules for the purposes of this definition;

**pro bono basis**—see section 8;

**professional association** means an entity whose membership consists principally of Australian legal practitioners and whose principal functions include representing or assisting Australian legal practitioners;

**professional misconduct**—see section 297;

**professional obligations** includes—

- (a) duties to the Supreme Courts; and
  - (b) obligations in connection with conflicts of interest; and
  - (c) duties to clients, including disclosure; and
  - (d) ethical standards required to be observed—
- that do not otherwise arise under this Law or the Uniform Rules;

**qualified entity** means—

- (a) an Australian legal practitioner; or
- (b) a law practice; or
- (c) either—
  - (i) an Australian-registered foreign lawyer; or
  - (ii) a foreign lawyer who is not an Australian-registered foreign lawyer but only to the extent that the foreign lawyer's legal practice is limited to the practice of foreign law and is carried out in accordance with the applicable requirements of Part 3.4; or
- (d) an individual engaged in legal practice under the authority of a law of the Commonwealth or of a jurisdiction, other than this Law or the Uniform Rules; or

(e) an entity engaged in legal practice of a kind specified in the Uniform Rules for the purposes of this definition, but only while the entity engages in the legal practice in accordance with any applicable requirements of the Uniform Rules;

**quashing** of a conviction for an offence includes the quashing of—

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

but does not include the quashing of a conviction where a finding of guilt or the acceptance of a guilty plea remains unaffected in relation to the offence;

**regulated property**, in relation to a law practice, means the following—

- (a) trust money or trust property received, receivable or held by the law practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
- (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the law practice or an associate of the law practice by which any documents or records referred to in paragraph (c) may be produced or reproduced in visible form;
- (e) client files;

**related entity**, in relation to a person, means—

- (a) if the person is a company within the meaning of the Corporations Act—a related body corporate within the meaning of section 50 of that Act; or
- (b) if the person is not a company within the meaning of that Act—a person specified or described in the Uniform Rules for the purposes of this definition;

**respondent** means the lawyer (within the meaning it has when used alone in Chapter 5) who, or the law practice that, is the subject of a complaint;

**serious offence** means an offence that is—

- (a) an indictable offence against a law of the Commonwealth, a State or a Territory (whether or not the offence is or may be dealt with summarily); or
- (b) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth, a State or a Territory if committed in Australia (whether or not the offence could be dealt with summarily if committed in Australia);

**sole practitioner** means an Australian legal practitioner who engages in legal practice on his or her own account;

**solicitor** means an Australian legal practitioner whose Australian practising certificate is not subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only;

**staff**—see the definition of **member of the staff**;

**Standing Committee** means the Attorneys-General of the participating jurisdictions;

**Note** See also clause 6 of Schedule 4.

**supervised legal practice** means legal practice by a person who is an Australian legal practitioner—

- (a) as an employee of, or other person working under supervision in, a law practice, where—
  - (i) at least one legal practitioner associate of the law practice is an authorised principal; and

- (ii) the person engages in legal practice under the supervision of an authorised principal referred to in subparagraph (i); or
- (b) as a principal of a law practice (other than a community legal service), where the person engages in legal practice under the supervision of an authorised principal of the law practice; or
- (c) as a corporate legal practitioner or government legal practitioner, where the person engages in legal practice under the supervision of a person who holds, or is eligible to hold but is exempted from holding, an Australian practising certificate authorising the holder to supervise legal practice by others; or
- (d) in a capacity or in circumstances specified in the Uniform Rules for the purposes of this definition;

***supervising legal practitioner***, in relation to a community legal service, means an Australian legal practitioner who is designated under section 117 as a supervising legal practitioner for the service;

***Supreme Court*** means—

- (a) the Supreme Court of this jurisdiction; but
- (b) so far as the term is used in the context of (or that includes or implies the inclusion of) another jurisdiction (for example, by the words “a Supreme Court”)—the Supreme Court of the other jurisdiction;

**Note** See also subsection (4).

***Supreme Court roll*** means—

- (a) the roll of Australian lawyers maintained by the Supreme Court; but
- (b) so far as the term is used in the context of (or that includes or implies the inclusion of) another jurisdiction (for example, by the words “a Supreme Court roll”), it means a roll of Australian lawyers maintained by the Supreme Court of the other jurisdiction;

***tax offence*** means any offence under the *Taxation Administration Act 1953* of the Commonwealth;

***third party payer***—see section 171;

***transit money***—see section 128;

***tribunal*** includes a panel or person authorised to hear or determine a matter;

***trust account***—see section 128;

***trust money***—see section 129;

***trust property***—see section 128;

***trust records***—see section 128;

***trust records examination*** means an external examination of trust records under Division 3 of Part 4.2;

***trust records investigation*** means an external investigation of trust records under Division 4 of Part 4.2;

***Uniform Regulations*** means the Legal Profession Uniform Regulations made under Part 9.1;

***Uniform Rules*** means the Legal Profession Uniform Rules made under Part 9.2;

***unincorporated legal practice*** means an unincorporated body or group that satisfies the following criteria—

- (a) it is—
  - (i) a partnership; or

- (ii) an unincorporated body or group, or an unincorporated body or group of a kind, approved by the Council under section 114 or specified in the Uniform Rules for the purposes of this definition;
- (b) it has given notice under section 104 that it intends to engage in legal practice in Australia and that notice is still operative;
- (c) the legal services it provides or proposes to provide are not limited to either or both of the following services—
  - (i) in-house legal services for the unincorporated body or group;
  - (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner;
- (d) it is not excluded by the Uniform Rules from being an unincorporated legal practice—  
but does not include—
- (e) a law firm; or
- (f) a community legal service; or
- (g) an incorporated legal practice;

***unsatisfactory professional conduct***—see section 296;

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

***vary*** includes, in relation to an Australian practising certificate or an Australian registration certificate, impose a condition on the certificate and alter or revoke a condition (other than a statutory condition) already imposed on the certificate.

**Note** For the term ***this jurisdiction***, see the Legal Profession Uniform Law Act of each participating jurisdiction.

- (2) In this Law, a reference to this Law (or to a provision of this Law) is a reference to this Law (or a provision of this Law) as applied in this jurisdiction, except as expressly provided otherwise and except where the context or subject matter otherwise indicates or requires.
- (3) In this Law, a reference to this Law as applied in a participating jurisdiction (or to a provision of this Law as applied in a participating jurisdiction), is a reference to—
  - (a) this Law (or a provision of this Law) as applied by the Legal Profession Uniform Law Act of that jurisdiction; or
  - (b) a law (or corresponding provision of a law) of that jurisdiction that the Standing Committee decides is a law that substantially corresponds to the provisions of this Law (see section 392(2)).
- (4) In this Law, a reference to the Supreme Court of a jurisdiction (whether express or implied) is a reference—
  - (a) to that Supreme Court as constituted in accordance with the law of that jurisdiction, including (where applicable) a provision of the Legal Profession Uniform Law Act of that jurisdiction; or
  - (b) if the law of that jurisdiction, including (where applicable) a provision of the Legal Profession Uniform Law Act of that jurisdiction, provides for a particular function of that Supreme Court to be exercised by a member, part or official of that Supreme Court—to that member, part or official exercising that function.



- (5) In this Law, a reference to an Australian practising certificate or Australian registration certificate “granted” in a jurisdiction is a reference to a certificate granted, issued or renewed under a law in force in the jurisdiction.
- (6) Notes included in this Law (including footnotes and endnotes) are part of this Law.

## **7 Interpretation generally**

- (1) The *Interpretation of Legislation Act 1984* of Victoria applies to the interpretation of this Law, the Uniform Regulations and the Uniform Rules in the same way as it applies to the interpretation of legislation and statutory instruments of Victoria.
- (2) Definitions, words and other expressions have in the Uniform Regulations or part of the Uniform Regulations the same meanings as they have in this Law or the relevant part of this Law, unless a contrary intention appears in this Law or the Uniform Regulations.
- (3) Definitions, words and other expressions have in the Uniform Rules or part of the Uniform Rules the same meanings as they have in this Law or the relevant part of this Law, unless a contrary intention appears in this Law or the Uniform Rules.

## **8 Meaning of *pro bono basis***

For the purposes of this Law, an Australian legal practitioner provides legal services on a *pro bono basis* where—

- (a) the practitioner, without fee, gain or reward or at a reduced fee, advises or represents a client in cases where—
  - (i) the client would not otherwise have access to legal services; or
  - (ii) the client’s case raises a wider issue of public interest; or
- (b) the practitioner is involved in free community legal education or law reform; or
- (c) the practitioner is involved in the giving of free legal advice or representation to charitable and community organisations.

## Chapter 2 Threshold requirements for legal practice

### Part 2.1 Unqualified legal practice

#### 9 Objectives

The objectives of this Part are—

- (a) to ensure, in the interests of the administration of justice, that legal work is carried out only by those who are properly qualified to do so; and
- (b) to protect clients of law practices by ensuring that persons carrying out legal work are entitled to do so.

#### 10 Prohibition on engaging in legal practice by unqualified entities

- (1) An entity must not engage in legal practice in this jurisdiction, unless it is a qualified entity.  
Penalty: 250 penalty units or imprisonment for 2 years, or both.
- (2) An entity is not entitled to recover any amount, and must repay any amount received, in respect of anything the entity did in contravention of subsection (1). Any amount so received may be recovered as a debt by the person who paid it.
- (3) Subsection (1) does not apply to an entity or class of entities declared by the Uniform Rules to be exempt from the operation of subsection (1), but only to the extent (if any) specified in the declaration.

#### 11 Prohibition on advertisements or representations by or about unqualified entities

- (1) An entity must not advertise or represent, or do anything that states or implies, that it is entitled to engage in legal practice, unless it is a qualified entity.  
Penalty: 250 penalty units.
- (2) A director, partner, officer, employee or agent of an entity must not advertise or represent, or do anything that states or implies, that the entity is entitled to engage in legal practice, unless the entity is a qualified entity.  
Penalty: 50 penalty units.

#### 12 Entitlement of certain persons to use certain titles, and presumptions with respect to other persons

##### (1) Titles

This section applies to the following titles—

- (a) lawyer, legal practitioner, barrister, solicitor, attorney, counsel or proctor;
- (b) Senior Counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel or His Majesty's Counsel;
- (c) any other title specified in the Uniform Rules for the purposes of this section.

##### (2) Entitlement to take or use title

A person is entitled by force of this section to take or use a title to which this section applies if—

- (a) the person is of a class authorised by the Uniform Rules for the purposes of this section to take or use that title; and
- (b) where the Uniform Rules so provide—the person does so in circumstances, or in accordance with restrictions, specified in the Uniform Rules for the purposes of this section.

(3) **Presumption of representation of entitlement of person**

The taking or use of a title to which this section applies by a person gives rise to a rebuttable presumption (for the purposes of section 11(1)) that the person represented that he or she is entitled to engage in legal practice.

(4) **Presumption of representation of entitlement of entity**

The taking or use of a title to which this section applies by a person in connection with an entity, of which the person is a partner, director, officer, employee or agent, gives rise to a rebuttable presumption (for the purposes of section 11(2)) that the person represented that the entity is entitled to engage in legal practice.

**13 Protection of lay associates**

A lay associate of a law practice does not contravene a provision of this Law or the Uniform Rules merely because of any of the following—

- (a) he or she receives any fee, gain or reward for business of the law practice that is the business of an Australian legal practitioner;
- (b) he or she holds out, advertises or represents himself or herself as a lay associate of the law practice where its business includes the provision of legal services;
- (c) he or she shares with any other person the receipts, revenue or other income of the law practice where its business is the business of an Australian legal practitioner—

unless the provision expressly applies to lay associates of law practices.

**14 Functions of local regulatory authority with respect to offence**

The designated local regulatory authority may—

- (a) take any steps that in its opinion may be necessary or proper for or with respect to the investigation of any question as to conduct by any entity (whether or not an Australian lawyer) that is, or may be, a contravention of a provision of this Part; and
- (b) institute prosecutions and other proceedings for the contravention of a provision of this Part by any entity (whether or not an Australian lawyer).

## **Part 2.2 Admission to the Australian legal profession**

### **Division 1 Introduction**

**15 Objective**

The objective of this Part is to protect the administration of justice and the clients of law practices by providing a system under which persons are eligible for admission to the Australian legal profession only if—

- (a) they have appropriate academic qualifications and practical legal training, whether obtained in Australia or elsewhere; and
- (b) they are fit and proper persons to be admitted.

**Notes**

- 1 Admission does not of itself entitle a person to engage in legal practice, but is a prerequisite for being able to apply in this jurisdiction for an Australian practising certificate, which entitles the holder to engage in legal practice.
- 2 The admission of New Zealand lawyers is effected by the operation of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## Division 2 Admission

### 16 Admission

- (1) The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if—
  - (a) the designated local regulatory authority has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and
  - (b) the person is not already admitted to the Australian legal profession; and
  - (c) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.
- (2) Residence in, or any other connection with, this jurisdiction is not a requirement for admission by the Supreme Court.

**Note** A person may seek admission by the Supreme Court of any participating jurisdiction, subject to compliance with this Law and applicable jurisdictional legislation.
- (3) Any person may, in accordance with any applicable rules of court, object to the Supreme Court to the admission of a particular person.
- (4) Nothing in this section is intended to interfere with the inherent jurisdiction of the Supreme Court to refuse admission.

### 17 Prerequisites for compliance certificates

- (1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she—
  - (a) has attained the academic qualifications specified under the Admission Rules for the purposes of this section (the *specified academic qualifications prerequisite*); and
  - (b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules for the purposes of this section (the *specified practical legal training prerequisite*); and
  - (c) is a fit and proper person to be admitted to the Australian legal profession.
- (2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession—
  - (a) the designated local regulatory authority may have regard to any matter relevant to the person's eligibility or suitability for admission, however the matter comes to its attention; and
  - (b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section.

### 18 Exemption from certain prerequisites

- (1) The designated local regulatory authority may exempt a person from satisfying the specified academic qualifications prerequisite or the specified practical legal training prerequisite or both, if the designated local regulatory authority is satisfied that the person has sufficient legal skills or relevant experience so as to render the person eligible for admission.
- (2) The legal skills or relevant experience or both can be obtained in legal practice, in service with a government authority or in another way considered appropriate by the designated local regulatory authority. They can be obtained wholly in Australia or overseas or obtained partly in Australia and partly overseas.

## 19 Compliance certificates

- (1) A person may apply, in accordance with the Admission Rules, to the designated local regulatory authority for a compliance certificate if the person proposes to be admitted in this jurisdiction.  
**Note** Section 474(2) contemplates that jurisdictional legislation may fix fees for payment in relation to any function of the Supreme Court, the designated tribunal or a local regulatory authority under this Law or the Uniform Rules. This could, for example, extend to processing an application for a compliance certificate.
- (2) The designated local regulatory authority may require an applicant for a compliance certificate to provide further information to it within a specified time.
- (3) The designated local regulatory authority may issue and provide to the Supreme Court a compliance certificate stating that the applicant has satisfied it that he or she—
  - (a) has satisfied the specified academic qualifications prerequisite and the specified practical legal training prerequisite (or is exempted under section 18); and
  - (b) is a fit and proper person to be admitted to the Australian legal profession (as referred to in section 17(1)(c)).
- (4) The designated local regulatory authority may revoke a compliance certificate issued in respect of a person if satisfied that the certificate was issued on the basis of information provided by the person that was false, misleading or incomplete in a material particular or that the certificate was issued in error. The designated local regulatory authority must notify the person of the revocation of the compliance certificate.
- (5) However, revocation of a compliance certificate under this section does not of itself affect the person's admission if he or she is already admitted.
- (6) The designated local regulatory authority must ensure that notice is given, in accordance with the Admission Rules, on an appropriate website of an application for admission.
- (7) Any person may object to the designated local regulatory authority against the issue by it of a compliance certificate to a particular person.
- (8) The designated local regulatory authority is not to issue a compliance certificate until after it—
  - (a) has given notice under subsection (6) of the application; and
  - (b) has afforded a reasonable opportunity for persons to object to the issue of the certificate; and
  - (c) has—
    - (i) given the applicant a copy of each objection that is received within a reasonable period and that the designated local regulatory authority considers affects the applicant's eligibility or suitability for admission; and
    - (ii) afforded the applicant an opportunity to respond to each objection referred to in subparagraph (i) within a reasonable period specified by the designated local regulatory authority and notified to the applicant; and
  - (d) has considered all objections received within a reasonable period as contemplated by paragraph (b) and all responses received from the applicant within the specified period as contemplated by paragraph (c).

- (9) Failure to give notice under subsection (6), or to give notice in accordance with the Admission Rules, does not affect the validity of the applicant's admission.

## **20 Conditional admission of foreign lawyers**

- (1) The designated local regulatory authority may recommend in a compliance certificate in respect of a foreign lawyer that the foreign lawyer be admitted subject to conditions of one or more of the following kinds—
- (a) a condition limiting the period of the foreign lawyer's admission;
  - (b) a condition requiring the foreign lawyer to undertake particular academic or practical legal training or both;
  - (c) a condition requiring the foreign lawyer to engage in supervised legal practice;
  - (d) a condition limiting the area of law in which the foreign lawyer may engage in legal practice;
  - (e) a condition otherwise restricting the foreign lawyer's practising entitlements.
- (2) The admission of a foreign lawyer is subject to the conditions (if any) recommended by the designated local regulatory authority in the compliance certificate.
- (3) The Supreme Court may, after the admission of a foreign lawyer, vary or revoke a condition to which the foreign lawyer's admission by the Court is subject. The designated local regulatory authority may make recommendations about the variation or revocation of a condition, and the Court must consider any recommendations made by the designated local regulatory authority in deciding on the variation or revocation of the condition.
- (4) Without limiting the grounds on which a person's name may be removed from the Supreme Court roll, the Supreme Court may order the removal of a person's name from the Supreme Court roll for a contravention of a condition.
- (5) Without limiting subsection (4), a contravention of a condition is capable of constituting unsatisfactory professional conduct or professional misconduct.
- Note** Section 48(1) provides that it is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must not contravene a condition that was imposed on the admission of the person to the Australian legal profession and that is still in force.
- (6) Nothing in this section is intended to interfere with the inherent jurisdiction of the Supreme Court to refuse admission.

## **21 Declaration of early assessment of suitability for a compliance certificate**

- (1) A person may apply to the designated local regulatory authority for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by it as to whether the person is a fit and proper person to be admitted.
- (2) The designated local regulatory authority may make the declaration applied for in relation to any or all of the matters disclosed and specified in the declaration or may refuse to do so.
- (3) A declaration made under this section is binding on the designated local regulatory authority unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

## **22 Supreme Court roll**

- (1) The Supreme Court must maintain a roll of Australian lawyers (the *Supreme Court roll*) for this jurisdiction containing the names and other relevant particulars of persons admitted by the Court, whether conditionally or without conditions.

- (2) A person's admission is effective from the time the person signs the Supreme Court roll.

### **23 Removal from Supreme Court roll**

- (1) The Supreme Court may order the removal of the name and other particulars of a person from the Supreme Court roll, on—
- its own motion; or
  - the recommendation of the designated local regulatory authority; or
  - the recommendation of the designated tribunal.
- (2) The designated local roll authority must remove a person's name from the Supreme Court roll (the *relevant roll*) if satisfied that the person's name has been removed from the Supreme Court roll for another jurisdiction (the *other roll*) and no order referred to in subsection (3) is, at the time of that removal, in force in relation to it.
- (3) The Supreme Court may, on application by a person who reasonably expects that his or her name will be removed from the other roll, order that his or her name not be removed from the relevant roll under subsection (2), if the Supreme Court is satisfied that—
- the person's name is likely to be removed from the other roll; and
  - the reason for the removal of the name will not involve disciplinary action or the possibility of disciplinary action—
- or may refuse to make an order.
- (4) An order under subsection (3) may be made subject to any conditions the Supreme Court considers appropriate and remains in force for the period specified in it.
- (5) The Supreme Court may revoke an order made under subsection (3), and subsection (2) then applies as if the person's name were removed from the other roll when the revocation takes effect.
- (6) The designated local roll authority—
- may, but need not, give the person notice of the date on which the authority proposes to remove the name from the relevant roll; and
  - must, as soon as practicable, give the person notice of the removal of the name from the relevant roll, unless notice of the date of the proposed removal was previously given.
- (7) The person's name is, on his or her application to the designated local roll authority or on the designated local roll authority's own initiative, to be restored to the relevant roll if the name is restored to the other roll.
- (8) Nothing in this section prevents a person whose name is removed from the relevant roll from afterwards applying for admission under this Part.

#### **Notes**

- Section 461(2) contains additional provisions relating to the removal of a person's name from the Supreme Court roll.
- Removal of a person's name from a Supreme Court roll results in the person becoming a disqualified person.

### **24 Notice to be given of interjurisdictional action**

- (1) A person whose name is on the Supreme Court roll for this jurisdiction and whose name has been removed from the Supreme Court roll for another jurisdiction must, as soon as practicable, give the designated local roll authority a written notice of the removal.
- Civil penalty: 50 penalty units.

- (2) If an authority or tribunal has, under a corresponding law, made a recommendation that a person's name be removed from the Supreme Court roll for this jurisdiction, the person must, as soon as practicable, give the designated local roll authority a written notice of the recommendation.

Civil penalty: 50 penalty units.

**Note** See section 80 for the requirement for the holder of an Australian practising certificate granted in this jurisdiction to give a separate notice to a designated local regulatory authority if the holder's name is removed from the Supreme Court roll for another jurisdiction.

## **25 Australian lawyer is officer of Supreme Court**

An Australian lawyer is an officer of the Supreme Court of this jurisdiction for as long as his or her name remains on the Supreme Court roll for any jurisdiction.

## **Division 3 Appeals**

### **26 Right of appeal about compliance certificates**

- (1) An applicant for a compliance certificate may appeal to the Supreme Court against the refusal of the designated local regulatory authority to issue a compliance certificate.
- (2) A person for whom a compliance certificate has been issued by the designated local regulatory authority may appeal to the Supreme Court against the revocation of the compliance certificate.
- (3) A foreign lawyer for whom a compliance certificate has been issued by the designated local regulatory authority recommending that the foreign lawyer be admitted subject to any conditions referred to in section 20(1) may appeal to the Supreme Court against the recommendation.
- (4) The Supreme Court may make any order it considers appropriate on an appeal under this section.
- (5) If the Supreme Court decides that an appeal under subsection (1) should be granted, the order may include a direction that the order has the same effect as a compliance certificate provided to the Court by the designated local regulatory authority.

### **27 Right of appeal about early assessment of suitability for a compliance certificate**

- (1) An applicant for a declaration of early assessment of suitability for a compliance certificate may appeal to the Supreme Court against the refusal of the designated local regulatory authority to make the declaration.
- (2) The Supreme Court may make any order it considers appropriate on the appeal, including without limitation a declaration of early assessment of suitability for a compliance certificate.
- (3) A declaration made under this section is binding on the designated local regulatory authority unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

### **28 Provisions relating to appeals**

- (1) An appeal under this Division is to be by way of a rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the designated local regulatory authority may be given on the appeal.
- (2) On an appeal under this Division, the Supreme Court may make an order as to costs as it thinks fit, other than an order against the designated local regulatory authority in favour of an applicant where the appeal was not successful.



## **Division 4      Miscellaneous**

### **29    Accreditation of law courses and providers of practical legal training**

The designated local regulatory authority may accredit or reaccredit law courses or providers of practical legal training in accordance with the Admission Rules.

## Chapter 3 Legal practice

### Part 3.1 Introduction

#### 30 Objectives

The objectives of this Chapter are—

- (a) to enable the provision of legal services through a range of business structures; and
- (b) to ensure that any particular type of business structure does not hinder a law practice and the legal practitioners within it from complying with this Law, the Uniform Rules and the other professional obligations of Australian legal practitioners; and
- (c) to ensure that clients of law practices are adequately protected regardless of the business structure through which a law practice provides legal services; and
- (d) to regulate the provision of legal services through community legal services.

#### 31 Action in relation to certificates is taken locally

An Australian practising certificate or Australian registration certificate granted in this jurisdiction cannot be varied, suspended or cancelled except under this Law as applied in this jurisdiction.

**Note** This section makes it clear that a certificate granted in this jurisdiction cannot be amended by an authority of another jurisdiction. Section 75 provides that the designated local regulatory authority must vary, suspend or cancel a certificate at the direction of the designated tribunal under section 302.

### Part 3.2 Law practices—general provisions

#### 32 Business structures

Legal services may be provided under any business structure, subject to the provisions of this Law and the Uniform Rules.

#### 33 Obligations not affected by nature of business structures

- (1) An Australian legal practitioner must comply with this Law, the Uniform Rules and his or her other professional obligations, regardless of the business structure in which or in connection with which the practitioner provides legal services.
- (2) A law practice must comply with this Law, the Uniform Rules and its other professional obligations, regardless of the business structure in which or in connection with which the law practice provides legal services.

#### 34 Responsibilities of principals

- (1) Each principal of a law practice is responsible for ensuring that reasonable steps are taken to ensure that—
  - (a) all legal practitioner associates of the law practice comply with their obligations under this Law and the Uniform Rules and their other professional obligations; and
  - (b) the legal services provided by the law practice are provided in accordance with this Law, the Uniform Rules and other professional obligations.
- (2) A failure to uphold that responsibility is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **35 Liability of principals**

- (1) If a law practice contravenes, whether by act or omission, any provision of this Law or the Uniform Rules imposing an obligation on the law practice, a principal of the law practice is taken to have contravened the same provision, if—
  - (a) the principal knowingly authorised or permitted the contravention; or
  - (b) the principal was in, or ought reasonably to have been in, a position to influence the conduct of the law practice in relation to its contravention of the provision and failed to take reasonable steps to prevent the contravention by the law practice.
- (2) A contravention by a principal arising under subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct by the principal.
- (3) Neither subsection (1) nor (2) affects any liability of the law practice or any other person for the contravention.

**Note** Section 470 deals with contraventions by partnerships and other unincorporated bodies.

### **36 Discharge by legal practitioner associate of obligations of law practice**

- (1) A legal practitioner associate of a law practice may, on behalf of the law practice, discharge any obligations of the law practice under this Law or the Uniform Rules.
- (2) For the purposes of subsection (1), the relevant provisions of this Law and the Uniform Rules apply to the associate in the same way as they apply to the law practice.
- (3) Subsection (1) does not apply to the extent that the associate is prevented by the Uniform Rules from taking an action referred to in that subsection.
- (4) This section does not affect any liability of a principal of the law practice.

### **37 Involvement of practitioners**

Subject to this Law and to the conditions of his or her Australian practising certificate, an Australian legal practitioner is not prevented from being a partner, director, officer or employee of a law practice merely because of one or more of the following—

- (a) the business of the law practice includes the provision of both legal services and other services;
- (b) one or more other persons are lay associates of the law practice;
- (c) the practitioner shares receipts, revenue or other income from the provision of his or her legal services with the law practice or one or more lay associates of the law practice.

### **38 Privileges of practitioners**

- (1) An Australian legal practitioner who provides legal services in the capacity of an officer, director, partner or employee of a law practice, or in the capacity of a corporate legal practitioner or government legal practitioner, does not lose the professional privileges of an Australian legal practitioner.
- (2) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer, director, partner or employee of a law practice or in the capacity of a corporate legal practitioner or government legal practitioner.

### **39 Undue influence**

A person must not cause or induce or attempt to cause or induce a law practice or a legal practitioner associate of a law practice to contravene this Law, the Uniform Rules or other professional obligations.

Penalty: 100 penalty units.

### **40 Approval of relationships regarding principals**

The Council may approve a relationship, or a kind of relationship, for the purposes of the definition of *principal* in section 6.

### **41 Uniform Rules**

The Uniform Rules may make provision with respect to any matter referred to in this Part.

## **Part 3.3 Australian legal practitioners**

### **Division 1 Introduction**

#### **42 Objectives**

The objectives of this Part are—

- (a) to provide a system for the grant and renewal of Australian practising certificates in this jurisdiction to eligible and suitable persons who are already admitted to the Australian legal profession in any jurisdiction; and
- (b) to facilitate the national practice of law by ensuring that the holders of Australian practising certificates can engage in legal practice in this jurisdiction regardless of their home jurisdiction.

**Note** The grant of practising certificates to New Zealand lawyers and their entitlement to practise in this jurisdiction are effected by the operation of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

### **Division 2 Australian practising certificates**

#### **43 Entitlement to practise**

- (1) An Australian legal practitioner is entitled to engage in legal practice in this jurisdiction.
- (2) That entitlement is subject to any requirements of this Law, the Uniform Rules and the conditions of the practitioner's Australian practising certificate.

#### **44 Grant or renewal of Australian practising certificates in this jurisdiction**

- (1) The designated local regulatory authority may, on application, grant or renew an Australian practising certificate in respect of a financial year.
- (2) An Australian practising certificate granted in this jurisdiction is subject to conditions imposed by or under this Law or the Uniform Rules.
- (3) An Australian practising certificate granted in this jurisdiction ceases to be in force if the holder ceases to be an Australian lawyer.
- (4) The application cannot be made in this jurisdiction unless the applicant reasonably intends that this jurisdiction will be his or her principal place of practice during the currency of the certificate or renewal applied for.
- (5) The Uniform Rules may specify the participating jurisdiction in which the application must be made if the applicant does not reasonably intend to engage in

legal practice in Australia during the currency of the certificate or renewal applied for.

#### **45 Prerequisites for grant or renewal of Australian practising certificates in this jurisdiction**

- (1) The designated local regulatory authority may grant or renew an Australian practising certificate only if it is satisfied that the applicant—
  - (a) is an Australian lawyer; and
  - (b) if required by this Law to have professional indemnity insurance—has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with this Law and the Uniform Rules; and
  - (c) has indicated in the application that he or she does not hold (and he or she does not have a current application for) another Australian practising certificate that would be in force concurrently with the certificate whose grant or renewal is sought under this section.

**Note** Section 474(2) contemplates that jurisdictional legislation may fix fees for payment in relation to any function of the Supreme Court, the designated tribunal or a local regulatory authority under this Law or the Uniform Rules. This could, for example, extend to processing an application for a practising certificate.

- (2) Subject to subsection (4), the designated local regulatory authority must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate.
- (3) In considering whether a person is or is not a fit and proper person to hold an Australian practising certificate, the designated local regulatory authority may have regard to the matters specified in the Uniform Rules for the purposes of this section.
- (4) A person may be considered a fit and proper person to hold an Australian practising certificate even though the person does not satisfy the requirements for a matter to which the designated local regulatory authority may have regard, if it is satisfied that this action is warranted in the circumstances.

**Note** A person who has been refused the grant or renewal of a certificate is a disqualified person—see the definition of *disqualified person* in section 6.

#### **46 Notification of principal place of practice**

- (1) If an Australian lawyer reasonably intends that this jurisdiction will be his or her principal place of practice, he or she must notify the designated local regulatory authority of that intention—
  - (a) on application for the grant or renewal of an Australian practising certificate in this jurisdiction; and
  - (b) within 14 days after his or her principal place of practice changes, if that change coincides with the move to this jurisdiction from another jurisdiction of the permanent office in or through which the lawyer engages in legal practice.
- (2) The designated local regulatory authority may reject the notification if it considers that it is reasonably likely that another jurisdiction will be the Australian lawyer's principal place of practice.

### **Division 3 Conditions of Australian practising certificates**

#### **47 Conditions—categories of practice and trust money**

- (1) An Australian practising certificate granted in this jurisdiction is subject to the condition, as determined by the designated local regulatory authority, that the holder is authorised to engage in legal practice—

- (a) in one or more of the following categories—
    - (i) as a principal of a law practice;
    - (ii) as an employee of a law practice;
    - (iii) as a corporate legal practitioner;
    - (iv) as a government legal practitioner; or
  - (b) as or in the manner of a barrister only; or
  - (c) both as a volunteer at a community legal service and otherwise on a pro bono basis, only.
- (2) An Australian practising certificate granted in this jurisdiction is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money.
- (3) An Australian practising certificate authorising the holder to engage in legal practice as a principal also authorises the holder to engage in legal practice as an employee of a law practice or a corporate legal practitioner or government legal practitioner.
- (4) Until the Australian practising certificate concerned is renewed, and subject to any relevant conditions—
- (a) an Australian practising certificate authorising the holder to engage in legal practice as an employee of a law practice also authorises the holder to engage in legal practice as a corporate legal practitioner or government legal practitioner; and
  - (b) an Australian practising certificate authorising the holder to engage in legal practice as a corporate legal practitioner also authorises the holder to engage in legal practice as a government legal practitioner; and
  - (c) an Australian practising certificate authorising the holder to engage in legal practice as a government legal practitioner also authorises the holder to engage in legal practice as a corporate legal practitioner.
- (5) An Australian practising certificate that is subject to a condition that the holder is authorised to engage in legal practice as set out in subsection (1)(a) or (b) also authorises the holder to engage in legal practice as a volunteer at a community legal service, or otherwise on a pro bono basis.

**Note** Discretionary conditions imposed by the designated local regulatory authority under section 53 may prohibit, restrict or regulate the provision of legal services by an Australian legal practitioner at community legal services or otherwise on a pro bono basis.

- (6) An Australian practising certificate also authorises the holder to supervise legal practice by others. This does not apply—
- (a) if the certificate is subject to a statutory or discretionary condition that the holder must engage in supervised legal practice only; or
  - (b) to the extent that the certificate is subject to a discretionary condition to the effect that the holder may not supervise legal practice by others.

**Note** Section 211 provides that an Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by a complying policy of professional indemnity insurance.

**48 Statutory conditions—to comply with admission conditions and to hold only one practising certificate**

- (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must not contravene a condition that was imposed on the admission of the person to the Australian legal profession (including that condition as varied after admission) and that is still in force.
- (2) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must not apply for or hold another Australian practising certificate that would be in force concurrently with the first certificate.

**49 Statutory condition—to engage in supervised legal practice**

- (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must, in this jurisdiction, engage in supervised legal practice only, until the holder has completed—
  - (a) if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission to the Australian legal profession—a period or periods equivalent to 18 months of supervised legal practice; or
  - (b) if the holder completed other practical legal training to qualify for admission to the Australian legal profession—a period or periods equivalent to 2 years of supervised legal practice.
- (2) The Uniform Rules may specify the method or a method of determining any such period or periods.
- (3) The statutory condition does not apply to an Australian practising certificate with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.
- (4) The designated local regulatory authority may—
  - (a) exempt a person or class of persons from the statutory condition; or
  - (b) reduce a period referred to in the statutory condition for a person or class of persons—if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to the length and nature of any legal practice previously engaged in by the person or persons.
- (5) The exemption may be given unconditionally or subject to any conditions that the designated local regulatory authority thinks appropriate.

**50 Statutory condition—barrister to undertake reading program**

- (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction, with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only, that the holder must—
  - (a) undertake and complete to the satisfaction of the designated local regulatory authority a reading program (whether full-time or otherwise) specified in the Uniform Rules or otherwise approved by the designated local regulatory authority; and
  - (b) read for a period specified by the designated local regulatory authority with a barrister who is—
    - (i) of a class or description specified in the Uniform Rules or otherwise approved by the designated local regulatory authority; and
    - (ii) chosen by the holder; and

- (c) comply with any other requirements specified by the designated local regulatory authority for the purposes of this paragraph.
- (2) The designated local regulatory authority may impose a discretionary condition limiting the practising rights of a barrister referred to in subsection (1) until the statutory condition is complied with.
- (3) The statutory condition, once satisfied, does not have to be complied with again unless the designated local regulatory authority otherwise directs.
- (4) The designated local regulatory authority may exempt a person or class of persons from the statutory condition.
- (5) The exemption may be given unconditionally or subject to any conditions that the designated local regulatory authority thinks appropriate.

#### **51 Statutory condition—to notify certain events**

- (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must notify the designated local regulatory authority in writing within 7 days that—
  - (a) the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the Uniform Rules for the purposes of this section; or
  - (b) a bankruptcy-related event has occurred in relation to the holder; or
  - (c) the holder has become the subject of disciplinary proceedings as a lawyer in a foreign country.
- (2) The Uniform Rules may specify circumstances in which a notice need not be given under subsection (1).
- (3) Subsection (1) does not apply to an offence to which section 86 applies.

**Note** Section 86 deals with automatic show cause events. Section 88 provides notification procedures for automatic show cause events for holders of Australian practising certificates.

#### **52 Statutory condition—continuing professional development**

It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must comply with the applicable requirements of the Continuing Professional Development Rules.

#### **53 Discretionary conditions**

- (1) The designated local regulatory authority may impose discretionary conditions on an Australian practising certificate granted in this jurisdiction in accordance with the Uniform Rules, but those conditions must be of a kind permitted by this Law or specified or described in the Uniform Rules for the purposes of this section.
- (2) Discretionary conditions may be imposed on an Australian practising certificate at its grant or renewal or during its currency and must be reasonable and relevant.

#### **54 Compliance with conditions**

The holder of an Australian practising certificate granted in this jurisdiction must comply with the conditions of the certificate.

Civil penalty: 100 penalty units.



## **Division 4      Miscellaneous**

### **55    Alteration or substitution of varied certificate**

The designated local regulatory authority may alter a certificate, or issue a substitute certificate, to reflect a variation of the certificate under this Law, but the operation of the variation is not affected if the designated local regulatory authority does neither.

**Note** A certificate can be issued in tangible or electronic format.

### **56    Government lawyers**

It is intended that jurisdictional legislation may—

- (a) exempt persons or classes of persons from the requirement to hold Australian practising certificates, either generally or for specified periods, in respect of their official functions as government lawyers; and
- (b) without limitation, exclude or modify the operation of specified provisions of this Law (including provisions of Part 2.2) to the extent that any of those provisions would otherwise be applicable to any persons, or classes of persons, as government lawyers.

### **57    Uniform Rules for Australian practising certificates and associated matters**

The Uniform Rules may make provision with respect to the following—

- (a) any aspect of Australian practising certificates, including their grant and renewal and the imposition of conditions including conditions restricting practising entitlements;
- (b) without limiting paragraph (a)—
  - (i) applications for the grant or renewal of Australian practising certificates, including the disclosure of matters relevant to an applicant's eligibility and suitability; and
  - (ii) the refusal of applications for the grant or renewal of Australian practising certificates.

## **Part 3.4    Foreign lawyers**

### **Division 1      Introduction**

#### **58    Objective**

The objective of this Part is to encourage and facilitate the internationalisation of legal services by providing a framework for the regulation of the practice of foreign law in this jurisdiction by foreign lawyers as a recognised aspect of legal practice in this jurisdiction.

#### **59    This Part does not apply to Australian legal practitioners**

This Part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also a foreign lawyer), except as expressly provided.

### **Division 2      Limited practice without registration**

#### **60    Practice of foreign law without registration but for limited periods**

- (1) A foreign lawyer may, subject to this Law, practise foreign law in this jurisdiction without having to hold a current Australian registration certificate—
  - (a) during one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or

- (b) during any period during which any restriction under the *Migration Act 1958* of the Commonwealth has the effect of limiting the period during which work may be done, or business transacted, by the foreign lawyer in Australia.
  - (2) Subsection (1) does not apply to a foreign lawyer—
    - (a) who maintains an office in this jurisdiction for the purpose of practising foreign law in Australia; or
    - (b) who is a partner, director or other principal of a law practice in this jurisdiction; or
    - (c) whose Australian registration certificate has been cancelled and he or she has not subsequently been granted an Australian registration certificate; or
    - (d) while his or her Australian registration certificate is suspended.
  - (3) A foreign lawyer who does not hold a current Australian registration certificate must not—
    - (a) maintain an office in this jurisdiction for the purpose of practising foreign law in this jurisdiction; or
    - (b) practise foreign law in this jurisdiction as a partner, director or other principal of a law practice.
- Penalty: 250 penalty units.

### **Division 3 Registration**

#### **61 Entitlement to practise**

- (1) An Australian-registered foreign lawyer is entitled to practise foreign law in this jurisdiction.
- (2) That entitlement is subject to any requirements of this Law and the Uniform Rules and the conditions of the foreign lawyer's Australian registration certificate.

