

Passed by both Houses



New South Wales

Legal Profession Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Legal Profession Act 2004 No 112	2
4 Amendment of other Acts	2
5 Amendment of Legal Profession Regulation 2005	2
6 Repeal of Act	2
Schedules	
1 Amendment of Chapter 1 of Legal Profession Act 2004	3
2 Amendment of Chapter 2 of Legal Profession Act 2004	5
3 Amendment of Chapter 3 of Legal Profession Act 2004	9
4 Amendment of Chapter 4 of Legal Profession Act 2004	17
5 Amendment of Chapter 5 of Legal Profession Act 2004	20
6 Amendment of Chapter 7 of Legal Profession Act 2004	21
7 Amendment of Chapter 8 of Legal Profession Act 2004	25
8 Amendment of Schedule 9 to Legal Profession Act 2004	27
9 Amendment of other Acts	34
10 Amendment of Legal Profession Regulation 2005	38

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, , 2006*



Legal Profession Amendment Bill 2006

Act No , 2006

An Act to amend the *Legal Profession Act 2004* in relation to the prohibition on engaging in unqualified legal practice, the grant of practising certificates, the penalties for and the investigation and prosecution of advertising offences, compensation orders, costs disclosures, costs agreements, costs assessments, foreign lawyers, and in other respects; to amend other Acts and the *Legal Profession Regulation 2005* to make consequential and other amendments; and for other purposes.

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

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Legal Profession Act 2004 No 112

The *Legal Profession Act 2004* is amended as set out in Schedules 1–8.

4 Amendment of other Acts

The Acts specified in Schedule 9 are amended as set out in that Schedule.

5 Amendment of Legal Profession Regulation 2005

The *Legal Profession Regulation 2005* is amended as set out in Schedule 10.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Chapter 1 of Legal Profession Act 2004

(Section 3)

[1] Section 4 Definitions

Omit “or issue” from the definition of *admission to the legal profession* in section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

grant of a practising certificate includes the issue of a practising certificate.

show cause event, in relation to a person, means:

- (a) his or her becoming bankrupt or being served with notice of a creditor’s petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth, or
- (b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth 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
- (c) his or her applying to take the benefit of any law 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, or
- (d) his or her conviction for a serious offence or a tax offence, whether or not:
 - (i) the offence was committed in or outside this jurisdiction, or
 - (ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires, or

Legal Profession Amendment Bill 2006

Schedule 1

Amendment of Chapter 1 of Legal Profession Act 2004

- (iii) other persons are prohibited from disclosing the identity of the offender.

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

(Section 3)

[1] Section 14 Prohibition on engaging in legal practice when not entitled

Omit “for fee, gain or reward” from section 14 (1).

[2] Section 45 Application for grant or renewal of local practising certificate

Insert after section 45 (5):

- (6) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.

Note. The purpose of this subsection is to deal with a case where a person practises both in Australia and overseas. In that case, overseas practice is to be disregarded (even if it forms the principal portion of the person’s overall practice), so that eligibility is determined by reference only to the person’s practice in Australia.

- (7) An Australian lawyer is also eligible to apply for the grant or renewal of a local practising certificate if the lawyer is of a class or description prescribed by the regulations. The regulations may provide that a Council has a discretion as to whether or not to grant or renew a local practising certificate to a person in his or her capacity as an Australian lawyer of that class or description.

Note. The purpose of this subsection is to enable regulations to be made conferring eligibility on an Australian lawyer who is not otherwise eligible to apply for a local practising certificate. Regulations could be made conferring eligibility, for example, on an Australian lawyer who practises exclusively overseas, or an Australian lawyer who holds a public office of a specified kind.

[3] Section 54 Statutory condition regarding practice as a barrister

Insert at the end of the section:

(2) Subsection (1) does not apply to:

- (a) a barrister who is, or who is of a class or description of barristers, specified by the Bar Council for the purposes of this section, or
- (b) a barrister who is of a class or description of barristers prescribed by the regulations for the purposes of this section,

to the extent respectively specified by the Bar Council or prescribed by the regulations.