#### **62 Grant or renewal of Australian registration certificates**

- (1) The designated local regulatory authority may, on application, grant or renew an Australian registration certificate in respect of a financial year.
- (2) An Australian registration certificate is subject to conditions imposed by or under this Law or the Uniform Rules.
- (3) The designated local regulatory authority must grant an Australian registration certificate to a person applying for it if the designated local regulatory authority is satisfied that—
  - (a) the person is an individual aged 18 years or over; and
  - (b) the person is registered or authorised to engage in legal practice in one or more foreign countries with an effective system of legal practice regulation and is not an Australian legal practitioner; and
  - (c) the person demonstrates an intention to engage in legal practice in Australia within a reasonable period after registration; and
  - (d) the person is not subject to any special conditions or undertakings concerning his or her engagement in legal practice as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country that would make registration inappropriate; and
  - (e) the person is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as—

- (i) a foreign lawyer; or
  - (ii) an Australian-registered foreign lawyer; or
  - (iii) an Australian lawyer; and
- (f) the person's registration or authorisation is not cancelled or currently suspended in any place as a result of disciplinary action; and
  - (g) the person is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place as a result of criminal, civil or disciplinary proceedings in any place; and
  - (h) the person satisfies any other requirements of the Uniform Rules.
- (4) The designated local regulatory authority may refuse to grant or renew an Australian registration certificate on any ground specified in the Uniform Rules for the purposes of this section.
  - (5) Residence or domicile in Australia is not a prerequisite for or a factor in entitlement to the grant or renewal of an Australian registration certificate.
  - (6) The designated local regulatory authority—
    - (a) may make any enquiries that it thinks fit of any foreign registration authority for the purposes of determining whether to be satisfied as to the matters referred to in subsection (3); and
    - (b) may consider any other matters, not inconsistent with this Law, that the designated local regulatory authority considers relevant.
  - (7) A foreign lawyer is registered as a foreign lawyer on being granted an Australian registration certificate, and ceases to be registered when the foreign lawyer no longer holds an Australian registration certificate.
- Note** A person who is granted an Australian registration certificate becomes an Australian-registered foreign lawyer.

### **63 Notification of principal place of practice**

- (1) If an applicant for or holder of an Australian registration certificate reasonably intends that this jurisdiction will be his or her principal place of practice, he or she must notify the designated local regulatory authority of that intention—
  - (a) on application for the grant or renewal of an Australian registration certificate; and
  - (b) within 14 days after his or her principal place of practice changes, if that change coincides with the move to this jurisdiction from another jurisdiction of the permanent office in or through which the holder engages in legal practice.
- (2) The designated local regulatory authority may reject the notification if it considers that it is reasonably likely that another jurisdiction will be the person's principal place of practice.

## **Division 4 Conditions of Australian registration certificates**

### **64 Conditions—trust money**

An Australian registration certificate is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money.

### **65 Statutory condition—to hold only one Australian registration certificate**

It is a statutory condition of an Australian registration certificate that the holder must not apply for or hold another Australian registration certificate that would be in force concurrently with the first certificate.

### **66 Statutory condition—to notify certain events**

- (1) It is a statutory condition of an Australian registration certificate that the holder must notify the designated local regulatory authority in writing within 7 days of the event that—
  - (a) the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the Uniform Rules for the purposes of this section; or
  - (b) a bankruptcy-related event has occurred in relation to the holder; or
  - (c) the holder is the subject of disciplinary proceedings, or other disciplinary action, as a lawyer in a foreign country.
- (2) The Uniform Rules may specify circumstances in which notification is not required.

### **67 Discretionary conditions**

- (1) The designated local regulatory authority may impose discretionary conditions on an Australian registration certificate in accordance with the Uniform Rules, but those conditions must be of a kind specified or described in the Uniform Rules for the purposes of this section.
- (2) Discretionary conditions may be imposed on an Australian registration certificate at its grant or renewal or during its currency and must be reasonable and relevant.
- (3) Without limitation, a discretionary condition may require the holder to engage in the practice of foreign law under specified supervision or restrict the foreign lawyer's practising entitlements.
- (4) The designated local regulatory authority must include details of discretionary conditions imposed on a foreign lawyer's Australian registration certificate in a local legal profession register.

### **68 Compliance with conditions**

The holder of an Australian registration certificate granted in this jurisdiction must comply with the conditions of the certificate.

Civil penalty: 100 penalty units.

## **Division 5 Scope and form of practice**

### **69 Scope of practice**

- (1) This section applies to—
  - (a) a foreign lawyer who is practising foreign law under Division 2; or
  - (b) an Australian-registered foreign lawyer.

- (2) The foreign lawyer may provide only the following legal services in Australia—
  - (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered or authorised by the foreign registration authority for the country;
  - (b) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is considered by the designated local regulatory authority to be essential;
  - (c) legal services in relation to arbitration proceedings or conciliation, mediation and other forms of consensual dispute resolution;
  - (d) legal services of a kind specified in the Uniform Rules for the purposes of this section.
- (3) Nothing in this Law authorises the foreign lawyer—
  - (a) to practise Australian law in Australia; or
  - (b) to appear in any court, except on the lawyer's own behalf or as permitted by the Uniform Rules.
- (4) Despite subsection (3), the foreign lawyer may advise on the effect of an Australian law if—
  - (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
  - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

## **70 Form of practice**

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's Australian registration certificate) practise foreign law—
  - (a) on the foreign lawyer's own account; or
  - (b) as a partner in a law firm; or
  - (c) as a volunteer at a community legal service or otherwise on a pro bono basis; or
  - (d) as a partner, director, officer or employee of an incorporated legal practice or unincorporated legal practice; or
  - (e) as an employee of a law practice; or
  - (f) as an employee of an Australian-registered foreign lawyer.
- (2) This section does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

## **Division 6 Miscellaneous**

### **71 Uniform Rules for foreign lawyers**

The Uniform Rules may make provision with respect to the following—

- (a) any aspect of Australian registration certificates, including their grant and renewal and the imposition of conditions including conditions restricting practising entitlements;
- (b) without limiting paragraph (a)—
  - (i) applications for the grant or renewal of Australian registration certificates, including the disclosure of matters relevant to an

- applicant's eligibility and suitability for the grant or renewal of Australian registration certificates; and
- (ii) the refusal of applications for Australian registration certificates; and
  - (iii) the imposition of conditions on Australian registration certificates;
- (c) the conduct of the practice of foreign law in Australia by foreign lawyers.

## **Part 3.5 Variation, suspension and cancellation of, and refusal to renew, certificates**

### **Division 1 Introduction**

#### **72 Objectives**

The objectives of this Part are—

- (a) to provide procedures for the variation, suspension or cancellation of Australian practising certificates and Australian registration certificates; and
- (b) to provide show cause procedures for certain events or matters relating to the grant, renewal or continued holding of Australian practising certificates and Australian registration certificates.

**Note** The refusal, suspension or cancellation of a person's Australian practising certificate results in the person becoming a disqualified person.

#### **73 References to certificate**

The term *certificate* in this Part refers to an Australian practising certificate or an Australian registration certificate.

### **Division 2 Variation, suspension or cancellation of certificates**

#### **74 Variation, suspension or cancellation for minor matters, or at request or with concurrence**

- (1) The designated local regulatory authority may vary a certificate for a formal or clerical reason or in another way that does not adversely affect the holder's interests.
- (2) The designated local regulatory authority may vary, suspend or cancel a certificate at the request of or with the concurrence of the holder.

#### **75 Variation, suspension or cancellation at direction of tribunal**

The designated local regulatory authority must vary, suspend or cancel a certificate at the direction of the designated tribunal under section 302.

#### **76 Variation, suspension or cancellation under Division 3 or 4**

The designated local regulatory authority may vary, suspend or cancel a certificate in accordance with—

- (a) Division 3 on a ground referred to in that Division; or
- (b) Division 4 in relation to an automatic show cause event or a designated show cause event.

#### **77 Immediate variation or suspension before or during consideration of proposed action**

- (1) This section applies if the designated local regulatory authority is considering whether to start, continue or complete action under this Part in relation to a certificate

and the designated local regulatory authority considers it necessary in the public interest to vary or suspend the certificate immediately.

- (2) The designated local regulatory authority may immediately vary or suspend the certificate, by written notice given to the holder, until the earlier of the following—
  - (a) the time at which the designated local regulatory authority informs the holder of the designated local regulatory authority's decision under this Part;
  - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The holder may make written representations to the designated local regulatory authority about the variation or suspension, and the designated local regulatory authority must consider the representations.
- (4) The designated local regulatory authority may at any time revoke a condition imposed by the variation under this section, whether or not in response to any written representations made to it by the holder.

#### **78 Lifting of suspension and renewal during suspension**

- (1) The designated local regulatory authority may lift the suspension of a certificate imposed under this Part at any time, whether or not in response to any written representations made to it by the holder, but must not do so inconsistently with an order of the designated tribunal in a case where the suspension was imposed at the direction of the designated tribunal.
- (2) The designated local regulatory authority may renew a certificate while it is suspended under this Part if the end of the period of its currency is imminent, but the renewed certificate remains suspended until it is cancelled or the suspension is lifted.

#### **79 Matters involving convictions**

- (1) If a certificate is varied, suspended or cancelled under this Part because the holder has been convicted of an offence, the Supreme Court may, on the application of the holder, order that decision be stayed until—
  - (a) the end of the time to appeal against the conviction; and
  - (b) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends.
- (2) A variation, suspension or cancellation referred to in subsection (1) does not have effect during any period in respect of which the stay is in force.
- (3) If a certificate is varied, suspended or cancelled under this Part because the holder has been convicted of an offence and the conviction is quashed—
  - (a) the variation or suspension ceases to have effect when the conviction is quashed; or
  - (b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had merely been suspended.

#### **80 Notice to be given of interjurisdictional action**

- (1) If the name of the holder of a certificate has been removed from the Supreme Court roll for another jurisdiction, the holder must, as soon as practicable, give the designated local regulatory authority a written notice of the removal.  
Civil penalty: 50 penalty units.
- (2) If an authority or tribunal has, under a corresponding law, made a recommendation in relation to the holder of a certificate that—

- (a) the person's name be removed from the Supreme Court roll for this jurisdiction; or
- (b) the person's certificate be suspended or cancelled; or
- (c) a certificate not be granted to the person for a period; or
- (d) conditions be imposed on the person's certificate—

the person must, as soon as practicable, give the designated local regulatory authority a written notice of the recommendation.

Penalty: 50 penalty units.

- (3) Subsections (1) and (2)(a) do not apply where the name has been removed from the Supreme Court roll for another jurisdiction under a provision that corresponds to the relevant provisions of section 23.

**Note** See section 24 for the requirement for a person whose name is on the Supreme Court roll for this jurisdiction to give a separate notice to the designated local roll authority if the person's name is removed from the Supreme Court roll for another jurisdiction.

#### **81 Notice to be given to certificate holder**

The designated local regulatory authority must give written notice of any variation, suspension or cancellation of a certificate to the holder or former holder, except where he or she has died.

### **Division 3 Variation, suspension or cancellation on specific grounds**

#### **82 Grounds for action under this Division**

- (1) The designated local regulatory authority may vary, suspend or cancel a certificate under this Division on the ground that—
  - (a) the holder has contravened a condition of the certificate; or
  - (b) the holder has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the holder in connection with this Chapter or has committed an offence under Chapter 7 in connection with any such investigation; or
  - (c) a local regulatory authority has made a recommendation to that effect under section 278 or 466(7); or
  - (d) in the case of an Australian practising certificate—the designated local regulatory authority reasonably believes that the holder is unable to fulfil the inherent requirements of an Australian legal practitioner.

**Note** Section 227 empowers the designated local regulatory authority to suspend an Australian practising certificate or Australian registration certificate for failure to pay an annual contribution or a levy.

- (2) The designated local regulatory authority may vary or suspend a certificate under this Division (if it considers it appropriate to do so having regard to the seriousness of the offence concerned and to the public interest) on the ground that the holder has been charged with a serious offence, a tax offence or an offence specified in the Uniform Rules for the purposes of this section and—
  - (a) the charge has not been determined; or
  - (b) the holder has been convicted of the offence but proceedings taken or likely to be taken in relation to the offence have not been concluded.
- (3) The variation or suspension referred to in subsection (2) has effect until the earliest of the following occurs—
  - (a) the designated local regulatory authority revokes it;



- (b) the end of the period specified by the designated local regulatory authority;
  - (c) if the holder is convicted of the offence—28 days after the day of the conviction;
  - (d) if the charge is dismissed—the day of the dismissal.
- (4) The designated local regulatory authority may recommend to another designated local regulatory authority that consideration be given as to whether the holder of an Australian practising certificate is, or may be, unable to fulfil the inherent requirements of an Australian legal practitioner (as referred to in subsection (1)(d)).
- (5) Subsection (4) does not by implication limit the powers of any local regulatory authority.

### **83 Local regulatory authority to give notice before acting under this Division**

If the designated local regulatory authority considers that a certificate should be varied, suspended or cancelled on a ground specified in section 82, it must give the holder notice in writing—

- (a) stating that it proposes to take that action and the ground or grounds for the proposed action; and
- (b) if it proposes to vary or suspend the certificate, stating the proposed variation or period of suspension, as the case requires; and
- (c) inviting the holder to respond in writing to the designated local regulatory authority within a specified period (not being less than 7 days nor more than 28 days after the notice is given) as to why the proposed action should not be taken.

### **84 Action taken after giving notice**

If the designated local regulatory authority—

- (a) has given notice under section 83 to the holder of a certificate of its proposed action; and
  - (b) the time specified in the notice for a response from the holder has expired—
- it may, after considering any response made by the holder, by notice in writing given to the holder, take the proposed action or take less onerous action that it considers appropriate.

## **Division 4 Show cause procedure for variation, suspension or cancellation of, or refusal to renew, certificates**

### **Subdivision 1 Preliminary**

#### **85 Show cause events**

Show cause events are of 2 kinds, as follows—

- (a) automatic show cause events;
- (b) designated show cause events.

## **Subdivision 2 Automatic show cause events**

### **86 Nature of automatic show cause events**

An *automatic show cause event* is any of the following in relation to a person who is an applicant for or the holder of a certificate—

- (a) a bankruptcy-related event;
- (b) his or her conviction for a serious offence or a tax offence, whether or not—
  - (i) the offence was committed while he or she was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer; or
  - (ii) other persons are prohibited from disclosing the identity of the offender;
- (c) an event of a kind specified in the Uniform Rules for the purposes of this section.

### **87 Automatic show cause events—applicants**

- (1) This section applies if an automatic show cause event has occurred at any time in relation to an applicant for the grant or renewal of a certificate.
- (2) As part of the application, the applicant must provide to the designated local regulatory authority a statement—
  - (a) about the show cause event; and
  - (b) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a certificate.
- (3) However, the applicant need not provide a statement under subsection (2) if the applicant (as a previous applicant for the grant or renewal of a certificate or as the holder of a certificate) has previously provided to the designated local regulatory authority a statement under this Part explaining why, despite the show cause event, he or she considers himself or herself to be a fit and proper person to hold a certificate.

### **88 Automatic show cause events—holders**

- (1) This section applies to an automatic show cause event that occurs in relation to the holder of a certificate.
- (2) The holder must, in accordance with subsection (3), give the designated local regulatory authority—
  - (a) a written notice stating that the show cause event occurred; and
  - (b) a written statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.
- (3) The holder must give the designated local regulatory authority—
  - (a) the notice within 7 days after the show cause event occurred; and
  - (b) the statement within 28 days after the show cause event occurred or a longer period allowed by the designated local regulatory authority (not exceeding the maximum period specified in the Uniform Rules) on application made by the holder within the applicable period.
- (4) The designated local regulatory authority may nevertheless accept a statement received out of time.

## **89 Automatic show cause events—action by local regulatory authority**

- (1) If the applicant or holder gives a statement required by this Subdivision, the designated local regulatory authority must determine whether the person concerned is a fit and proper person to hold a certificate.
- (2) The designated local regulatory authority may vary, suspend or cancel, or may refuse to renew, a certificate if the applicant or holder—
  - (a) fails to provide a statement as required by this Subdivision; or
  - (b) has provided a statement in accordance with this Subdivision but the designated local regulatory authority does not consider that the applicant or holder has shown in the statement that, despite the show cause event, he or she is a fit and proper person to hold a certificate (or can be considered such a fit and proper person if the designated local regulatory authority is satisfied that doing so is warranted in the circumstances); or
  - (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.
- (3) If the designated local regulatory authority determines that the applicant or holder is such a fit and proper person (or can be considered such a fit and proper person if the designated local regulatory authority is satisfied that doing so is warranted in the circumstances), it—
  - (a) must take no further action in relation to the show cause event; but
  - (b) may impose a discretionary condition that it considers appropriate in the circumstances.
- (4) In determining a matter under this section, the designated local regulatory authority—
  - (a) may, but need not, conduct an investigation into the matter; and
  - (b) is not limited to making its determination, or conducting any such investigation, on the basis of just the automatic show cause event concerned; and
  - (c) may have regard to the facts and circumstances that surround, arise in connection with, relate to or give rise to the automatic show cause event concerned.

## **Subdivision 3 Designated show cause events**

### **90 Nature of designated show cause events**

A *designated show cause event* is the service of a notice on a holder of a certificate—

- (a) alleging—
  - (i) in the case of a holder of an Australian practising certificate—that the holder has engaged in legal practice outside the terms of a condition restricting his or her practising entitlements; or
  - (ii) in the case of a holder of an Australian registration certificate—that the holder has provided legal services not permitted by or under this Law; or
  - (iii) in the case of a holder of an Australian practising certificate who is required to have professional indemnity insurance—that the holder does not have, or no longer has, professional indemnity insurance that complies with this Law in relation to the certificate; or

- (iv) a matter of a kind specified in the Uniform Rules for the purposes of this section; and
- (b) requiring the holder to provide a statement showing cause why the designated local regulatory authority should not take action, specified in the notice, to vary, suspend or cancel the certificate.

**91 Designated show cause events—holders**

- (1) The holder of a certificate in relation to whom a designated show cause event occurs must, in accordance with subsection (2), give the designated local regulatory authority a written statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.
- (2) The holder must give the designated local regulatory authority the statement within 28 days after service of the notice of the designated show cause event or a longer period allowed by the designated local regulatory authority (not exceeding the maximum period specified in the Uniform Rules) on application made by the holder within that period of 28 days.
- (3) The designated local regulatory authority may nevertheless accept a statement received out of time.

**92 Designated show cause events—action by local regulatory authority**

- (1) If the holder provides a statement required by this Subdivision, the designated local regulatory authority must determine whether the person concerned is a fit and proper person to hold a certificate.
- (2) The designated local regulatory authority may vary, suspend or cancel, or may refuse to renew, a certificate if the holder—
  - (a) fails to provide a statement as required by this Subdivision; or
  - (b) has provided a statement in accordance with this Subdivision but the designated local regulatory authority does not consider that the holder has shown in the statement that, despite the show cause event, he or she is a fit and proper person to hold a certificate (or can be considered such a fit and proper person if the designated local regulatory authority is satisfied that doing so is warranted in the circumstances); or
  - (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.
- (3) If the designated local regulatory authority determines that the person is such a fit and proper person (or can be considered such a fit and proper person if the designated local regulatory authority is satisfied that doing so is warranted in the circumstances), it must take no further action in relation to the show cause event but may impose a discretionary condition that it considers appropriate in the circumstances.
- (4) If the designated local regulatory authority determines that the person is not such a fit and proper person (or cannot be so considered such a fit and proper person), it may take the action specified in the notice referred to in section 90 or take less onerous action that the designated local regulatory authority considers appropriate.
- (5) In determining a matter under this section, the designated local regulatory authority—
  - (a) may, but need not, conduct an investigation into the matter; and

- (b) is not limited to making its determination, or conducting any such investigation, on the basis of just the designated show cause event concerned; and
  - (c) may have regard to the facts and circumstances that surround, arise in connection with, relate to or give rise to the designated show cause event concerned.
- (6) The designated local regulatory authority is not to deal with a matter under this section if the matter has previously been the subject of investigation or determination under this Law unless the designated local regulatory authority is satisfied there are exceptional circumstances for doing so.

## **Division 5      Miscellaneous**

### **93    Events or matters occurring before admission or registration**

If an event or matter occurred before a person was first admitted to the Australian legal profession or first registered as a foreign lawyer, the designated local regulatory authority may decide to take no action under this Part in connection with the event or matter if—

- (a) the person disclosed the event or matter to the designated local regulatory authority in an application for a compliance certificate or for a declaration of early assessment of suitability for a compliance certificate or in his or her first application for an Australian registration certificate; or
- (b) the designated local regulatory authority is satisfied that it is appropriate to do so given the passage of time and any other circumstances the designated local regulatory authority considers relevant.

### **94    Restriction on making further applications**

- (1) If the designated local regulatory authority refuses to grant or renew or cancels a certificate under this Part, the designated local regulatory authority may also decide that the person concerned is not entitled to apply for a certificate for a specified period not exceeding 5 years.
- (2) That person is accordingly not entitled to apply for a certificate during that period.
- (3) The designated local regulatory authority must give the person concerned written notice of the designated local regulatory authority's decision under this section.

### **95    Consideration and investigation of applicants or holders**

- (1) In considering whether or not to grant, renew, vary, suspend or cancel a certificate, the designated local regulatory authority may, by notice to the applicant or holder, require the applicant or holder—
  - (a) to give it specified documents or information; or
  - (b) to be medically examined by a medical practitioner nominated by the designated local regulatory authority; or
  - (c) to provide a report from a Commissioner of Police as to whether the applicant or holder has been convicted or found guilty of an offence in Australia; or
  - (d) to cooperate with any inquiries by the designated local regulatory authority that it considers appropriate.
- (2) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the designated local regulatory authority.

**96 Deferral of action or temporary renewal for limited purposes**

The designated local regulatory authority may, at its discretion, for the purpose of enabling the proper arrangement of the affairs of the holder of a certificate who is the subject of action or proposed action under this Part, defer taking the action, or renew the certificate, for a period that the designated local regulatory authority considers necessary to achieve that purpose.

**97 Relationship of this Part with Chapter 5**

- (1) Nothing in this Part prevents a matter to which this Part relates from being dealt with under Chapter 5, whether or not it is being, or has already been, dealt with under this Part.
- (2) Without limitation, a matter to which this Part relates may be made the subject of a complaint and dealt with under Chapter 5 even if adverse action has been taken under this Part against the Australian legal practitioner or Australian-registered foreign lawyer concerned.

**98 Uniform Rules**

The Uniform Rules may make provision with respect to the variation, suspension or cancellation of certificates, the show cause procedure under this Part and any other matter relating to this Part.

## **Part 3.6 Appeal or review about certificates**

**99 Objective**

The objective of this Part is to provide a right to appeal against or to seek a review of certain decisions of the designated local regulatory authority in relation to Australian practising certificates and Australian registration certificates. A reference in this Part to such a certificate is a reference to a certificate granted or to be granted in this jurisdiction.

**100 Right of appeal or review about Australian practising certificates**

- (1) An applicant for or the holder of an Australian practising certificate may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by that tribunal of, any of the following decisions of the designated local regulatory authority under this Chapter—
  - (a) a decision to refuse to grant or renew the Australian practising certificate;
  - (b) a decision to vary, suspend or cancel the Australian practising certificate or, without limitation, to impose a condition on the Australian practising certificate;
  - (c) a decision that a person is not entitled to apply for an Australian practising certificate for a specified period (see section 94).
- (2) An appeal or review under this section may be made to review the merits of the decision concerned.
- (3) The designated tribunal may make any order it considers appropriate on an appeal or review under this section, including any of the following orders—
  - (a) an order directing the designated local regulatory authority to grant, or to refuse to grant, an application for an Australian practising certificate;
  - (b) an order directing the designated local regulatory authority to suspend for a specified period or cancel an Australian practising certificate, or to reinstate an Australian practising certificate that has been suspended or cancelled;

- (c) an order that an applicant or holder is not entitled to apply for the grant of an Australian practising certificate for a specified period not exceeding 5 years;
  - (d) an order directing the designated local regulatory authority to vary an Australian practising certificate in the manner specified by the designated tribunal.
- (4) Except to the extent (if any) that may be ordered by the designated tribunal, the lodging of an appeal or application for review under this section does not stay the effect of the refusal, variation, suspension or cancellation concerned.
  - (5) The designated tribunal may not order the imposition of conditions on an Australian practising certificate without first taking submissions from the designated local regulatory authority.
  - (6) In proceedings on an appeal or review under this section, fresh evidence, or evidence in addition to or in substitution for matters considered by the designated local regulatory authority, may be given.
  - (7) In proceedings on an appeal or review under this section in which the question of whether a person is a fit and proper person to hold an Australian practising certificate is at issue—
    - (a) the onus of establishing that a person is a fit and proper person to hold an Australian practising certificate is on the person asserting that fact; and
    - (b) it is to be presumed in the absence of evidence to the contrary that any statement of facts in the reasons of the designated local regulatory authority for the decision concerned is a correct statement of the facts in the matter; and
    - (c) a document that appears to be a document issued for the purposes of or in connection with any application, proceedings or other matter arising under the Bankruptcy Act is admissible in the proceedings and is evidence of the matters stated in the document.
  - (8) The designated local regulatory authority is to give effect to any order of the designated tribunal under this section.

**Note** Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

#### **101 Right of appeal or review about Australian registration certificates**

- (1) An applicant for or the holder of an Australian registration certificate may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by that tribunal of, any of the following decisions of the designated local regulatory authority under this Chapter—
  - (a) a decision to refuse to grant or renew the Australian registration certificate;
  - (b) a decision to vary, suspend or cancel the Australian registration certificate;
  - (c) a decision that a person is not entitled to apply for an Australian registration certificate for a specified period (see section 94).
- (2) An appeal or review under this section may be made to review the merits of the decision concerned.
- (3) The designated tribunal may make any order it considers appropriate on the appeal or review.
- (4) Except to the extent (if any) that may be ordered by the designated tribunal, the lodging of an appeal or application for review does not stay the effect of the refusal, variation, suspension or cancellation concerned.

- (5) The designated tribunal may not order the imposition of conditions on an Australian registration certificate without first taking submissions from the designated local regulatory authority.
- (6) In proceedings on an appeal or review under this section, fresh evidence, or evidence in addition to or in substitution for matters considered by the designated local regulatory authority, may be given.
- (7) The designated local regulatory authority is to give effect to any order of the designated tribunal under this section.  
**Note** Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

## **Part 3.7 Incorporated and unincorporated legal practices**

### **Division 1 General**

#### **102 Application of this Division**

This Division applies to a law practice that is an incorporated legal practice or an unincorporated legal practice.

#### **103 Services that may be provided**

A law practice to which this Division applies is entitled to engage in legal practice in this jurisdiction, and may also provide other services.

#### **104 Notice of intention to engage in or terminate legal practice**

- (1) If an entity intends to engage in legal practice in this jurisdiction as a law practice to which this Division applies, it must give the designated local regulatory authority a notice of that intention within the period specified in the Uniform Rules.
- (2) An entity must not engage in legal practice in this jurisdiction as a law practice to which this Division applies if it has not given the designated local regulatory authority the notice required under subsection (1).  
Civil penalty: 50 penalty units.
- (3) If a law practice to which this Division applies ceases to engage in legal practice in this jurisdiction, it must give the designated local regulatory authority a notice of that fact within the period specified in the Uniform Rules.  
Civil penalty: 50 penalty units.
- (4) The Uniform Rules may make provision for determining whether and when an entity ceases to engage in legal practice in this jurisdiction.
- (5) To be effective, a notice under this section must comply with and be given in accordance with the Uniform Rules. In particular, the Uniform Rules may—
  - (a) specify the period within which a notice must be given; and
  - (b) provide for a notice to be given on behalf of an entity.
- (6) A notice given by an entity under subsection (1) operates until it gives notice under subsection (3).

#### **105 Principals**

A law practice to which this Division applies must have at least one authorised principal.



### **106 Law practice without principal**

- (1) A law practice to which this Division applies contravenes this section if it does not have any authorised principals for a period exceeding 7 days.  
Civil penalty: 50 penalty units.
- (2) If a law practice to which this Division applies ceases to have any authorised principals, the law practice must notify the designated local regulatory authority of that fact within 7 days.  
Civil penalty: 50 penalty units.
- (3) A law practice to which this Division applies must not provide legal services in this jurisdiction during any period it is non-compliant with relevant requirements under this section.  
Penalty: 250 penalty units.
- (4) A law practice to which this Division applies that contravenes subsection (1) is taken to be non-compliant with relevant requirements under this section for the period from the end of the period of 7 days until it has at least one authorised principal.
- (5) The designated local regulatory authority may, if it thinks it appropriate, appoint an Australian legal practitioner who is an employee of the law practice or another person nominated by the designated local regulatory authority, in the absence of an authorised principal, to exercise the responsibilities of a principal under this Law.  
**Note** Section 34 provides for the responsibilities of each principal of a law practice.
- (6) An Australian legal practitioner is not eligible to be appointed under this section unless the practitioner is an authorised principal.
- (7) The appointment under this section of a person to exercise functions of an authorised principal does not, for any other purpose, confer or impose on the person any of the other functions of a principal of the law practice.
- (8) A law practice does not contravene subsection (1) during any period during which a person holds an appointment under this section in relation to the law practice.

### **107 Disclosure obligations**

- (1) This section applies if a person engages a law practice to which this Division applies to provide services that the person might reasonably assume to be legal services and the law practice provides both legal services and other services.
- (2) The law practice must, in accordance with the Uniform Rules, make a disclosure to the person informing the person—
  - (a) whether the services are legal services; and
  - (b) of any other matters specified in the Uniform Rules for the purposes of this section.
- (3) If a proper disclosure has not been made under this section, the standard of care owed by the law practice in respect of the service is the standard that would be applicable if the service were a legal service that had been provided by an Australian legal practitioner.

## **Division 2 Provisions applying to incorporated legal practices only**

### **108 External administration proceedings under Corporations Act or other legislation**

- (1) This section applies to—
  - (a) proceedings in any court under Chapter 5 of the Corporations Act relating to a corporation that is or was an incorporated legal practice and that is or was in

- the process of becoming an externally-administered corporation under that Act; and
- (b) proceedings in any court under other legislation for the external administration (however expressed) of an incorporated legal practice.
- (2) The designated local regulatory authority is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the law practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of—
- (a) in relation to proceedings referred to in subsection (1)(a)—the Corporations Act; or
- (b) in relation to proceedings referred to in subsection (1)(b)—any legislation applicable to the incorporated legal practice.
- (5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.
- Note** Section 5G of the Corporations Act provides that, if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**109 Incorporated legal practice that is subject to receivership under this Law and external administration under Corporations Act**

- (1) This section applies if an incorporated legal practice is the subject of both—
- (a) the appointment of a Uniform Law receiver; and
- (b) the appointment of a Corporations Act administrator.
- (2) The Uniform Law receiver is under a duty to notify the Corporations Act administrator of the appointment of the Uniform Law receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) The Uniform Law receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except where proceedings referred to in section 111 have been commenced.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Uniform Law receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
- (5) The designated local regulatory authority is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.
- (7) In this section—
- Corporations Act administrator*** means—

- (a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or
- (b) a person who is appointed to exercise powers under that Act and who is specified, or of a class specified, in the Uniform Rules for the purposes of this definition;

*Uniform Law receiver* means a receiver appointed under Part 6.5.

**110 Incorporated legal practice that is subject to receivership under this Law and external administration under other legislation**

- (1) This section applies if an incorporated legal practice is the subject of both—
  - (a) the appointment of a Uniform Law receiver; and
  - (b) the appointment of an external administrator.
- (2) The Uniform Law receiver is under a duty to notify the external administrator of the appointment of the Uniform Law receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.
- (3) The Uniform Law receiver or the external administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Uniform Law receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
- (5) The designated local regulatory authority is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) In this section—

*external administrator* means a person who is appointed to exercise powers under other legislation (whether or not of this jurisdiction) and who is specified, or of a class specified, in the Uniform Rules for the purposes of this definition;

*Uniform Law receiver* means a receiver appointed under Part 6.5.

**111 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices**

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice)—
  - (a) civil proceedings relating to a failure to account for, pay or deliver money or property received by, or entrusted to, the practice (or to any director, officer or employee of the practice) in the course of the provision of legal services by the practice, being money or property under the direct or indirect control of the practice;
  - (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by an Australian legal practitioner who is a director, officer or employee of the practice in connection with the provision of legal services to the client.
- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in those proceedings, but would be liable for those acts or omissions if the practice and those officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.

**112 Relationship of Law to constitution of, or legislation establishing, incorporated legal practice**

- (1) The provisions of this Law or the Uniform Rules that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.
- (2) The provisions of this Law or the Uniform Rules that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over provisions of the legislation by or under which the corporation is established or regulated that are specified or described in the Uniform Rules.
- (3) Subsection (2) applies to a corporation that is established by or under a law (whether or not of this jurisdiction) with power to engage in legal practice, but is not a company within the meaning of the Corporations Act.

**113 Relationship of Law to Corporations legislation**

- (1) The Uniform Rules may declare any provision of this Law or the Uniform Rules that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.
- (2) The Uniform Rules may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Law or the Uniform Rules to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to—
  - (a) the whole of the Corporations legislation; or
  - (b) a specified provision of the Corporations legislation; or
  - (c) the Corporations legislation other than a specified provision; or
  - (d) the Corporations legislation otherwise than to a specified extent.
- (3) In this section, *matter* includes act, omission, body, person or thing.

**Division 3 Miscellaneous**

**114 Approval of business structures**

The Council may approve—

- (a) a corporation, or a kind of corporation, for the purposes of the definition of *incorporated legal practice* in section 6; or
- (b) an unincorporated body or group, or a kind of unincorporated body or group, for the purposes of the definition of *unincorporated legal practice* in section 6.

**115 Uniform Rules for incorporated and unincorporated legal practices**

The Uniform Rules may make provision with respect to any aspect of incorporated legal practices and unincorporated legal practices, so far as concerns the provision of legal services or matters that affect or may affect the provision of legal services.

## Part 3.8 Community legal services

### 116 Status of community legal services

- (1) The status of a community legal service as a body established on a not-for-profit basis is not affected by any profit made by it so long as the income cannot or will not be distributed to any member or employee of the body otherwise than by way of reasonable remuneration under a contract of service or for services.
- (2) A community legal service may, subject to Part 4.3, recover legal costs incurred by it in respect of legal services that it provides.

**Note** Legal practice at a community legal service is required to be covered by professional indemnity insurance, including legal services provided by a member or employee of the service or a volunteer at the service.

### 117 Supervising legal practitioner

- (1) A community legal service or its governing body is required to have at least one Australian legal practitioner who—
  - (a) is employed or engaged by the service or is a member of its governing body; and
  - (b) is designated by the governing body as a supervising legal practitioner for the service and responsible for the provision of legal services by the service.
- (2) A community legal service contravenes this section if it or its governing body does not have any supervising legal practitioners for a period exceeding 7 days.

Penalty: 250 penalty units.

**Note** A supervising legal practitioner is a principal of the law practice.

### 118 Uniform Rules for community legal services

The Uniform Rules may make provision with respect to any aspect of community legal services, so far as concerns the provision of legal services or matters that affect or may affect the provision of legal services.

## Part 3.9 Disqualifications

### Division 1 Making of disqualification orders

#### 119 Disqualification of individuals (other than practitioners)

- (1) The designated tribunal may, on the application of the designated local regulatory authority, make an order disqualifying a person who is an individual (other than an Australian legal practitioner) for the purposes of this Law, for a specified period or indefinitely, if satisfied that—
  - (a) a ground for making the order under this section has been established (see subsection (2)); and
  - (b) the disqualification is justified.
- (2) Any of the following are grounds for disqualifying a person—
  - (a) that the person has been convicted of a serious offence;
  - (b) that the person is not a fit and proper person to be employed or paid in connection with the practice of law or to be involved in the management of a law practice;

- (c) that the person was formerly an Australian legal practitioner and has, when an Australian legal practitioner, been guilty of conduct that constituted unsatisfactory professional conduct or professional misconduct;
  - (d) that the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct;
  - (e) that the person could be disqualified under sections 206C–206F of the Corporations Act from managing a law practice if the law practice were a corporation.
- (3) The designated tribunal, on application by the person and with the leave of the tribunal, or by the designated local regulatory authority, may vary or revoke an order if it considers it appropriate to do so.
- (4) An order to a similar effect made by a corresponding authority of another jurisdiction under a corresponding law applies in relation to this jurisdiction in the same way as it applies in relation to that other jurisdiction and as if it had been made by the designated tribunal.

#### **120 Disqualification of entities from providing legal services**

- (1) The designated tribunal may, on the application of the designated local regulatory authority, make an order disqualifying an entity that is or was a law practice from providing all or specified legal services in this jurisdiction, for a specified period or indefinitely, if satisfied that—
- (a) a ground for disqualifying the entity under this section has been established (see subsection (2)); and
  - (b) the disqualification is justified.
- (2) Any of the following are grounds for disqualifying an entity that is or was a law practice from providing legal services—
- (a) that the law practice has contravened section 121;
  - (b) that the law practice has failed to comply with a management system direction under section 257;
  - (c) that the law practice (or a related entity) has contravened section 258 or the Uniform Rules made under that section;
  - (d) that a legal practitioner associate of the law practice has been found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction.
- (3) An order disqualifying an entity may, if the designated tribunal thinks it appropriate, be made—
- (a) subject to conditions as to the conduct of the law practice; or
  - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
  - (c) together with orders to safeguard the interests of clients or employees of the law practice.
- (4) The designated tribunal, on application by the entity, or by the designated local regulatory authority, may vary or revoke an order if it considers it appropriate to do so.
- (5) An order to a similar effect made by a corresponding authority of another jurisdiction under a corresponding law applies in relation to this jurisdiction in the same way as it applies in relation to that other jurisdiction and as if it had been made by the designated tribunal.

- (6) Courts and tribunals of this jurisdiction may make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this section.

## **Division 2 Prohibitions and other provisions regarding disqualified persons and disqualified entities**

### **121 Contravention by law practice—disqualified or convicted person as lay associate**

- (1) A law practice contravenes this subsection if the law practice has a lay associate whom any principal or other legal practitioner associate of the law practice knows to be—
- (a) a disqualified person; or
  - (b) a person who has been convicted of a serious offence—
- unless the lay associate is approved by the designated local regulatory authority under subsection (2).
- Penalty: 100 penalty units.
- (2) The designated local regulatory authority may, on application, approve a person as a lay associate for the purposes of this section. An approval may be given generally, or for a particular position or category of positions with a particular law practice, or for a particular category of positions with any law practice.
- (3) In dealing with an application for approval of a person as a lay associate, the designated local regulatory authority may consider any relevant matters and must consider the following matters so far as they are relevant—
- (a) the nature and circumstances of the person’s disqualification or conviction;
  - (b) the requirements and responsibilities of the arrangement or kind of arrangement under which the person is seeking to be employed or otherwise involved;
  - (c) the degree of connection between the person’s disqualification or conviction and the requirements and responsibilities of the arrangement or kind of arrangement.
- (4) An approval may be granted unconditionally or subject to specified conditions.
- Note** The designated local regulatory authority could consider a person’s application for approval as a lay associate at the same time as it decides not to grant or renew, or decides to suspend or cancel, the person’s Australian practising certificate.

### **122 Contravention by disqualified person**

- (1) A person who—
- (a) is a disqualified person; or
  - (b) has been convicted of a serious offence—
- must not seek to become a lay associate of a law practice unless the person first informs the law practice of the disqualification or conviction.
- Civil penalty: 100 penalty units.
- (2) Proceedings for a pecuniary penalty order for a contravention of subsection (1) may only be brought within 6 months after discovery of the contravention by the law practice.
- (3) Subsection (1) does not apply in circumstances specified in the Uniform Rules for the purposes of this section.

**123 Contravention by Australian legal practitioner**

Conduct of an Australian legal practitioner who provides legal services on behalf of a disqualified entity in the capacity of an associate of the entity is capable of constituting unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the entity is a disqualified entity.

**124 Disqualified entity ceases to be incorporated or unincorporated legal practice**

If a disqualified entity is an incorporated legal practice or unincorporated legal practice immediately before an order is made under section 120, it ceases to be an incorporated legal practice or unincorporated legal practice.

**125 Spent convictions**

This Part has effect subject to any applicable jurisdictional legislation relating to spent convictions (however described).



## Chapter 4 Business practice and professional conduct

### Part 4.1 Introduction

#### 126 Objectives

The objectives of this Chapter are—

- (a) to ensure appropriate safeguards are in place for maintaining the integrity of legal services; and
- (b) to apply those safeguards regardless of the type of business structure used for the delivery of legal services.

### Part 4.2 Trust money and trust accounts

#### Division 1 Preliminary

#### 127 Objective

The objective of this Part is to ensure that trust money is held by law practices in a manner that protects the interests of the persons for whom or on whose behalf it is held.

#### 128 Definitions

(1) In this Law—

**authorised ADI** means an ADI authorised to maintain trust accounts to hold trust money under section 149;

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

**controlled money account** means an account maintained by a law practice with an ADI for the holding of controlled money received by the law practice;

**general trust account** means an account maintained by a law practice with an authorised ADI for the holding of trust money, other than controlled money or transit money;

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

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

**trust account** means an account maintained by a law practice with an authorised ADI to hold trust money;

**trust property** means property entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice for or on behalf of another person, but does not include trust money;

**trust records** includes the following documents—

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records;
- (e) trust account ADI statements;

- (f) trust account receipts and payments cash books;
  - (g) trust ledger accounts;
  - (h) records of monthly trial balances;
  - (i) records of monthly reconciliations;
  - (j) trust transfer journals;
  - (k) statements of account as required to be furnished under the Uniform Rules;
  - (l) registers required to be kept under the Uniform Rules;
  - (m) monthly statements required to be kept under the Uniform Rules;
  - (n) files relating to trust transactions or bills of costs or both;
  - (o) written directions, authorities or other documents required to be kept under this Law or the Uniform Rules;
  - (p) supporting information required to be kept under the Uniform Rules in relation to powers to deal with trust money.
- (2) A reference in this Law to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.
- (3) A reference in this Law to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by—
- (a) the practice alone; or
  - (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
  - (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following—
    - (i) one or more associates of the practice;
    - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

#### **129 Meaning of *trust money***

- (1) For the purposes of this Law, ***trust money*** is money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes—
- (a) money received by the law practice on account of legal costs in advance of providing the services; and
  - (b) controlled money received by the law practice; and
  - (c) transit money received by the law practice; and
  - (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person.
- (2) However, the following money is not trust money for the purposes of this Law—
- (a) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client;
  - (b) money entrusted to or held by a law practice for or in connection with—
    - (i) a managed investment scheme; or
    - (ii) mortgage financing;undertaken by the law practice;

- (c) money received by a law practice for or in connection with a financial service it provides in circumstances where the law practice or an associate of the law practice—
  - (i) is required to hold an Australian financial services licence covering the provision of the service; or
  - (ii) provides the financial service as a representative of another person who carries on a financial services business;
- (d) money received by a law practice for investment purposes unless—
  - (i) the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client; and
  - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property;
- (e) money determined under section 152 not to be trust money;
- (f) money declared by the Uniform Rules not to be trust money.

### **130 Application of this Part to law practices and trust money**

- (1) This Part applies to a law practice in respect of the following trust money received by it—
  - (a) trust money received in this jurisdiction if the law practice has an office in this jurisdiction or has offices in no jurisdiction at all;
  - (b) trust money received in another jurisdiction if the law practice has an office in this jurisdiction and in no other jurisdiction;
  - (c) trust money received in another jurisdiction if—
    - (i) the law practice has offices in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the money was received; and
    - (ii) the law practice elects to have this Part apply to the money.
- (2) This Part applies to a law practice only in connection with legal services provided by the law practice.
- (3) The Uniform Rules may provide that specified provisions of this Part—
  - (a) do not apply; or
  - (b) apply with specified modifications—  
to specified law practices or classes of law practices or to specified trust money or specified kinds of trust money, either generally or in specified circumstances or kinds of circumstances.
- (4) The designated local regulatory authority may exempt a particular law practice from complying with any of the provisions of this Part, subject to any conditions that the designated local regulatory authority may impose.
- (5) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

### **131 Australian-registered foreign lawyers**

The provisions of this Part and the Uniform Rules apply to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal

practitioners, subject to any modifications specified in the Uniform Rules for the purposes of this section.

**132 Former practices, principals and associates**

This Part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.

**133 Receiving or holding money by or on behalf of barristers on account of legal costs for legal services**

It is intended that jurisdictional legislation may include provisions prohibiting, regulating or otherwise providing for the receiving or holding of money by or on behalf of a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the legal services.

**134 Provisions relating to certain money**

- (1) If a law practice receives or holds money that is non-trust money (other than money for the payment of legal costs due to the law practice), it must give the person who provided the money written notice that—
  - (a) the money will not be treated as trust money; and
  - (b) the money is not subject to the provisions relating to trust money in this Law or the Uniform Rules; and
  - (c) a claim against the fidelity fund of this jurisdiction cannot be made in respect of the money.Civil penalty: 100 penalty units.
- (2) For the purposes of subsection (1), *non-trust money* is money that is not trust money for the purposes of this Law because of section 129(2)(c), (d), (e) or (f).

**Division 2 Trust money and trust accounts**

**135 Dealing with trust money**

- (1) A law practice must deal with trust money in accordance with this Law and the Uniform Rules and not otherwise.  
Civil penalty: 50 penalty units.
- (2) Trust money held by a law practice may be dealt with only by the law practice or an associate of the law practice.

**136 General trust account for each jurisdiction**

- (1) A law practice that receives trust money to which this Part applies (other than controlled money or transit money received in a form other than cash) must maintain a general trust account in this jurisdiction.  
Civil penalty: 50 penalty units.
- (2) A law practice may maintain one or more general trust accounts in this jurisdiction.

**137 Certain trust money to be deposited in general trust account**

A law practice must deposit trust money (other than cash) into the law practice's general trust account as soon as practicable after receiving it unless—

- (a) the law practice has a written direction by a person legally entitled to provide it to deal with the money otherwise than by depositing it in the account; or
- (b) the money is controlled money or transit money; or
- (c) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Civil penalty: 100 penalty units.

**Note** Section 143 deals with trust money received in the form of cash.

**138 Holding, disbursing and accounting for trust money in general trust account**

- (1) Except as otherwise provided in this Part, a law practice must—
  - (a) hold trust money deposited in the law practice's general trust account exclusively for the person on whose behalf it is received; and
  - (b) disburse the trust money only in accordance with a direction given by the person.

Civil penalty: 50 penalty units.

- (2) Subsection (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.
- (3) The law practice must account for the trust money as required by the Uniform Rules.

Civil penalty: 50 penalty units.

**Note** Jurisdictional legislation may provide for disbursement for the purpose of statutory deposit accounts.

**139 Controlled money**

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money.  
Civil penalty: 50 penalty units.
- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.  
Civil penalty: 50 penalty units.
- (3) Subject to a court order or as authorised by law, the law practice that holds money deposited in a controlled money account must not disburse the money except in accordance with—
  - (a) the written direction relating to the money; or
  - (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Civil penalty: 50 penalty units.

- (4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the Uniform Rules.  
Civil penalty: 50 penalty units.
- (5) The law practice must keep a written direction mentioned in this section for 7 years.  
Civil penalty: 50 penalty units.

- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the Uniform Rules otherwise permit.  
Civil penalty: 50 penalty units.
- (7) The Uniform Rules may make provision with respect to the receipt of controlled money, the establishment and maintenance of controlled money accounts, the withdrawal of controlled money, and the keeping of registers of controlled money.

#### **140 Transit money**

- (1) A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions, or else as soon as practicable after it is received.  
Civil penalty: 50 penalty units.
- (2) A law practice must, in respect of transit money received by the law practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.  
Civil penalty: 50 penalty units.
- (3) A law practice must keep the particulars mentioned in subsection (2) for 7 years.  
Civil penalty: 50 penalty units.

#### **141 Trust money subject to specific powers**

- (1) A law practice must ensure that trust money (other than cash) that is the subject of a power is dealt with only in accordance with that power.  
Civil penalty: 50 penalty units.
- (2) The law practice must account for the money in the way specified in the Uniform Rules for the purposes of this Division.  
Civil penalty: 50 penalty units.

#### **142 Trust money subject to a written direction**

- (1) A law practice that receives a written direction to deal with trust money (other than cash) in a particular way must comply with that direction within the period specified in the direction, or otherwise, as soon as practicable after it is received.  
Civil penalty: 50 penalty units.
- (2) The law practice must keep the written direction for 7 years after the matter has been finalised.  
Civil penalty: 50 penalty units.

#### **143 Trust money received in the form of cash**

- (1) A law practice must deposit all trust money received in the form of cash (other than controlled money) in the law practice's general trust account as soon as practicable after receiving the money, even if it has a written direction to deal with it in some other way. Once deposited, the money may be dealt with in accordance with the written direction.  
Civil penalty: 50 penalty units.
- (2) A law practice must deposit controlled money received in the form of cash in a controlled money account and deal with it in accordance with the Uniform Rules.  
Civil penalty: 50 penalty units.

#### **144 Withdrawal of trust money**

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.  
Civil penalty: 50 penalty units.
- (2) A law practice may do any of the following, in relation to trust money held in the practice's general trust account or controlled money account—
  - (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the law practice, where the law practice is otherwise entitled to do so;
  - (b) withdraw money for payment to the law practice's account for legal costs owing to the practice if the relevant procedures or requirements specified in the Uniform Rules for the purposes of this Division are complied with;
  - (c) deal with the balance as unclaimed money, after—
    - (i) deducting any legal costs properly owing to the practice, and
    - (ii) exhausting any other means of distributing it in accordance with the client's instructions.

#### **145 Protection of trust money**

- (1) Money standing to the credit of a trust account maintained by a law practice is not available for the payment of debts of the law practice or any of its associates.
- (2) Money standing to the credit of a trust account maintained by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the law practice or any of its associates.
- (3) This section does not apply to money to which a law practice or associate is entitled.

#### **146 Intermixing money**

A law practice must not mix trust money with other money unless authorised to do so by the designated local regulatory authority, and only in accordance with any conditions the designated local regulatory authority imposes in relation to that authorisation.

Civil penalty: 50 penalty units.

#### **147 Keeping trust records**

- (1) A law practice must keep in permanent form trust records in relation to trust money received by the law practice.  
Civil penalty: 50 penalty units.
- (2) The law practice must keep the trust records—
  - (a) in accordance with the Uniform Rules; and
  - (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
  - (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
  - (d) for a period of 7 years after the last transaction entry in the trust record, or the finalisation of the matter to which the trust record relates, whichever is the later.Civil penalty: 50 penalty units.
- (3) A law practice must not knowingly receive money or record receipt of money in the law practice's trust records under a false name.

Civil penalty: 100 penalty units.

- (4) If a law practice is aware that a person on whose behalf trust money is received by the law practice is commonly known by more than one name, the law practice must ensure that the law practice's trust records record all names by which the person is known.

Penalty: 50 penalty units.

- (5) In this section, a reference (however expressed) to *keeping trust records* includes a reference to making and keeping backup copies of trust records.

#### **148 Deficiency in trust account**

A law practice, an Australian legal practitioner or any other person must not, without reasonable excuse, cause—

- (a) a deficiency in any trust account or trust ledger account; or
- (b) a failure to pay or deliver any trust money.

Penalty: 500 penalty units or imprisonment for 5 years, or both.

#### **149 Authorised deposit-taking institutions**

- (1) An ADI is authorised to maintain trust accounts to hold trust money if—
- (a) it is regulated by APRA; and
  - (b) it has entered into an arrangement with a nominated trust authority that provides for any one or more of the following—
    - (i) the payment of interest on the whole or any part of deposits in trust accounts to the nominated trust authority on account of the nominated fund of the relevant jurisdiction;
    - (ii) the manner in which the nominated trust authority is informed of amounts held in trust accounts;
    - (iii) the auditing of balances in trust accounts;
    - (iv) any other relevant matters.
- (2) An ADI at which a trust account is maintained by a law practice—
- (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and
  - (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right against money in the account—

but this subsection does not relieve an ADI from any liability to which it is subject apart from this Law.

- (3) An ADI must give the designated local regulatory authority any reports about trust accounts required under the Uniform Rules and must do so in accordance with the Uniform Rules.

Civil penalty: 100 penalty units.

- (4) An ADI at which a trust account is maintained must, without charge, provide an investigator or external examiner access to, or copies of, any records relating to the trust account or trust money deposited in it, and full details of any transactions relating to it. This requirement applies despite any legislation or duty of confidence to the contrary.

Civil penalty: 100 penalty units.



- (5) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of any action taken in accordance with this section.
- (6) In this section—  
*nominated fund* means a fund or account nominated in applicable jurisdictional legislation for the purposes of this section;  
*nominated trust authority* means an authority nominated in applicable jurisdictional legislation for the purposes of this section.

**150 Authority to receive trust money**

A law practice must not receive trust money unless—

- (a) a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money; or
- (b) the law practice is otherwise authorised to receive trust money under the Uniform Rules.

Civil penalty: 250 penalty units.

**151 Disclosure of accounts used to hold money**

- (1) A law practice must, in accordance with the requirements referred to in subsection (3), notify the designated local regulatory authority of the details required by the Uniform Rules of each account maintained at an ADI in which the law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate.  
Civil penalty: 50 penalty units.
- (2) Subsection (1) applies whether or not the money is trust money.
- (3) The details must be notified to the designated local regulatory authority at the times and in the manner that the designated local regulatory authority requires.

**152 Determinations about status of money**

- (1) The designated local regulatory authority may determine that money held by a law practice is or is not trust money if it considers there is doubt or a dispute about its status.
- (2) The designated local regulatory authority may revoke or modify a determination under this section.
- (3) This section has effect subject to a decision of a court or administrative review body made in relation to the money.

**153 When, how and where money is received**

- (1) For the purposes of this Law, a law practice receives money when—
  - (a) the law practice obtains possession or control of it directly; or
  - (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
  - (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.
- (2) For the purposes of this Law, a law practice or associate is taken to have received money if the money is available to the law practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an

account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

- (3) The Uniform Rules may determine or make provision for determining the jurisdiction in which a law practice receives trust money.

#### **154 Reporting irregularities and suspected irregularities**

- (1) As soon as practicable after—
  - (a) a legal practitioner associate of a law practice; or
  - (b) an ADI; or
  - (c) an external examiner; or
  - (d) another entity of a kind specified in the Uniform Rules for the purposes of this section—

becomes aware that there is an irregularity in any of the law practice's trust accounts or trust ledger accounts, the associate, ADI, examiner or entity must give written notice of the irregularity to the designated local regulatory authority.

Civil penalty:

for a corporation—250 penalty units;

for an individual—50 penalty units.

- (2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to the designated local regulatory authority.

Civil penalty: 50 penalty units.

**Note** Section 466 contains provisions relating to compliance with this section.

### **Division 3 External examinations of trust records**

#### **155 Appointment of external examiner to conduct external examination of trust records**

- (1) A law practice must once in each financial year have its trust records externally examined by a suitably qualified person appointed in accordance with the Uniform Rules as an external examiner.  
Civil penalty: 50 penalty units.
- (2) The designated local regulatory authority may examine, or may in writing appoint a suitably qualified person as an external examiner to examine, a law practice's trust records if the designated local regulatory authority is not satisfied—
  - (a) that the law practice has had its trust records externally examined as required by this section; or
  - (b) that an external examination of the law practice's trust records has been carried out in accordance with the Uniform Rules.
- (3) An appointment by the designated local regulatory authority may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external examination.
- (4) If the only trust money received or held by a law practice during a financial year is transit money, its trust records in respect of that year are not required to be externally examined.
- (5) The designated local regulatory authority may exercise the functions of an external examiner, and references in this Law to an external examiner appointed to examine

a law practice's trust records include references to the designated local regulatory authority when exercising those functions.

**156 Qualifications of external examiners**

- (1) Only persons designated or within a class designated under the Uniform Rules for the purposes of this section may be appointed as external examiners.
- (2) An associate of a law practice cannot be appointed as an external examiner to examine the law practice's trust records.

**157 External examinations**

An external examiner appointed to examine a law practice's trust records may examine the affairs of the law practice for the purposes of and in connection with an examination of the trust records.

**158 Carrying out external examination**

Subject to Chapter 7, an external examination of trust records is to be carried out in accordance with the Uniform Rules.

**Note** Chapter 7 applies to an external examination of trust records.

**159 External examiner's report**

- (1) An external examiner must give a written report of the examination—
  - (a) to the designated local regulatory authority as soon as practicable after completing the examination; or
  - (b) otherwise as specified in the Uniform Rules.
- (2) The examiner must not disclose information in the report or acquired in carrying out the external examination, unless permitted to do so under subsection (3) or under section 462.  
Penalty: 50 penalty units.
- (3) The examiner may disclose information in the report or acquired in carrying out the examination—
  - (a) as is necessary for properly conducting the external examination and making the report of the examination; or
  - (b) to an investigator or a supervisor, manager or receiver appointed under this Law; or
  - (c) to the law practice concerned or an associate of the law practice.

**160 Costs of external examination**

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the external examination.
- (2) If the designated local regulatory authority carried out, or appointed the external examiner to carry out, the external examination, the designated local regulatory authority may recover the amount (as determined by the designated local regulatory authority) of all or part of the costs of the examination as a debt payable to it by the law practice.
- (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

## **Division 4 External investigations**

### **161 Principal purposes of external investigation**

The principal purposes of an external investigation are to ascertain whether a law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud or defalcation, but this section does not limit the scope of an investigation or the powers of an external investigator.

### **162 Appointment of external investigators**

- (1) The designated local regulatory authority may investigate, or may in writing appoint a suitably qualified person as an external investigator to investigate, the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external investigation.
- (3) The designated local regulatory authority may exercise the functions of an external investigator, and references in this Law to an external investigator appointed to examine a law practice's trust records include references to the designated local regulatory authority when exercising those functions.

### **163 External investigations**

The designated local regulatory authority may undertake, or the instrument of appointment of an external investigator may authorise the investigator to undertake, external investigations—

- (a) in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice; or
- (b) where the designated local regulatory authority otherwise considers it appropriate to do so.

### **164 Carrying out external investigation**

Subject to Chapter 7, an external investigation is to be carried out in accordance with the Uniform Rules.

**Note** Chapter 7 applies to an external investigation.

### **165 Investigator's report**

- (1) As soon as practicable after completing an external investigation, the investigator must give a written report of the investigation to the designated local regulatory authority.
- (2) The investigator must not disclose information contained in the report or acquired in carrying out the external investigation except—
  - (a) to the law practice or person who is a subject of the investigation or report; or
  - (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
  - (c) as provided in section 462.

Penalty: 50 penalty units.

### **166 Costs of external investigation**

- (1) This section applies if—
  - (a) an investigator states in his or her report of an external investigation that there is evidence that a contravention of this Law has been committed or evidence

- that a default (within the meaning of Part 4.5) has occurred in relation to the law practice whose affairs are under investigation; and
- (b) the designated local regulatory authority is satisfied that the contravention or default is wilful or of a substantial nature.
- (2) The designated local regulatory authority may recover the amount (as determined by the designated local regulatory authority) of all or part of the costs of the external investigation as a debt payable to it by the law practice.
  - (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

## **Division 5      Miscellaneous**

### **167    Unclaimed money**

Unclaimed money held in a trust account is to be dealt with in accordance with—

- (a) jurisdictional legislation; or
- (b) the Uniform Rules if jurisdictional legislation so provides.

### **168    Uniform Rules for trust money and trust accounts**

- (1) The Uniform Rules may make provision with respect to any aspect of trust money received by law practices and trust accounts.
- (2) Without limitation, the Uniform Rules may make provision with respect to the following—
  - (a) the receipt, handling and disbursement of trust money;
  - (b) the establishment and maintenance of trust accounts;
  - (c) record keeping and accounting requirements;
  - (d) reports to clients and the designated local regulatory authority by law practices relating to trust money and trust accounts;
  - (e) the external examination of trust records;
  - (f) the external investigation of the affairs of a law practice;
  - (g) dealing with unclaimed money.

## **Part 4.3    Legal costs**

### **Division 1      Introduction**

#### **169    Objectives**

The objectives of this Part are—

- (a) to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; and
- (b) to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- (c) to provide a framework for assessment of legal costs.

#### **170    Commercial or government clients**

- (1) This Part does not apply to—
  - (a) a commercial or government client; or

- (b) a third party payer who would be a commercial or government client if the third party payer were a client of the law practice concerned—  
but this section and sections 181(1), (7) and (8), 182, 183 and 185(3), (4) and (5) do apply to a commercial or government client referred to in paragraph (a) or a third party payer referred to in paragraph (b).
- (2) For the purposes of this Law, a **commercial or government client** is a client of a law practice where the client is—
- (a) a law practice; or
  - (b) one of the following entities defined or referred to in the Corporations Act—
    - (i) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body;
    - (ii) a liquidator, administrator or receiver;
    - (iii) a financial services licensee;
    - (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required;
    - (v) a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3); or
  - (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
  - (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
  - (e) a body or person incorporated in a place outside Australia; or
  - (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
  - (g) a government authority in Australia or in a foreign country; or
  - (h) a person specified in, or of a class specified in, the Uniform Rules.
- (3) For the purposes of subsection (2)(b)(v), the composition of the subsidiary's board is taken to be controlled by the large proprietary company if the large proprietary company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the subsidiary.
- (4) For the purposes of subsection (3), the large proprietary company is taken to have power to make an appointment referred to in that subsection if—
- (a) a person cannot be appointed as a director of the subsidiary without the exercise by the large proprietary company of such a power in the person's favour; or
  - (b) a person's appointment as a director of the subsidiary follows necessarily from the person being a director or other officer of the large proprietary company.

### 171 Third party payers

- (1) For the purposes of this Law—
  - (a) a person is a *third party payer*, in relation to a client of a law practice, if the person is not the client and—
    - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
    - (ii) has already paid all or a part of those legal costs under such an obligation; and
  - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and
  - (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.
- (4) The Uniform Rules may provide that particular references in this Law to a client include references to an associated third party payer.

## Division 2 Legal costs generally

### 172 Legal costs must be fair and reasonable

- (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are—
  - (a) proportionately and reasonably incurred; and
  - (b) proportionate and reasonable in amount.
- (2) In considering whether legal costs satisfy subsection (1), regard must be had to whether the legal costs reasonably reflect—
  - (a) the level of skill, experience, specialisation and seniority of the lawyers concerned; and
  - (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the matter involved a matter of public interest; and
  - (c) the labour and responsibility involved; and
  - (d) the circumstances in acting on the matter, including (for example) any or all of the following—
    - (i) the urgency of the matter;
    - (ii) the time spent on the matter;
    - (iii) the time when business was transacted in the matter;
    - (iv) the place where business was transacted in the matter;
    - (v) the number and importance of any documents involved; and
  - (e) the quality of the work done; and
  - (f) the retainer and the instructions (express or implied) given in the matter.
- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the Uniform Rules and any fixed costs legislative provisions.

- (4) A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if—
- (a) the provisions of Division 3 relating to costs disclosure have been complied with; and
  - (b) the costs agreement does not contravene, and was not entered into in contravention of, any provision of Division 4.

### **173 Avoidance of increased legal costs**

A law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs.

## **Division 3 Costs disclosure**

### **174 Disclosure obligations of law practice regarding clients**

#### **(1) Main disclosure requirement**

A law practice—

- (a) must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs; and
- (b) must, when or as soon as practicable after there is any significant change to anything previously disclosed under this subsection, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client—

together with the information referred to in subsection (2).

#### **(2) Additional information to be provided**

Information provided under—

- (a) subsection (1)(a) must include information about the client's rights—
  - (i) to negotiate a costs agreement with the law practice; and
  - (ii) to negotiate the billing method (for example, by reference to timing or task); and
  - (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
  - (iv) to seek the assistance of the designated local regulatory authority in the event of a dispute about legal costs; or
- (b) subsection (1)(b) must include a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter.

#### **(3) Client's consent and understanding**

If a disclosure is made under subsection (1), the law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs.

#### **(4) Exception for legal costs below lower threshold**

A disclosure is not required to be made under subsection (1) if the total legal costs in the matter are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the *lower threshold*), but the law practice may



nevertheless choose to provide the client with the uniform standard disclosure form referred to in subsection (5).

(5) **Alternative disclosure for legal costs below higher threshold**

If the total legal costs in a matter are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the *higher threshold*), the law practice may, instead of making a disclosure under subsection (1), make a disclosure under this subsection by providing the client with the uniform standard disclosure form prescribed by the Uniform Rules for the purposes of this subsection.

(6) **Disclosure to be written**

A disclosure under this section must be made in writing, but the requirement for writing does not affect the law practice's obligations under subsection (3).

(7) **Change in amount of total costs—where previously below lower threshold**

If the law practice has not made a disclosure, whether under subsection (1) or (5), because the total legal costs in the matter are not likely to exceed the lower threshold, the law practice must, when or as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the legal costs are likely to exceed the lower threshold—

- (a) inform the client in writing of that expectation; and
- (b) make the disclosure required by subsection (1) or (if applicable) subsection (5).

(8) **Change in amount of total costs—where previously below higher threshold**

If the law practice has not made a disclosure under subsection (1) but has made a disclosure under subsection (5) because the total legal costs in the matter are not likely to exceed the higher threshold, the law practice must, when or as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the legal costs are likely to exceed the higher threshold—

- (a) inform the client in writing of that expectation; and
- (b) make the disclosure required by subsection (1).

(9) **Meaning of total legal costs**

For the purposes of this section, the *total legal costs* in a matter do not include GST and disbursements.

**175 Disclosure obligations if another law practice is to be retained**

- (1) If a law practice (the *first law practice*) intends to retain another law practice (the *second law practice*) on behalf of a client, the first law practice must disclose to the client the details specified in section 174(1) in relation to the second law practice, in addition to any information required to be disclosed to the client under section 174.
- (2) If a law practice (the *first law practice*) retains or intends to retain another law practice (the *second law practice*) on behalf of a client, the second law practice is not required to make a disclosure to the client under section 174, but must disclose to the first law practice the information necessary for the first law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the second law practice is retained.

**176 Disclosure obligations of law practice regarding associated third party payers**

- (1) If a law practice is required to make a disclosure to a client of the law practice under section 174 or 175, the law practice must, in accordance with subsection (2), also

make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.

- (2) A disclosure under subsection (1) must be made in writing—
  - (a) at the time the disclosure to the client is required; or
  - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.

#### **177 Disclosure obligations regarding settlement of litigious matters**

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed—
  - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
  - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1), if the other law practice makes the disclosure to the client before the settlement is executed.

#### **178 Non-compliance with disclosure obligations**

- (1) If a law practice contravenes the disclosure obligations of this Part—
  - (a) the costs agreement concerned (if any) is void; and
  - (b) the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority; and
  - (c) the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority or under jurisdictional legislation; and
  - (d) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.
- (2) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section—
  - (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
  - (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (3) The Uniform Rules may provide that subsections (1) and (2)—
  - (a) do not apply; or
  - (b) apply with specified modifications—in specified circumstances or kinds of circumstances.

## **Division 4      Costs agreements**

### **179    Client's right to costs agreement**

A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice.

### **180    Making costs agreements**

- (1) A costs agreement may be made—
  - (a) between a client and a law practice retained by the client; or
  - (b) between a client and a law practice retained on behalf of the client by another law practice; or
  - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
  - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer that is accepted in writing or (except in the case of a conditional costs agreement) by other conduct.
- (4) A costs agreement cannot provide that the legal costs to which it relates are not subject to a costs assessment.

### **181    Conditional costs agreements**

- (1) A costs agreement (a *conditional costs agreement*) may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement must—
  - (a) be in writing and in plain language; and
  - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (3) A conditional costs agreement must—
  - (a) be signed by the client; and
  - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement.
- (4) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
- (5) If a client terminates a conditional costs agreement within the cooling-off period, the law practice—
  - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
  - (b) in particular, may not recover any uplift fee.
- (6) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.

- (7) A conditional costs agreement may relate to any matter, except a matter that involves—
  - (a) criminal proceedings; or
  - (b) proceedings under the *Family Law Act 1975* of the Commonwealth; or
  - (c) proceedings under legislation specified in the Uniform Rules for the purposes of this section.
- (8) A contravention of provisions of this Law or the Uniform Rules relating to conditional costs agreements by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

#### **182 Conditional costs agreements involving uplift fees**

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) If a conditional costs agreement relates to a litigious matter—
  - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
  - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A conditional costs agreement that includes an uplift fee—
  - (a) must identify the basis on which the uplift fee is to be calculated; and
  - (b) must include an estimate of the uplift fee or, if that is not reasonably practical—
    - (i) a range of estimates for the uplift fee; and
    - (ii) an explanation of the major variables that may affect the calculation of the uplift fee.
- (4) A law practice must not enter into a costs agreement in contravention of this section or of the Uniform Rules relating to uplift fees.  
Civil penalty: 100 penalty units.

#### **183 Contingency fees are prohibited**

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.  
Civil penalty: 100 penalty units.
- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable fixed costs legislative provision.
- (3) A contravention of subsection (1) by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

#### **184 Effect of costs agreement**

Subject to this Law, a costs agreement may be enforced in the same way as any other contract.

### **185 Certain costs agreements are void**

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.  
**Note** If a costs agreement is void due to a failure to comply with the disclosure obligations of this Part, the costs must be assessed before the law practice can seek to recover them (see section 178(1)).
- (2) A law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (3) A law practice that has entered into a costs agreement in contravention of section 182 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (4) A law practice that has entered into a costs agreement in contravention of section 183 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (5) If a law practice does not repay an amount required by subsection (2), (3) or (4) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

## **Division 5 Billing**

### **186 Form of bills**

A bill may be in the form of a lump sum bill or an itemised bill.

### **187 Request for itemised bills**

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable.
- (3) The law practice must comply with the request within 21 days after the date on which the request is made in accordance with subsection (2).
- (4) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

### **188 Responsible principal for bill**

- (1) A bill given by a law practice, or a letter accompanying the bill, must—
  - (a) be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or
  - (b) nominate a principal of the law practice as the responsible principal for the bill.
- (2) If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be a responsible principal for the bill.

### **189 Giving bills**

A bill is to be given to a client in accordance with the Uniform Rules.

**190 Progress reports**

- (1) A law practice must give a client, on reasonable request, without charge and within a reasonable period, a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.
- (3) Subsection (2) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

**191 Charging for bills prohibited**

A law practice must not make a charge for preparing or giving a bill, and any charge made for that purpose is not recoverable by the law practice.

**192 Notification of client's rights**

A law practice must ensure that a bill includes or is accompanied by a written statement setting out—

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).

**193 Interim bills**

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be assessed under Division 7, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been assessed or paid.

**Division 6 Unpaid legal costs**

**194 Restriction on commencing proceedings to recover legal costs**

- (1) A law practice must not commence legal proceedings to recover legal costs from a person unless a bill has been given for the legal costs and the bill complies with the requirements of this Law and the Uniform Rules.
- (2) A law practice must not commence legal proceedings to recover legal costs from a person who has been given a bill until—
  - (a) where the legal costs are the subject of a costs dispute before the designated local regulatory authority—the authority has closed or resolved the dispute; and
  - (b) at least 30 days after the later of—
    - (i) the date on which the person is given the bill; or
    - (ii) the date on which the person receives an itemised bill following a request made in accordance with section 187.

**195 Interest on unpaid legal costs**

- (1) A law practice may charge interest on unpaid legal costs in accordance with the applicable terms of a costs agreement.

- (2) To the extent that the applicable terms of a costs agreement do not deal with the charging of interest, a law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the law practice has given a bill for the costs in accordance with this Part.
- (3) A law practice must not charge interest under this section on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice must not charge interest under this section or under a costs agreement at a rate that exceeds the rate specified in or determined under the Uniform Rules for the purposes of this section.
- (5) A law practice must not charge interest under this section or under a costs agreement on a bill given more than 6 months after the completion of the matter.
- (6) Subsection (5) does not apply where—
  - (a) the law practice has provided a lump sum bill within the 6-month period after completion, but the client or an associated third party payer requests an itemised bill outside of the 6-month period; or
  - (b) a bill has not been issued within the 6-month period (or an earlier bill has been issued but withdrawn) at the request of the client or associated third party payer.

## **Division 7 Costs assessment**

### **196 Application of this Division generally**

This Division applies to legal costs payable on a solicitor-client basis.

### **197 Application of this Division where complaint made**

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a costs dispute under Chapter 5 may not be the subject of a costs assessment under this Division except to the extent that—

- (a) the designated local regulatory authority is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment; or
- (b) the designated local regulatory authority arranges for a costs assessment under section 284.

### **198 Applications for costs assessment**

- (1) Applications for an assessment of the whole or any part of legal costs payable to a law practice may be made by any of the following—
  - (a) a client who has paid or is liable to pay them to the law practice;
  - (b) a third party payer who has paid or is liable to pay them to the law practice or the client;
  - (c) the law practice;
  - (d) another law practice, where the other law practice retained the law practice to act on behalf of a client and the law practice has given the other law practice a bill for doing so.
- (2) An application under this section is to be made in accordance with applicable jurisdictional legislation.
- (3) An application under this section must be made within 12 months after—

- (a) the bill was given to, or the request for payment was made to, the client, third party payer or other law practice; or
  - (b) the legal costs were paid if neither a bill nor a request was made.
- (4) However, an application that is made out of time may be dealt with by the costs assessor if the designated tribunal, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.
- (5) Subsection (4) does not apply to an application made out of time by a third party payer who is not a commercial or government client but who would be a commercial or government client if the third party payer were a client of the law practice concerned.
- (6) If the third party payer is a non-associated third party payer, the law practice concerned must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (7) If an application for a costs assessment is made in accordance with this Division—
  - (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
  - (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.
- (8) A costs assessor is to cause a copy of an application for a costs assessment to be given to any law practice or client concerned or any other person whom the costs assessor thinks it appropriate to notify.
- (9) A person who is notified by the costs assessor under subsection (8)—
  - (a) is entitled to participate in the costs assessment process; and
  - (b) is taken to be a party to the assessment; and
  - (c) if the costs assessor so determines, is bound by the assessment.
- (10) If there is a non-associated third party payer for a client of a law practice, then, despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.

#### **199 Costs assessment**

- (1) Assessments of legal costs are to be conducted by costs assessors, and are to be conducted in accordance with this Part, the Uniform Rules and any applicable jurisdictional legislation.
- (2) On a costs assessment, the costs assessor must—
  - (a) determine whether or not a valid costs agreement exists; and
  - (b) determine whether legal costs are fair and reasonable and, to the extent they are not fair and reasonable, determine the amount of legal costs (if any) that are to be payable.

**Note** A costs agreement can be void under section 178 or 185.

#### **200 Factors in a costs assessment**

- (1) In considering whether legal costs for legal work are fair and reasonable, the costs assessor must apply the principles in section 172 so far as they are applicable.



- (2) In considering whether legal costs for legal work are fair and reasonable, the costs assessor may have regard to the following matters—
  - (a) whether the law practice and any legal practitioner associate or foreign lawyer associate involved in the work complied with this Law and the Uniform Rules;
  - (b) any disclosures made, including whether it would have been reasonably practicable for the law practice to disclose the total costs of the work at the outset (rather than simply disclosing charging rates);
  - (c) any relevant advertisement as to the law practice's costs or the skills of the law practice or any legal practitioner associate or foreign lawyer associate involved in the work;
  - (d) any other relevant matter.
- (3) The costs assessor must take into account the incidence of GST in a costs assessment.
- (4) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

#### **201 Reasons to be given**

On a costs assessment, a costs assessor must provide reasons for the costs assessment, and may determine the form in which reasons are given.

#### **202 Referral for disciplinary action**

On a costs assessment, a costs assessor—

- (a) may refer a matter to the designated local regulatory authority if the costs assessor considers that the legal costs charged are not fair and reasonable; and
- (b) must refer a matter to the designated local regulatory authority if the costs assessor considers that the legal costs charged, or any other issue raised in the assessment, may amount to unsatisfactory professional conduct or professional misconduct.

#### **203 Admissibility determinations in disciplinary proceedings**

Determinations of costs assessors are admissible in disciplinary proceedings as evidence as to the fairness and reasonableness of legal costs.

#### **204 Costs of costs assessment**

- (1) Without affecting the powers of a court or tribunal to award costs in relation to a costs assessment, a costs assessor is, subject to this section, to determine the costs of a costs assessment and by whom they are payable.
- (2) Unless the costs assessor believes that in all the circumstances it is not fair and reasonable for the costs to be paid otherwise, the costs of a costs assessment are payable by a law practice if—
  - (a) the law practice has failed to disclose a matter required to be disclosed by Division 3; or
  - (b) the law practice has failed to disclose a matter required to be disclosed in the manner required by Division 3; or
  - (c) the law practice's costs have been reduced by 15% or more on assessment.

**205 Right of appeal or review**

- (1) An applicant for assessment or the law practice concerned may, in accordance with applicable jurisdictional legislation, appeal against or seek a review of a decision of a costs assessor in the jurisdiction for which the costs assessor exercised his or her functions in relation to the decision.
- (2) The court or tribunal hearing the appeal or reviewing the decision may make any order it considers appropriate on the appeal or review.
- (3) This section does not apply where the designated local regulatory authority determines a costs dispute under Part 5.3.

**Division 8 Miscellaneous**

**206 Security for legal costs**

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

**207 Unreasonable legal costs—disciplinary action**

- (1) A contravention of a requirement of this Part that a law practice must not charge more than fair and reasonable legal costs is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of—
  - (a) the responsible principal or principals for a bill given by the law practice (see section 188); and
  - (b) each legal practitioner associate or foreign lawyer associate who was involved in giving the bill or authorising it to be given.
- (2) Subsection (1) applies to a responsible principal—
  - (a) whether or not he or she had actual knowledge of the bill or its contents; and
  - (b) whether or not he or she had actual knowledge that the legal costs were unfair or unreasonable.
- (3) However, subsection (1) does not apply to a responsible principal if he or she establishes that it was not reasonable for him or her to suspect or believe that the legal costs in the bill were unfair or unreasonable in the circumstances (otherwise than by the mere assertion of someone else involved in the law practice).

**208 Uniform Rules for legal costs**

- (1) The Uniform Rules may make provision with respect to any aspect of legal costs.
- (2) Without limitation, the Uniform Rules may make provision with respect to the following—
  - (a) costs disclosure;
  - (b) costs agreements;
  - (c) costs billing;
  - (d) the payment of interest on unpaid costs;
  - (e) costs assessments.

## Part 4.4 Professional indemnity insurance

### 209 Objectives

The objectives of this Part are—

- (a) to ensure that each Australian legal practitioner who engages in legal practice in this jurisdiction has or is covered by approved professional indemnity insurance; and
- (b) to ensure that clients of law practices have adequate protection against the consequences of professional negligence.

### 210 Approved insurance policy

- (1) For the purposes of this Part, a policy of professional indemnity insurance is an ***approved insurance policy*** for a participating jurisdiction if—
  - (a) it is issued or provided by—
    - (i) an insurer or other provider approved under, or selected in accordance with, applicable legislation of the jurisdiction; or
    - (ii) if there is no insurer or other provider approved under or selected in accordance with that legislation or if there is no legislative arrangement for the approval or selection of insurers or other providers in the jurisdiction—
      - (A) an insurer authorised by APRA under the *Insurance Act 1973* of the Commonwealth to carry on insurance business in Australia; or
      - (B) an insurer or other provider approved by the Council; and
  - (b) it—
    - (i) complies with the minimum standards specified in the Uniform Rules for the purposes of this section; or
    - (ii) is approved by the Council.
- (2) For the purposes of this Part, a policy of professional indemnity insurance is an ***approved insurance policy*** for a jurisdiction that is not a participating jurisdiction if it is approved by the Council.
- (3) If it considers it is appropriate to do so in relation to this jurisdiction, the Council may give an approval for the purposes of this section unconditionally or subject to conditions specified in the approval, and may vary or revoke an approval.
- (4) For the purposes of this Law, an Australian legal practitioner or law practice has professional indemnity insurance for this jurisdiction if the practitioner or law practice holds or is covered by an approved insurance policy for this jurisdiction.

### 211 Australian legal practitioners

An Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by an approved insurance policy for this jurisdiction and the policy covers that legal practice.

Civil penalty: 100 penalty units.

#### Note

- 1 Section 45 provides that the designated local regulatory authority must not grant or renew an Australian practising certificate unless it is satisfied that the applicant has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with this Law and the Uniform Rules. This does not apply if the applicant is not required to have professional indemnity insurance.

- 2 The Uniform Rules may provide that professional indemnity insurance may be issued on either a practitioner basis or on a law practice basis covering practitioners.
- 3 All legal practice as a volunteer or on a pro bono basis needs to be covered by an approved insurance policy for this jurisdiction.

## **212 Incorporated legal practices**

An incorporated legal practice must not engage in legal practice in this jurisdiction unless the incorporated legal practice itself holds an approved insurance policy for this jurisdiction and the policy covers the legal practice in which it is engaged.

Civil penalty: 100 penalty units.

## **213 Community legal services**

- (1) A community legal service that is a corporation must not engage in legal practice in this jurisdiction unless—
  - (a) the community legal service holds an approved insurance policy for this jurisdiction; and
  - (b) the policy covers the community legal service itself and each Australian legal practitioner who engages in legal practice for or on behalf of the community legal service in this jurisdiction; and
  - (c) the policy covers that legal practice.

Civil penalty: 100 penalty units.

- (2) A community legal service that is not a corporation must not engage in legal practice in this jurisdiction unless—
  - (a) each Australian legal practitioner who engages in legal practice for or on behalf of the community legal service holds or is covered by an approved insurance policy for this jurisdiction; and
  - (b) the policy covers that legal practice.

Civil penalty: 100 penalty units.

## **214 Australian-registered foreign lawyers**

An Australian-registered foreign lawyer who does not hold or is not covered by an approved insurance policy for this jurisdiction must provide a disclosure statement in writing to each client before, or as soon as practicable after, being retained for legal services in this jurisdiction stating—

- (a) whether or not the lawyer is covered by other professional indemnity insurance; and
- (b) if covered, the nature and extent of that insurance.

Civil penalty: 100 penalty units.

## **215 Exemptions**

- (1) An Australian legal practitioner is exempt from the requirement to hold or be covered by an approved insurance policy for this jurisdiction if—
  - (a) the home jurisdiction of the practitioner is another jurisdiction; and
  - (b) the practitioner holds or is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.