[4] Section 65 Definition of “show cause event”

Omit the section.

[5] Section 66 Applicant for local practising certificate—show cause event

Omit “issue” wherever occurring in section 66 (7) and (8).

Insert instead “grant”.

[6] Section 78 Immediate suspension of local practising certificate

Omit “section 61” from section 78 (2) (a). Insert instead “section 61 (4)”.

[7] Section 85 Regulation of advertising and other marketing of services

Omit “100 penalty units” wherever occurring in section 85 (2) and (8).

Insert instead “200 penalty units”.

[8] Section 85 (12)

Omit the subsection.

[9] Section 102 Special provisions about interstate legal practitioner engaging in unsupervised legal practice as solicitor in this jurisdiction

Insert “as a solicitor” after “practice” where firstly occurring.

- [10] Section 105 Consideration and investigation of applicants or holders**
Omit “authority” from section 105 (1) (c). Insert instead “Council”.
- [11] Section 129 Show cause procedure for cancellation of local practising certificate following foreign regulatory action**
Omit “lawyer” from section 129 (3). Insert instead “practitioner”.
- [12] Section 184 Definitions**
Omit the definition of *show cause event*.
- [13] Section 193 Advertising**
Omit “the practice of law” wherever occurring in section 193 (1).
Insert instead “legal practice engaged in”.
- [14] Section 195 Trust money and trust accounts**
Insert “and Australian legal practitioners” after “practices” in section 195 (1).
- [15] Section 195 (3)**
Insert “, the regulations or any legal profession rule” after “this Act”.
- [16] Section 203 Requirements regarding applications for grant or renewal of registration**
Omit “carrying on the practice of law” from section 203 (2) (f) (i).
Insert instead “engaging in legal practice”.
- [17] Section 203 (2) (f) (i)**
Omit “carry on the practice of law”. Insert instead “engage in legal practice”.
- [18] Section 203 (2) (f) (ii)**
Omit “carrying on any practice of law”.
Insert instead “engaging in legal practice”.

Legal Profession Amendment Bill 2006

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

[19] Section 203 (2) (g)

Omit “the practice of law”. Insert instead “legal practice engaged in”.

[20] Section 203 (2) (g)

Omit “the applicant’s practice of law”.

Insert instead “legal practice by the applicant”.

[21] Section 203 (3) (b)

Omit “practise law”. Insert instead “engage in legal practice”.

[22] Section 205 Requirement to grant or renew registration if criteria satisfied

Omit “the practice of law” wherever occurring in section 205 (1) (b) and (c) (ii).

Insert instead “legal practice”.

[23] Section 205 (1) (c) (i)

Omit “carrying on the practice of law”.

Insert instead “engaging in legal practice”.

[24] Section 206 Refusal to grant or renew registration

Omit “carries on the practice of law” from section 206 (2) (h).

Insert instead “engages in legal practice”.

Schedule 3 Amendment of Chapter 3 of Legal Profession Act 2004

(Section 3)

[1] Section 290 Payment of certain costs and expenses from Fund

Omit “a Council in exercising its functions” from section 290 (1) (k).
Insert instead “a Council or the Commissioner in exercising functions”.

[2] Section 290 (1) (p)

Insert after section 290 (1) (o):

- (p) without limiting any other paragraph, the costs of a Council or the Commissioner in exercising functions under section 85 (Regulation of advertising and other marketing of services) or regulations under that section (including the prosecution of offences under that section or those regulations).

[3] Section 297 Application of Part to community legal centres

Omit “an Australian legal practitioner” from section 297 (2) (a).
Insert instead “a law practice”.

[4] Section 297 (2) (b)

Omit “an Australian legal practitioner on behalf of another person in the course of practising as an Australian legal practitioner”.
Insert instead “a law practice on behalf of another person”.

[5] Section 309 Disclosure of costs to clients

Insert “, whether a specific rate or a benchmark rate,” after “(if any)” in section 309 (1) (e).