**Note** The Uniform Rules may provide that professional indemnity insurance must provide indemnity for the private legal practice of the insured in relation to the provision of legal services within Australia.

- (2) The designated local regulatory authority may exempt an Australian legal practitioner from the requirement to obtain an approved insurance policy for this jurisdiction if—
  - (a) the home jurisdiction of the practitioner is this jurisdiction; and
  - (b) the practitioner is a legal practitioner associate of a law practice that—
    - (i) maintains a permanent office in this jurisdiction and only one other jurisdiction; and
    - (ii) has at least one principal whose home jurisdiction is that other jurisdiction and who engages solely or principally in legal practice at that permanent office; and
  - (c) the practitioner is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.
- (3) An Australian legal practitioner is exempt from the requirement to hold or be covered by an approved insurance policy for this jurisdiction if—
  - (a) the home jurisdiction of the practitioner is this jurisdiction; and
  - (b) the practitioner is a legal practitioner associate of a law practice that—
    - (i) maintains a permanent office in this jurisdiction and at least 2 other jurisdictions; and
    - (ii) has at least one principal in each of those other jurisdictions who engages solely or principally in legal practice at the permanent office in that other jurisdiction; and
  - (c) the Australian legal practitioner is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (b) refers and that policy covers legal practice in this jurisdiction.
- (4) The designated local regulatory authority may exempt an incorporated legal practice from the requirement to obtain an approved insurance policy for this jurisdiction if the practice—
  - (a) maintains a permanent office in this jurisdiction and only one other jurisdiction; and
  - (b) is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.
- (5) An incorporated legal practice is exempt from the requirement to obtain an approved insurance policy for this jurisdiction if the practice—
  - (a) maintains a permanent office in this jurisdiction and at least 2 other jurisdictions; and
  - (b) is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (a) refers and that policy covers legal practice in this jurisdiction.
- (6) The designated local regulatory authority may exempt a specified Australian legal practitioner from the requirement to hold or be covered by an approved insurance policy on any grounds that the designated local regulatory authority considers sufficient and may, as a condition of exemption, impose a discretionary condition on his or her Australian practising certificate limiting the scope of legal services that may be provided by the holder of that certificate.
- (7) An exemption under subsection (6) can operate only in respect of periods commencing when or after the exemption is granted.

- (8) The Uniform Rules may provide for other exemptions from the requirement to hold or be covered by an approved insurance policy, and (without limitation) an exemption may—
- (a) apply to classes of Australian legal practitioners, classes of incorporated legal practices and classes of community legal services; and
  - (b) as a condition of exemption applying to or in respect of an Australian legal practitioner, impose or provide for imposing a discretionary condition (on an Australian practising certificate granted in a participating jurisdiction) limiting the scope of legal services that may be provided by the holder of that certificate.

**216 Notification of proposed change of jurisdiction in which professional indemnity insurance is obtained**

- (1) This section applies where—
- (a) an Australian legal practitioner holds or is covered for a period (the *current period*) by an approved insurance policy for this jurisdiction; and
  - (b) the practitioner is a legal practitioner associate of a law practice that—
    - (i) maintains a permanent office in this jurisdiction and at least 2 other jurisdictions; and
    - (ii) has at least one principal in each of those other jurisdictions who engages solely or principally in legal practice at the permanent office in that other jurisdiction; and
  - (c) the law practice forms an intention during the current period to hold or be covered by an approved insurance policy for another jurisdiction and not this jurisdiction.
- (2) The law practice must notify the insurer or other provider of the policy referred to in subsection (1)(a) of the intention referred to in subsection (1)(c) by a date determined by or under legislation of this jurisdiction or as soon as practicable thereafter.

**Note** This section applies where an exemption under section 215(3) would become applicable.

**217 Uniform Rules for professional indemnity insurance**

The Uniform Rules may make provision with respect to any aspect of professional indemnity insurance.

## **Part 4.5 Fidelity cover**

### **Division 1 Introduction**

**218 Objective**

The objective of this Part is to establish a fidelity cover scheme to ensure that persons who suffer pecuniary loss as a result of defaults by law practices have a source of compensation for defaults arising from or constituted by acts or omissions of associates of law practices.

**219 Definitions**

In this Part—

*claim* means a claim under this Part, and *claimant* means a person who makes a claim under this Part;

*concerted interjurisdictional default* means a default of a law practice arising from or constituted by an act or omission—

- (a) that was committed jointly by 2 or more associates of the law practice; or
- (b) parts of which were committed by 2 or more associates of the law practice—where this jurisdiction is the relevant jurisdiction for at least one of the associates and another jurisdiction is the relevant jurisdiction for at least one of the associates;

**default** means—

- (a) in relation to trust money or trust property received by a law practice in the course of legal practice by the law practice—a failure of the law practice to pay or deliver the trust money or trust property, where the failure arises from an act or omission of an associate that involves fraud or other dishonesty; or
- (b) in relation to trust property received by a law practice in the course of legal practice by the law practice—a fraudulent dealing with the trust property, where the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves fraud or other dishonesty;

**fidelity fund**—see sections 222 and 223;

**lawyer** means—

- (a) an Australian legal practitioner; or
- (b) an Australian-registered foreign lawyer who is an associate of a law practice;

**pecuniary loss**, in relation to a default, means—

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing;

**relevant jurisdiction**—see section 220.

## 220 Meaning of *relevant jurisdiction*

- (1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be determined under this section.  
**Note** The concept of an associate's "relevant jurisdiction" is used to determine the jurisdiction whose fidelity fund is liable for a default of a law practice arising from or constituted by an act or omission committed by the associate. The relevant jurisdiction for an associate is in some cases the associate's home jurisdiction.
- (2) In the case of a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the relevant jurisdiction for the associate is—
  - (a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was maintained; or
  - (b) in any other case—the associate's home jurisdiction.
- (3) In the case of a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is—
  - (a) if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was maintained; or
  - (b) in any other case—the associate's home jurisdiction.

- (4) In the case of a default involving trust property received in Australia, or received outside Australia and brought to Australia, the relevant jurisdiction for the associate is the associate's home jurisdiction.
- (5) In this section, *Australian trust account* means a trust account maintained under this Law or a trust account maintained under a corresponding law.  
**Note** Section 251 (Default involving interjurisdictional elements if committed by one associate only) provides that the interjurisdictional fidelity authority may treat the default as consisting of 2 or more defaults for the purpose of determining the liability of the fidelity fund.

#### **221 Defaults to which this Part applies**

- (1) This Part applies to a default of a law practice only to the extent that it occurs in connection with the provision of legal services by the law practice.  
**Note** See section 233 for entitlement to make a claim for a default.
- (2) It is immaterial where a default occurs.
- (3) This Part applies to a default even though an associate involved was but is no longer an Australian legal practitioner or an Australian-registered foreign lawyer.
- (4) This Part does not apply to defaults or classes of defaults specified in the Uniform Rules.  
**Note** Money entrusted to or held by a law practice for or in connection with a managed investment scheme, or mortgage financing, undertaken by the law practice is not trust money for the purposes of this Law (see section 129(2)).

### **Division 2 Fidelity funds and fidelity authorities**

#### **222 Fidelity fund for this jurisdiction**

The fund nominated in the Legal Profession Uniform Law Act of this jurisdiction is the *fidelity fund* of this jurisdiction for the purposes of this Part.

**Note** The fidelity authority is an entity specified in jurisdictional legislation for the purposes of the definition of fidelity authority in section 6.

#### **223 How this Part applies to this jurisdiction**

- (1) This Part applies in relation to this jurisdiction, so that—
  - (a) the term “the fidelity fund” refers to the fidelity fund of this jurisdiction; and
  - (b) the term “the fidelity authority” refers to the fidelity authority for this jurisdiction.
- (2) Subsection (1) does not apply where the context indicates that the fidelity fund of another jurisdiction or the fidelity authority of another jurisdiction is referred to.

### **Division 3 Fidelity fund**

#### **224 Funding**

The fidelity fund consists of—

- (a) the money paid on account of the fidelity fund either as annual contributions or levies under this Part; and
- (b) the interest or other income accruing from investment of the money in the fidelity fund; and
- (c) other money paid to the fidelity fund in accordance with jurisdictional legislation.



## **225 Annual contributions**

- (1) A person who applies to the designated local regulatory authority for the grant or renewal of—
  - (a) an Australian practising certificate; or
  - (b) an Australian registration certificate (except where the person is not and reasonably expects not to be an associate of a law practice during its currency)—in relation to a financial year must pay an annual contribution for the financial year to the fidelity fund.
- (2) The amount of a contribution is to be set by the fidelity authority and is in addition to all other fees payable in relation to the application.
- (3) The fidelity authority may provide for different contributions to be payable by different classes of lawyers.
- (4) This section does not apply to—
  - (a) a barrister; or
  - (b) a government legal practitioner; or
  - (c) a corporate legal practitioner; or
  - (d) other Australian legal practitioners of a class specified in the Uniform Rules for the purposes of this section and to the extent so specified.

## **226 Levies**

- (1) This section applies if, at a particular time, the fidelity authority believes that the fidelity fund is not sufficient to satisfy the liabilities of the fidelity fund at or about that time.
- (2) The fidelity authority may impose a levy of an amount that the authority considers reasonable on—
  - (a) all lawyers who are liable to pay an annual contribution to the fidelity fund for the relevant financial year; or
  - (b) a class of lawyers so liable that is determined by the authority.
- (3) The fidelity authority may provide for different levies to be payable by different classes of lawyers.
- (4) The amount of a levy is payable into the fidelity fund by a date and in a way determined by the fidelity authority.

## **227 Failure to pay annual contribution or levy**

If a lawyer fails to pay an annual contribution or a levy in accordance with this Part, the designated local regulatory authority may suspend his or her Australian practising certificate or Australian registration certificate while the failure continues.

## **228 Insurance**

- (1) The fidelity authority may arrange with an insurer for the insurance of the fidelity fund, whether against particular claims or particular classes of claims or otherwise.
- (2) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the fidelity fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.

## **229 Borrowing**

The fidelity authority cannot borrow money for the purposes of the fidelity fund.

## **230 Caps on payments for claims**

- (1) The local regulations may fix either or both of the following—
  - (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the fidelity fund in respect of individual claims or classes of individual claims;
  - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the fidelity fund in respect of all claims made in relation to individual law practices or classes of law practices.
- (2) Amounts must not be paid from the fidelity fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the fidelity fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the fidelity authority may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the fidelity fund and the circumstances of the particular case.
- (5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the fidelity authority to consider payment of a larger amount.

## **231 Sufficiency**

- (1) If the fidelity authority is of the opinion that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the authority may do any or all of the following—
  - (a) postpone all payments relating to all or any class of claims out of the fund;
  - (b) impose a levy;
  - (c) make partial payments of the amounts of one or more allowed claims out of the fund with payment of the balance being a charge on the fund;
  - (d) make partial payments of the amounts of 2 or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.
- (2) In deciding whether to do any or all of the things mentioned in subsection (1), the fidelity authority—
  - (a) must have regard to hardship where relevant information is known to the authority; and
  - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the fidelity authority declares that a decision is made under subsection (1)(d)—
  - (a) the balance specified in the declaration ceases to be a liability of the fidelity fund; and
  - (b) the authority may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the fund.
- (4) A decision of the fidelity authority made under this section is final and not subject to appeal or review.

**Note** Section 246(8) provides for payment to a claimant of any additional amount (less costs) recovered by the exercise of rights of subrogation under section 246.

## **232 Audit**

The fidelity authority must cause the accounts relating to the fidelity fund to be audited annually, and must forward a copy of the audit report to the designated local regulatory authority.

## **Division 4 Claims about defaults**

### **233 Entitlement to make a claim**

- (1) A person who suffers pecuniary loss as a result of a default by a law practice is entitled to make a claim about the default against the fidelity fund, if this jurisdiction is the relevant jurisdiction of an associate of the law practice whose act or omission (whether alone or with one or more other associates of the law practice) gives rise to or constitutes the default.
- (2) Subsection (1) extends to an associate of the law practice who, or to the law practice itself in the case of an incorporated legal practice that, suffers pecuniary loss as a result of the default.

### **234 Making a claim**

- (1) A claim is to be made in writing in accordance with the Uniform Rules.
- (2) Claims are to be dealt with in accordance with this Part and the Uniform Rules.

### **235 Advertisements**

- (1) If the fidelity authority considers that there has been, or may have been, a default by a law practice, it may publish a notice in accordance with the Uniform Rules seeking information about the default or inviting claims about the default or both.
- (2) A notice inviting claims about a default must fix a final date for making claims that is at least 3 months and not more than 12 months after the date of the first (or only) publication of the notice.  
**Note** Section 248(1) provides a right of appeal against a failure to determine a claim after 12 months after the claim was made.
- (3) The fidelity authority may provide information to persons making inquiries in response to a notice published under this section.

### **236 Time limit for making claims**

- (1) Subject to subsection (2), a claim does not lie against the fidelity fund unless the prospective claimant notifies the fidelity authority of the default concerned within—
  - (a) the period of 6 months after the prospective claimant becomes aware of the default; or
  - (b) a further period allowed by the fidelity authority; or
  - (c) a further period allowed by the Supreme Court of the jurisdiction to which the fidelity authority belongs where the authority refuses to allow a further period under paragraph (b).
- (2) If the fidelity authority publishes a notice under section 235 fixing a final date for making claims about a default, a claim may be made—
  - (a) up to and including the final date fixed under the notice; or
  - (b) within a further period allowed by the authority; or

- (c) within a further period allowed by the Supreme Court of the jurisdiction to which the authority belongs where the authority refuses to allow a further period under paragraph (b)—  
even though it would have been barred under subsection (1) had the notice not been published.
- (3) The Supreme Court may allow a further period referred to in subsection (1)(c) or (2)(c) if it is satisfied that it would be—
  - (a) reasonable to do so after taking into account all ascertained and contingent liabilities of the fidelity fund; and
  - (b) appropriate to do so in a particular case having regard to matters the Supreme Court considers relevant.
- (4) The fidelity authority must take reasonable steps to individually notify potential claimants of whom it is aware of their entitlement to make a claim within a reasonable specified period of at least 21 days after the notification.
- (5) Notification under subsection (4) can be made only while relevant claims can be made under subsection (1) or (2), but a claim by a potential claimant who has been so notified—
  - (a) may be made during the specified period even if it would otherwise be barred under subsection (1) or (2); and
  - (b) is ineffective if made after the specified period.

### **237 Processing and investigation of claims**

Subject to this Part and the Uniform Rules, the fidelity authority may process and investigate a claim against the fidelity fund in any manner it considers appropriate.

### **238 Advance payments**

- (1) The fidelity authority may, at its absolute discretion, make payments from the fidelity fund to a claimant in advance of the determination of a claim if satisfied that—
  - (a) the claim is likely to be allowed; and
  - (b) payment is warranted to alleviate hardship.
- (2) Any payments made in advance are to be taken into account when the claim is determined.
- (3) If the claim is disallowed, the amounts paid under this section are recoverable by the fidelity authority as a debt due to the fidelity fund.
- (4) If the claim is allowed but the amount payable is less than the amounts paid under this section, the excess paid under this section is recoverable by the fidelity authority as a debt due to the fidelity fund.

### **239 Claims by law practices or associates about notional defaults**

- (1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the law practice was avoided, remedied or reduced by a financial contribution made by the law practice or by one or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced, is referred to in this section as a *notional default*.
- (3) This Part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

## **Division 5 Determination of claims**

### **240 Determination of claims**

- (1) The fidelity authority must ensure that claims against the fidelity fund are determined independently, at arm's length from the legal profession.
- (2) The fidelity authority must provide written notice to a claimant against the fidelity fund of its decision in relation to a claim as soon as practicable after making that decision.
- (3) The fidelity authority may determine a claim by wholly or partly allowing or disallowing it, or otherwise settling it.
- (4) The fidelity authority may wholly or partly disallow a claim, or reduce the amount of a claim, to the extent that—
  - (a) the claim does not relate to a default for which the fidelity fund is liable; or
  - (b) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (c) the negligence of the claimant contributed to the loss; or
  - (d) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or
  - (e) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
  - (f) the claimant has unreasonably refused to disclose information or documents to or cooperate with the fidelity authority, or any other authority (including, for example, an investigative or prosecuting authority), in the investigation of the claim.
- (5) The fidelity authority may reduce the amount otherwise payable on a claim to the extent the authority considers appropriate—
  - (a) if satisfied that the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (b) if satisfied that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
  - (c) if satisfied that the claimant has unreasonably hindered the investigation of the claim.
- (6) In wholly or partly allowing a claim, the fidelity authority must specify the amount payable from the fidelity fund to the claimant or to another person at the claimant's direction.
- (7) Subsection (4) does not limit a fidelity authority's power to disallow or reduce a claim, and subsection (5) does not limit a fidelity authority's power to reduce a claim.
- (8) The fidelity authority must publish a statement, at least annually, about how the authority is giving effect to subsection (1).

### **241 Maximum amount allowable**

- (1) The amount payable in respect of a default must not exceed the pecuniary loss resulting from the default.
- (2) This section does not apply to costs payable under section 242 or to interest payable under section 243.

#### **242 Costs**

- (1) If the fidelity authority wholly or partly allows a claim, it must order payment from the fidelity fund of the claimant's reasonable legal costs involved in making and proving the claim, unless it considers that special circumstances exist that warrant a reduced amount of costs or a determination that no amount should be paid for costs.
- (2) If the fidelity authority wholly disallows a claim, it may order payment from the fidelity fund of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, where it considers it is appropriate to make the order.

#### **243 Interest**

- (1) In determining the amount of pecuniary loss resulting from a default, the fidelity authority must order payment from the fidelity fund of interest on the amount payable, unless it considers that special circumstances exist that warrant a reduced amount of interest or a determination that no interest should be paid.
- (2) The interest is to be calculated from the date on which the claim was made, to the date of notification that the claim has been allowed, at the rate specified in or determined under the Uniform Rules for the purposes of this section or at the rate of 5% to the extent provision is not made in the Uniform Rules for the rate of interest.

#### **244 Reduction of claim because of other benefits**

- (1) A person is not entitled to recover from the fidelity fund any amount equal to amounts or to the value of other benefits in connection with the default concerned—
  - (a) that have already been paid to or received by the person; or
  - (b) that have already been determined and are payable to or receivable by the person; or
  - (c) that (in the opinion of the fidelity authority) are likely to be paid to or received by the person; or
  - (d) that (in the opinion of the fidelity authority) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person—

from other sources in respect of the pecuniary loss to which a claim relates.

- (2) The fidelity authority may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 245.
- (3) Without limiting subsection (1), but subject to sections 250 and 251, a person is not entitled to recover from the fidelity fund of this jurisdiction if the person has already recovered from the fidelity fund of another jurisdiction in connection with the default concerned.

#### **245 Repayment of certain amounts**

- (1) If—
  - (a) a claimant receives a payment from the fidelity fund in respect of a claim; and
  - (b) the claimant receives or recovers from another source or sources a payment on account of the pecuniary loss; and
  - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources—the amount of the surplus is a debt payable by the claimant to the fidelity fund.

- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the fidelity fund in respect of the claim.

#### **246 Subrogation**

- (1) On payment of a claim from the fidelity fund, the fidelity authority is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against—
  - (a) an associate in respect of whom the claim is made; or
  - (b) the person authorised to administer the estate of an associate in respect of whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 240.
- (4) The fidelity authority may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the fidelity authority brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
- (6) The fidelity authority may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.
- (7) The fidelity authority must pay into the fidelity fund any money recovered in exercising its rights and remedies under this section.
- (8) If in exercising its rights and remedies under this section the fidelity authority recovers more money than that already paid to the claimant, the authority must pay the difference to the claimant after deducting costs incurred to recover the money. This subsection applies whether or not the total amount paid would otherwise exceed any relevant maximum amount fixed under section 230.

#### **247 Right of appeal against decision on claim**

- (1) A claimant against the fidelity fund may appeal to the designated tribunal against a decision of the fidelity authority—
  - (a) to wholly or partly disallow a claim; or
  - (b) to reduce the amount allowed in respect of a claim—but an appeal does not lie against a decision of the fidelity authority to limit the amount payable, or to decline to pay an amount, under section 230 or 231.
- (2) An appeal against a decision must be lodged within 30 days of receiving written notice about the decision.
- (3) On an appeal under this section—
  - (a) the appellant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives that requirement; and
  - (b) the designated tribunal may, on application by the fidelity authority, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.

- (4) The designated tribunal may review the merits of the fidelity authority's decision to the extent considered relevant by the tribunal.
- (5) The designated tribunal may—
  - (a) affirm the decision; or
  - (b) if satisfied that the reasons for varying or setting aside the fidelity authority's decision are sufficiently cogent to warrant doing so—
    - (i) vary the decision; or
    - (ii) set aside the decision and make a decision in substitution for the decision set aside; or
    - (iii) set aside the decision and remit the matter for reconsideration by the fidelity authority in accordance with any directions or recommendations of the tribunal.
- (6) The designated tribunal may make other orders as it thinks fit.
- (7) No order for costs is to be made on an appeal under this section unless the designated tribunal is satisfied that an order for costs should be made in the interests of justice.

#### **248 Right of appeal against failure to determine claim**

- (1) A claimant against the fidelity fund may appeal to the designated tribunal against a failure of the fidelity authority to determine a claim after 12 months after the claim was made and while the failure continues.
- (2) On an appeal under this section—
  - (a) the appellant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives this requirement; and
  - (b) the designated tribunal may, on application by the fidelity authority, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (3) No order for costs is to be made on an appeal under this section unless the designated tribunal is satisfied that an order for costs should be made in the interests of justice.

#### **249 Court proceedings**

In any proceedings brought in a court under section 246, 247 or 248—

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, a lawyer or other person with respect to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the lawyer or other person is not a defendant in, or a party to, the proceedings; and
- (b) any defence that would have been available to the lawyer or other person is available to the fidelity authority.

### **Division 6 Defaults involving interjurisdictional elements**

#### **250 Concerted interjurisdictional defaults**

- (1) The fidelity authority may treat a concerted interjurisdictional default as if the default consisted of 2 or more separate defaults—
  - (a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and



- (b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.
- (2) The fidelity authority may treat a claim about a concerted interjurisdictional default as if the claim consisted of—
  - (a) one or more claims made under this Part; and
  - (b) one or more claims made under a corresponding law or laws.
- (3) A claim about a concerted interjurisdictional default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
  - (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding sections 230 and 231 and the provisions of the corresponding laws of other jurisdictions that correspond to those sections; or
  - (b) in other shares as agreed by the fidelity authorities involved.
- (4) Subsection (3) does not affect the application of sections 230 and 231 in respect of the amount payable from the fidelity fund after the claim has been assessed.

**251 Default involving interjurisdictional elements if committed by one associate only**

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, where the default involves more than one of the cases referred to in section 220(2) to (4) (Meaning of relevant jurisdiction).
- (2) The fidelity authority may treat the default to which this section applies as if the default consisted of 2 or more separate defaults—
  - (a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction; and
  - (b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions.
- (3) The fidelity authority may treat a claim about the default to which this section applies as if the claim consisted of—
  - (a) one or more claims made under this Part; and
  - (b) one or more claims made under a corresponding law or laws.
- (4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
  - (a) in equal shares in respect of the default, and disregarding sections 230 and 231 and the provisions of the corresponding laws of other jurisdictions that correspond to those sections; or
  - (b) in other shares as agreed by the fidelity authority and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of sections 230 and 231 in respect of the amount payable from the fidelity fund after the claim has been assessed.

**252 Interjurisdictional agency**

- (1) The fidelity authority may request a fidelity authority of another jurisdiction to act as its agent for the purpose of processing or investigating a claim about a default if the default appears to have—
  - (a) occurred partly or solely in the other authority's jurisdiction; or

- (b) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) If the fidelity authority agrees to act as agent of another fidelity authority, it may—
  - (a) act as agent of the other authority for the purpose of processing or investigating the claim; and
  - (b) exercise any of its powers or other functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made against the fidelity fund of this jurisdiction.

## **Division 7      Miscellaneous**

### **253      Cooperation**

- (1) When dealing with a claim, the fidelity authority may exercise any of its functions in cooperation with or with the assistance of other fidelity authorities or the designated local regulatory authority.
- (2) The fidelity authority and the designated local regulatory authority may exchange information about a claim and the authority may exchange information about a claim with other fidelity authorities.

### **254      Protection from liability**

- (1) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the fidelity fund by—
  - (a) the fidelity authority or a member of the fidelity authority; or
  - (b) a person acting at the direction of anyone referred to in paragraph (a).
- (2) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of publishing a notice or providing information under section 235 by—
  - (a) the fidelity authority or a member of the fidelity authority; or
  - (b) the proprietor, editor or publisher of a newspaper in respect of a notice under that section published in the newspaper; or
  - (c) an internet service provider or internet content host in respect of a notice under that section published on the internet; or
  - (d) a person acting at the direction of anyone referred to in paragraph (a), (b) or (c).

### **255      Uniform Rules for fidelity cover**

- (1) The Uniform Rules may make provision with respect to any aspect of the fidelity cover scheme under this Part.
- (2) Without limitation, the Uniform Rules may make provision with respect to the following—
  - (a) the minimum terms and conditions of fidelity cover;
  - (b) the requirements and processes for making a claim against a fidelity fund;
  - (c) the procedure by which a claim against the relevant fidelity fund is to be processed;
  - (d) the procedure for identifying and dealing with concerted interjurisdictional defaults and defaults to which section 251 applies.

## Part 4.6 Business management and control

### 256 Compliance audits

- (1) The designated local regulatory authority may conduct, or appoint a suitably qualified person to conduct, an audit of the compliance of a law practice with this Law, the Uniform Rules and other applicable professional obligations if the designated local regulatory authority considers there are reasonable grounds to do so, based on—
  - (a) the conduct of the law practice or one or more of its associates; or
  - (b) a complaint against the law practice or one or more of its associates.
- (2) The appointment of a suitably qualified person may be made generally, or in relation to a particular law practice, or in relation to a particular compliance audit.
- (3) A report of a compliance audit is to be provided to the law practice concerned and may be provided to the designated local regulatory authority.

**Note** Chapter 7 applies to a compliance audit.

### 257 Management system directions

- (1) The designated local regulatory authority may give a management system direction to a law practice if the authority considers it reasonable to do so after the conduct of any examination, investigation or audit referred to in Chapter 7.
- (2) A *management system direction* is a direction to a law practice or class of law practices—
  - (a) to ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the law practice, or by a law practice of that class, in accordance with this Law, the Uniform Rules and other professional obligations; and
  - (b) to provide periodic reports to the designated local regulatory authority on the systems and on compliance with the systems.
- (3) A law practice must comply with a management system direction given to it.

### 258 Prohibited services and business

- (1) A law practice (or a related entity) must not—
  - (a) promote or operate a managed investment scheme; or
  - (b) provide a service or conduct a business of a kind specified in the Uniform Rules for the purposes of this section.

Civil penalty: 250 penalty units.
- (2) Despite subsection (1), an associate of a law practice may promote or operate a managed investment scheme if, in the event of an insolvency or administration of the managed investment scheme, the associate is appointed as—
  - (a) an administrator, liquidator, receiver, receiver and manager, agent of a mortgagee or controller of the managed investment scheme in respect of the insolvency or administration; or
  - (b) a controller or external administrator of an entity acting in a similar capacity as a responsible entity where a managed investment scheme does not have a responsible entity in respect of an insolvency or administration.
- (3) Except as permitted by or under the Uniform Rules, or as approved by the designated local regulatory authority, a law practice must not provide legal services in relation

to a managed investment scheme if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme.

Civil penalty: 250 penalty units.

- (4) A law practice (or a related entity) must not, in its capacity as the legal representative of a lender or contributor, negotiate the making of or act in respect of a mortgage, other than—
- (a) a mortgage under which the lender is a financial institution; or
  - (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the law practice who acts for the lender or contributors or by an associate or agent of the law practice, or a person engaged by the law practice for the purpose of introducing the borrower to the lender or contributors; or
  - (c) a mortgage, or a mortgage of a class, that the Uniform Rules specify as exempt from this prohibition.

Civil penalty: 250 penalty units.

- (5) In this section—

**borrower** means a person who borrows, from a lender or contributor, money that is secured by a mortgage;

**contributor** means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a law practice;

**contributory mortgage** means a mortgage to secure money lent by 2 or more contributors as tenants in common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for or on behalf of those contributors;

**financial institution** means—

- (a) an ADI; or
- (b) a corporation or other body, or a corporation or body of a class, specified in the Uniform Rules for the purpose of this definition;

**lender** means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

- (6) To the extent that this section applies to an incorporated legal practice, this section is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

## 259 Uniform Rules for legal services

The Uniform Rules may make provision with respect to—

- (a) the provision of legal services by law practices or particular categories of law practices; and
- (b) the provision of other services by law practices in circumstances where a conflict of interest relating to the provision of legal services may arise and the imposition of additional duties and obligations in those circumstances; and
- (c) requirements for law practices in or in connection with providing legal and other services referred to in paragraph (a) or (b).

## Chapter 5 Dispute resolution and professional discipline

### Part 5.1 Introduction

#### 260 Objectives

The objectives of this Chapter are—

- (a) to provide a framework for the timely and effective resolution of disputes or issues between clients and lawyers or law practices; and
- (b) to provide a scheme for the discipline of the Australian legal profession, in the interests of the administration of justice and for the protection of clients of law practices and the public generally; and
- (c) to monitor, promote and enforce the professional standards, competence and honesty of the Australian legal profession.

#### 261 References to lawyers

The term *lawyer* when used alone in this Chapter refers to any of the following—

- (a) an Australian legal practitioner;
- (b) an Australian-registered foreign lawyer;
- (c) an Australian lawyer who is not an Australian legal practitioner;
- (d) a former Australian legal practitioner, a former Australian-registered foreign lawyer or a former Australian lawyer (see section 262(4)).

#### 262 Application of this Chapter to conduct of lawyer or law practice

- (1) Subject to subsection (5), this Chapter applies to conduct of a lawyer occurring—
  - (a) wholly within Australia; or
  - (b) wholly outside Australia; or
  - (c) partly within Australia and partly outside Australia.
- (2) This Chapter applies to conduct of a law practice occurring—
  - (a) wholly within Australia; or
  - (b) partly within Australia and partly outside Australia.
- (3) This Chapter applies to conduct of a lawyer or law practice whether consisting of acts or omissions or a combination of both.
- (4) This Chapter extends to—
  - (a) a former Australian legal practitioner or former Australian-registered foreign lawyer in respect of conduct while an Australian legal practitioner or Australian-registered foreign lawyer in the same way as it applies to an Australian legal practitioner or Australian-registered foreign lawyer, with any necessary modifications; and
  - (b) a former Australian lawyer in respect of conduct occurring while an Australian lawyer who is not an Australian legal practitioner, in the same way as it applies to an Australian lawyer who is not an Australian legal practitioner, with any necessary modifications; and
  - (c) conduct of a lawyer as a public notary.
- (5) This Chapter does not apply to conduct of a lawyer or law practice to the extent the application of this Chapter is excluded by Part 4 of Schedule 3.

### 263 Application of this Chapter to lawyers and law practices

- (1) A provision of this Law or any other applicable law that protects a person from any action, liability, claim or demand in connection with any conduct of the person does not affect the application of this Chapter to the person in respect of the conduct.
- (2) Except to the extent jurisdictional legislation otherwise provides, this Chapter does not apply to a person while the person holds—
  - (a) office as a Justice of the High Court; or
  - (b) office as a judge or magistrate of a court created by the Parliament of the Commonwealth; or
  - (c) office as a judge or magistrate of a court, or a judicial member of a tribunal, of a jurisdiction; or
  - (d) an office specified in the Uniform Rules for the purposes of this section—  
regardless of whether the conduct the subject of a complaint allegedly occurred before or after the person’s appointment to the office concerned.
- (3) For the purposes of this Chapter, conduct of a lawyer in the exercise of official functions as an arbitrator or costs assessor constitutes conduct occurring in connection with the practice of law, except to the extent that the conduct was concerned with the justiciable aspects of decision making by the arbitrator or costs assessor.
- (4) For the purposes of this Chapter, conduct of a lawyer does not constitute conduct occurring in connection with the practice of law to the extent that it is conduct engaged in in the exercise of executive or administrative functions under legislation as—
  - (a) a government lawyer who is not required to hold an Australian practising certificate; or
  - (b) a person appointed to an office by the Governor-General, the Governor of a State or the Administrator of a Territory; or
  - (c) any member, officer or employee of a local regulatory authority or professional association.

### 264 Jurisdiction of Supreme Courts

- (1) The inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of Australian lawyers are not affected by anything in this Chapter, and extend to Australian legal practitioners whose home jurisdiction is this jurisdiction and to other Australian legal practitioners engaged in legal practice in this jurisdiction.
- (2) Nothing in this Chapter is intended to affect the jurisdiction and powers of another Supreme Court with respect to the control and discipline of Australian lawyers or Australian legal practitioners.

## Part 5.2 Complaints

### Division 1 Making complaints and other matters about complaints

#### 265 What is a complaint?

A *complaint* may relate to any dispute or issue about any conduct to which this Chapter applies.

**Note** A complaint can be about the conduct of either a lawyer or a law practice or both.

**266 Who may make a complaint?**

- (1) Any person or body may make a complaint.
- (2) The designated local regulatory authority may initiate a complaint containing a disciplinary matter only.

**267 How is a complaint made?**

- (1) A complaint is made to or by the designated local regulatory authority.
- (2) A complaint must be made or recorded in writing and must—
  - (a) identify the complainant; and
  - (b) identify the lawyer or law practice about whom the complaint is made (or, if it is not possible to identify the lawyer, identify the law practice concerned); and
  - (c) describe the alleged conduct that is the subject of the complaint.

**268 Matters in a complaint**

- (1) A complaint may contain either or both of the following—
  - (a) a consumer matter;
  - (b) a disciplinary matter.
- (2) A dispute or issue about conduct that is the subject of a complaint can be both a consumer matter and a disciplinary matter.  
**Note** For example, a dispute or issue relating to costs could be both a consumer matter (i.e. a costs dispute) and a disciplinary matter.
- (3) A commercial or government client making a complaint cannot obtain relief under this Chapter in relation to a consumer matter, but this subsection does not prevent the dispute or issue that is the subject of the consumer matter from being dealt with as a disciplinary matter.

**269 Consumer matters (including costs disputes)**

- (1) A *consumer matter* is so much of a complaint about a lawyer or a law practice as relates to the provision of legal services to the complainant by the lawyer or law practice and as the designated local regulatory authority determines should be resolved by the exercise of functions relating to consumer matters.  
**Note** A determination of the designated local regulatory authority under subsection (1) does not prevent the dispute or issue also being dealt with as a disciplinary matter—see section 268(2).
- (2) A *costs dispute* is a consumer matter involving a dispute about legal costs payable on a solicitor-client basis where the dispute is between a lawyer or law practice and a person who is charged with those legal costs or is liable to pay those legal costs (other than under a court or tribunal order for costs), whether as a client of the lawyer or law practice or as a third party payer.  
**Note** Section 291 enables the designated local regulatory authority to deal with costs disputes within certain monetary limits.

**270 Disciplinary matters**

A *disciplinary matter* is so much of a complaint about a lawyer or a law practice as would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

**271 Mixed complaints**

If a complaint contains or may contain both a consumer matter and a disciplinary matter, the designated local regulatory authority may give priority to resolving the

consumer matter as soon as possible and, if necessary and appropriate, separately from the disciplinary matter.

### **272 Time limits on making complaints**

- (1) Subject to subsection (2), a complaint must be about conduct alleged to have occurred within the period of 3 years immediately before the complaint is made, but the designated local regulatory authority may waive the time requirement if satisfied that—
  - (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
  - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (2) To the extent that a complaint involves a costs dispute, the complaint must be made within the required period referred to in subsection (3), but the designated local regulatory authority may waive the time requirement if satisfied that—
  - (a) the complaint is made within 4 months after the required period; and
  - (b) it is just and fair to deal with the complaint having regard to the delay and reasons for the delay; and
  - (c) the lawyer or law practice has not commenced legal proceedings in respect of the legal costs.
- (3) For the purposes of subsection (2), the *required period* is the period of—
  - (a) 60 days after the legal costs become payable, except as provided by paragraph (b); or
  - (b) if an itemised bill was requested in respect of those costs in accordance with section 187(2)—30 days after the request was complied with.
- (4) The designated local regulatory authority's decision to waive or refuse to waive a time requirement under this section is final and cannot be challenged in any proceedings by the complainant or the respondent.

### **273 Withdrawing complaints**

- (1) A complaint may be wholly or partly withdrawn by the complainant.
- (2) No further action is to be taken under this Chapter with respect to a consumer matter contained in a complaint to the extent it is withdrawn, but—
  - (a) the designated local regulatory authority may initiate or continue to investigate disciplinary matters, or proceed with disciplinary matters despite the whole or partial withdrawal of a complaint; and
  - (b) the whole or partial withdrawal of a complaint does not prevent—
    - (i) a further complaint being made under this Chapter, by the same or any other person, with respect to the same subject matter; or
    - (ii) action being taken on any other complaint made with respect to the same subject matter.
- (3) The whole or partial withdrawal of a complaint in any jurisdiction does not of itself affect any proceedings in the designated tribunal.

### **274 Where complaint is dealt with**

A complaint is to be dealt with in the participating jurisdiction with which the complaint has the closest connection.



**Notes**

- 1 Part 4 of Schedule 3 deals with conduct partly or wholly occurring in one or more non-participating jurisdictions.
- 2 See section 407 for guidelines and directions about determining which designated local regulatory authority should deal with a matter where more than one jurisdiction is or may be involved or there is uncertainty as to which jurisdiction is relevant in the circumstances.

**275 Other rights not affected**

This Division does not affect any other right of a person to complain about the conduct of a lawyer or a law practice under any other legislation or to seek a remedy at common law or in equity in relation to the conduct.

**Division 2 Preliminary assessment of complaints**

**276 Preliminary assessment of complaint**

- (1) The designated local regulatory authority must conduct a preliminary assessment of a complaint.
- (2) When conducting the preliminary assessment—
  - (a) the designated local regulatory authority may request further information to be provided within a specified period by the complainant, the respondent or another person who may have relevant information; and
  - (b) the designated local regulatory authority is not bound by rules of evidence and may inform itself on any matter in any manner as it thinks fit.
- (3) Any evidence or information obtained by the designated local regulatory authority in the course of conducting a preliminary assessment may be used by the designated local regulatory authority or an investigator in or in relation to any later investigation or consideration of the complaint.
- (4) The designated local regulatory authority may complete a preliminary assessment even if requested information is not provided within the specified period.

**277 Closure of whole or part of complaint after preliminary assessment**

- (1) At any stage after the preliminary assessment of a complaint, the designated local regulatory authority may close the complaint without further consideration of its merits for any of the following reasons to the extent they are applicable—
  - (a) the complaint is vexatious, misconceived, frivolous or lacking in substance;
  - (b) the complaint was made out of time;
  - (c) the complainant has not responded, or has responded inadequately, to a request for further information;
  - (d) the subject matter of the complaint has been or is already being investigated;
  - (e) the subject matter of the complaint would be better investigated or dealt with by police or another investigatory or law enforcement body;
  - (f) the designated local regulatory authority has made a recommendation under section 82(4) in relation to the lawyer concerned;
  - (g) the subject matter of the complaint is the subject of civil proceedings, except so far as it is a disciplinary matter;
  - (h) the designated local regulatory authority, having considered the complaint, forms the view that the complaint requires no further investigation, except so far as it is a consumer matter;
  - (i) the complaint is not one that the designated local regulatory authority has power to deal with;

- (j) the designated local regulatory authority is satisfied that it is otherwise in the public interest to close the complaint.
- (2) After the preliminary assessment of a complaint made by a commercial or government client, the designated local regulatory authority must immediately close the complaint without further consideration of its merits unless it contains or gives rise to a disciplinary matter.  
**Note** Section 268(3) precludes a commercial or government client from obtaining relief under this Chapter in relation to a consumer matter.
- (3) A complaint may be closed under this section without any investigation or without completing an investigation.
- (4) The designated local regulatory authority is not required to give a complainant, a lawyer or law practice an opportunity to be heard or make a submission to the designated local regulatory authority before determining whether or not to close a complaint under this section.
- (5) The power to close a complaint under this section extends to closure of part of a complaint.

#### **278 Immediate suspension of practising or registration certificate**

- (1) The designated local regulatory authority may recommend that an Australian practising certificate or Australian registration certificate be immediately suspended if—
  - (a) a complaint has been made about the conduct of an Australian legal practitioner, Australian-registered foreign lawyer or law practice; and
  - (b) the designated local regulatory authority considers the immediate suspension of the certificate is warranted in the public interest on the ground of the seriousness of the alleged conduct.
- (2) The designated local regulatory authority may make the recommendation whether or not an investigation of the complaint has begun or been completed.
- (3) The making of the recommendation does not prevent the designated local regulatory authority from continuing to deal with the complaint.  
**Note** Section 82 provides that in these circumstances a designated local regulatory authority may suspend the certificate.

### **Division 3 Notification to and submissions by respondents**

#### **279 Notification to respondent about complaint**

- (1) The designated local regulatory authority—
  - (a) may, after receiving a complaint, notify the respondent of the complaint or give the respondent a summary or details of the complaint; and
  - (b) subject to section 281, must, as soon as practicable after the designated local regulatory authority decides to investigate a complaint under section 282 and if it has not already done so, give the respondent a summary or details of the complaint and a notice informing the respondent of the right to make submissions; and
  - (c) must, before making a determination and if it has not already done so, give the respondent a summary or details of the complaint and a notice informing the respondent of the right to make submissions.
- (2) A notice informing the respondent of the right to make submissions must specify a period of 21 days in which submissions must be received or a shorter or longer period

if the designated local regulatory authority reasonably believes a different period is warranted in the circumstances.

#### **280 Submissions by respondent**

- (1) The respondent to a complaint may, within the period specified under section 279, make submissions to the designated local regulatory authority about the complaint or decision or its subject matter, unless the complaint has been closed.
- (2) The designated local regulatory authority may at its discretion extend the period in which submissions may be made.
- (3) The designated local regulatory authority must consider any submissions made by the respondent within the specified period in response to the notice of a decision to investigate a complaint before deciding what action is to be taken on the complaint, and may consider submissions received afterwards.
- (4) The rules of procedural fairness are not breached merely because no submissions are received within the specified period and the designated local regulatory authority makes a determination in relation to the complaint, even if submissions are received afterwards.

#### **281 Exceptions to requirement for notification of complaint**

- (1) Section 279(1)(b) does not require the designated local regulatory authority to give the respondent a summary or details of a complaint or a notice about making submissions if the designated local regulatory authority reasonably believes that to do so will or is likely to—
  - (a) prejudice the investigation of the complaint; or
  - (b) prejudice an investigation by the police or another investigatory or law enforcement body of any matter with which the complaint is concerned; or
  - (c) place the complainant or another person at risk of intimidation or harassment; or
  - (d) prejudice pending court proceedings.
- (2) In that case, the designated local regulatory authority—
  - (a) may postpone giving the respondent the summary or details and the notice until of the opinion that it is appropriate to do so; or
  - (b) may at its discretion give the respondent the notice and a statement of the general nature of the complaint.

### **Division 4 Investigation of complaints**

#### **282 Power to investigate complaints**

- (1) The designated local regulatory authority may investigate the whole or part of a complaint.
- (2) The designated local regulatory authority may appoint a suitably qualified person to conduct a complaints investigation.
- (3) The appointment may be made generally, or in relation to a particular law practice, or in relation to a particular complaints investigation.

**Note** Chapter 7 applies to an investigation under this Division.

**283 Extending scope of investigation**

- (1) The designated local regulatory authority may, if it considers it appropriate to do so, extend the scope of an investigation of a complaint so as to include conduct of the respondent revealed during the investigation.
- (2) Conduct so revealed, or anything arising from that conduct, may be made the subject of a new complaint.
- (3) The new complaint need not be the subject of a separate or further investigation if the designated local regulatory authority is satisfied that the subject matter has already been sufficiently investigated or considered.

**284 Referral of matters for costs assessment**

- (1) For the purpose of investigating a complaint containing a disciplinary matter, the designated local regulatory authority may arrange for an assessment of costs charged or claimed by the respondent.
- (2) Any such application may be made outside any applicable time limit for making applications for costs assessments.

## **Part 5.3 Consumer matters**

### **Division 1 Preliminary**

**285 Application of this Part**

- (1) This Part applies to consumer matters.
- (2) Division 2 applies to all consumer matters, but has effect subject to Division 3 in relation to costs disputes.

### **Division 2 Provisions applicable to all consumer matters**

**286 Prerequisite to resolution action by local regulatory authority**

Despite any other provision of this Division, the designated local regulatory authority is not to take action towards resolving a consumer matter unless it is of the opinion that—

- (a) at least one of the parties has made a reasonable attempt to resolve the matter and the attempt has been unsuccessful; or
- (b) it would be unreasonable to expect the complainant to be involved in such an attempt.

**287 Informal resolution of consumer matters**

The designated local regulatory authority must attempt to resolve a consumer matter by informal means as soon as practicable.

**288 Mediation**

- (1) This section applies to a complaint to the extent that it contains a consumer matter.
- (2) The designated local regulatory authority may order the parties to the complaint to attend mediation in good faith in relation to the consumer matter.
- (3) If mediation succeeds in relation to a consumer matter contained in the complaint, the designated local regulatory authority may close the complaint to that extent on the ground that it has been resolved.

- (4) If mediation fails in relation to a consumer matter contained in the complaint, the designated local regulatory authority may investigate the complaint further and proceed to a determination of the consumer matter.
- (5) If the complainant does not engage in mediation in good faith in relation to a consumer matter contained in the complaint, the designated local regulatory authority may instead close the complaint so far as it contains the consumer matter.
- (6) Neither evidence of anything said or admitted during a mediation or attempted mediation under this section of the whole or a part of the conduct that is the subject of a complaint nor a document prepared for the purposes of the mediation or attempted mediation—
  - (a) may be used by the designated local regulatory authority in making a determination; or
  - (b) is admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.

### **289 Settlement agreements**

- (1) If the parties to a complaint involving a consumer matter reach agreement under this Part or otherwise with respect to the consumer matter—
  - (a) the designated local regulatory authority may prepare a written record of the agreement; and
  - (b) the record must be signed by or on behalf of each party and certified by the designated local regulatory authority; and
  - (c) the designated local regulatory authority must give each party a copy of the signed and certified record.
- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified record in a court.
- (3) On filing, the record is taken to be an order of the court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under subsection (2).

### **290 Determination of consumer matters by local regulatory authority**

- (1) The designated local regulatory authority may resolve a consumer matter by making a determination that, in the designated local regulatory authority's view, is fair and reasonable in all the circumstances.
- (2) In determining a consumer matter, the designated local regulatory authority may make any of the following orders—
  - (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;
  - (b) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
  - (c) an order requiring the respondent to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
  - (d) an order requiring—
    - (i) the respondent Australian legal practitioner; or
    - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice—  
to undertake training, education, counselling or be supervised;
  - (e) a compensation order against the respondent in accordance with Part 5.5.

- (3) A failure to comply with an order under this section is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of—
  - (a) any principal of a respondent law practice; and
  - (b) any lawyer involved in the contravention.

### **Division 3 Further provisions applicable to costs disputes**

#### **291 General role of local regulatory authority in costs disputes**

- (1) The designated local regulatory authority is, subject to the other provisions of this Division, to deal with a costs dispute in the same manner as other consumer matters if—
  - (a) the total bill for legal costs is less than \$100 000 (indexed) payable in respect of any one matter; or
  - (b) the total bill for legal costs equals or is more than \$100 000 (indexed) payable in respect of any one matter, but the total amount in dispute is less than \$10 000 (indexed).
- (2) If a complaint contains a costs dispute that cannot be dealt with under subsection (1), the designated local regulatory authority is not to deal with or continue to deal with the dispute, but is to inform the parties of the right to apply for a costs assessment or to make an application under jurisdictional legislation for the matter to be determined.

#### **292 Binding determinations in costs disputes**

- (1) The designated local regulatory authority may make a binding determination about costs in the circumstances referred to in subsection (2).
- (2) The determination may be made in circumstances where—
  - (a) the designated local regulatory authority is unable to resolve a costs dispute referred to in section 291(1) (whether wholly or partly); and
  - (b) the total amount of legal costs still in dispute is less than \$10 000 (indexed).
- (3) The determination must specify the amount payable as legal costs (including a nil amount). The amount ordered as payable must be less than \$10 000 (indexed).
- (4) A determination is to be based on the designated local regulatory authority's assessment of what is fair and reasonable in all the circumstances.
- (5) In considering what is fair and reasonable in all the circumstances, the designated local regulatory authority must have regard to section 200.

#### **293 Cases where binding determinations are not made in costs disputes**

- (1) The designated local regulatory authority is to cease dealing with a costs dispute in the circumstances referred to in subsection (2), but is to inform the parties of the right to apply for a costs assessment or to make an application under jurisdictional legislation for the matter to be determined.
- (2) The action under subsection (1) is to be taken where—
  - (a) an attempted resolution by the designated local regulatory authority of a costs dispute referred to in section 291(1) is unsuccessful (whether wholly or partly); and
  - (b) either—
    - (i) the total amount of legal costs still in dispute is equal to or more than \$10 000 (indexed); or

- (ii) the total amount of legal costs still in dispute is less than \$10 000 (indexed) and the designated local regulatory authority notifies the parties in writing that it is unable to resolve the dispute.

**Note** Section 197 provides in part that legal costs that are or have been the subject of a costs dispute under this Chapter may not be the subject of a costs assessment unless the designated local regulatory authority is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment. Consequently, a costs assessment is not available where a costs dispute is resolved.

#### **294 GST excluded in calculations**

Amounts payable by way of GST in respect of legal costs are to be disregarded when determining—

- (a) the total bill for legal costs referred to in section 291; or
- (b) the total amount of legal costs referred to in section 292 or 293.

## **Part 5.4 Disciplinary matters**

### **Division 1 Preliminary**

#### **295 Application of this Part**

This Part applies to disciplinary matters.

#### **296 Unsatisfactory professional conduct**

For the purposes of this Law, *unsatisfactory professional conduct* includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

#### **297 Professional misconduct**

- (1) For the purposes of this Law, *professional misconduct* includes—
  - (a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
  - (b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.
- (2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

#### **298 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limitation, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of this Law, whether or not—
  - (i) the contravention is an offence or punishable by way of a pecuniary penalty order; or

- (ii) the person has been convicted of an offence in relation to the contravention; or
- (iii) a pecuniary penalty order has been made against the person under Part 9.7 in relation to the contravention;
- (b) conduct consisting of a contravention of the Uniform Rules;
- (c) conduct involving contravention of the Legal Profession Uniform Law Act of this jurisdiction (other than this Law), whether or not the person has been convicted of an offence in relation to the contravention;
- (d) charging more than a fair and reasonable amount for legal costs in connection with the practice of law;
- (e) conduct in respect of which there is a conviction for—
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (f) conduct as or in becoming an insolvent under administration;
- (g) conduct in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (h) conduct consisting of a failure to comply with the requirements of a notice under this Law or the Uniform Rules;
- (i) conduct in failing to comply with an order of the designated tribunal made under this Law or an order of a corresponding authority made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Law or a corresponding law);
- (j) conduct in failing to comply with a compensation order made under this Chapter.

## **Division 2 Determination by local regulatory authority**

### **299 Determination by local regulatory authority—unsatisfactory professional conduct**

- (1) The designated local regulatory authority may, in relation to a disciplinary matter, find that the respondent lawyer or a legal practitioner associate of the respondent law practice has engaged in unsatisfactory professional conduct and may determine the disciplinary matter by making any of the following orders—
  - (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;
  - (b) an order reprimanding the respondent or a legal practitioner associate of the respondent law practice;
  - (c) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
  - (d) an order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
  - (e) an order requiring—
    - (i) the respondent lawyer; or
    - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice—  
to undertake training, education or counselling or be supervised;



- (f) an order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount (not exceeding \$25 000) to the fund referred to in section 456;
  - (g) an order recommending the imposition of a specified condition on the Australian practising certificate or Australian registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.
- (2) If the designated local regulatory authority proposes to determine a disciplinary matter under this section—
- (a) the designated local regulatory authority must provide the respondent or associate and the complainant with details of the proposed determination and invite them to make written submissions to the designated local regulatory authority within a specified period; and
  - (b) the designated local regulatory authority must take into consideration any written submissions made to the designated local regulatory authority within the specified period, and may, but need not, consider submissions received afterwards; and
  - (c) the designated local regulatory authority is not required to repeat the process if the designated local regulatory authority decides to make a determination in different terms after taking into account any written submissions received during the specified period; and
  - (d) the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the designated local regulatory authority makes a determination in relation to the complaint, even if submissions are received afterwards.
- (3) If the designated local regulatory authority determines a disciplinary matter under this section, no further action is to be taken under this Chapter with respect to the complaint.
- (4) If a complaint contains both a consumer matter and a disciplinary matter and the designated local regulatory authority has already made a determination of the consumer matter under section 290, the designated local regulatory authority may, in subsequently making a determination about the disciplinary matter, take into account the determination already made about the consumer matter, but not so as to make further orders under that section.

### **Division 3      Role of designated tribunal**

#### **300    Initiation and prosecution of proceedings in designated tribunal**

- (1) The designated local regulatory authority may initiate and prosecute proceedings against a respondent lawyer in the designated tribunal if the designated local regulatory authority is of the opinion that—
- (a) the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the designated tribunal; or
  - (b) the alleged conduct may amount to professional misconduct.
- (2) As soon as practicable after deciding to initiate proceedings under this section, the designated local regulatory authority must give the complainant and the respondent to the complaint written notice of the decision.

#### **301    Procedure of designated tribunal**

- (1) Proceedings initiated under this Chapter in the designated tribunal are to be dealt with in accordance with the procedures of the designated tribunal.

- (2) Subject to any procedural requirements, the designated tribunal may determine proceedings without conducting a formal hearing, but is bound by the rules of procedural fairness.
- (3) It is intended that jurisdictional legislation may determine whether the designated tribunal is bound by the rules of evidence in conducting a hearing in relation to an allegation of professional misconduct, but the designated tribunal is otherwise not bound by those rules in relation to matters arising under this Chapter.

### **302 Determination by designated tribunal—disciplinary matters**

- (1) If, after it has completed a hearing under this Part into the conduct of a respondent lawyer, the designated tribunal finds that the lawyer is guilty of unsatisfactory professional conduct or professional misconduct, the designated tribunal may make any orders that it thinks fit, including any of the orders that a local regulatory authority can make under section 299 in relation to a lawyer and any one or more of the following—
  - (a) an order that the lawyer do or refrain from doing something in connection with the practice of law;
  - (b) an order that the lawyer cease to accept instructions as a public notary in relation to notarial services;
  - (c) an order that the lawyer's practice be managed for a specified period in a specified way or subject to specified conditions;
  - (d) an order that the lawyer's practice be subject to periodic inspection by a specified person for a specified period;
  - (e) an order that the lawyer seek advice in relation to the management of the lawyer's practice from a specified person;
  - (f) an order recommending that the name of the lawyer be removed from a roll kept by a Supreme Court, a register of lawyers kept under jurisdictional legislation or the Australian Legal Profession Register;
  - (g) an order directing that a specified condition be imposed on the Australian practising certificate or Australian registration certificate of the lawyer;
  - (h) an order directing that the lawyer's Australian practising certificate or Australian registration certificate be suspended for a specified period or cancelled;
  - (i) an order directing that an Australian practising certificate or Australian registration certificate not be granted to the lawyer before the end of a specified period;
  - (j) an order that the lawyer not apply for an Australian practising certificate or Australian registration certificate before the end of a specified period;
  - (k) a compensation order against the lawyer in accordance with Part 5.5;
  - (l) an order that the lawyer pay a fine of a specified amount not exceeding \$100 000 if the lawyer is found guilty of professional misconduct.
- (2) Subject to section 303, the designated tribunal may make ancillary or other orders, including—
  - (a) an order for payment by the lawyer of expenses associated with orders under this section, as assessed or reviewed in or in accordance with the order or as agreed; and
  - (b) an interlocutory or interim order, including an order of the kind referred to in subsection (1).

- (3) The designated tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.
- (4) If the designated tribunal makes an order that a lawyer pay a fine, a copy of the order may be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount of the fine and the order may be enforced as if it were an order of the court.
- (5) To avoid doubt, the power of the designated tribunal under subsection (1) to make any of the orders that the designated local regulatory authority can make under section 299 extends to making orders of that kind in relation to a lawyer whom the tribunal finds is guilty of professional misconduct.
- (6) It is intended that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

### **303 Costs**

- (1) The designated tribunal must make orders requiring a lawyer whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the designated local regulatory authority and the complainant), unless the designated tribunal is satisfied that exceptional circumstances exist.
- (2) The designated tribunal may make orders requiring a lawyer whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the designated local regulatory authority and the complainant), if satisfied that—
  - (a) the sole or principal reason why the proceedings were instituted in the designated tribunal was a failure of the lawyer to cooperate with the designated local regulatory authority; or
  - (b) there is some other reason warranting the making of an order in the particular circumstances.
- (3) The designated tribunal may make orders requiring—
  - (a) a local regulatory authority; or
  - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section—to pay costs, but may do so only if satisfied that the lawyer concerned is not guilty of unsatisfactory professional conduct or professional misconduct and the designated tribunal considers that special circumstances warrant the making of the orders.
- (4) The designated tribunal may make orders requiring—
  - (a) a lawyer in respect of whom proceedings are pending before the designated tribunal; or
  - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section—to pay costs on an interlocutory or interim basis.
- (5) An order for costs—
  - (a) may be for a specified amount; or
  - (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.
- (6) An order for costs may specify the terms on which costs must be paid.
- (7) It is intended that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

### 304 Compliance with orders of designated tribunal

Persons and bodies (other than the Supreme Court) having relevant functions under this Law must give effect to the orders of the designated tribunal under this Law.

**Note** Sections 23 and 461 provide that the Supreme Court may order the removal of the name of a lawyer from the Supreme Court roll on its own motion or on the recommendation of the designated local regulatory authority, the designated tribunal or a corresponding disciplinary body.

### 305 Power to disregard procedural lapses

- (1) The designated tribunal may order that a failure by the designated local regulatory authority to observe a procedural requirement in relation to a complaint is to be disregarded, if satisfied that the parties to the proceedings have not been prejudiced by the failure.
- (2) This section applies to a failure occurring before proceedings were instituted in the designated tribunal in relation to the complaint as well as to a failure occurring afterwards.

## Part 5.5 Compensation orders

### 306 Making of compensation orders

- (1) For the purposes of section 290, the designated local regulatory authority may make a compensation order against a respondent lawyer or law practice in accordance with this Part.
- (2) For the purposes of section 302, the designated tribunal may make a compensation order against a respondent lawyer in accordance with this Part.

### 307 Request by complainant for compensation order

- (1) A complainant may request—
  - (a) the designated local regulatory authority; or
  - (b) the designated tribunal in proceedings under Division 3 of Part 5.4—  
to make a compensation order.
- (2) A compensation order may be requested in respect of loss suffered by—
  - (a) the complainant; or
  - (b) another person who is a client of the respondent—  
(or both) because of the conduct the subject of the complaint. The complainant, or other person, suffering the loss is referred to in this Part as an *aggrieved person*.
- (3) A complainant who makes such a request must describe the loss suffered by the aggrieved person and the relevant circumstances.
- (4) A request may be made in the complaint or to the designated local regulatory authority at any time after the complaint is made and before it is disposed of.
- (5) However, a request may not be made after proceedings have been initiated in the designated tribunal with respect to the complaint unless the designated tribunal grants the complainant leave to make the request.

### 308 Nature of compensation orders

- (1) A compensation order is an order to compensate the aggrieved person for loss suffered because of conduct that is the subject of a complaint and consists of one or more of the orders referred to in subsections (2), (3) and (4).

- (2) A compensation order may include an order that the respondent lawyer or law practice pay to the aggrieved person, by way of monetary compensation for the loss, a specified amount not exceeding—
  - (a) where the compensation order is made by the designated local regulatory authority—\$25 000; or
  - (b) where the compensation order is made by the designated tribunal—\$25 000 or a greater amount agreed to with the consent of both the complainant and the respondent lawyer or law practice.
- (3) A compensation order may include an order that the respondent lawyer or law practice cannot recover or must repay the whole or a specified part of the amount charged to the aggrieved person by the lawyer or law practice in respect of specified legal services. An order under this subsection is effective—
  - (a) to prevent recovery of an amount even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the lawyer or law practice; and
  - (b) to require repayment of an amount even if a court has ordered payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the lawyer or law practice.
- (4) A compensation order may include an order discharging a lien possessed by the lawyer or law practice in respect of a specified document or class of documents.
- (5) A compensation order may specify the person to whom monetary compensation is payable, whether to the aggrieved person or to another person on behalf of the aggrieved person.

**Note** Section 311 provides that compensation awarded under this Part does not affect any other remedy available for the loss.

### **309 Prerequisites for making of compensation orders**

- (1) Unless the complainant and the respondent lawyer or law practice concerned agree, a compensation order is not to be made unless the designated local regulatory authority or designated tribunal (as the case requires) is satisfied that—
  - (a) the aggrieved person has suffered loss because of the conduct concerned; and
  - (b) it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of any loss for which the aggrieved person has received or is entitled to receive—
  - (a) compensation under an order that has been made by a court; or
  - (b) compensation paid or payable from a fidelity fund of any jurisdiction, where a relevant claim for payment from that fund has been made or determined.
- (3) Subsection (2) does not apply where a fidelity authority is seeking a compensation order under its subrogation to the rights and remedies of a claimant (see section 246).

### **310 Enforcement of compensation orders**

A copy of a compensation order made by the designated local regulatory authority may be filed in a court of competent jurisdiction and the order (so far as it relates to any amount payable under the order) may be enforced as if it were an order of the court.

### **311 Other remedies not affected**

The recovery of compensation awarded under this Part does not affect any other remedy available to an aggrieved person, but any compensation so awarded must be

taken into account, and appropriate adjustments made, in any other proceedings by or on behalf of the aggrieved person in respect of the same loss.

## **Part 5.6 Appeal or review**

### **312 Finality of determinations of local regulatory authority**

The determination of a complaint or matter by the designated local regulatory authority under this Chapter is final, except as provided by this Part.

### **313 Internal review of decisions of local regulatory authority**

- (1) The designated local regulatory authority may (at its absolute discretion) conduct an internal review of a decision made by the designated local regulatory authority (or its delegate) if the designated local regulatory authority considers it appropriate to do so.
- (2) On the review, the designated local regulatory authority is to consider whether the decision was dealt with appropriately and whether the decision was based on reasonable grounds.
- (3) On the review, the designated local regulatory authority may confirm the original decision, make a new decision, or refer the matter back to the original decision-maker.

### **314 Right of appeal or review of decisions of local regulatory authority**

- (1) A respondent lawyer or a legal practitioner associate of a respondent law practice may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by the designated tribunal of, a determination of the designated local regulatory authority under—
  - (a) section 290, in relation to a compensation order for more than \$10 000; or
  - (b) section 299.
- (2) The designated tribunal may make any order it considers appropriate on the appeal or review.
- (3) It is intended that jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

## **Part 5.7 General duties of local regulatory authority**

### **315 Duty to deal with complaints**

It is the duty of the designated local regulatory authority to deal with all complaints properly made and to deal with them in accordance with this Law and the Uniform Rules.

### **316 Duty to exercise discretions fairly**

It is the duty of the designated local regulatory authority, in exercising or considering whether or how to exercise any applicable discretions when dealing with a complaint (including the conduct of any investigation), to act in a fair manner, having regard to the respective interests of the complainant and the respondent and to the public interest.

### **317 Duty to deal with complaints efficiently and expeditiously**

It is the duty of the designated local regulatory authority to deal with complaints (including the conduct of any investigations) as efficiently and expeditiously as is practicable.

### **318 Notice of decisions and determinations**

- (1) It is the duty of the designated local regulatory authority in relation to a complaint to give the complainant and the respondent written notice of—
  - (a) a decision to close the complaint; or
  - (b) a determination made in relation to the complaint (including a costs dispute); or
  - (c) a decision made as a result of an internal review in connection with the complaint.
- (2) A notice under this section must be given as soon as practicable after the decision or determination is made, and must include a statement of reasons for the decision.
- (3) The designated local regulatory authority need not give a party to a complaint notice of a decision or determination to close the complaint if the designated local regulatory authority considers that it would be appropriate in the circumstances to dispense with notifying that party.

**Note** Section 300 provides for notice to be given of a decision to initiate proceedings in the designated tribunal.

### **319 Rules of procedural fairness**

- (1) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Law or the Uniform Rules, apply in relation to—
  - (a) the investigation and determination of complaints by the designated local regulatory authority; and
  - (b) the making of other decisions by the designated local regulatory authority in respect of complaints; and
  - (c) the procedures of the designated local regulatory authority in respect of complaints and any associated matters.
- (2) Subsection (1) does not apply in relation to a decision of the designated local regulatory authority that the whole or part of a complaint should be resolved by the exercise of functions relating to consumer matters (see section 269(1)).

## **Part 5.8 Miscellaneous**

### **320 Power to make orders includes power to make recommendations**

- (1) A power to make an order directing action in relation to a matter under this Chapter includes a power to make an order recommending the taking of action (or refraining from the taking of action) in relation to the matter so far as the matter concerns another jurisdiction.
- (2) A recommendation under this section may be made in any manner that the Supreme Court, the designated local regulatory authority or the designated tribunal considers appropriate, and (to avoid doubt) may be made to a person or body having powers or other functions under a law of another jurisdiction.

### **321 Waiver of privilege or duty of confidentiality—complaints**

- (1) If a client of a law practice makes a complaint about the law practice or a lawyer, the complainant is taken to have waived legal professional privilege, or the benefit of any duty of confidentiality, to enable the law practice or lawyer to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint.

- (2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

**322 Uniform Rules**

The Uniform Rules may make provision with respect to any matter referred to in this Chapter.



## Chapter 6 External intervention

### Part 6.1 Introduction

#### 323 Objectives

The objectives of this Chapter are—

- (a) to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices for the purpose of protecting the interests of—
  - (i) the general public; and
  - (ii) clients; and
  - (iii) law practices and others, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients; and
- (b) to ensure that there is an accountable and transparent process for the appointment of interveners and for the conduct of interventions.

#### Note

This Chapter—

- (a) applies to all law practices, regardless of whether or not they are incorporated under the Corporations Act; and
- (b) is intended to apply so that it, rather than the Corporations Act or the Bankruptcy Act, applies in respect of the winding up of trust property and in respect of the carrying on of a law practice by external intervention.

#### 324 Further application of this Chapter

This Chapter applies, with any necessary adaptations, to—

- (a) a former law practice or former Australian legal practitioner; and
- (b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate; and
- (c) the administrator, or receiver, or receiver and manager, or official manager, of the property of an incorporated legal practice; and
- (d) the liquidator of an incorporated legal practice that is being or has been wound up; and
- (e) Australian-registered foreign lawyers and former Australian-registered foreign lawyers—

in the same way as it applies to law practices.

#### 325 Operation of appointment of external intervener in another participating jurisdiction

- (1) The appointment in another participating jurisdiction of an external intervener is effective to operate in and in respect of this jurisdiction.
- (2) An order or direction of a court or tribunal of another participating jurisdiction made under this Chapter (as applied in that jurisdiction) in relation to a law practice has effect in and in respect of this jurisdiction as if it were an order or direction of the designated tribunal made in relation to that law practice.
- (3) Subsection (2) does not apply to an order appointing a receiver.

## Part 6.2 Initiation of external intervention

### 326 Circumstances warranting external intervention

External intervention may take place in relation to a law practice in any of the following circumstances—

- (a) where a legal practitioner associate involved in the law practice has died, ceases to hold a current Australian practising certificate or a current Australian registration certificate, has become an insolvent under administration or is in prison;
- (b) in the case of a law firm or an unincorporated legal practice—where the firm or group has been wound up or dissolved;
- (c) in the case of an incorporated legal practice—where the corporation concerned ceases to be an incorporated legal practice, is being or has been wound up or has been deregistered or dissolved;
- (d) in any case—where the designated local regulatory authority forms a belief on reasonable grounds that the law practice or an associate of the law practice—
  - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the law practice; or
  - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the law practice; or
  - (iii) has failed to properly account in a timely manner to any person for trust money or trust property received by the law practice for or on behalf of that person; or
  - (iv) has failed to properly make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
  - (v) is in breach of the Uniform Rules with the result that the record-keeping for the law practice's trust accounts is inadequate; or
  - (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
  - (vii) is the subject of an adverse finding in relation to a complaint relating to trust money or trust property received by the law practice; or
  - (viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Law; or
  - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the law practice or for properly winding up the affairs of the law practice;
- (e) where any other proper cause exists in relation to the law practice.

### 327 Determination to initiate external intervention

- (1) This section applies when the designated local regulatory authority becomes aware that one or more of the circumstances referred to in section 326 exist in relation to a law practice and decides that, having regard to the interests of the clients of the law practice and to other matters that it considers appropriate, external intervention is warranted.
- (2) The designated local regulatory authority may determine to initiate the appointment under this Chapter of—
  - (a) a supervisor of trust money of the law practice, if the designated local regulatory authority is of the opinion—

- (i) that external intervention is required because of issues relating to the law practice's trust accounts; and
    - (ii) that it is not appropriate that the provision of legal services by the law practice be wound up and terminated because of those issues; or
  - (b) a manager for the law practice, if the designated local regulatory authority is of the opinion—
    - (i) that external intervention is required because of issues relating to the law practice's trust records; or
    - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the law practice; or
  - (c) a receiver for the law practice, if the designated local regulatory authority is of the opinion—
    - (i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (ii) that it may be appropriate that the provision of legal services by the law practice be wound up and terminated.
- (3) The designated local regulatory authority may, from time to time, make further determinations in relation to the law practice and for that purpose may, at the designated local regulatory authority's absolute discretion, revoke a previous determination with effect from a date or event specified by the designated local regulatory authority.

### **328 Appointment of external intervener may be general or limited**

An appointment of an external intervener for a law practice may be made in respect of the law practice generally or may be limited by the terms of the appointment, including for example to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject matter.

## **Part 6.3 Supervisors of trust money**

### **329 Appointment of supervisor of trust money**

- (1) This section applies if the designated local regulatory authority determines to appoint a supervisor of trust money of a law practice.
- (2) The designated local regulatory authority may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either—
  - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts—and may (but need not) be a member of the staff of the designated local regulatory authority.
- (4) Notice of the appointment must be given in accordance with the Uniform Rules.

### **330 Effect of service of notice of appointment**

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless—
  - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account and signed by the supervisor or a nominee of the supervisor; or
  - (b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or
  - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.

Civil penalty: 100 penalty units.

- (2) After service on a person (other than an ADI, the supervisor or a nominee of the supervisor) of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the person must not—
  - (a) deal with any of the law practice's trust money; or
  - (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
  - (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

Penalty: 100 penalty units.

- (3) A supervisor of trust money may, for the purposes of subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice.

### **331 Role of supervisor of trust money**

- (1) A supervisor of trust money of a law practice has the powers and other functions of the law practice in relation to the trust money, including powers—
  - (a) to receive trust money entrusted to the practice; and
  - (b) to open and close trust accounts.
- (2) For the purpose of exercising his or her powers and other functions under subsection (1), the supervisor may exercise any or all of the following powers—
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the law practice or an associate or former associate of the law practice or any other person who has or had control of documents relating to trust money received by the law practice to give the supervisor either or both of the following—
    - (i) access to the files and documents the supervisor reasonably requires;
    - (ii) information relating to the trust money the supervisor reasonably requires;

- (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the designated local regulatory authority and—
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) This section applies to trust money held by the law practice before the supervisor is appointed, as well as to trust money received afterwards.
- (5) The supervisor does not have a role in the management of the affairs of the law practice except insofar as the affairs relate to a trust account of the law practice.
- (6) The supervisor may enter and remain on premises under subsection (2)(a) only—
- (a) during normal business hours; or
  - (b) during other hours with the consent of the occupier of the premises.
- (7) The supervisor must not enter premises under subsection (2)(a) unless, before the entry, he or she has produced for inspection by the occupier—
- (a) the supervisor's notice of appointment; and
  - (b) a form of identification that includes the supervisor's photograph and signature.
- (8) However, if the supervisor is refused access to the premises or the premises are unoccupied and the supervisor considers that entry is necessary to prevent destruction of documents or for another urgent reason, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (9) The supervisor must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the supervisor's functions.
- (10) If the supervisor takes possession of—
- (a) a document, disk, tape or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied—
- under this section, the supervisor (on request by the occupier, a principal of a law practice or a person from whom it was taken) must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

### **332 Records of and dealing with trust money of law practice under supervision**

- (1) A supervisor of trust money of a law practice must maintain the records of his or her dealings with the trust money—
- (a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and

- (b) separately from the affairs of any other law practice for which he or she is an external intervener; and
  - (c) in the manner specified in the Uniform Rules for the purposes of this section.
- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

### **333 Termination of supervisor's appointment**

- (1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances—
- (a) the term of the appointment comes to an end;
  - (b) the appointment is set aside under section 358;
  - (c) the appointment of a manager for the law practice takes effect;
  - (d) the appointment of a receiver for the law practice takes effect;
  - (e) the supervisor has distributed all trust money received by the law practice and wound up all trust accounts;
  - (f) a determination of the designated local regulatory authority that the appointment be terminated has taken effect.
- (2) The designated local regulatory authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

## **Part 6.4 Managers**

### **334 Appointment of manager**

- (1) This section applies if the designated local regulatory authority determines to appoint a manager for a law practice.
- (2) The designated local regulatory authority may, by instrument in writing, appoint a person as manager.
- (3) Subject to subsection (4), the appointee must be an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money.
- (4) In the case of the appointment of a manager for a law practice that consists of a barrister, the appointee must be the holder of an Australian practising certificate as a principal.
- (5) The powers of the manager for a law practice that consists of a barrister include power to reallocate or return briefs.
- (6) The appointee may (but need not) be a member of the staff of the designated local regulatory authority.
- (7) Notice of the appointment must be given in accordance with the Uniform Rules.

### **335 Effect of service of notice of appointment**

- (1) After service on a law practice of a notice of the appointment of a manager for the law practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.
- Penalty: 100 penalty units.

- (2) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless—
- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account and signed by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver; or
  - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver; or
  - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account and signed by the manager, a receiver appointed for the law practice, or a nominee of the manager or receiver.

Civil penalty: 100 penalty units.

- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not—
- (a) deal with any of the law practice's trust money; or
  - (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
  - (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

Penalty: 100 penalty units.

- (4) A manager may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another trust account nominated by the manager or receiver.
- (6) Subsection (3) does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the law practice.

### **336 Role of managers**

- (1) A manager for a law practice may carry on the law practice and may do all things that the law practice or a legal practitioner associate of the law practice might lawfully have done, including but not limited to the following—
- (a) transacting any business of the law practice that the manager reasonably believes to be urgent;
  - (b) transacting, with the approval of any or all of the existing clients of the law practice, any business on their behalf, including—
    - (i) commencing, continuing, defending or settling any proceedings; and
    - (ii) receiving, retaining and disposing of property;
  - (c) accepting instructions from new clients and transacting any business on their behalf, including—
    - (i) commencing, continuing, defending or settling any proceedings; and
    - (ii) receiving, retaining and disposing of regulated property;
  - (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;

- (e) entering into, executing or performing any agreement;
  - (f) dealing with trust money or trust property;
  - (g) winding up the affairs of the law practice.
- (2) For the purpose of exercising his or her powers under subsection (1), the manager may exercise any or all of the following powers—
- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the manager either or both of the following—
    - (i) access to the files and documents the manager reasonably requires;
    - (ii) information relating to client matters the manager reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the designated local regulatory authority and—
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) The manager may enter and remain on premises under subsection (2)(a) only—
- (a) during normal business hours; or
  - (b) during other hours with the consent of the occupier of the premises.
- (5) The manager must not enter premises under subsection (2)(a) unless, before the entry, he or she has produced for inspection by the occupier—
- (a) the manager's notice of appointment; and
  - (b) a form of identification that includes the manager's photograph and signature.
- (6) However, if the manager is refused access to the premises or the premises are unoccupied and the manager considers that entry is necessary to prevent destruction of documents or for another urgent reason, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (7) The manager must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the manager's functions.
- (8) If the manager takes possession of—
- (a) a document, disk, tape or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied—



under this section, the manager (on request by the occupier, a principal of a law practice or a person from whom it was taken) must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

**337 Records and accounts of law practice under management and dealings with trust money**

- (1) The manager for a law practice must maintain the records and accounts of the law practice that he or she manages—
  - (a) separately from the management of the affairs of the law practice before his or her appointment as manager; and
  - (b) separately from the affairs of any other law practice for which he or she is an external intervener; and
  - (c) in the manner specified in the Uniform Rules for the purposes of this section.
- (2) Subject to subsection (1), the manager for a law practice must deal with trust money of the law practice in the same way as a law practice must deal with trust money.

**338 Deceased estates**

- (1) It is the duty of the manager for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the law practice for the orderly winding up of the estate.
- (2) The manager is not, in the exercise of powers and other functions as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from exercising powers or other functions as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and other functions are not affected by the death.

**339 Lien for costs on regulated property**

- (1) This section applies if—
  - (a) a manager has been appointed for a law practice; and
  - (b) the law practice or a legal practitioner associate of the law practice claims a lien for legal costs on regulated property of the law practice.
- (2) The manager may serve on the law practice or legal practitioner associate a written notice requiring the law practice or associate to give the manager within a specified period of not less than one month—
  - (a) particulars sufficient to identify the regulated property; and
  - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the manager in writing to give access to the regulated property that is reasonably necessary to enable the law practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the manager may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

**340 Termination of manager's appointment**

- (1) The appointment of a manager for a law practice terminates in the following circumstances—

- (a) the term of the appointment comes to an end;
  - (b) the appointment is set aside under section 358;
  - (c) the appointment of a receiver for the law practice takes effect, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and other functions of a manager;
  - (d) the manager has wound up the affairs of the law practice;
  - (e) a determination of the designated local regulatory authority that the appointment be terminated has taken effect.
- (2) The designated local regulatory authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
  - (3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (c) or (e), the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to—
    - (a) another external intervener appointed for the law practice; or
    - (b) the law practice, if another external intervener is not appointed for the law practice.
  - (4) The former manager need not transfer regulated property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the designated local regulatory authority.
  - (5) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

## Part 6.5 Receivers

### 341 Appointment of receiver

- (1) This section applies if the designated local regulatory authority determines to initiate action for the appointment of a receiver for a law practice.
- (2) The designated tribunal may, on the application of the designated local regulatory authority, appoint a person as receiver for a law practice.
- (3) The designated tribunal may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
- (4) Before commencing to hear an application for appointment of a receiver, the designated tribunal must order from the precincts of the tribunal any person who is not—
  - (a) an officer of the tribunal; or
  - (b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or
  - (c) a principal of the law practice concerned; or
  - (d) a person who is about to or is in the course of giving evidence; or
  - (e) a person permitted by the tribunal to be present in the interests of justice.
- (5) The appointee must be—
  - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts—

and may (but need not) be a member of the staff of the designated local regulatory authority.

- (6) Notice of the appointment must be given in accordance with the Uniform Rules.

### **342 Effect of service of notice of appointment**

- (1) After service on a law practice of a notice of the appointment of a receiver for the law practice and until the appointment is terminated, a legal practitioner associate of the law practice who is specified or referred to in the notice must not participate in the affairs of the practice.

Penalty: 100 penalty units.

- (2) After service on an ADI of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless—

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager; or
- (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager; or
- (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager.

Civil penalty: 100 penalty units.

- (3) After service on a person of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the person must not—

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice—

but this subsection does not apply to an ADI, the receiver or manager for the law practice or a nominee of the receiver or manager.

Penalty: 100 penalty units.

- (4) A receiver may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the receiver or a manager for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another trust account nominated by the receiver or manager.

### **343 Role of receivers**

- (1) The role of a receiver for a law practice is—
- (a) to be the receiver of regulated property of the law practice; and
  - (b) to wind up and terminate the affairs of the law practice.
- (2) For the purpose of winding up the affairs of the law practice and in the interests of the law practice's clients, the designated tribunal may, by order, authorise—

- (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money, or a law practice whose principals are or include one or more Australian legal practitioners who hold Australian practising certificates authorising the receipt of trust money, specified in the instrument to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the designated tribunal, the receiver, if authorised under subsection (2) to carry on the legal practice engaged in by a law practice, has all the powers and other functions of a manager under this Chapter and is taken to have been appointed as manager for the law practice.
- (4) The designated tribunal may, by order, terminate an authorisation to carry on a legal practice granted under subsection (2).
- (5) For the purpose of exercising his or her powers and other functions under this section, the receiver may exercise any or all of the following powers—
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the receiver—
    - (i) access to the files and documents the receiver reasonably requires; and
    - (ii) information relating to client matters the receiver reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (6) If the receiver takes anything from the premises, the receiver must issue a receipt in a form approved by the designated local regulatory authority and—
  - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

#### **344 Records and accounts of law practice under receivership and dealings with trust money**

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages—
  - (a) separately from the management of the affairs of the law practice before his or her appointment as receiver; and

- (b) separately from the affairs of any other law practice that the receiver is managing or for which the receiver is appointed as external intervener; and
  - (c) in the manner specified in the Uniform Rules for the purposes of this section.
- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**345 Power of receiver to take possession of regulated property**

- (1) A receiver for a law practice may take possession of regulated property of the law practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the designated tribunal may, on application by the receiver, order the person to deliver the regulated property to the receiver.
- (4) If, on application made by the receiver, the designated tribunal is satisfied that an order made under subsection (3) has not been complied with, the tribunal may order the seizure of any regulated property of the law practice that is located on the premises specified in the order and make any further orders it thinks fit.
- (5) An order under subsection (4) operates to authorise—
  - (a) any member of the police force; or
  - (b) the receiver or a person authorised by the receiver, together with any member of the police force—to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.
- (6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

**346 Power of receiver to take delivery of regulated property**

- (1) If a receiver for a law practice believes on reasonable grounds that another person is under an obligation, or will later be under an obligation, to deliver regulated property to the law practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.
- (2) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property to the law practice, the person must deliver the property to the receiver.  
Civil penalty: 100 penalty units.
- (3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

**347 Power of receiver to deal with regulated property**

- (1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the law practice.
- (2) The receiver may deal with the regulated property in any manner in which the law practice might lawfully have dealt with the property.