[6] Section 309 (1) (i) (ii)

Omit the subparagraph. Insert instead:

- (ii) the setting aside of a costs agreement or a provision of a costs agreement under section 328

(Setting aside costs agreements or provisions of costs agreements),

[7] Section 309 (1A) and (1B)

Insert after section 309 (1):

- (1A) For the purposes of subsection (1) (e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.
- (1B) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.

[8] Section 312 Exceptions to requirement for disclosure

Omit section 312 (1) (c). Insert instead:

- (c) if the client or prospective client is:
 - (i) a law practice or an Australian legal practitioner, or
 - (ii) 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 (respectively within the meaning of the *Corporations Act 2001* of the Commonwealth), or
 - (iii) a financial services licensee (within the meaning of that Act), or
 - (iv) a liquidator, administrator or receiver (as respectively referred to in that Act), or
 - (v) a partnership that carries on the business of providing professional services if the partnership consists of 20 or more members or if the partnership would be a large proprietary company (within the meaning of that Act) if it were a company, or

- (vi) a proprietary company (within the meaning of that Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required, or
- (vii) an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure, or
- (viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth,

[9] Section 317 Effect of failure to disclose

Insert “or a provision of the costs agreement” after “the costs agreement” in section 317 (2).

[10] Section 321 Interest on unpaid legal costs

Insert “, whether the bill is given in the form of a lump sum bill or an itemised bill” after “Part” in section 321 (1).

[11] Section 321 (4) (a)

Omit “prescribed under the *Supreme Court Act 1970*”.

Insert instead “prescribed by rules under section 101 (Interest after judgment) of the *Civil Procedure Act 2005*”.

[12] Section 321 (5)

Insert after section 321 (4):

- (5) Subsection (1) applies in relation to a bill of costs given in the form of a lump sum bill even if the client afterwards requests or is afterwards given an itemised bill.

[13] Section 323 Conditional costs agreements

Insert after section 323 (4):

(4A) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement if disclosure under:

- (a) section 309 (Disclosure of costs to clients), or
- (b) section 310 (1) (Disclosure if another law practice is to be retained),

in relation to the agreement was not or would not be required in the circumstances referred to in section 312 (1) (c) or (d) (Exceptions to requirement for disclosure).

[14] Section 324 Conditional costs agreements involving uplift fees

Omit section 324 (4). Insert instead:

- (4) If a conditional costs agreement relates to a litigious matter, the premium must not exceed 25% of the legal costs (excluding unpaid disbursements) otherwise payable.

[15] Section 327 Certain costs agreements are void

Insert after section 327 (3):

- (3A) A law practice that has entered into a costs agreement in contravention of section 324 (2)–(5) (Conditional costs agreements involving uplift fees) is not entitled to recover the whole or any part of the uplift fee and must repay any amount received in respect of the uplift fee to the person from whom it was received.

[16] Section 327 (4)

Omit “section 324”. Insert instead “section 324 (1)”.

[17] Section 328 Setting aside costs agreements or provisions of costs agreements

Insert “or a provision of a costs agreement” after “a costs agreement” wherever occurring in section 328 (1) and the note to the subsection.

[18] Section 328 (1A)

Insert after section 328 (1):

(1A) The costs assessor may:

- (a) set aside merely a provision of the costs agreement even if the client applied for the whole agreement to be set aside, or
- (b) set aside the whole costs agreement even if the client applied merely for a provision of the agreement to be set aside.

[19] Section 328 (4)

Insert “or a provision of a costs agreement” after “a costs agreement”.

[20] Section 328 (4) and (5)

Insert “or the provision of the agreement” after “the agreement” wherever occurring.

[21] Section 328 (6)

Insert “or the provision of the costs agreement” after “agreement”.

[22] Section 328 (11)

Insert after section 328 (10):

- (11) Subdivision 6 (Appeals) of Division 11 applies in relation to a determination to make, or not make, an order under subsection (1) or (4) as if references in that Subdivision to an application for a costs assessment were references to an application to set aside a costs agreement or a provision of a costs agreement.