### **348 Power of receiver to require documents or information**

- (1) A receiver for a law practice may require a person referred to in subsection (2) to give the receiver, within a period and in a manner specified by the receiver, either or both of the following—
  - (a) access to the documents relating to the affairs of the law practice the receiver reasonably requires;
  - (b) information relating to the affairs of the law practice the receiver reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A requirement under subsection (1) may be imposed on—
  - (a) a person who is an associate or former associate of the law practice; or
  - (b) a person who has or had control of documents relating to the affairs of the law practice; or
  - (c) a person who has information relating to regulated property of the law practice or property that the receiver believes on reasonable grounds to be regulated property of the law practice.
- (3) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Civil penalty: 50 penalty units.

**Note** Section 466 contains provisions relating to compliance with this section.

### **349 Examinations about regulated property**

- (1) The designated tribunal may, on the application of a receiver for a law practice, make an order directing that an associate or former associate of the law practice or any other person appear before the designated tribunal for examination on oath or affirmation in relation to the regulated property of the law practice.
- (2) On an examination of a person under this section, the person must answer all questions that the designated tribunal allows to be put to the person.

### **350 Lien for costs on regulated property**

- (1) This section applies if—
  - (a) a receiver has been appointed for a law practice; and
  - (b) the law practice or a legal practitioner associate of the law practice claims a lien for legal costs on regulated property of the law practice.
- (2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the law practice or associate to give the receiver within a specified period of not less than one month—
  - (a) particulars sufficient to identify the regulated property; and
  - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the law practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

**351 Regulated property not to be attached**

Regulated property of a law practice (including regulated property held by a receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

**352 Recovery of regulated property where there has been a breach of trust etc.**

- (1) This section applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been taken by, paid to, or transferred to, a person (*the transferee*) in breach of trust or improperly or unlawfully and the transferee—
  - (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
  - (b) did not provide to the law practice or any other person any or any adequate consideration for the taking, payment or transfer; or
  - (c) because of the taking, payment or transfer, became indebted or otherwise liable to the law practice or to a client of the law practice in the amount of the payment or in another amount.
- (2) The receiver is entitled to recover from the transferee—
  - (a) if subsection (1)(a) applies—the amount of the payment or the value of the regulated property taken or transferred; or
  - (b) if subsection (1)(b) applies—the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or
  - (c) if subsection (1)(c) applies—the amount of the debt or liability—and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.
- (3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been paid in breach of trust or improperly or unlawfully to a person (*the prospective plaintiff*) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party—
  - (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
  - (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.
- (4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been used in breach of trust or improperly or unlawfully so as to discharge a debt or liability of a person (*the debtor*), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.
- (5) A person authorised by the designated local regulatory authority to do so may give a certificate with respect to all or any of the following facts—
  - (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt, and the identity of the person from whom it was received;
  - (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;

- (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the law practice and the truth or falsity of those entries;
  - (d) the money and securities held by the law practice at the specified time.
- (6) If the receiver brings proceedings under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

### **353 Improperly destroying property etc.**

A person must not, with intent to defeat the operation of this Part or of the Uniform Rules relating to receivers, and whether before or after the appointment of a receiver—

- (a) destroy, conceal, remove from one place to another; or
  - (b) deliver into the possession, or place under the control, of another person—
- any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Penalty: 500 penalty units or imprisonment for 5 years, or both.

### **354 Deceased estates**

- (1) It is the duty of the receiver for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the law practice for the orderly winding up of the estate.
- (2) The receiver is not, in the exercise of powers and other functions as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising powers or other functions as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and other functions are not affected by the death.

### **355 Termination of receiver's appointment**

- (1) The appointment of a receiver for a law practice terminates in the following circumstances—
  - (a) the term (if any) of the appointment comes to an end;
  - (b) the appointment is set aside under section 358;
  - (c) an order of the designated tribunal that the appointment be terminated has taken effect.
- (2) The following provisions apply where a receiver for a law practice is appointed by the designated tribunal—
  - (a) the designated local regulatory authority or receiver may at any time apply to the designated tribunal for an order terminating the appointment immediately or with effect from a specified date;
  - (b) the receiver must apply to the designated tribunal for termination of the appointment when the affairs of the law practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (3) The designated tribunal may make any order it considers appropriate in relation to an application under this section.



**Note** Section 325(2) provides that certain orders of a court or tribunal of another jurisdiction have effect in and in respect of this jurisdiction as if they were orders of the designated tribunal.

- (4) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the designated tribunal's decision on the application except to the extent (if any) that the tribunal otherwise directs.
- (5) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice—
  - (a) to another external intervener appointed for the law practice within the period of 14 days beginning with the day after the date of the termination; or
  - (b) to the law practice, if another external intervener is not appointed for the law practice within that period and if paragraph (c) does not apply; or
  - (c) to another person in accordance with arrangements approved by the designated local regulatory authority, if it is not practicable to transfer and deliver the regulated property to the law practice.
- (6) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (5) unless the expenses of receivership have been paid.
- (7) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

## Part 6.6 General

### 356 Conditions on appointment of external intervener

- (1) An appointment of an external intervener is subject to—
  - (a) any conditions imposed by the appropriate authority; and
  - (b) any conditions imposed by or under the Uniform Rules for the purposes of this section.
- (2) The appropriate authority may impose conditions—
  - (a) when the appointment is made; or
  - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection (2).
- (4) The *appropriate authority* is—
  - (a) the designated local regulatory authority in the case of a supervisor of trust accounts or a manager; or
  - (b) the designated tribunal in the case of a receiver.

### 357 Status of acts of external intervener

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of—
  - (a) any proceedings; or
  - (b) any transaction that relies on that act or omission—  
taken to have been done or omitted to be done by the law practice.
- (2) Nothing in this section subjects an associate of the law practice to any personal liability.

### **358 Right of appeal or review about appointment of external intervener**

- (1) An aggrieved person may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by that tribunal of, the appointment in this jurisdiction of an external intervener for a law practice.
- (2) An *aggrieved person* is—
  - (a) the law practice; or
  - (b) an associate of the law practice; or
  - (c) any person authorised to operate a trust account of the law practice; or
  - (d) a client of the law practice whose interests may be adversely affected by the appointment; or
  - (e) any other person whose interests may be adversely affected by the appointment.
- (3) The appeal or application for review is to be lodged within 7 days after notice of the appointment is served on—
  - (a) the person who proposes to appeal or seek review; or
  - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal or seek review.
- (4) The designated tribunal may by order do any one or more of the following—
  - (a) confirm the appointment;
  - (b) set aside the appointment;
  - (c) impose or vary any conditions of the appointment;
  - (d) make any other orders it thinks fit.
- (5) The appointment of an external intervener is not stayed by the making of an appeal or an application for review, and the external intervener may accordingly continue to exercise his or her powers and other functions as external intervener during the currency of the appeal or review except to the extent (if any) that the designated tribunal otherwise directs.
- (6) To avoid doubt, this section has effect subject to section 325.

### **359 Directions of designated tribunal**

Where the designated tribunal has appointed an external intervener for a law practice, the tribunal may, on application by—

- (a) the external intervener; or
- (b) a principal of the law practice; or
- (c) any other person affected by the external intervention—

give directions in relation to any matter affecting the intervention or the intervener's powers or other functions under this Law.

### **360 Manager and receiver appointed for law practice**

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

### **361 ADI disclosure requirements**

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener, without charge—

- (a) whether or not the law practice, or an associate of the law practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
  - (b) details identifying every account so maintained.Civil penalty: 100 penalty units.
- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge—
  - (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
  - (b) provide the intervener with full details of any transactions relating to any such account or money.Civil penalty: 100 penalty units.
- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener, without charge—
  - (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
  - (b) the details of any such account.Civil penalty: 100 penalty units.
- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

### **362 Confidentiality**

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except—
  - (a) so far as is necessary for exercising his or her powers or other functions; or
  - (b) as provided in subsection (2).Civil penalty: 50 penalty units.
- (2) An external intervener may disclose information to any of the following—
  - (a) any court, tribunal or other person acting judicially;
  - (b) a local regulatory authority;
  - (c) any officer of or Australian legal practitioner instructed by or on behalf of—
    - (i) a local regulatory authority; or
    - (ii) the Commonwealth, a State or a Territory; or
    - (iii) an authority of the Commonwealth or of a State or Territory—

- in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;
- (d) a member of the police force of any jurisdiction if the designated local regulatory authority or external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
  - (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
  - (f) a client or former client of the law practice concerned if the information relates to the client or former client;
  - (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
  - (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned;
  - (i) the fidelity authority of the fidelity fund for this jurisdiction or any other jurisdiction.

**363 Provisions relating to requirements under this Chapter**

- (1) This section applies to a requirement imposed on a person under this Chapter or the Uniform Rules made for the purposes of this Chapter to give an external intervener access to documents or information.
- (2) The external intervener imposing the requirement may—
  - (a) inspect any document provided pursuant to the requirement; and
  - (b) make copies of the document or any part of the document; and
  - (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.

**364 Obstruction of external intervener**

A person must not, without reasonable excuse, obstruct an external intervener exercising a function under this Law.

Civil penalty: 50 penalty units.

**365 Fees, costs and expenses**

- (1) The fees, costs and expenses of an external intervener are payable in accordance with the Uniform Rules and payable by and recoverable from the law practice concerned.
- (2) The designated local regulatory authority may recover any unpaid fees, costs and expenses from the law practice.
- (3) Fees, costs and expenses not paid to the external intervener by a law practice are payable from the fund specified or described in the Legal Profession Uniform Law Act of this jurisdiction for the purposes of this section.
- (4) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the fund referred to in subsection (3) are to be paid into that fund or refunded in accordance with an applicable law of this jurisdiction.

**366 Protection from liability**

- (1) No liability attaches to a protected person in respect of any act or omission by an external intervener done in good faith and in the exercise or purported exercise of the intervener's functions under this Chapter.

- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the Uniform Rules.
- (3) A *protected person* is the designated local regulatory authority, an external intervener or a person acting at the direction of the designated local regulatory authority or an external intervener.

**367 Uniform Rules for external intervention**

- (1) The Uniform Rules may make provision with respect to any aspect of external intervention.
- (2) Without limitation, the Uniform Rules may make provision with respect to the following—
  - (a) the content of and service of notices of appointment and termination of external interveners;
  - (b) reports by external interveners;
  - (c) the entitlement of external interveners to remuneration and the recovery by them of remuneration to which they are entitled;
  - (d) the assessment and recovery of legal costs and expenses incurred in relation to external interventions.

## Chapter 7 Investigatory powers

### Part 7.1 Introduction

#### 368 Objective

- (1) The objective of this Chapter is to set out powers that are exercisable in connection with—
  - (a) trust records examinations; and
  - (b) trust records investigations; and
  - (c) compliance audits; and
  - (d) complaint investigations.
- (2) A person (including the designated local regulatory authority) who or which carries out, or proposes to carry out, an examination, investigation or audit mentioned in subsection (1) is referred to in this Chapter as an *investigator*.

#### 369 References to lawyers

The term *lawyer* when used alone in this Chapter has the same meaning as it has in Chapter 5 (see section 261).

### Part 7.2 Requirements relating to documents, information and other assistance

#### 370 Requirements—trust records examinations, trust records investigations and compliance audits

- (1) For the purpose of carrying out a trust records examination, trust records investigation or compliance audit in relation to a law practice, an investigator may, on production of evidence of his or her appointment for inspection, require the law practice or any person who has or had control of documents relating to the affairs of the law practice to give the investigator either or both of the following—
  - (a) access to the documents relating to the affairs of the law practice the investigator reasonably requires;
  - (b) information relating to the affairs of the law practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Civil penalty: 50 penalty units.

**Note** Section 466 contains provisions relating to compliance with this section.

#### 371 Requirements—complaint investigations

- (1) For the purpose of carrying out a complaint investigation in relation to a lawyer or law practice, an investigator may, by notice served on the lawyer or a legal practitioner associate of the law practice (as the case requires), require the lawyer or associate to do any one or more of the following—
  - (a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
  - (b) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);

- (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to a lawyer or law practice, the investigator may, on production of evidence of his or her appointment, require any person (other than the lawyer) who has or had control of documents relating to the subject matter of the complaint to give the investigator either or both of the following—
  - (a) access to the documents relating to the affairs of the lawyer that the investigator reasonably requires;
  - (b) information relating to the affairs of the lawyer that the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.  
Penalty: 50 penalty units.
- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.
- (5) If a notice under subsection (1) is served on the lawyer or legal practitioner associate by the investigator personally, the investigator must produce evidence of his or her appointment for inspection at the time of service.

**Note** Section 466 contains provisions relating to compliance with this section.

### **372 Inspection and copying of documents**

An investigator may inspect any document provided pursuant to a requirement under this Part and may make copies of the document or any part of the document.

### **373 Retention and return of documents**

- (1) Subject to this section, an investigator may retain a document provided pursuant to a requirement under this Part if, and for so long as, the investigator considers that retention of the document is reasonably necessary—
  - (a) for the purposes of the trust records examination, trust records investigation, compliance audit or complaint investigation concerned; or
  - (b) to enable evidence to be obtained for the purposes of any disciplinary or other proceedings in relation to it under this Law or the Uniform Rules.
- (2) If an investigator retains a document under this section, he or she must take reasonable steps to return it to the person who provided it when the reason for its retention no longer exists.
- (3) Nothing in this section prevents an investigator from retaining a copy of a document or other thing seized, or making a copy and retaining it.

## **Part 7.3 Entry and search of premises**

### **374 Investigator's power to enter premises—trust records investigations, compliance audits and complaint investigations**

- (1) For the purpose of carrying out a trust records investigation, compliance audit or complaint investigation, an investigator may enter and remain on premises to exercise the powers in section 375.
- (2) The investigator may enter premises—
  - (a) with the consent of the occupier; or

- (b) under the authority of a search warrant issued under this Part; or
- (c) in the case of non-residential premises—without the consent of the occupier and without a warrant, but only if—
  - (i) the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material; and
  - (ii) the designated local regulatory authority in the particular case has authorised the investigator (orally or in writing) to do so.

### 375 Powers of investigator while on premises

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers—
  - (a) search the premises and examine anything on the premises;
  - (b) search for any information, document or other material relating to the matter to which the investigation relates;
  - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;
  - (d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
  - (e) make copies of any relevant material or any part of any relevant material;
  - (f) use (free of charge) photocopying or other equipment on the premises for the purpose of copying any relevant material;
  - (g) seize and take away any relevant material or any part of any relevant material;
  - (h) with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material—
    - (i) inspect and gain access to a computer or equipment; and
    - (ii) download or otherwise obtain any documents or information; and
    - (iii) make copies of any documents or information held in it; and
    - (iv) seize and take away any computer or equipment or any part of it;
  - (i) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;
  - (j) require any person who is on the premises to do any of the following—
    - (i) to state his or her full name, date of birth and address;
    - (ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;
    - (iii) to produce relevant material;
    - (iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;
    - (v) to provide access (free of charge) to photocopying or other equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
    - (vi) to give other assistance the investigator reasonably requires to carry out the investigation;
- (k) do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.

**Note** Section 387 provides that a failure to comply with a requirement under paragraph (j) is an offence, except where entry was obtained with the occupier's consent. Section 466 contains provisions relating to compliance with paragraph (j).



- (2) Any documents, information or anything else obtained by the investigator may be used for the purposes of the investigation.
- (3) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.

### **376 Provisions relating to entry and search with consent**

- (1) An investigator must not enter and search any premises under this Part with the consent of the occupier unless, before the occupier consents to that entry and search, the investigator has—
  - (a) produced evidence of his or her appointment for inspection; and
  - (b) informed the occupier—
    - (i) of the purpose of the entry and search; and
    - (ii) that the occupier may refuse to give or may withdraw consent to the entry and search or to the seizure of anything found during the search; and
    - (iii) that the occupier may refuse to consent, or may withdraw consent, to the taking of any copy or extract from a document found on the premises during the search; and
    - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in any disciplinary or other proceedings under this Law or the Uniform Rules.
- (2) If an occupier consents to an entry and search, the investigator who requested consent must before entering the premises ask the occupier to sign an acknowledgment stating—
  - (a) that the occupier has been informed of the purpose of the entry and search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in disciplinary or other proceedings; and
  - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any copy or extract; and
  - (c) that the occupier has consented to such an entry and search; and
  - (d) the date and time that the occupier consented.
- (3) If an occupier consents to the seizure or taking of any thing during a search, the investigator must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
  - (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (4) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the investigator leaves the premises.
- (5) If, in any proceedings, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.
- (6) The occupier may withdraw consent to an entry or search, but withdrawal does not affect the validity of anything done or omitted before the withdrawal.

### **377 Search warrants**

- (1) For the purpose of carrying out a trust records investigation or complaint investigation, an investigator may apply for a search warrant, to an issuing authority (however described) authorised under the legislation of this jurisdiction to issue search warrants, if—
  - (a) a search is proposed to be undertaken in this jurisdiction; and
  - (b) the investigator believes there are reasonable grounds for the issue of a search warrant.
- (2) A search warrant may, in response to an application made under this section, be issued if—
  - (a) an investigator satisfies the issuing authority that there are reasonable grounds to suspect that relevant material is located at the premises; and
  - (b) the issuing authority is satisfied that there are reasonable grounds for issuing the warrant; and
  - (c) any other requirements of the applicable jurisdictional legislation are satisfied.
- (3) A search warrant authorises an investigator named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
  - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
  - (b) to exercise the powers in section 375.
- (4) A search warrant may restrict the powers that may be exercised under section 375.

### **378 Search warrants—announcement before entry**

- (1) On executing a search warrant, the investigator executing the warrant—
  - (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) if the investigator has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An investigator need not comply with subsection (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

### **379 Search warrants—details of warrant to be given to occupier**

- (1) If the occupier is present at premises where a search warrant is being executed, the investigator must—
  - (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the investigator must—
  - (a) identify himself or herself to a person at the premises; and
  - (b) give to the person a copy of the warrant.
- (3) An investigator executing a search warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.

### **380 Retention and return of things seized during search**

- (1) Subject to this section, an investigator may retain a document or other thing seized during a search if, and for so long as, the investigator considers that retention of the document or thing is reasonably necessary—
  - (a) for the purposes of the trust records investigation or complaint investigation concerned; or
  - (b) to enable evidence to be obtained for the purposes of any disciplinary or other proceedings in relation to it under this Law or the Uniform Rules.
- (2) If an investigator retains a document or thing under this section, he or she must take reasonable steps to return it to the person from whom it was seized when the reason for its retention no longer exists.
- (3) Nothing in this section prevents an investigator from retaining a copy of a document or other thing seized, or making a copy and retaining it.

### **381 Copies of seized things to be provided**

- (1) This section applies if—
  - (a) a person in charge of premises, or someone else who apparently represents the person, is present at the premises where an investigator enters the premises with or without consent; and
  - (b) the investigator seizes—
    - (i) a document, film, computer file or something else that can be readily copied; or
    - (ii) a data storage device containing information that can be readily copied.
- (2) The person in charge or other person may ask the investigator to give the person a copy of the thing or information.
- (3) The investigator must give the person the copy as soon as practicable after the seizure.
- (4) However, the investigator is not required to give the copy if—
  - (a) the thing seized was a copy produced by the use of equipment on the premises; or
  - (b) possession of the thing or information by a person in charge of the premises or someone else would be an offence.

## **Part 7.4 Additional powers in relation to incorporated legal practices**

### **382 Application and operation of this Part**

- (1) This Part applies to—
  - (a) trust records investigations; and
  - (b) compliance audits; and
  - (c) complaint investigations—  
conducted in relation to incorporated legal practices.
- (2) An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.
- (3) The provisions of this Part are additional to the other provisions of this Chapter.

**Note** Section 466 contains provisions relating to compliance with a requirement of this Part to produce documents, provide information or do anything else under this Part.

### **383 Examination of persons**

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on ASIC by Division 2 of Part 3 of the ASIC Act.
- (2) The provisions of Division 2 of Part 3 of the ASIC Act apply to the exercise of those powers, with the following modifications (and any other necessary modifications)—
  - (a) a reference to ASIC is taken to be a reference to the investigator;
  - (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, examined or audited by the investigator;
  - (c) a reference in section 19 of that Act to a person is taken to be a reference to a lawyer or an incorporated legal practice;
  - (d) a reference to a prescribed form is taken to be a reference to a form approved by the designated local regulatory authority.
- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred by this section.

### **384 Inspection of books**

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on ASIC by sections 30(1), 34 and 37 to 39 of the ASIC Act.
- (2) Those provisions apply to 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 investigator;
  - (b) a reference to a corporation (including a corporation that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;
  - (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 designated local regulatory authority or a person authorised by the local regulatory authority who is a member of the staff of the local regulatory authority;
  - (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies.

### **385 Power to hold hearings**

- (1) The investigator may hold hearings for the purposes of an investigation, examination or audit to which this Part applies.
- (2) Sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to a 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 investigator;
  - (b) a reference to a member or staff member is taken to be a reference to the designated local regulatory authority or a person authorised by the local

- regulatory authority who is an officer or employee of the local regulatory authority;
- (c) a reference to a prescribed form is taken to be a reference to a form approved by the designated local regulatory authority.

## **Part 7.5 Miscellaneous**

### **386 Report to local regulatory authority of disciplinary matters**

- (1) This section applies if, in the course of—
- (a) a trust records examination; or
  - (b) a trust records investigation; or
  - (c) a compliance audit; or
  - (d) a complaint investigation—
- an investigator becomes aware of any matter that the investigator thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.
- (2) The investigator must, unless the matter is or has already been the subject of a complaint under Chapter 5, refer the matter to the designated local regulatory authority to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

### **387 Obstruction of investigator**

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a function under this Law.  
Penalty: 50 penalty units.
- (2) A person required to do anything under section 375(1)(j) must not, without reasonable excuse, fail to comply with the requirement.  
Penalty: 50 penalty units.
- (3) Subsections (1) and (2) do not apply in relation to premises where entry is effected with the consent of the occupier.

### **388 Obligation of lawyers**

- (1) The duties imposed on a lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) A lawyer must not mislead an investigator in the exercise of any function under this Chapter.  
Penalty: 100 penalty units.

### **389 Protection from liability**

- (1) No liability attaches to a protected person in respect of any act or omission by an investigator done in good faith and in the exercise or purported exercise of the investigator's functions under this Chapter.
- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the Uniform Rules.

- (3) For the purposes of this section, a *protected person* is the designated local regulatory authority, an investigator or a person acting at the direction of the local regulatory authority or an investigator.

**390 Uniform Rules**

- (1) The Uniform Rules may make provision with respect to any aspect of trust records examinations, trust records investigations, compliance audits and complaint investigations.
- (2) Without limitation, the Uniform Rules may make provision with respect to the following—
- (a) the manner in which powers under this Chapter are to be exercised;
  - (b) qualifications for appointment as an investigator;
  - (c) reports by investigators.

## Chapter 8 Regulatory authorities

### Part 8.1 Standing Committee

#### 391 Role of Standing Committee

- (1) The Standing Committee has a general supervisory role in relation to the Council, the Commissioner and local regulatory authorities to ensure they are fulfilling their duties under this Law consistently with the objectives of this Law.
- (2) The Standing Committee's role includes overseeing the finances of the Council and approving its budget.

**Note** The Standing Committee also has the role of making Uniform Regulations under section 417 and considering Uniform Rules under section 428, and may request reports under section 393.

#### 392 Decisions of Standing Committee

- (1) A decision supported by a majority of the members of the Standing Committee is for the purposes of this Law the decision of the Standing Committee, except as provided by subsection (2).

**Note** If the Standing Committee consists of two members only, a majority would in that case consist of both members.

- (2) A decision for the purposes of paragraph (b) of the definition of *participating jurisdiction* in section 6 resulting in a jurisdiction becoming a participating jurisdiction is to be supported by all the members of the Standing Committee.
- (3) A certificate signed by the Secretary of the Standing Council on Law and Justice (or a successor body) stating that a decision of the Standing Committee for the purposes of this Law was as set out in the certificate is conclusive evidence of the decision.

**Note** By clause 6 of Schedule 4, the Standing Committee is taken to include the Attorneys-General of any non-participating jurisdictions on behalf of which the Inter-Governmental Agreement was signed. Consequently the Standing Committee includes the Attorney-General of a non-participating jurisdiction but the jurisdiction remains non-participating. This arrangement operates only up to the end of the first operational term of the Council.

#### 393 Reports for Standing Committee

- (1) The Standing Committee may request reports from the Council, the Commissioner or any local regulatory authority regarding specified aspects of their operations under this Law.
- (2) A request for a report cannot be about a particular person or a particular matter.
- (3) The Council, the Commissioner and local regulatory authorities must provide the Standing Committee with any requested reports.
- (4) The Standing Committee may receive and consider annual and other reports from the Council, the Commissioner and local regulatory authorities.

### Part 8.2 Legal Services Council

#### 394 Establishment and objectives of Council

- (1) The Legal Services Council is established.
- (2) The objectives of the Council are as follows—
  - (a) to monitor the implementation of the Legal Profession Uniform Law and ensure its consistent application across participating jurisdictions;

- (b) to ensure that the Legal Profession Uniform Framework remains efficient, targeted and effective, and promotes the maintenance of professional standards;
  - (c) to ensure that the Legal Profession Uniform Framework appropriately accounts for the interests and protection of clients of law practices.
- (3) It is the intention of the Parliament of this jurisdiction that this Law as applied in this jurisdiction, together with this Law as applied in other participating jurisdictions, has the effect that one single Council is established, with functions conferred or imposed on the Council by or under this Law as so applied.

### **395 Provisions relating to Council**

- (1) The Council has the functions conferred or imposed on it by or under this Law as applied in this jurisdiction and other participating jurisdictions.
- (2) The Council—
- (a) is a corporation with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) has all the powers of an individual and, in particular, may do anything necessary or convenient to be done in the performance of its functions.
- (3) The Council is not and does not represent the Crown.
- (4) The Council is appointed for a cycle of terms, each of 3 years and referred to as an *operational term*.  
**Note** See clause 7 of Schedule 4 for the commencement of the first operational term.
- (5) The Council may exercise its functions in relation to—
- (a) one participating jurisdiction; or
  - (b) two or more or all participating jurisdictions, collectively.
- (6) Schedule 1 contains provisions relating to the Council and associated matters.

### **396 Functions of Council in relation to Commissioner**

The Council has the following functions in relation to the Commissioner—

- (a) to monitor and review the exercise of the functions of the Commissioner;
- (b) to examine each annual and other report of the Commissioner and report to the Standing Committee on any matter appearing in, or arising out of, any such report;
- (c) to recommend to the Standing Committee any changes to the role or functions of the Commissioner that the Council thinks desirable;
- (d) to inquire into any question in connection with the Commissioner's functions that is referred to it by the Standing Committee and report to the Standing Committee on that question.

### **397 Delegation of Council's functions**

The Council may, by instrument in writing, delegate any of its functions, other than this power of delegation, to an entity specified, or of a kind specified, in the Uniform Rules for the purposes of this section.



## **Part 8.3 Commissioner for Uniform Legal Services Regulation**

### **398 Establishment and objectives of office of Commissioner**

- (1) The office of Commissioner for Uniform Legal Services Regulation is established.
- (2) The objectives of the office of Commissioner are as follows—
  - (a) to promote compliance with requirements of this Law and the Uniform Rules;
  - (b) to ensure the consistent and effective implementation of the provisions of Chapter 5 and supporting Uniform Rules, through the development and making of appropriate guidelines;
  - (c) to raise awareness of the Legal Profession Uniform Framework and its objectives.
- (3) It is the intention of the Parliament of this jurisdiction that this Law as applied in this jurisdiction, together with this Law as applied in the other participating jurisdictions, has the effect that one single office of Commissioner is established, with functions conferred or imposed on the Commissioner by or under this Law as so applied.

### **399 Provisions relating to Commissioner**

- (1) The Commissioner has the functions conferred or imposed on him or her by or under this Law as applied in this jurisdiction and other participating jurisdictions.
- (2) The Commissioner may exercise his or her functions in relation to—
  - (a) one participating jurisdiction; or
  - (b) two or more or all participating jurisdictions, collectively.
- (3) Schedule 2 contains provisions relating to the Commissioner and associated matters.

### **400 Delegation of Commissioner's functions**

The Commissioner may, by instrument in writing, delegate any of his or her functions, other than this power of delegation, to—

- (a) a member of the staff of the Commissioner; or
- (b) an entity specified, or of a kind specified, in the Uniform Rules for the purposes of this section.

### **401 Independence of Commissioner**

In exercising any functions under this Law, the Commissioner and the Commissioner's delegates are to be independent of the Council, except as provided by this Part.

## **Part 8.4 Admissions Committee**

### **402 Establishment and functions of Admissions Committee**

- (1) The Council must establish an Admissions Committee.
- (2) The functions of the Admissions Committee are the functions referred to in section 403 and the following functions—
  - (a) to develop Admission Rules as provided in section 426;
  - (b) to give advice to the Council about guidelines and directions of the Council relating to admission and any other matters relating to admission;
  - (c) to give advice to the Council about any matters referred to the Committee by the Council.

#### **403 Provisions relating to Admissions Committee**

- (1) The Admissions Committee has the functions conferred or imposed on it by or under this Law as applied in this jurisdiction and other participating jurisdictions.
- (2) The Admissions Committee may exercise its functions in relation to—
  - (a) one participating jurisdiction; or
  - (b) two or more or all participating jurisdictions, collectively.
- (3) The Council may provide staff and other assistance to the Admissions Committee.
- (4) Part 6 of Schedule 1 contains provisions relating to the Admissions Committee and associated matters.

### **Part 8.5 Local regulatory authorities**

#### **404 Independence of local regulatory authorities**

In exercising any functions under this Law, the local regulatory authorities and their respective delegates are to be independent of the Council and the Commissioner, except to the extent provided by this Chapter.

#### **405 Local regulatory authority for Chapter 5 functions to be independent entity**

- (1) A local regulatory authority exercising Chapter 5 functions must be an independent entity.
- (2) Subsection (1) does not prevent a local regulatory authority from delegating (under section 406) any Chapter 5 functions to a professional association.

#### **406 Delegation of functions of local regulatory authorities**

- (1) A local regulatory authority may, by instrument in writing, delegate any of its functions under this Law to an entity prescribed, or an entity of a class prescribed, by jurisdictional legislation.
- (2) Subsection (1) does not apply to—
  - (a) the power to delegate a function; or
  - (b) the power (under section 411) to take over responsibility for a matter from a delegate of the local regulatory authority.

#### **407 Guidelines and directions by Council or Commissioner for local regulatory authorities**

- (1) The Council may issue guidelines or directions about the exercise of functions under this Law or the Uniform Rules (other than Chapter 5 functions) by local regulatory authorities.
- (2) The Commissioner may issue guidelines or directions about the exercise of Chapter 5 functions.
- (3) Guidelines or directions may, without limitation, provide for determining which local regulatory authority should deal with a matter where more than one jurisdiction is or may be involved or there is uncertainty as to which jurisdiction is relevant in the circumstances.
- (4) A direction may be issued if the giver of the direction is of the opinion that the direction is necessary or appropriate to ensure that the designated local regulatory authority acts in a manner that promotes interjurisdictional consistency in the application of this Law and the Uniform Rules.

- (5) A direction cannot be issued in relation to the outcome of a particular matter.
- (6) A local regulatory authority must comply with applicable directions issued by the Council or the Commissioner.
- (7) The power to issue guidelines or directions includes power to amend or revoke them.

**408 Guidelines and directions by local regulatory authorities for their delegates**

- (1) A local regulatory authority may issue guidelines or directions to its delegates about the exercise of functions under this Law or the Uniform Rules by the delegates.
- (2) Guidelines or directions issued under this section cannot be inconsistent with applicable guidelines or directions issued by the Council or the Commissioner.
- (3) The power to issue guidelines or directions includes power to amend or revoke them.

**409 Functions of Council in relation to local regulatory authorities**

- (1) The Council has the following functions in relation to local regulatory authorities—
  - (a) to promote consistency in the exercise of functions of local regulatory authorities (other than Chapter 5 functions);
  - (b) for the purpose of promoting consistency—to monitor and review the exercise of functions of local regulatory authorities (other than Chapter 5 functions);
  - (c) to include in its annual report a report on the implementation of the provisions of this Law and the Uniform Rules that confer or impose functions on local regulatory authorities;
  - (d) to report to the Standing Committee, with any comments that it thinks fit, on any matter relating to or connected with the exercise of functions of local regulatory authorities to which, in the opinion of the Council, the attention of the Standing Committee should be drawn;
  - (e) to recommend to the Standing Committee any changes to the role or functions of local regulatory authorities under this Law or the Uniform Rules that the Council thinks desirable;
  - (f) to inquire into any question in connection with the functions of local regulatory authorities that is referred to it by the Standing Committee and report to the Standing Committee on that question.
- (2) No liability attaches to the Council or a member of the Council for any act or omission done or omitted by a local regulatory authority, or a delegate of a local regulatory authority, in the exercise or purported exercise of functions under this Law or the Uniform Rules.
- (3) In this section—  
*functions* of local regulatory authorities means functions of local regulatory authorities under this Law or the Uniform Rules.

**410 Functions of Commissioner in relation to Chapter 5 functions of local regulatory authorities**

- (1) The Commissioner has the following functions in relation to local regulatory authorities—
  - (a) to promote consistency in the exercise of Chapter 5 functions;
  - (b) for the purpose of promoting consistency—to monitor and review the exercise of Chapter 5 functions;
  - (c) to report to the Council, with any comments that the Commissioner thinks fit, on—

- (i) any matter relating to or connected with the exercise of Chapter 5 functions to which, in the opinion of the Commissioner, the attention of the Standing Committee should be drawn; and
    - (ii) without limitation, compliance with the Commissioner's guidelines or directions by local regulatory authorities or their delegates;
  - (d) to recommend to the Council for reporting to the Standing Committee any changes to Chapter 5 functions that the Commissioner thinks desirable.
- (2) No liability attaches to the Commissioner for any act or omission done or omitted by a local regulatory authority, or a delegate of a local regulatory authority, in the exercise or purported exercise of functions under this Law or the Uniform Rules.

#### **411 Power of local regulatory authority to take over exercise of delegated function**

- (1) A local regulatory authority may take over responsibility for a matter from a delegate of the authority, if the authority is of the opinion that it is appropriate to take it over.
- (2) When a local regulatory authority takes over a matter from a delegate—
  - (a) the local regulatory authority may deal with and determine the matter afresh, but may adopt or take into account anything done or received by the delegate to date; and
  - (b) the delegate is to provide any assistance required by the local regulatory authority to deal with the matter (including copies of or access to all documents held by the delegate that relate to the matter); and
  - (c) the delegate otherwise ceases to have responsibility for the matter unless the local regulatory authority refers the matter back to the delegate under subsection (3).
- (3) The local regulatory authority may refer a matter back to the delegate at any time to be dealt with and determined by the delegate, with any directions as to how the matter should be dealt with that the local regulatory authority thinks fit.
- (4) This section does not limit any other power that a local regulatory authority has to take over or otherwise deal with a matter, whether under another law or the terms of a delegation or otherwise.

## **Part 8.6 General**

#### **412 Exercise of functions generally**

- (1) The Council, the Commissioner, their respective delegates and the Admissions Committee must exercise their functions under this Law in accordance with applicable provisions of this Law, the Uniform Regulations and the Uniform Rules.
- (2) A local regulatory authority and its delegates must exercise their functions under this Law in accordance with applicable provisions of this Law, the Uniform Regulations and the Uniform Rules and applicable guidelines and directions under this Chapter.

#### **413 Registers of delegations**

- (1) The Council, the Commissioner and a local regulatory authority must each maintain a register of delegations under this Law in a form determined by it.
- (2) A register of delegations must contain a copy of all instruments of delegation issued by the delegator and currently in force.
- (3) A delegator must arrange for a review of the register of delegations to be carried out at least on an annual basis and for a report of the review to be submitted to the Council for its consideration.

- (4) The Council must ensure that a current version of each register of delegations is publicly available at all reasonable times on its website or another publicly accessible website.
- (5) The Council may make arrangements for a composite register containing two or more of the registers referred to in this section.

**414 Documents lodged with Council or Commissioner instead of local regulatory authority**

- (1) If a person lodges with the Council or the Commissioner a document (including, for example, a complaint) that should have been lodged with a local regulatory authority for this jurisdiction, the Council or the Commissioner must forward the document, if appropriate, to a local regulatory authority for this jurisdiction.
- (2) A document forwarded to a local regulatory authority under this section is taken to have been lodged with the authority when it was lodged with the Council or the Commissioner.

**415 Limitation as to individual matters**

Nothing in this Chapter authorises the Standing Committee, the Council or the Commissioner—

- (a) to investigate a matter relating to any particular conduct; or
- (b) to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter; or
- (c) to reconsider the findings, recommendations or other decisions of a local regulatory authority (or its delegate) in relation to any particular matter.

**416 Application of certain Acts of New South Wales**

- (1) In this section—  
*applied Acts* means the following Acts of New South Wales as in force from time to time—
  - (a) the *Privacy and Personal Information Protection Act 1998*;
  - (b) the *Government Information (Public Access) Act 2009*;
  - (c) the *State Records Act 1998*;
  - (d) the *Ombudsman Act 1974*.
- (2) Subject to subsection (4), the applied Acts apply as laws of a participating jurisdiction for the purposes of this Law.
- (3) However, an applied Act does not apply for the purposes of this Law to the extent that functions, other than functions relating to the Australian Legal Profession Register, are being exercised under this Law by a local regulatory authority.
- (4) The Uniform Regulations may modify an applied Act for the purposes of this Law.
- (5) Without limiting subsection (4), the Uniform Regulations may—
  - (a) provide that an applied Act applies as if a provision of the applied Act specified in the Uniform Regulations were omitted; or
  - (b) provide that an applied Act applies as if an amendment to the applied Act made by a law of New South Wales, and specified in the Uniform Regulations, had not taken effect; or
  - (c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

- (6) Despite section 7, but subject to any modifications referred to in subsections (4) and (5) of this section—
- (a) the *Interpretation Act 1987* of New South Wales; and
  - (b) any other relevant Acts of New South Wales relating to the interpretation of legislation of New South Wales—
- apply to the interpretation of the applied Acts in their application for the purposes of this Law.

## Chapter 9 Miscellaneous

### Part 9.1 Legal Profession Uniform Regulations

#### 417 Legal Profession Uniform Regulations

- (1) The Standing Committee may make Legal Profession Uniform Regulations with respect to—
  - (a) any matter that by this Law is expressly required or permitted to be prescribed by Uniform Regulations; and
  - (b) any matter that is ancillary to a matter referred to in paragraph (a).
- (2) The Uniform Regulations prevail over the Uniform Rules to the extent of any inconsistency.

#### 418 Publication of Uniform Regulations

- (1) The Uniform Regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) A Uniform Regulation commences on the day or days specified in the Regulation for its commencement (being not earlier than the date it is published).

### Part 9.2 Legal Profession Uniform Rules

#### 419 Power to make Uniform Rules

- (1) The Council may make Legal Profession Uniform Rules with respect to any matter that by this Law is required or permitted to be specified in Uniform Rules or that is necessary or convenient to be specified for carrying out or giving effect to this Law.

#### Notes

- 1 Uniform Rules cannot be inconsistent with the provisions of this Law.
  - 2 See section 428 for the Council's obligation to make an Admission Rule as submitted to the Standing Committee under section 426.
- (2) Without limiting the scope of the Uniform Rules, the Uniform Rules may apply to—
    - (a) qualified entities; and
    - (b) Australian lawyers who are not Australian legal practitioners; and
    - (c) former Australian legal practitioners, former Australian-registered foreign lawyers and former Australian lawyers; and
    - (d) persons seeking admission; and
    - (e) lay associates of law practices.
  - (3) The Uniform Rules may provide for the application to and modification of provisions of this Law for various categories of law practices and for the persons referred to in subsection (2).
  - (4) The Uniform Rules may authorise any matter to be determined, applied or regulated, from time to time, by any specified person or body.
  - (5) The Uniform Rules may contain civil penalty provisions.
  - (6) A contravention of a civil penalty provision in the Uniform Rules is punishable by the imposition of a civil penalty of an amount not exceeding 50 penalty units specified in the Uniform Rules.
  - (7) The power to make Uniform Rules includes power to amend or repeal Uniform Rules.