[23] Section 331 Legal costs cannot be recovered unless bill has been served

Omit “A law practice” from section 331 (1).

Insert instead “Subject to section 332A (Person may request itemised bill), a law practice”.

[24] Section 332A

Insert after section 332:

332A Person may request itemised bill

- (1) Within 30 days after receiving a lump sum bill, a person may request the law practice to give them an itemised bill.
- (2) If a person makes a request under subsection (1), the law practice must not commence any proceedings to recover those costs until at least 30 days after complying with the request.
- (3) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (4) Section 332 (2)–(7) (Bills) apply to the giving of an itemised bill under this section.

[25] Section 333 Notification of client's rights

Omit section 333 (a) (ii). Insert instead:

- (ii) the setting aside of a costs agreement or a provision of a costs agreement under section 328 (Setting aside costs agreements or provisions of costs agreements),

[26] Section 333 (2)

Insert at the end of the section after the note:

- (2) Subsection (1) does not apply to a bill if disclosure under:
 - (a) section 309 (Disclosure of costs to clients), or
 - (b) section 310 (1) (Disclosure if another law practice is to be retained),in relation to the relevant costs agreement was not or would not be required in the circumstances referred to in section 312 (1) (c) or (d) (Exceptions to requirement for disclosure).

[27] Section 352 Application for costs assessment by law practice giving bill

Omit “a costs assessor” from section 352 (1).

Insert instead “the Manager, Costs Assessment”.

[28] Section 361 Assessment of complying costs agreements

Omit “costs, and” from section 361 (1) (b). Insert instead “costs”.

[29] Section 361 (1) (c)

Omit the paragraph.

[30] Section 361 (2)

Omit the subsection and note. Insert instead:

- (2) This section has effect subject to section 328 but does not limit the operation of section 365.

Note. Section 328 provides for the setting aside of a costs agreement or a provision of a costs agreement. Section 365 provides that a costs assessor may have regard to, but not apply the terms of, a costs agreement in assessing party/party costs.

[31] Section 368 Certificate as to determination

Omit “to each party and the Manager, Costs Assessment” from section 368 (1).

[32] Section 368 (5A)

Insert after section 368 (5):

- (5A) The costs assessor must forward the certificate or a copy of the certificate to:

- (a) the Manager, Costs Assessment, and
- (b) each party to the assessment, unless subsection (6) applies.

[33] Section 368 (6) (a)

Omit the paragraph. Insert instead:

- (a) forward a copy of the certificate to the Manager, Costs Assessment only, and

[34] Section 369 Recovery of costs of costs assessment

Insert after section 369 (2):

(2A) 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 364 (Assessment of costs—costs ordered by court or tribunal) are payable and include the determination in the certificate issued under this section in relation to the assessment.

[35] Section 369 (5)

Insert “and forward” after “issue”.

[36] Section 369 (10)

Omit “means”. Insert instead “includes”.

[37] Section 369 (10)

Insert “also” before “includes”.

[38] Section 373 Application by party for review of determination

Omit “the issue of” from section 373 (1).

[39] Section 373 (1)

Insert “has been forwarded to the parties” before “that”.

[40] Section 373 (1), note

Insert “or a provision of the costs agreement” after “the costs agreement”.

[41] Section 485 Failure to obtain fidelity insurance for regulated mortgage

Omit “issue” from section 485 (1). Insert instead “grant”.

Schedule 4 Amendment of Chapter 4 of Legal Profession Act 2004

(Section 3)

[1] Section 508 Practitioner to be notified of complaint

Insert “to” after “likely” in section 508 (3).

[2] Section 508 (3) (a)–(d)

Omit “to” wherever occurring at the beginning of each paragraph.

[3] Section 511 Summary dismissal of complaints

Omit “authority” wherever occurring in section 511 (1) (a) and (h).
Insert instead “Commissioner or Council”.

[4] Section 511 (1) (f)

Omit “an”. Insert instead “any”.

[5] Section 533 Referral of matters to costs assessors

Insert after section 533 (4):

- (5) No fee is payable under section 354 (How to make an application for costs assessment) for any such application.