- (8) The power to amend or repeal Uniform Rules is exercisable in the same way, and subject to the same conditions, as the power to make Uniform Rules, and references (however expressed) in this Law to developing, making and otherwise dealing with Uniform Rules apply also to the amendment or repeal of Uniform Rules.

#### **420 Categories of Uniform Rules**

- (1) The Uniform Rules may contain provisions designated respectively as—
- (a) Admission Rules; and
  - (b) Legal Practice Rules; and
  - (c) Legal Profession Conduct Rules; and
  - (d) Continuing Professional Development Rules.
- (2) Uniform Rules not so designated may be known as general Uniform Rules or by another designation specified in the Rules.

#### **421 Contents of Admission Rules**

- (1) The Admission Rules may make provision with respect to any aspect of admission.
- (2) Without limitation, the Admission Rules may make provision with respect to the following—
- (a) the prerequisites for the issue of a compliance certificate, as referred to in section 17;
  - (b) without limiting paragraph (a), the accreditation, monitoring and reaccreditation of law courses and providers of practical legal training (in connection with those prerequisites);
  - (c) the making and assessment of applications for compliance certificates;
  - (d) the issue of compliance certificates;
  - (e) declarations of early assessment of suitability for a compliance certificate;
  - (f) applications for, and the giving of, directions by the designated local regulatory authority as to—
    - (i) the sufficiency of qualifications or training obtained overseas; and
    - (ii) guidance as to the need (if any) to obtain further qualifications or training;
  - (g) conditions on admission that may be applied in the case of foreign lawyers.
- (3) The Admission Rules may require the disclosure of matters that may affect consideration of the suitability of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed.

**Note** Section 6 provides—“Without limiting the meaning of the terms **admission** or **admission to the Australian legal profession**, those terms include readmission.” Consequently the Admission Rules may make provision with respect to any aspect of readmission.

#### **422 Contents of Legal Practice Rules**

The Legal Practice Rules may provide for any aspect of legal practice by Australian legal practitioners, Australian-registered foreign lawyers and law practices.

#### **423 Contents of Legal Profession Conduct Rules**

- (1) The Legal Profession Conduct Rules may provide for any aspect of—
- (a) the professional conduct of Australian legal practitioners, Australian-registered foreign lawyers and law practices; and



- (b) the conduct of Australian legal practitioners and Australian-registered foreign lawyers as it affects or may affect their suitability as Australian legal practitioners and Australian-registered foreign lawyers.
- (2) Without limitation, the Legal Profession Conduct Rules may include provisions with respect to what Australian legal practitioners, Australian-registered foreign lawyers and law practices must do, or refrain from doing, in order to—
  - (a) uphold their duty to the courts and the administration of justice, including rules relating to—
    - (i) advocacy; and
    - (ii) obeying and upholding the law; and
    - (iii) maintaining professional independence; and
    - (iv) maintaining the integrity of the legal profession; and
  - (b) promote and protect the interests of clients, including—
    - (i) rules relating to client confidentiality; and
    - (ii) rules for informing clients about reasonably available alternatives to fully contested adjudication of cases; and
  - (c) avoid conflicts of interest.

#### **424 Contents of Continuing Professional Development Rules**

The Continuing Professional Development Rules may require Australian legal practitioners to comply with provisions for continuing professional development and may provide for any aspect of continuing professional development.

#### **425 Development of general Uniform Rules**

- (1) This section applies to all proposed Uniform Rules other than those referred to in sections 426 and 427, and has effect subject to sections 429 and 430.
- (2) The Council may develop proposed Uniform Rules to which this section applies.
- (3) In developing proposed Uniform Rules to which this section applies, the Council—
  - (a) must consult with the Commissioner, and such of the Council’s advisory committees and local regulatory authorities as it considers appropriate, and may consult more broadly if it so chooses, for a minimum period of 30 days; and
  - (b) must release a draft of the proposed Uniform Rules for public consultation and invite written submissions about the draft to be made to the Council during a specified period of at least 30 days before finalising the draft; and
  - (c) must consider all reasonable submissions duly made and received.
- (4) The Council may, after considering the submissions and making any amendments to the draft, submit the proposed Uniform Rules to the Standing Committee.

#### **426 Development of Admission Rules**

- (1) This section applies to proposed Admission Rules, and has effect subject to sections 429 and 430.
- (2) The Admissions Committee may develop proposed Admission Rules.
- (3) In developing proposed Admission Rules, the Admissions Committee—
  - (a) must consult with the Chief Justices of the participating jurisdictions, the Council, the Commissioner, and such of the Council’s advisory committees and local regulatory authorities as the Council considers appropriate, for a minimum period of 30 days; and

- (b) must, with the approval of the Council, release a draft of the proposed Admission Rules for public consultation and invite written submissions about the draft to be made to the Admissions Committee or to the Law Council of Australia or Australian Bar Association or both (as the case requires) during a specified period of at least 30 days; and
  - (c) must consider all reasonable submissions duly made and received and provide the Council with a copy of all submissions received; and
  - (d) must, after considering the submissions and making any amendments to the draft, submit a final draft to the Council, together with a report demonstrating compliance with the requirements of this subsection.
- (4) The Council must submit the proposed Admission Rules to the Standing Committee in the form in which they are submitted to the Council.

**427 Development of Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules**

- (1) This section applies to proposed Uniform Rules designated as Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules, and has effect subject to sections 429 and 430.
- (2) The Law Council of Australia may develop proposed Uniform Rules (to which this section applies) so far as they apply or relate to solicitors.
- (3) The Australian Bar Association may develop proposed Uniform Rules (to which this section applies) so far as they apply or relate to barristers.
- (4) The Law Council of Australia and Australian Bar Association may develop proposed Uniform Rules (to which this section applies) so far as they apply or relate to Australian-registered foreign lawyers.
- (5) In developing proposed Uniform Rules (to which this section applies), the Law Council of Australia or Australian Bar Association or both (as the case requires)—
  - (a) must consult with the Legal Services Council, the Commissioner, and such of the Legal Services Council's advisory committees and local regulatory authorities as the Legal Services Council considers appropriate, for a minimum period of 30 days; and
  - (b) must, with the approval of the Legal Services Council, release a draft of the proposed Uniform Rules for public consultation and invite written submissions about the draft to be made to the Law Council or Australian Bar Association or both (as the case requires) during a specified period of at least 30 days; and
  - (c) must consider all reasonable submissions duly made and received and provide the Legal Services Council with a copy of all submissions received; and
  - (d) must, after considering the submissions and making any amendments to the draft, submit a final draft to the Legal Services Council, together with a report demonstrating compliance with the requirements of this subsection.
- (6) If the Legal Services Council approves the final draft as submitted to the Legal Services Council, or that draft with amendments agreed to by the Law Council of Australia or Australian Bar Association or both (as the case requires), the Legal Services Council may submit the proposed Uniform Rules to the Standing Committee.

#### **428 Making of Uniform Rules**

- (1) The Council may make a Uniform Rule as submitted to the Standing Committee under section 425 or 427, and must make a Uniform Rule as submitted to the Standing Committee under section 426, if—
  - (a) the Standing Committee approves the Uniform Rule within 30 days of its submission to the Standing Committee; or
  - (b) the 30-day period expires without the Uniform Rule being vetoed under subsection (2) during that period.
- (2) Subject to subsection (3), the Standing Committee may veto the Uniform Rule within the 30-day period. If it does so, the Council must not make the Uniform Rule as submitted to the Standing Committee, but the Uniform Rule may be resubmitted to the Standing Committee with amendments.
- (3) The Standing Committee may veto a proposed Admission Rule, Legal Practice Rule, Legal Profession Conduct Rule or Continuing Professional Development Rule only where the Standing Committee considers that the rule or a part of the rule would—
  - (a) impose restrictive or anti-competitive practices that are not in the public interest; or
  - (b) otherwise not be in the public interest because it conflicts with the objectives of this Law; or
  - (c) impact on the public funding of the scheme for the regulation of the legal profession.
- (4) The Standing Committee must cause a notice setting out the reasons for vetoing a rule to be published as soon as practicable.
- (5) Without limiting the powers of the Standing Committee with respect to a Uniform Rule submitted to it, the Standing Committee may require a draft of a proposed Uniform Rule to be released for further consideration or further public consultation or both.

#### **429 Cases where public consultation not required**

The requirements of section 425, 426 or 427 for public consultation do not apply to a proposed Uniform Rule if the Council considers the Uniform Rule—

- (a) corrects a minor error in the Uniform Rules; or
- (b) involves a non-material change to the Uniform Rules; or
- (c) relates to a matter of a kind that the Standing Committee approves as not requiring public consultation.

#### **430 Urgent matters**

- (1) The requirements of section 425, 426 or 427 do not apply to a proposed Uniform Rule if the Council considers it needs to be made urgently.
- (2) In the case of an amendment or repeal of Admission Rules, the Council must first consult with the Admissions Committee.
- (3) In the case of an amendment or repeal of Legal Practice Rules, Legal Profession Conduct Rules or Continuing Professional Development Rules, the Council must first consult with the Law Council of Australia and the Australian Bar Association.
- (4) As soon as practicable after taking action under this section, the Council must provide the Standing Committee with a report of its action and a statement of its reasons for taking the action.

#### **431 Publication of Uniform Rules**

- (1) The Uniform Rules are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) A Uniform Rule commences on the day or days specified in the Rule for its commencement (being not earlier than the date it is published).

### **Part 9.3 Legal Profession Registers**

#### **432 Australian Legal Profession Register**

- (1) The Council may maintain an Australian Legal Profession Register.
- (2) The Uniform Rules may provide for information to be given to the Council that must or may be included in the Register.

#### **433 Public availability of Australian Legal Profession Register**

- (1) This section applies if the Council maintains an Australian Legal Profession Register.
- (2) Subject to subsection (3), the Council must ensure that a current version of the Australian Legal Profession Register is—
  - (a) publicly available for inspection, without charge, at the Council's office during normal business hours; and
  - (b) publicly available, without charge, at all reasonable times on its website or another publicly accessible website.
- (3) The Uniform Rules may provide for certain information to be excluded from the publicly available version of the Register in order—
  - (a) to protect the personal safety of any person; or
  - (b) to avoid prejudicing any investigation, inquiry or legal or other proceedings; or
  - (c) to balance the privacy of any person to whom the details relate with consumer and public interests in making the details publicly available.

#### **434 Local legal profession register**

It is intended that jurisdictional legislation may provide for the maintenance of a local legal profession register.

#### **435 Content of registers**

The Uniform Rules may specify the details that may or must not be included in a register referred to in this Part, but otherwise a register may be kept in a form determined by the Council or the local regulatory authority (as the case may be).

### **Part 9.4 Cooperative and other arrangements**

#### **436 Arrangements with authorities**

- (1) The Council, the Commissioner, the Admissions Committee or the designated local regulatory authority may negotiate and enter into arrangements with Australian or foreign authorities or courts for exchanging, obtaining or disclosing information relevant to any of their respective functions under this Law or the Uniform Rules.
- (2) The Council, the Admissions Committee or the designated local regulatory authority may negotiate and enter into arrangements with foreign authorities for the mutual

recognition for admission purposes of academic courses and practical legal training programs.

**437 Ad hoc communication with authorities**

- (1) Without limiting any other functions that it has to seek or obtain information, the designated local regulatory authority may communicate with and obtain relevant information from Australian or foreign authorities or courts in connection with the consideration of an application for a compliance certificate.
- (2) Without limiting any other power that it has to disclose information, the Council, the Commissioner, the Admissions Committee or the designated local regulatory authority may disclose information to a foreign authority or court in response to a request for relevant information, but may do so only if satisfied that it is not likely that the information provided will be inappropriately disclosed by the foreign authority or court.

**438 Disclosure of information to ASIC**

- (1) The Commissioner or a local regulatory authority may disclose to ASIC information concerning a corporation that is or was an incorporated legal practice that the Commissioner or authority acquired in the course of exercising functions under this Law and that is relevant to ASIC's functions.
- (2) Information may be provided under this section despite any law relating to secrecy or confidentiality, including any provisions of this Law.

**439 Disclosure of information between relevant persons**

- (1) A relevant person may disclose information obtained in the administration of this Law or the Uniform Rules to another relevant person.
- (2) In this section—  
*relevant person* means—
  - (a) the Council or the Commissioner; or
  - (b) a local regulatory authority; or
  - (c) a committee of the Council or a local regulatory authority; or
  - (d) a member of the Council or a local regulatory authority or a committee of either; or
  - (e) a delegate of the Council, the Commissioner or a local regulatory authority; or
  - (f) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a) to (e).

**440 Information, assistance and cooperation**

- (1) The Council, the Commissioner and the local regulatory authorities are each to ensure, as far as practicable, that—
  - (a) relevant information in connection with the exercise of their respective functions is—
    - (i) shared between them in accordance with arrangements agreed between them; and
    - (ii) provided expeditiously, at the request of one of them to the other; and
  - (b) their respective functions are, where relevant, exercised in a cooperative manner.
- (2) The local regulatory authorities are to provide information and other assistance to the Council and the Commissioner in order to assist them in exercising responsibilities

and functions under this Chapter. For that purpose, the Council and the Commissioner may specify the kind of information or other assistance they respectively require and the periods within which or times by which it is to be provided.

- (3) A reference in this section to a local regulatory authority, the Council or the Commissioner includes a reference to their delegates and to the Admissions Committee.

#### **441 Cooperation with Commonwealth, States and Territories**

- (1) The Council, the Commissioner and the local regulatory authorities may each exercise any of their functions in cooperation with, or with the assistance of, the Commonwealth, a State or a Territory, including in cooperation with, or with the assistance of, any of the following entities—
- (a) a government authority;
  - (b) a professional association;
  - (c) an educational body or other body established by or under a law of the Commonwealth, a State or a Territory.
- (2) In particular, the Council, the Commissioner or a local regulatory authority may—
- (a) ask an entity referred to in subsection (1) for information that is required to exercise their respective functions under this Law or the Uniform Rules; and
  - (b) use the information to exercise those functions.
- (3) An entity referred to in subsection (1) of this jurisdiction that receives a request for information under this section is authorised to give the information to the Council, the Commissioner or a local regulatory authority, as appropriate.
- (4) A reference in this section to the Council, the Commissioner or a local regulatory authority includes a reference to their delegates and to the Admissions Committee.

### **Part 9.5 Notices and evidentiary matters**

#### **442 Service of notices on lawyers and law practices**

- (1) For the purposes of this Law, a notice or other document may be served on, or given to, an Australian legal practitioner or Australian-registered foreign lawyer by—
- (a) delivering it personally to the practitioner or lawyer; or
  - (b) sending it by post to the practitioner or lawyer at his or her address for service appearing on the Australian Legal Profession Register or a local legal profession register of any jurisdiction.
- (2) For the purposes of this Law, a notice or other document may be served on, or given to, a law practice by—
- (a) delivering it personally to a principal of the law practice; or
  - (b) sending it by post to the law practice at its usual or last known business address; or
  - (c) leaving it at the practice's usual or last known business address with a person on the premises who is apparently at least 16 years of age and apparently employed there.
- (3) A notice or other document may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a corporation.

**443 Service of notices on Council, Commissioner, Admissions Committee, local regulatory authority or delegate**

For the purposes of this Law, a notice or other document may be served on, lodged with or given to the Council, the Commissioner, the Admissions Committee, a local regulatory authority or a delegate of any them by delivering it personally, or sending it by post, to the office of the Council, Commissioner, Admissions Committee, authority or delegate.

**444 Service of notices on other persons**

For the purposes of this Law, a notice or other document may be served on, or given to, a person (other than a person referred to in section 442 or 443)—

- (a) if the person is an individual, by—
  - (i) delivering it personally to the person; or
  - (ii) sending it by post to the person at his or her usual or last known residential or business address; or
  - (iii) leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act—
  - (i) by delivering it personally to the registered office of the company; or
  - (ii) by sending it by post to the registered office of the company; or
  - (iii) in any other way that service of documents may be effected on a corporation; or
- (c) in any other case—in any way permitted by law.

**445 Time of service**

For the purposes of this Law, a notice or other document is taken to have been served on, or given to, a person or law practice—

- (a) in the case of delivery in person—at the time the document is delivered; or
- (b) in the case of posting—2 business days after the day on which the document was posted.

**446 Evidentiary matters**

- (1) A certificate sealed by, or signed on behalf of, the designated local regulatory authority, stating that, on a date or during a period specified in the certificate—
  - (a) a person held or did not hold an Australian practising certificate or an Australian registration certificate; or
  - (b) the Australian practising certificate or Australian registration certificate of a person was subject to a specified condition or restriction—is, in the absence of proof to the contrary, proof of the matters stated in it.
- (2) A certificate sealed by, or signed on behalf of, the Council, stating that a matter specified in the certificate is, or was at any time specified in the certificate, on the Australian Legal Profession Register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.
- (3) A certificate sealed by, or signed on behalf of, the designated local regulatory authority, stating that a matter specified in the certificate is, or was at any time specified in the certificate, on a local legal profession register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.

## **Part 9.6 Injunctions**

### **447 Injunctions to restrain contraventions of Law or Uniform Rules**

- (1) This section applies if a person has contravened, is contravening, or is likely to contravene this Law or the Uniform Rules.
- (2) The designated local regulatory authority may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction restraining the person from contravening this Law or the Uniform Rules (including by requiring the person to do something).
- (4) The Supreme Court may grant the injunction—
  - (a) whether or not it appears to the Court that the person intends to contravene this Law or the Uniform Rules, contravene this Law or the Uniform Rules again or continue to contravene this Law or the Uniform Rules; and
  - (b) whether or not the person has previously contravened this Law or the Uniform Rules; and
  - (c) whether or not there is a likelihood of substantial damage to anyone else if the person contravenes this Law or the Uniform Rules; and
  - (d) whether or not proceedings for a contravention of this Law or the Uniform Rules have begun or are about to begin.
- (5) The Supreme Court may grant an interim injunction restraining the person from contravening this Law or the Uniform Rules (including requiring the person to do something) before deciding an application for an injunction under this section.

### **448 Amendment or discharge of injunctions**

The Supreme Court may amend or discharge an injunction (including an interim injunction) made under this Part on the application of the designated local regulatory authority to whom it was granted or any other interested person.

### **449 Interim injunctions—undertakings about costs or damages**

- (1) If the designated local regulatory authority applies for an injunction under this Part, the Supreme Court must not require the applicant to give an undertaking about costs or damages as a condition of granting an interim injunction.
- (2) The Supreme Court must accept an undertaking from the designated local regulatory authority about costs or damages, and not require a further undertaking from anyone else, if—
  - (a) the applicant for an injunction under this Part is someone else; and
  - (b) the Court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and
  - (c) the local regulatory authority gives the undertaking.

### **450 Supreme Court's other powers not limited**

- (1) The powers given to the Supreme Court under this Part are in addition to any other powers of the Court.
- (2) In particular, an application to the Supreme Court for an injunction under this Part may be made without notice to the person against whom the injunction is sought.



## Part 9.7 Criminal and civil penalties

### Division 1 Criminal penalties

**Note** Proceedings for offences are dealt with under jurisdictional legislation, which may also empower local regulatory authorities to commence and maintain proceedings for this purpose.

#### 451 Criminal penalties

- (1) A subsection of a section of this Law, or a section of this Law that is not divided into subsections, creates a criminal offence if the word “penalty” is set out at the foot of the subsection or section and is not preceded by the word “civil”.
- (2) An offence referred to in subsection (1) is punishable by a penalty not exceeding the penalty set out at the foot of the subsection or section.
- (3) Proceedings for an offence referred to in subsection (1) against this Law as applied in this jurisdiction are to be dealt with in accordance with jurisdictional law.

### Division 2 Civil penalties

#### 452 Civil penalties

- (1) A provision that is—
  - (a) a subsection of a section of this Law; or
  - (b) a section of this Law that is not divided into subsections; or
  - (c) a subrule of a Uniform Rule; or
  - (d) a Uniform Rule that is not divided into subrules—is a civil penalty provision if the words “civil penalty” are set out at the foot of the subsection, section, subrule or rule.
- (2) A contravention of a provision referred to in subsection (1) is punishable by an amount not exceeding the penalty set out at the foot of the subsection, section, subrule or rule.
- (3) Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.

#### 453 Designated tribunal may order payment of pecuniary penalty

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the designated local regulatory authority may apply to the designated tribunal for an order that the wrongdoer pay a pecuniary penalty.
- (2) If the designated tribunal is satisfied that the wrongdoer has contravened a civil penalty provision, the tribunal may order the wrongdoer to pay for each contravention the pecuniary penalty that the tribunal determines is appropriate (but not more than the relevant amount specified for the provision).
- (3) In determining the pecuniary penalty, the designated tribunal must have regard to all relevant matters, including—
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.

- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Law against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.
- (5) Proceedings for a pecuniary penalty order are civil proceedings, and the rules of procedure apply accordingly.
- (6) It is intended that jurisdictional legislation may determine whether the designated tribunal is bound by the rules of evidence in conducting a hearing in relation to proceedings for a pecuniary penalty order, but the designated tribunal is otherwise not bound by those rules in relation to those proceedings.

**454 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**455 Persons involved in contravening civil penalty provision**

- (1) A person must not—
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

**456 Recovery of a pecuniary penalty**

If the designated tribunal orders a person to pay a pecuniary penalty—

- (a) the penalty is to be paid to a fund specified in the Legal Profession Uniform Law Act of this jurisdiction or is to be dealt with in another manner so specified; and
- (b) the order is enforceable as a judgment or order of a court.

**457 Civil proceedings after criminal proceedings**

The designated tribunal must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**458 Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if—
  - (a) criminal proceedings are instituted or have already been instituted against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**459 Criminal proceedings after civil proceedings**

Criminal proceedings may be instituted against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

**460 Evidence given in proceedings for penalty order not admissible in criminal proceedings**

- (1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the person if—
  - (a) the person previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the pecuniary penalty order.

**Part 9.8 Interjurisdictional provisions relating to certain matters**

**461 Compliance with recommendations or orders made under corresponding laws**

- (1) Persons and bodies (other than the Supreme Court) having relevant powers or other functions under this Law as applied in this jurisdiction must (as far as practicable)—
  - (a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers or other functions exercisable under this Law; and
  - (b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by a lawyer in this jurisdiction.
- (2) If a corresponding disciplinary body makes a recommendation that a person's name be removed under this Law as applied in this jurisdiction from the Supreme Court roll, the Supreme Court may, without holding a further hearing, order the removal of the name from the Supreme Court roll.
- (3) In this section—

***corresponding disciplinary body*** means—

  - (a) a court or tribunal of another jurisdiction having powers or functions under a corresponding law that correspond to any of the functions of the designated tribunal; or
  - (b) another Supreme Court exercising—
    - (i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyers; or
    - (ii) its jurisdiction or powers to make orders under a corresponding law of that jurisdiction in relation to any Australian lawyers;

*lawyer*, when used alone, has the same meaning as it has in Chapter 5 (see section 261).

## Part 9.9 General

### 462 Prohibition on disclosure of information

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any information obtained in the execution or administration of this Law or the Uniform Rules unless permitted to do so under subsection (2).  
Civil penalty: 50 penalty units.
- (2) A relevant person is permitted, for the purposes of this Law, to disclose information obtained in the execution or administration of this Law or the Uniform Rules—
  - (a) to the extent that the disclosure is reasonably required to exercise functions under this Law, the Uniform Rules or any other legislation; or
  - (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Law, the Uniform Rules or any other legislation; or
  - (c) with the prior consent in writing of the person to whom the information relates; or
  - (d) to a court or tribunal in the course of legal proceedings; or
  - (e) pursuant to an order of a court or tribunal under any law; or
  - (f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter; or
  - (g) to the Attorney-General of any jurisdiction.
- (3) In this section—

**relevant person** means—

  - (a) the Council or the Commissioner; or
  - (b) a local regulatory authority; or
  - (c) a committee of the Council or a local regulatory authority; or
  - (d) a member of the Council or a local regulatory authority or of a committee of either; or
  - (e) a delegate of the Council, the Commissioner or a local regulatory authority; or
  - (f) an external examiner or external investigator under Part 4.2; or
  - (g) an external intervener under Chapter 6; or
  - (h) an investigator under Chapter 7; or
  - (i) a designated local roll authority or a member of a designated local roll authority; or
  - (j) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a) to (i); or
  - (k) a person who formerly held a position referred in paragraphs (a) to (j).

### 463 Effect of decision on appeal or review

- (1) This section applies if a decision under this Law made by a decision-maker (the *original decision-maker*) can be the subject of an appeal or review to a court or tribunal (the *superior court or tribunal*).

- (2) If the decision of the superior court or tribunal varies, or is made in substitution for, the decision of the original decision-maker, the decision of the superior court or tribunal is taken—
  - (a) to be the decision of the original decision-maker (other than for the purposes of a further appeal or review by the superior court or tribunal for the same matter); and
  - (b) to have had effect as the decision of the original decision-maker on and from the date of the original decision-maker's actual decision, unless the superior court or tribunal orders otherwise.

#### **464 General provisions about appeal or review**

- (1) If a decision under this Law relating to a person can be the subject of an appeal or review, the decision-maker must (except in circumstances referred to in the Uniform Rules) ensure the person is given a notice as soon as practicable stating—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) the rights of appeal or review available to the person in respect of the decision and the period within which any such appeal or review must be made or applied for.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision concerned.
- (3) For the purposes of the provisions of this Law relating to a right of appeal or review about a decision, a failure of the decision-maker to make a decision on a person's application within a period specified in the Uniform Rules for the purposes of this section is taken to be a decision (the *constructive decision*) to refuse the application.
- (4) However, the decision-maker may make a decision (the *late decision*) on the person's application after that period if the decision-maker is satisfied that—
  - (a) no appeal or application for review has been made about the constructive decision; or
  - (b) an appeal or application for review has been made about the constructive decision but the appeal or application has been withdrawn; or
  - (c) the late decision would be to the person's benefit.
- (5) The late decision is as valid as if it had been made during that period.

#### **465 Duty to report suspected offences**

- (1) This section applies if a relevant person suspects on reasonable grounds, after investigation or otherwise, that a person has committed a serious offence (except in the case of an offence against this Law for which the relevant person is the appropriate prosecuting authority).
- (2) The relevant person must—
  - (a) report the suspected offence (if it has not already been reported) to the police or other appropriate investigating or prosecuting authority; and
  - (b) make available to the police or authority the information and documents relevant to the suspected offence in the possession of, or under the control of, the person (regardless of who reported it).
- (3) The obligation under subsection (2)(b) to make available the information and documents continues while the relevant person holds the relevant suspicion.
- (4) In this section—

*relevant person* means—

- (a) the Council or the Commissioner; or
- (b) the Admissions Committee; or
- (c) a local regulatory authority; or
- (d) a delegate of the Council, the Commissioner or a local regulatory authority; or
- (e) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a) to (d).

**466 Provisions relating to certain requirements under this Law**

- (1) This section applies to a requirement under—
  - (a) section 154 to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
  - (b) section 348 to give access to documents or information; or
  - (c) section 370 to produce documents or provide information; or
  - (d) section 371 to produce documents, provide information or otherwise assist in, or cooperate with, an investigation; or
  - (e) section 375(1)(j) to do a specified thing; or
  - (f) Part 7.4 to produce documents, provide information or do anything else under that Part.
- (2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on—
  - (a) the ground of legal professional privilege or any other duty of confidence; or
  - (b) the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
- (3) A person is not excused from complying with the requirement on the ground that compliance with the requirement, or an answer, document, information or assistance provided in complying with the requirement, may tend to incriminate the person.
- (4) Any information, document or other thing obtained as a direct or indirect consequence of a person complying with the requirement is admissible against the person in proceedings or procedures—
  - (a) for making a false or misleading statement; or
  - (b) for an offence against this Law; or
  - (c) relating to a disciplinary matter—but is not otherwise admissible in evidence against that person.
- (5) A person complying with the requirement is not subject to any liability, claim or demand merely because of compliance with the requirement and, without limitation, is not liable for any loss or damage suffered by another person as a result of the person's compliance with the requirement.
- (6) A failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) A local regulatory authority may recommend to the designated local regulatory authority that an Australian practising certificate or an Australian registration certificate be suspended while a failure by the holder to comply with the requirement continues.

**467 Protection from liability**

- (1) No liability attaches to a relevant person for any act or omission done or omitted in good faith and in the exercise or purported exercise of functions under this Law, the Uniform Regulations or the Uniform Rules.
- (2) In this section—  
*relevant person* means—
  - (a) the Council or the Commissioner; or
  - (b) a local regulatory authority; or
  - (c) a committee of the Council or a local regulatory authority; or
  - (d) a member of the Council, a local regulatory authority or a committee of either; or
  - (e) a delegate of the Council, the Commissioner or a local regulatory authority; or
  - (f) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a) to (e).

**468 Non-compellability of certain witnesses**

- (1) A relevant person referred to in section 467 is not compellable in any legal proceedings (including proceedings before the designated tribunal for the purposes of Chapter 5) to give evidence or produce documents in respect of any matter in which the person was involved in the course of the administration of this Law.
- (2) Subsection (1) is subject to any exceptions provided by jurisdictional legislation, for example in connection with royal commissions.

**469 Investigation of offences**

It is intended that jurisdictional legislation may—

- (a) provide for the appointment of persons to investigate suspected offences against this Law or suspected contraventions of civil penalty provisions (except to the extent they can be investigated under other provisions of this Law); and
- (b) without limitation, apply (with or without modification) specified provisions of this Law in relation to those investigations.

**470 Contraventions by partnerships or other unincorporated bodies**

- (1) This section applies in respect of—
  - (a) an offence against a provision of this Law or the Uniform Rules; or
  - (b) a contravention of a civil penalty provision—  
that is expressed as imposing an obligation on a law practice, or other entity, that is a partnership or other unincorporated body.
- (2) A reference (however expressed) in the provision to the law practice or other entity is to be read as reference to each principal of the law practice or other entity who—
  - (a) knowingly authorised or permitted the conduct constituting the offence or contravention; or
  - (b) was in, or ought reasonably to have been in, a position to influence the conduct of the law practice in relation to its contravention of the provision and failed to take reasonable steps to prevent the conduct.
- (3) In this section—

*principal* of an entity that is not a law practice means a partner of, a member of the governing body of, or an office holder in, the entity.

**Note** Section 6 contains a definition of principal of a law practice.

#### **471 Indexation of amounts**

If a provision of this Law or the Uniform Rules refers to an indexed amount, the amount is, in accordance with the Uniform Rules, to be indexed—

- (a) on a basis that reflects movements in the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician; or
- (b) on another basis specified in the Uniform Rules for the purposes of this section.

#### **472 Supreme Court may order delivery up of documents etc.**

- (1) On the application of a client of a law practice, the Supreme Court may order the law practice—
  - (a) to give to the client a bill of costs in respect of any legal services provided by the law practice; and
  - (b) to give to the client, on any conditions that the Supreme Court may determine, any of the client's documents that are held by the law practice in relation to those services.
- (2) Subsection (1) does not affect the provisions of Division 7 of Part 4.3 with respect to the assessment of costs.
- (3) This section does not apply to the client of a law practice retained on the client's behalf by another law practice.
- (4) In this section, a reference to a law practice includes a reference to—
  - (a) in the case of a person who was a sole practitioner when the legal services concerned were provided—
    - (i) the former sole practitioner; or
    - (ii) the executor of the will of the former sole practitioner; or
    - (iii) the trustee or administrator of the estate of the former sole practitioner; and
  - (b) subject to any other applicable arrangements—
    - (i) the persons who were the partners of a former law firm or unincorporated legal practice when the legal services concerned were provided; and
    - (ii) in the case of a law firm or unincorporated legal practice where there has been a change of partners since the legal services concerned were provided—subject to any other applicable arrangements, the firm or practice as currently constituted; and
    - (iii) the assignee of a law practice or former law practice; and
    - (iv) the receiver of a law practice or former law practice appointed under this Law; and
  - (c) any person of a class prescribed by the Uniform Rules for the purposes of this section.



**473 Forms**

- (1) The Council may approve forms for use under this Law or the Uniform Rules in relation to the functions of the Council or the Commissioner, to the extent forms are not specified in or otherwise provided for by this Law or the Uniform Rules.
- (2) A local regulatory authority may approve forms for use under this Law or the Uniform Rules in relation to the functions of the authority, to the extent forms are not specified in or otherwise provided for by this Law or the Uniform Rules.

**474 Fees**

- (1) The Uniform Rules may fix fees for payment in relation to any function of the Council or the Commissioner under this Law or the Uniform Rules, to the extent fees are not specified in or otherwise provided for by this Law or the Uniform Rules.
- (2) It is intended that jurisdictional legislation may fix fees for payment in relation to any function of the Supreme Court, the designated tribunal or a local regulatory authority under this Law or the Uniform Rules, to the extent fees are not specified in or otherwise provided for by this Law or the Uniform Rules.

**475 Provisions applying in relation to non-participating jurisdictions**

Schedule 3 contains provisions applying in relation to non-participating jurisdictions.

**476 Transitional provisions**

Schedule 4 contains transitional provisions.

## Schedule 1 Provisions relating to Council

### Part 1 Introduction

#### 1 Definitions

In this Schedule—

*Chair* means the Chair of the Council;

*host Attorney-General* means the host Attorney-General for this Law (the Attorney-General of Victoria);

*member* means a member of the Council.

### Part 2 Constitution of Council

#### 2 Membership of Council

- (1) The Council is to consist of 5 members drawn from participating jurisdictions, as follows—
  - (a) 1 member appointed by the host Attorney-General on the recommendation of the Law Council of Australia;
  - (b) 1 member appointed by the host Attorney-General on the recommendation of the Australian Bar Association;
  - (c) 2 members appointed by the host Attorney-General on the recommendation of the Standing Committee on the basis of their expertise in one or more of the following areas—
    - (i) the practice of law;
    - (ii) the protection of consumers;
    - (iii) the regulation of the legal profession;
    - (iv) financial management;
  - (d) 1 member appointed as the Chair by the host Attorney-General on the recommendation of the Standing Committee made in accordance with subclause (2).
- (2) In recommending a person to the host Attorney-General for appointment as the Chair, the Standing Committee must ensure that—
  - (a) it has consulted with the President of the Law Council of Australia and the President of the Australian Bar Association; and
  - (b) the President of the Law Council of Australia and the President of the Australian Bar Association have had an opportunity to nominate candidates for appointment as the Chair; and
  - (c) it does not recommend a person without the concurrence of the President of the Law Council of Australia and the concurrence of the President of the Australian Bar Association.
- (3) The Standing Committee must ensure that the members are appointed so that, as far as practicable, the members reflect a balance of participating jurisdictions and a balance of expertise.
- (4) A member does not have a representational role in relation to any particular area of expertise or in relation to any particular organisation or jurisdiction.

### 3 Terms of office of members

- (1) Subject to this Schedule, a member holds office for the operational term of the Council specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.  
**Note** An operational term of the Council is 3 years—see section 395(4).
- (2) For the first operational term of the Council, a member may instead be appointed for a period of 18 months.
- (3) A person appointed as a member to fill a vacancy during an operational term holds office for the balance of the period for which his or her predecessor was appointed.
- (4) A member cannot hold office for periods, whether consecutive or non-consecutive, that total more than 6 years.
- (5) A member may be appointed for a shorter period than that referred to in subclause (1), (2) or (3), to ensure the member does not hold office for periods that total more than 6 years.

### 4 Diversity of membership

- (1) The Standing Committee must ensure that—
  - (a) over the first operational term of the Council, at least one member is drawn from each participating jurisdiction; and
  - (b) over a cycle of two operational terms of the Council (other than the first operational term of the Council), at least one member is drawn from each participating jurisdiction.
- (2) The Standing Committee is to arrange for consultation to take place between representatives of the Law Council of Australia, the Australian Bar Association and the Standing Committee to ensure compliance with subclause (1).

**Note** A memorandum of understanding between the Standing Committee and the Law Council of Australia and the Standing Committee and the Australian Bar Association is intended to provide for all the parties to work together to bring about the result set out in this clause.

### 5 Vacancy in office of member

- (1) The office of a member becomes vacant if he or she—
  - (a) completes a term of office and is not reappointed; or
  - (b) resigns the office by written instrument addressed to the host Attorney-General; or
  - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
  - (d) dies.
- (2) The host Attorney-General may, at any time, terminate the appointment of a member—
  - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or
  - (b) for contravening a condition of the member's appointment contained in his or her instrument of appointment; or
  - (c) without limitation, if—
    - (i) the member has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-General, renders the member unfit to continue to hold the office of member; or
    - (ii) the member becomes an insolvent under administration.

- (3) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

## **6 Extension of term of office during vacancy in membership**

- (1) If—
- (a) the office of a member becomes vacant because the member has completed the member's term of office; and
  - (b) the member has not yet served a total of 6 years as a member—
- the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if—
- (a) the member resigns the member's office by instrument in writing addressed to the host Attorney-General; or
  - (b) the host Attorney-General determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months or the unexpired portion of the maximum 6-year term, whichever is the shorter.
- (4) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

## **7 Remuneration of members**

A member is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Standing Committee may from time to time determine with respect to the member.

## **8 Disclosure of conflict of interest**

- (1) If—
- (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Council; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter—
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) Particulars of any disclosure made under this clause must be recorded by the Council.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Standing Committee or the Council otherwise determines—
- (a) be present during any deliberation of the Council with respect to the matter; or
  - (b) take part in any decision of the Council with respect to the matter.
- (4) For the purposes of the making of a determination by the Council under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
- (a) be present during any deliberation of the Council for the purpose of making the determination; or
  - (b) take part in the making by the Council of the determination.
- (5) A contravention of this clause does not invalidate any decision of the Council.

## **Part 3 Procedure of Council**

### **9 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Council.

### **10 Quorum**

The quorum for a meeting of the Council is a majority of its members.

### **11 Chief Executive Officer may attend meetings**

The Chief Executive Officer of the Council may attend meetings of the Council and may participate in discussions of the Council, but is not entitled to vote at a meeting.

### **12 Presiding member**

- (1) The Chair (or, in the absence of the Chair, a person elected by the members of the Council who are present at a meeting of the Council) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

### **14 Transaction of business outside meetings or by telecommunication**

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2)—the Chair and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

### **15 Defects in appointment of members**

A decision of the Council is not invalidated by any defect or irregularity in the appointment of any member of the Council.

### **16 First meeting**

The Chair may call the first meeting of the Council in any manner the Chair thinks fit.

## **Part 4 Chief Executive Officer of Council**

### **17 Chief Executive Officer of Council**

- (1) The office of Chief Executive Officer of the Council is established.
- (2) The Chief Executive Officer of the Council is to administer the affairs of the Council in accordance with the policies and directions of the Council.
- (3) The functions of the Chief Executive Officer of the Council are exercised by the Commissioner.
- (4) A person cannot otherwise be appointed to be or to act as the Chief Executive Officer of the Council.

## **Part 5 Staff, consultants and contractors of Council**

### **18 Staff of Council**

- (1) Persons may be employed in the Public Service of New South Wales under the *Government Sector Employment Act 2013* of New South Wales to enable the Council to exercise its functions.
- (2) Despite section 7 of this Law—
  - (a) the *Interpretation Act 1987* of New South Wales; and
  - (b) any other relevant Acts of New South Wales relating to the interpretation of legislation of New South Wales—apply to the interpretation of the *Government Sector Employment Act 2013* of New South Wales for the purposes of this clause.

### **19 Secondment of staff to Council**

The Chief Executive Officer of the Council may arrange for the services of any of the following persons to be made available to the Council in connection with the exercise of its functions—

- (a) members of the staff of a government authority;
- (b) members of the staff of a local regulatory authority;
- (c) members of the staff of the Commissioner.

### **20 Consultants and contractors of Council**

- (1) The Chief Executive Officer of the Council may engage persons with suitable qualifications and experience as consultants or contractors for the purpose of providing services to the Council.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Council from time to time.

## **Part 6 Committees established by Council**

### **21 Admissions Committee**

- (1) The Admissions Committee is to consist of 7 persons drawn from participating jurisdictions and appointed by the Council, as follows—
  - (a) 2 current or former Supreme Court Judges from different jurisdictions nominated by the Chief Justice of the host jurisdiction for this Law with the concurrence of the Chief Justice of each other participating jurisdiction;

- (b) 1 person nominated by the Law Council of Australia, who has expertise or experience in legal practice;
  - (c) 1 person nominated by the Australian Bar Association, who has expertise or experience in legal practice;
  - (d) 2 persons from different jurisdictions, each of whom is nominated by—
    - (i) the Dean of a Law School or of a Faculty of Law or the head of an institution that provides practical legal training; or
    - (ii) a person who is of equivalent status or who has equivalent functions;
  - (e) 1 person, nominated by the Standing Committee, who—
    - (i) is an officer or employee of a government department who has expertise or experience in regulating the legal profession or in monitoring or developing policy relating to the legal profession; or
    - (ii) has expertise or experience in developing policy standards for admission or in accrediting education courses or institutions.
- (2) The Council must ensure that there is at least one member of the Admissions Committee from each participating jurisdiction.
  - (3) The Standing Committee is to alternate its nomination of a person under subclause (1)(e) between participating jurisdictions unless it decides not to do so.
  - (4) A member does not have a representational role in relation to any particular group or body to which the member belongs or in relation to any particular jurisdiction or jurisdictions.
  - (5) The terms on which members of the Admissions Committee are appointed and hold their positions on the committee are to be as determined from time to time by the Council.
  - (6) The procedures of the Admissions Committee are as determined by the Committee.
  - (7) The Admissions Committee may appoint a member of the Committee as its Chair.

## **22 Advisory committees**

- (1) The Council may establish one or more advisory committees to provide advice, recommendations or assistance to the Council in the exercise of the Council's functions.
- (2) Membership of an advisory committee is to include persons with relevant expertise and experience, including relevant expertise and experience in any of the following—
  - (a) courts or court administration;
  - (b) consumer interest groups;
  - (c) legal education institutions;
  - (d) insurance providers;
  - (e) the Australian legal profession;
  - (f) government.
- (3) Membership of an advisory committee may, but need not, include one or more members of the Council.
- (4) The terms on which members of an advisory committee are appointed and hold their positions on the committee are to be as determined from time to time by the Council.
- (5) The procedures of an advisory committee are as determined by the committee.

### **23 Other committees**

- (1) The Council may establish other committees, which may include persons who are not members of the Council.
- (2) The appointment and tenure of members of a committee and its charter are to be as determined from time to time by the Council.
- (3) The procedures of a committee are as determined by the committee.

### **24 Remuneration of members of committees**

- (1) A member of a committee (other than the Admissions Committee) is entitled to be paid the remuneration (including travelling and subsistence allowances), if any, that the Council may from time to time determine with respect to the member.
- (2) A member of the Admissions Committee is entitled to be paid the remuneration (including travelling and subsistence allowances), if any, that the Standing Committee may from time to time determine with respect to the member.

### **25 Committees are committees of Council**

Committees established by the Council are committees of the Council.

## **Part 7 Annual reports of Council**

### **26 Annual reports**

- (1) The Council must, within 4 months after the end of each financial year, submit an annual report for the financial year to the Standing Committee.
- (2) The annual report must include a financial statement for the Council for the period to which the report relates.
- (3) The financial statement is to be prepared in accordance with *Australian Accounting Standards*.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Standing Committee is to make arrangements for the tabling of the annual report of the Council, and the report of the auditor with respect to the financial statement in the report, in the Parliament of each participating jurisdiction.
- (6) The Standing Committee may extend, or further extend, the period for submission of an annual report to the Committee by a total period of up to 2 months.



## Schedule 2 Provisions relating to Commissioner

Section 399

### Part 1 Introduction

#### 1 Definition

In this Schedule—

*host Attorney-General* means the host Attorney-General for this Law (the Attorney-General of Victoria).

### Part 2 Appointment and tenure of office

#### 2 Appointment of Commissioner

The host Attorney-General is to appoint a person as Commissioner on the recommendation of the Standing Committee and with the concurrence of the Council.

**Note** See clause 8 of Schedule 4 for the initial appointment of the Commissioner.

#### 3 Term of office of Commissioner

- (1) The Commissioner is to be appointed for a term, not exceeding 5 years, specified in his or her instrument of appointment, but is eligible for reappointment.
- (2) The Commissioner cannot be appointed for terms, whether consecutive or non-consecutive, that total more than 10 years.

#### 4 Remuneration of Commissioner

The Commissioner is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Standing Committee may from time to time determine.

#### 5 Vacancy in office of Commissioner

- (1) The office of Commissioner becomes vacant if he or she—
  - (a) completes a term of office and is not reappointed; or
  - (b) resigns the office by written instrument addressed to the host Attorney-General; or
  - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
  - (d) dies.
- (2) The host Attorney-General may terminate the Commissioner's appointment after consultation with the Standing Committee—
  - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or
  - (b) for contravening a condition of the Commissioner's appointment contained in his or her instrument of appointment; or
  - (c) without limitation, if—
    - (i) the Commissioner has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-General, renders the Commissioner unfit to continue to hold the office of Commissioner; or
    - (ii) the Commissioner becomes an insolvent under administration.

## **6 Acting Commissioner**

- (1) The Council may appoint a person to act as Commissioner—
  - (a) during a vacancy in the office of Commissioner; or
  - (b) during a period, or all periods, when the Commissioner is absent from duty or, for any other reason, is unable to perform the duties of the office.
- (2) The Council may appoint a person as Acting Commissioner only if the Council considers that he or she has sufficient knowledge of legal practice and the legal system to be able to exercise the functions of the Commissioner.
- (3) An acting appointment is for the term, not exceeding 6 months, specified in the instrument of appointment and a person appointed to act is eligible for reappointment.
- (4) The Acting Commissioner—
  - (a) has all the functions of the Commissioner; and
  - (b) is entitled to be paid the remuneration and allowances that the Commissioner would have been entitled to for exercising those functions.
- (5) The Council may remove the Acting Commissioner from office at any time.

## **Part 3 Staff, consultants and contractors of Commissioner**

### **7 Staff of Commissioner**

- (1) Persons may be employed in the Public Service of New South Wales under the *Government Sector Employment Act 2013* of New South Wales to enable the Commissioner to exercise his or her functions.
- (2) Despite section 7 of this Law—
  - (a) the *Interpretation Act 1987* of New South Wales; and
  - (b) any other relevant Acts of New South Wales relating to the interpretation of legislation of New South Wales—apply to the interpretation of the *Government Sector Employment Act 2013* of New South Wales for the purposes of this clause.

### **8 Secondment of staff to Commissioner**

The Commissioner may arrange for the services of any of the following persons to be made available to the Commissioner in connection with the exercise of his or her functions—

- (a) members of the staff of a government authority;
- (b) members of the staff of a local regulatory authority;
- (c) members of the staff of the Council.

### **9 Consultants and contractors of Commissioner**

- (1) The Commissioner may engage persons with suitable qualifications and experience as consultants or contractors for the purpose of providing services to the Commissioner.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Commissioner from time to time.

## Part 4 Annual reports of Commissioner

### 10 Annual reports

- (1) The Commissioner must, within 4 months after the end of each financial year, submit an annual report for the financial year to the Council.
- (2) The annual report must include—
  - (a) a financial statement for the Commissioner for the period to which the report relates; and
  - (b) statistical information about complaints received, resolved and determined; and
  - (c) a report containing information regarding compliance functions; and
  - (d) audit information submitted by fidelity authorities for fidelity funds.
- (3) The financial statement is to be prepared in accordance with *Australian Accounting Standards*.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Council may extend, or further extend, the period for submission of an annual report to the Council by a total period of up to 2 months.
- (6) The Council is to provide the Standing Committee with a copy of the Commissioner's annual report as soon as practicable after it is received by the Council.
- (7) The Standing Committee is to make arrangements for the tabling of the annual report of the Commissioner and the report of the auditor with respect to the financial statement in the report, in the Parliament of each participating jurisdiction.

## Schedule 3 Provisions applying in relation to non-participating jurisdictions

### Part 1 Preliminary

#### Notes

- 1 Some provisions of this Law apply in their own terms in relation to non-participating jurisdictions (whether by reference to any jurisdiction or by specific reference to a non-participating jurisdiction).

In particular—

- the term **Australian lawyer** is defined in section 6 so as to include a person admitted to the Australian legal profession in any jurisdiction;
- the terms **Australian practising certificate** and **Australian registration certificate** are defined in section 6 so as to include certificates granted in a non-participating jurisdiction;
- the terms **Australian legal practitioner** and **Australian-registered foreign lawyer** are defined in section 6 so as to include legal practitioners and foreign lawyers holding certificates granted in a non-participating jurisdiction.

This Schedule contains other provisions that apply in relation to non-participating jurisdictions.

- 2 A person who is an Australian lawyer by virtue of admission by the Supreme Court of a non-participating jurisdiction is eligible, if otherwise qualified, to be granted an Australian practising certificate under Part 3.3. Among other matters, this Schedule contains provisions relating to practising certificates granted in a non-participating jurisdiction.

#### 1 Definitions

In this Schedule—

**lawyer**, when used alone, has the same meaning as it has in Chapter 5 (see section 261);

**non-participant legal practitioner** means a person who is the holder of a current non-participant practising certificate but who is not the holder of a current Australian practising certificate granted in a participating jurisdiction;

**non-participant practising certificate** means a practising certificate granted to an Australian lawyer under the law of a non-participating jurisdiction and authorising the Australian lawyer to engage in legal practice in that jurisdiction;

**non-participant registered foreign lawyer** means a person who is registered as a foreign lawyer under a law of a non-participating jurisdiction but who is not the holder of a current Australian registration certificate granted in a participating jurisdiction.

### Part 2 Application of this law in relation to non-participant legal practitioners

#### 2 Practising certificate granted in non-participating jurisdiction

- (1) In the application of this Law to a non-participant practising certificate and to a non-participant legal practitioner, this Law applies with the following modifications—
- (a) Parts 3.3, 3.5, 3.6 and 9.3 of this Law do not apply—
    - (i) except to the extent, if any, specified in the Uniform Rules; and
    - (ii) with the exception of section 49;
  - (b) any provisions of this Law specified in the Uniform Rules for the purposes of this clause do not apply (except to the extent, if any, specified in the Uniform Rules);
  - (c) any other modifications specified in the Uniform Rules and any necessary modifications.

- (2) Provisions of the Uniform Rules specified in the Uniform Rules for the purposes of this clause do not apply (except to the extent, if any, specified in the Uniform Rules) to a non-participant practising certificate and a non-participant legal practitioner.

### **3 Extent of entitlement to practise in this jurisdiction**

- (1) This Law does not authorise a non-participant legal practitioner to engage in legal practice in this jurisdiction to a greater extent than an Australian legal practitioner could be authorised under an Australian practising certificate granted in a participating jurisdiction.
- (2) Also, a non-participant legal practitioner's right to engage in legal practice in this jurisdiction—
- (a) is subject to any conditions imposed under clause 4 or by the Uniform Rules; and
  - (b) is, to the greatest practicable extent and with all necessary changes—
    - (i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
    - (ii) subject to any condition on the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on his or her admission to the legal profession in this or another jurisdiction.
- (3) If there is an inconsistency between conditions mentioned in subclause (2)(a) and conditions mentioned in subclause (2)(b), the conditions that are, in the opinion of the designated local regulatory authority, more onerous prevail to the extent of the inconsistency.
- (4) A person who is an Australian lawyer by virtue of admission by the Supreme Court of a non-participating jurisdiction must not engage in legal practice in this jurisdiction in a manner not authorised by this Law or in contravention of any condition referred to in this clause.

### **4 Additional conditions on practice of non-participant legal practitioner**

- (1) The designated local regulatory authority may, by written notice to a non-participant legal practitioner engaged in legal practice in this jurisdiction, impose any condition on the practitioner's practice that it may impose under this Law on an Australian practising certificate granted in this jurisdiction.
- (2) Also, a non-participant legal practitioner's right to engage in legal practice in this jurisdiction is subject to any condition imposed by or under the Uniform Rules.
- (3) Conditions imposed under or referred to in this clause must not be more onerous than conditions applying to Australian legal practitioners who are holders of current Australian practising certificates granted in this jurisdiction.
- (4) A non-participant legal practitioner must not contravene a condition imposed under this clause.

### **5 Non-participant legal practitioner expecting to practise solely or principally in this jurisdiction**

- (1) A non-participant legal practitioner who—
- (a) engages in legal practice solely or principally in this jurisdiction during a financial year; and
  - (b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year—
- must apply for the grant of an Australian practising certificate under Part 3.3 of this Law as applied in this jurisdiction in respect of the following financial year.

- (2) Subclause (1) does not apply to a non-participant legal practitioner who applied for the grant or renewal of a non-participant practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.
- (3) The exemption provided by subclause (2) ceases to operate at the end of the period specified in the Uniform Rules for the purposes of this subclause.

#### **6 Home jurisdiction of non-participant legal practitioner**

For the purposes of this Law, the home jurisdiction of a non-participant legal practitioner is the non-participating jurisdiction in which the practitioner's practising certificate was granted.

### **Part 3 Application of this law in relation to non-participant registered foreign lawyers**

#### **7 Registration in non-participating jurisdiction**

- (1) In the application of this Law to registration as a foreign lawyer granted in a non-participating jurisdiction and to a non-participant registered foreign lawyer, this Law applies with the following modifications—
  - (a) Parts 3.4, 3.5, 3.6 and 9.3 of this Law do not apply (except to the extent, if any, specified in the Uniform Rules);
  - (b) any provisions of this Law specified in the Uniform Rules for the purposes of this clause do not apply (except to the extent, if any, specified in the Uniform Rules);
  - (c) any other modifications specified in the Uniform Rules and any necessary modifications.
- (2) Provisions of the Uniform Rules specified in the Uniform Rules for the purposes of this clause do not apply (except to the extent, if any, specified in the Uniform Rules) to registration as a foreign lawyer in a non-participating jurisdiction or to a non-participant registered foreign lawyer.

#### **8 Extent of entitlement to practise in this jurisdiction**

- (1) This Law does not authorise a non-participant registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than an Australian-registered foreign lawyer could be authorised under an Australian registration certificate granted in a participating jurisdiction.
- (2) Also, a non-participant registered foreign lawyer's right to engage in legal practice in this jurisdiction—
  - (a) is subject to any conditions imposed under clause 9 or by the Uniform Rules; and
  - (b) is, to the greatest practicable extent and with all necessary changes—
    - (i) the same as the foreign lawyer's right to practise foreign law in the foreign lawyer's home jurisdiction; and
    - (ii) subject to any condition on the foreign lawyer's right to practise foreign law in that jurisdiction, including (if relevant) any conditions imposed on his or her admission to the legal profession in this or another jurisdiction.
- (3) If there is an inconsistency between conditions mentioned in subclause (2)(a) and conditions mentioned in subclause (2)(b), the conditions that are, in the opinion of

the designated local regulatory authority, more onerous prevail to the extent of the inconsistency.

- (4) A non-participant registered foreign lawyer must not practise foreign law in this jurisdiction in a manner not authorised by this Law or in contravention of any condition referred to in this clause.

#### **9 Additional conditions on practice of non-participant registered foreign lawyer**

- (1) The designated local regulatory authority may, by written notice to a non-participant registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the foreign lawyer's practice that it may impose under this Law on an Australian registration certificate granted in this jurisdiction.
- (2) Also, a non-participant registered foreign lawyer's right to engage in legal practice in this jurisdiction is subject to any condition imposed by or under the Uniform Rules.
- (3) Conditions imposed under or referred to in this clause must not be more onerous than conditions applying in the same or similar circumstances to Australian-registered foreign lawyers who are holders of current Australian registration certificates granted in this jurisdiction.
- (4) A non-participant registered foreign lawyer must not contravene a condition imposed under this clause.

#### **10 Non-participant registered foreign lawyer expecting to practise solely or principally in this jurisdiction**

- (1) A non-participant registered foreign lawyer who—
  - (a) practises foreign law solely or principally in this jurisdiction during a financial year; and
  - (b) reasonably expects to practise foreign law solely or principally in this jurisdiction in the following financial year—must apply for the grant of an Australian registration certificate under Part 3.4 of this Law as applied in this jurisdiction in respect of the following financial year.
- (2) Subclause (1) does not apply to a non-participant registered foreign lawyer who applied for the grant or renewal of registration as a foreign lawyer in a non-participating jurisdiction on the basis that the foreign lawyer reasonably expected to practise foreign law solely or principally in this jurisdiction under an arrangement that is of a temporary nature.
- (3) The exemption provided by subclause (2) ceases to operate at the end of the period specified in the Uniform Rules for the purposes of this subclause.
- (4) This clause does not affect the right of a foreign lawyer under section 60 to practise foreign law in this jurisdiction without having to hold a current Australian registration certificate during a limited period.

#### **11 Home jurisdiction of non-participant registered foreign lawyer**

For the purposes of this Law, the home jurisdiction of a non-participant registered foreign lawyer is the non-participating jurisdiction in which the foreign lawyer's registration as a foreign lawyer was granted.

## **Part 4 Dispute resolution and professional discipline**

### **12 Non-application of Chapter 5 to certain conduct of lawyer occurring within non-participating jurisdiction or outside Australia**

- (1) Chapter 5 as applied in this jurisdiction does not apply to—
  - (a) conduct of a lawyer that has occurred within a non-participating jurisdiction, unless consent is given as referred to in subclause (2); or
  - (b) conduct of a non-participant legal practitioner or non-participant registered foreign lawyer to the extent that the conduct has occurred outside Australia, unless—
    - (i) the conduct is part of a course of conduct that has occurred within a participating jurisdiction; or
    - (ii) the conduct is part of a course of conduct that has occurred within a non-participating jurisdiction and consent is given as referred to in subclause (2).
- (2) For the purposes of subclause (1), consent is given in relation to conduct of a lawyer that has occurred within a non-participating jurisdiction if—
  - (a) the lawyer was admitted to the Australian legal profession by the Supreme Court of a participating jurisdiction or was at the relevant time the holder of an Australian practising certificate, or Australian registration certificate, granted in a participating jurisdiction; and
  - (b) either—
    - (i) the corresponding authority of the non-participating jurisdiction consents to the conduct being dealt with under this Law as applied in this jurisdiction; or
    - (ii) the complainant and the lawyer consent to the conduct being dealt with under this Law as applied in this jurisdiction.

### **13 Non-application of Chapter 5 to certain conduct of law practice occurring within non-participating jurisdiction or outside Australia**

- (1) Chapter 5 as applied in this jurisdiction does not apply to—
  - (a) conduct of a law practice to the extent the conduct has occurred within a non-participating jurisdiction, unless consent is given under subclause (2); or
  - (b) conduct of a law practice to the extent the conduct has occurred outside Australia, unless—
    - (i) the conduct is part of a course of conduct that has occurred within a participating jurisdiction; or
    - (ii) the conduct is part of a course of conduct that has occurred within a non-participating jurisdiction and consent is given under subclause (2).
- (2) For the purposes of subclause (1), consent is given in relation to conduct of a law practice occurring within a non-participating jurisdiction if either—
  - (a) the corresponding authority of the non-participating jurisdiction consents to the conduct being dealt with under this Law as applied in this jurisdiction; or
  - (b) the complainant and the law practice consent to the conduct being dealt with under this Law as applied in this jurisdiction.



**14 Non-application of Chapter 5 to certain conduct occurring within participating jurisdiction or outside Australia**

- (1) Chapter 5 as applied in this jurisdiction does not apply to conduct of a lawyer or law practice that has occurred within this jurisdiction (and any conduct that has occurred outside Australia that is part of a course of conduct that has occurred within this jurisdiction) if—
  - (a) the conduct is part of a course of conduct that occurred partly in a non-participating jurisdiction; and
  - (b) either—
    - (i) the designated local regulatory authority consents to the conduct being dealt with under a corresponding law; or
    - (ii) the complainant and the lawyer or law practice consent to the conduct being dealt with under a corresponding law.
- (2) Subclause (1) does not apply if the conduct is not capable of being dealt with under the corresponding law.
- (3) The designated local regulatory authority may give consent for the purposes of subclause (1)(b)(i), and may do so conditionally or unconditionally.

**Part 5 Miscellaneous**

**15 Fidelity funds and fidelity authorities for non-participating jurisdiction**

For the purposes of this Law—

- (a) the fidelity fund of a non-participating jurisdiction is the fund (however described) established or maintained under a law of that jurisdiction to provide a source of compensation for defaults by law practices; and
- (b) the fidelity authority for a non-participating jurisdiction is the authority responsible for the general administration of the fidelity fund (as referred to in paragraph (a)) of that jurisdiction.

**16 Uniform Rules**

- (1) The Uniform Rules may make provision with respect to any aspect of the application of this Law in relation to non-participating jurisdictions (including non-participant legal practitioners and non-participant registered foreign lawyers).
- (2) Without limitation, the Uniform Rules may make provision with respect to the notification of persons or bodies having functions under a law of a non-participating jurisdiction about actions or other things done under this Law.

## Schedule 4 Savings and transitional provisions

### Part 1 Introduction and general provisions

#### 1 Definitions

In this Schedule—

**commencement day** means the day on which this Law (or the relevant provision of this Law) commences in this jurisdiction;

**old Chapter 4** means Chapter 4 of the Act, or one of the Acts, comprised in the old legislation;

**old Chapter 5** means Chapter 5 of the Act, or one of the Acts, comprised in the old legislation;

**old fidelity fund** means the fund (whatever called) of this jurisdiction that was in existence immediately before the commencement day and is of the same or a similar nature as the fund referred to in section 222 of this Law as applied in this jurisdiction;

**old legislation** means the statutory provisions repealed by the Legal Profession Uniform Law Act of this jurisdiction.

#### 2 General savings and transitional provision

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the *Interpretation of Legislation Act 1984* of Victoria as applying under section 7(1) of this Law.
- (2) If anything of a kind required or permitted to be done under a provision of this Law as applied in this jurisdiction was done under a corresponding provision of the old legislation and still had effect immediately before the commencement day, the thing continues in effect on and after that day as if—
  - (a) this Law as applied in this jurisdiction had been in force when it was done; and
  - (b) it had been done under this Law as applied in this jurisdiction.
- (3) If subclause (2) applies in relation to the execution, lodgement, issue or publication of a written instrument, any reference in the instrument to a provision of the old legislation is, for the purposes of that subclause, to be read as a reference to the corresponding provision of this Law as applied in this jurisdiction.
- (4) Without limiting subclauses (2) and (3), if a provision of the old legislation that corresponds to a provision of this Law as applied in this jurisdiction would, but for its repeal by the Legal Profession Uniform Law Act of this jurisdiction, have applied in relation to anything done or being done or in existence before the commencement day, the provision of this Law applies in relation to that thing, and so applies with any necessary adaptations.
- (5) If a provision of the old legislation continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—
  - (a) any other provisions of the old legislation necessary to give effect to that continued provision;
  - (b) any regulation made under the old legislation for the purposes of that continued provision.
- (6) This clause does not have effect to the extent that other provision is made by this Schedule or that the context or subject matter otherwise indicates or requires, and has effect subject to the local regulations.

### **3 References to old legislation**

A reference to the old legislation in any Act (other than the Legal Profession Uniform Law Act of this jurisdiction or this Law as applied in this jurisdiction) or in any subordinate instrument, agreement, deed or other document is to be construed as a reference to this Law, so far as the reference relates to any period on or after the commencement day and is not inconsistent with the subject matter.

### **4 Time limits**

- (1) If the time for doing any act was fixed by or under the old legislation, that time continues to apply on and after the commencement day in relation to any act that was required or permitted to be done, and could have been done, before that day and, unless the contrary intention appears, nothing in this Law has the effect of extending or abridging the time for doing that act.
- (2) The time for doing an act to which subclause (1) applies may be extended or abridged on or after the commencement day in accordance with any provision made by or under the old legislation as in force immediately before that day as if that provision had not been repealed, but subject to anything in this Schedule requiring a reference in that provision to be construed in a particular way.

### **5 Savings and transitional rules and regulations**

- (1) The Uniform Rules may contain provisions of a savings and transitional nature consequent on the repeal of the old legislation.
- (2) The local regulations may contain provisions of a savings and transitional nature consequent on the repeal of the old legislation.
- (3) The provisions referred to in subclause (2) prevail over the provisions referred to in subclause (1) to the extent of any inconsistency.
- (4) Any such provision may, if the Uniform Rules or the local regulations (as the case may require) so provide, take effect from the commencement day or a later day.
- (5) To the extent to which any such provision takes effect from a day that is earlier than the date of its gazettal or publication, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than this jurisdiction or an authority of this jurisdiction), the rights of that person existing before the date of its gazettal or publication; or
  - (b) to impose liabilities on any person (other than this jurisdiction or an authority of this jurisdiction) in respect of anything done or omitted to be done before the date of its gazettal or publication.

## **Part 2 Regulatory authorities**

### **6 Standing Committee**

- (1) The Standing Committee referred to in the definition of that term in section 6 of this Law is taken to include the Attorneys-General of any non-participating jurisdictions on behalf of which the Inter-Governmental Agreement was signed.
- (2) Without affecting the subsequent validity of anything done or omitted to be done, subclause (1) has effect only during—
  - (a) the first operational term of the Council; and
  - (b) the period preceding that term starting with the date specified in the Legal Profession Uniform Law Act of Victoria for the purposes of this clause.

## **7 First operational term of Council**

The first operational term of the Council is the period of 3 years commencing on the date specified in the Legal Profession Uniform Law Act of Victoria for the purposes of this clause.

## **8 Initial appointment of Commissioner**

- (1) The initial appointment of the Commissioner is to be made by the host Attorney-General for this Law on the recommendation of the Standing Committee.
- (2) The Commissioner appointed under this clause—
  - (a) is to be appointed for a term, not exceeding 12 months, specified in his or her instrument of appointment; and
  - (b) is eligible for reappointment in the same manner, but only if the initial appointment of persons as members of the Council has not taken effect; and
  - (c) is eligible for reappointment under clause 2 of Schedule 2, if the initial appointment of persons as members of the Council has taken effect.
- (3) This clause has effect despite anything to the contrary in clause 2 or 3(1) of Schedule 2 and does not limit any other provision of that Schedule.

## **9 Local regulatory authority for Chapter 5 functions—postponement of section 405**

- (1) The Attorney-General of this jurisdiction may, by order published in the Gazette of this jurisdiction, declare that section 405(1) of this Law does not apply to a local regulatory authority of this jurisdiction exercising Chapter 5 functions.
- (2) The declaration has effect only during the period of 3 years after this Law first applies to this jurisdiction as a participating jurisdiction, unless it is sooner revoked.
- (3) Accordingly, section 405(1) of this Law does not apply to a local regulatory authority of this jurisdiction exercising Chapter 5 functions while a declaration under this clause is in force.

# **Part 3 Particular provisions**

## **Division 1 Application of this Part**

### **10 Application of the other provisions of this Part**

- (1) This Part (except this Division) applies in relation to this jurisdiction only if and to the extent legislation of this jurisdiction so provides.
- (2) The provisions of other legislation of this jurisdiction dealing with matters to which this Part applies prevail over the provisions of this Part to the extent of any inconsistency.

## **Division 2 Admission and legal practice**

### **11 Admission**

- (1) A person who was a local lawyer within the meaning of the old legislation immediately before the commencement day by admission to the legal profession by the Supreme Court is, on and from that day, taken to be an Australian lawyer as if he or she had been admitted to the legal profession under this Law as applied in this jurisdiction.

- (2) Despite anything to the contrary in subclause (1), the day of admission of a person referred to in that subclause is the day he or she was previously admitted to the legal profession by the Supreme Court of this jurisdiction.
- (3) The fees payable for admission are the fees that were or would have been payable under the old legislation, unless otherwise provided by—
  - (a) legislation of this jurisdiction; or
  - (b) the Uniform Rules, if provision is not made by legislation of this jurisdiction.

## **12 Practising certificates—local legal practitioners**

- (1) A practising certificate (as a local legal practitioner) granted under the old legislation before the commencement day and expressed to be operative on or after that day is taken, on and after that day, to be an Australian practising certificate granted in this jurisdiction under this Law as applied in this jurisdiction, and may be renewed, varied, suspended or cancelled accordingly.
- (2) If an application made under the old legislation for a practising certificate has not been determined before the commencement day—
  - (a) the application is to be determined as if it were an application made in this jurisdiction under this Law as applied in this jurisdiction for an Australian practising certificate; and
  - (b) a practising certificate already held by the applicant remains in force as if it were an Australian practising certificate granted in this jurisdiction under this Law as applied in this jurisdiction until a new certificate is granted or the application is refused.
- (3) The fees payable in respect of an application referred to in subclause (2) (or for the grant or issue of a practising certificate in consequence of such an application) are the fees that were or would have been payable under the old legislation, unless otherwise provided by—
  - (a) legislation of this jurisdiction; or
  - (b) the Uniform Rules, if provision is not made by legislation of this jurisdiction.
- (4) Any conditions attaching to a practising certificate granted under the old legislation continue to attach to the certificate on and after the commencement day.

## **13 Registration certificates—foreign lawyers**

- (1) A registration certificate (as a locally registered foreign lawyer) granted under the old legislation immediately before the commencement day and expressed to be operative on or after that day is taken, on and after that day, to be an Australian registration certificate granted in this jurisdiction under this Law as applied in this jurisdiction, and may be renewed, suspended or cancelled accordingly.
- (2) If an application made under the old legislation for registration as a foreign lawyer has not been determined before the commencement day—
  - (a) the application is to be determined as if it were an application made in this jurisdiction under this Law as applied in this jurisdiction for an Australian registration certificate; and
  - (b) a registration certificate already held by the applicant remains in force as if it were an Australian registration certificate granted in this jurisdiction under this Law as applied in this jurisdiction until a new certificate is granted or the application is refused.
- (3) The fees payable in respect of an application referred to in subclause (2) (or for the grant or issue of a registration certificate in consequence of such an application) are

the fees that were or would have been payable under the old legislation, unless otherwise provided by—

- (a) legislation of this jurisdiction; or
  - (b) the Uniform Rules, if provision is not made by legislation of this jurisdiction.
- (4) Any conditions attaching to a registration certificate granted under the old legislation continue to attach to the certificate on and after the commencement day.

#### **14 Incorporated legal practices and multi-disciplinary practices**

- (1) An entity that was an incorporated legal practice within the meaning of the old legislation immediately before the commencement day is taken to be an incorporated legal practice within the meaning of this Law as applied in this jurisdiction.
- (2) An entity that was a multi-disciplinary partnership within the meaning of the old legislation immediately before the commencement day is taken to be an unincorporated legal practice within the meaning of this Law as applied in this jurisdiction.
- (3) An entity referred to in subclause (1) or (2) is taken to have given notice under section 104 of this Law as applied in this jurisdiction that it intends to engage in legal practice in Australia.

#### **15 Disqualification orders**

- (1) This clause applies to an order that a person (other than a legal practitioner) is a disqualified person for the purposes of any provisions of the old legislation.
- (2) An order to which this clause applies and that was in force under the old legislation immediately before the commencement day continues in force on and after that day according to its tenor as if it were an order under section 119 of this Law.

#### **16 Approval of lay associates**

- (1) This clause applies to an approval of a lay associate for the purposes of a provision of the old legislation that prohibits a legal practitioner or law practice from having a lay associate who the practitioner or practice knows to be—
  - (a) a disqualified person (within the meaning of the provision); or
  - (b) a person who has been found guilty of a relevant offence (within the meaning of the provision).
- (2) An approval to which this clause applies and that was in force under the old legislation immediately before the commencement day is taken, on and after that day, to be an approval of the person to whom the approval relates under section 121 of this Law.

#### **17 Disqualification of entities from providing legal services**

- (1) An entity disqualified under the old legislation from providing legal services under the old legislation immediately before the commencement day continues to be disqualified under this Law.
- (2) If the disqualification was made by an order under the old legislation that was in force immediately before the commencement day, the order continues in force on and after that day according to its tenor as if it were an order under Part 3.9 of this Law as applied in this jurisdiction.

### **Division 3 Client information**

#### **18 Client information and legal costs**

- (1) Subject to subclause (2)—
  - (a) Part 4.3 of this Law applies to a matter if the client first instructs the law practice on or after the commencement day; and
  - (b) the provisions of the old legislation relating to legal costs (other than provisions prescribed by the local regulations) continue to apply to a matter if the client first instructed the law practice in the matter before the commencement day.
- (2) If a law practice is retained by another law practice on behalf of another client on or after the commencement day in relation to a matter in which the other law practice was retained by the client before the commencement day—
  - (a) Part 4.3 of this Law does not apply in respect of the other law practice in relation to that matter; and
  - (b) in that case the provisions of the old legislation relating to legal costs (other than provisions prescribed by the local regulations) continue to apply.
- (3) Until a Uniform Rule prescribing an amount for the purposes of section 174(4) of this Law takes effect, the lower threshold is \$750 for those purposes.
- (4) Until a Uniform Rule prescribing an amount for the purposes of section 174(5) of this Law takes effect, the higher threshold is \$3000 for those purposes.

### **Division 4 Trust money and trust accounts**

#### **19 Arrangements with ADIs**

- (1) This clause applies to an arrangement that—
  - (a) was entered into under the old legislation with an ADI and was in force immediately before the commencement day; and
  - (b) included provisions of the kind contemplated by section 149(1)(b) of this Law.
- (2) An arrangement to which this clause applies continues in force on and after the commencement day as if it were an arrangement under section 149 of this Law, but only to the extent to which its provisions are of the kind contemplated by section 149(1)(b) of this Law.

#### **20 External examiners**

A person who, immediately before the commencement day, was an approved external examiner for the purposes of the old legislation is taken, on and after that day, to be duly appointed as an external examiner for the purposes of this Law until the end of 30 June of the second year after the year in which the commencement day occurs, whether or not the person meets the requirements of section 156 of this Law.

#### **21 Deficiencies and irregularities in trust accounts**

- (1) Section 148 of this Law applies to a deficiency in a trust account or a failure to pay or deliver trust money, whether the deficiency or failure to pay or deliver relates to money received before, on or after the commencement day.
- (2) Section 154 of this Law applies in relation to an irregularity, whether it occurred before or occurs on or after the commencement day.
- (3) Section 154 of this Law applies to an Australian legal practitioner in relation to an irregularity, whether the practitioner became or becomes aware of the irregularity, or

formed or forms the belief about the irregularity, before, on or after the commencement day.

- (4) Section 154(1) of this Law does not apply to an ADI, to an external examiner or to an entity referred to in section 154(1)(d), in relation to an irregularity, if the ADI, external examiner or other entity became aware of the irregularity concerned before the commencement day.
- (5) Neither section 154 of this Law nor this clause requires a notice to be given of a matter if notice was already given of the matter before the commencement day under the old legislation.

## **Division 5 Fidelity cover**

### **22 Current claims**

- (1) This clause applies to a claim made under the old legislation relating to claims against the old fidelity fund but not disposed of before the commencement day.
- (2) On and after the commencement day—
  - (a) the claim is to continue to be dealt with in accordance with the provisions of the old legislation; and
  - (b) for that purpose, the claim is to continue to be dealt with by the entity responsible for dealing with it under those provisions (the *current entity*).
- (3) Subclause (2)(b) does not apply if a local regulation or other legislation of this jurisdiction directs that another entity referred to in this Law (the *substituted entity*) is to deal with the complaint or investigation instead of the current entity.
- (4) The substituted entity may have regard to anything done by the current entity before, on or after the commencement day but before the direction takes effect.

### **23 Claims under this Law about prior default**

- (1) This clause applies to a default that—
  - (a) happened or is alleged to have happened before the commencement day; and
  - (b) could have been, but was not, the subject of a claim under the fidelity cover provisions of the old legislation.
- (2) A claim may be made under this Law on or after the commencement day about the default.
- (3) The claim may be made, even if the default could not be the subject of a claim under this Law if it had happened on or after the commencement day.
- (4) This Law applies (with the necessary modifications) in relation to the claim and the act or omission giving rise to or constituting the default.
- (5) This clause does not authorise the making of a claim under this Law in relation to a default that occurred before the commencement day, if a corresponding claim could not have been made under the old legislation because it would have been barred at the relevant time.



## **Division 6 Investigations of certain matters**

### **24 Current investigations under Chapter 3 of the old legislation**

- (1) This clause applies to an investigation commenced by a person (the *investigator*) under Chapter 3 of the old legislation, and subsisting immediately before the commencement day, for the purpose of—
  - (a) monitoring compliance by a law practice or person with the provisions of the old legislation (or of regulations under the old legislation) relating to trust money and trust accounts; or
  - (b) determining whether or not a law practice or person has contravened any of those provisions; or
  - (c) detecting or preventing defaults, fraud or defalcation in relation to a law practice; or
  - (d) investigating the affairs or specified affairs of a law practice.
- (2) On and after the commencement day, the investigation is to continue to be dealt with in accordance with the provisions of the old legislation.
- (3) An investigation may be undertaken under Division 4 of Part 4.2 of this Law in relation to a trust account or trust money received by a law practice whether that account was established, or that money was received, before, on or after the commencement day.
- (4) A reference in a provision of this clause to provisions of the old legislation (or of regulations under the old legislation) does not include provisions prescribed by the local regulations.

### **25 Investigations under this Law of prior matters**

- (1) An investigation may be commenced under this Law on or after the commencement day in relation to matters (including acts and omissions) occurring before that day, for the purpose of—
  - (a) monitoring compliance by a law practice or person with the provisions of the old legislation (or of regulations under the old legislation) relating to trust money and trust accounts; or
  - (b) determining whether or not a law practice or person has contravened any of those provisions; or
  - (c) detecting or preventing defaults, fraud or defalcation in relation to a law practice; or
  - (d) investigating the affairs or specified affairs of a law practice—  
so long as the same matters had not been, or had not commenced to be, investigated before that day under Chapter 3 of the old legislation.
- (2) This clause does not authorise an investigation to be commenced after the commencement day in relation to a matter if an investigation of the relevant kind could not have been commenced under the old legislation in relation to the matter had the old legislation not been repealed.

## **Division 7 Dispute resolution and professional discipline**

### **26 Current complaints and investigations**

- (1) This clause applies to—
  - (a) a complaint made under old Chapter 4 but not disposed of before the commencement day; or

- (b) an investigation referred to in old Chapter 4 that had begun but had not been completed before the commencement day.
- (2) On and after the commencement day—
  - (a) the complaint or investigation is to continue to be dealt with in accordance with the provisions of the old legislation; and
  - (b) for that purpose, the complaint or investigation is to continue to be dealt with by the entity responsible for dealing with it under those provisions (the *current entity*).
- (3) Subclause (2)(b) does not apply if a local regulation or other legislation of this jurisdiction directs that another entity referred to in this Law (the *substituted entity*) is to deal with the complaint or investigation instead of the current entity.
- (4) The substituted entity may have regard to anything done by the current entity before, on or after the commencement day but before the direction takes effect.

## **27 Complaints and investigations under this Law of prior conduct**

- (1) This clause applies to conduct that—
  - (a) happened or is alleged to have happened before the commencement day; and
  - (b) could have been, but was not, the subject of a complaint (or, if relevant, a request for dispute resolution) under old Chapter 4.
- (2) A complaint may be made under this Law on or after the commencement day in relation to the conduct, even if the conduct could not be the subject of a complaint under this Law if it had happened on or after the commencement day.
- (3) An investigation may be commenced under this Law on or after the commencement day in relation to the conduct, so long as the same conduct had not been, or had not commenced to be, investigated before that day under the old legislation.
- (4) The complaint may be made, or the investigation may be commenced, even if the conduct could not be the subject of a complaint under this Law if it had happened after the commencement day.
- (5) This Law applies (with the necessary modifications) in relation to the conduct.
- (6) However, disciplinary action may not be taken against a person under this Law in relation to the conduct if it is more onerous than the disciplinary action that could have been taken against the person under the old legislation in relation to the conduct.
- (7) This clause does not authorise an investigation to be commenced after the commencement day in relation to the conduct if an investigation of the relevant kind could not have been commenced under the old legislation in relation to the conduct had the old legislation not been repealed.

## **Division 8 External intervention**

### **28 External intervention**

- (1) This clause applies to—
  - (a) any appointment made under old Chapter 5 before the commencement day and subsisting immediately before that day; or
  - (b) any other act, matter or thing done under that Chapter before the commencement day and having effect immediately before that day.

- (2) On and after the commencement day—
  - (a) the appointment or other act, matter or thing operates or has effect for the purposes of this Law as if it had been duly made or done under Chapter 6 of this Law; and
  - (b) any function under this Law may be exercised in relation to the appointee or the other act, matter or thing by the entity responsible under the old legislation (the *current entity*).
- (3) Subclause (2)(b) does not apply if a local regulation or other legislation of this jurisdiction directs that another entity referred to in this Law (the *substituted entity*) is to exercise the function.
- (4) The substituted entity may have regard to anything done by the current entity before, on or after the commencement day but before the direction takes effect.

## **Division 9      Other provisions**

### **29    Injunctions**

An injunction made or granted under the old legislation and in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an injunction under Part 9.6 of this Law as applied in this jurisdiction.

### **30    Offences**

Nothing in this Schedule operates—

- (a) to create an offence retrospectively or to increase the penalty for an offence retrospectively; or
- (b) to create a liability for a contravention of a civil penalty provision retrospectively or to increase the penalty for a contravention of a civil penalty provision retrospectively.