[6] Sections 537 (1) (c) and (2), 542 (1) (c), 559 (2) (b) and 571 (5) (b) (i)

Omit “section 540 (Summary conclusion of complaint procedure by caution, reprimand or compensation order)” wherever occurring.

Insert instead “section 540 (Summary conclusion of complaint procedure by caution, reprimand, compensation order or imposition of conditions)”.

[7] Section 540 Summary conclusion of complaint procedure by caution, reprimand, compensation order or imposition of conditions

Insert after section 540 (2) (c):

- (d) determine that a specified condition be imposed on the practitioner’s practising certificate.

[8] Section 540 (5)

Insert “or that a condition be imposed on an Australian legal practitioner’s practising certificate under this section,” after “this section,”.

[9] Section 540 (6)

Insert after section 540 (5) after the note:

- (6) If the Commissioner determines that a specified condition be imposed on a practising certificate, the appropriate Council is required to impose and maintain the condition. The condition may be amended, suspended, reinstated or revoked with the concurrence of the Commissioner.

[10] Section 570 Request by complainant for compensation order

Omit section 570 (1). Insert instead:

- (1) A complainant may request a compensation order in respect of loss suffered by:
- (a) the complainant, or
 - (b) another person who is a client of the law practice to which the Australian legal practitioner concerned belongs,
- (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*.

[11] Section 570 (2)

Omit “the complainant”. Insert instead “the aggrieved person”.

[12] Section 571 Compensation orders

Omit “complainant” from section 571 (1) and (2) wherever occurring. Insert instead “aggrieved person”.

[13] Section 572 Prerequisites to making of compensation orders

Omit “complainant” from section 572 (1) (a).
Insert instead “aggrieved person”.

[14] Section 572 (2)

Omit “complainant”. Insert instead “aggrieved person”.

[15] Section 573 Making of compensation orders

Insert “539 or” after “section” in section 573 (3) (a) (i).

[16] Section 573 (7)

Insert after section 573 (6):

(7) 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.

[17] Section 575 Other remedies not affected

Omit “a complainant”. Insert instead “an aggrieved person”.

[18] Section 575

Omit “the complainant”. Insert instead “the aggrieved person”.

[19] Section 599

Insert after section 598:

599 Conditions imposed under this Chapter

Any requirements of Chapter 2 (General requirements for engaging in legal practice) relating to the imposition of conditions do not apply to conditions imposed under this Chapter.

Legal Profession Amendment Bill 2006

Schedule 5 Amendment of Chapter 5 of Legal Profession Act 2004

Schedule 5 Amendment of Chapter 5 of Legal Profession Act 2004

(Section 3)

[1] Section 615 Circumstances warranting external intervention

Omit “law practice” from section 615 (d). Insert instead “practice”.

[2] Section 653 Reports by external intervener

Omit “authority” from section 653 (3).
Insert instead “Law Society Council”.

Schedule 6 Amendment of Chapter 7 of Legal Profession Act 2004

(Section 3)

[1] Section 688 Functions of Commissioner

Omit “issue” from section 688 (1) (j). Insert instead “grant”.

[2] Section 689 Commissioner may require Councils to provide information

Omit “issue” wherever occurring in section 689 (1) (d).
Insert instead “grant”.

[3] Section 689A

Insert after section 689:

689A Functions of Commissioner in relation to advertising offences

- (1) In addition to the Commissioner’s other functions, the Commissioner may institute prosecutions for an offence against section 85 (Regulation of advertising and other marketing of services) or regulations made under that section.
- (2) If the Commissioner suspects on reasonable grounds that a person (whether or not an Australian lawyer) may have committed an offence against section 85 or regulations made under that section, the Commissioner or a person authorised by the Commissioner may conduct an investigation in relation to the matter.
- (3) The Commissioner or authorised person has and may exercise, in relation to the matter referred to in subsection (2), the same powers as an investigator has under Chapter 6 (Provisions relating to investigations) in relation to a matter that is the subject of a complaint under Chapter 4 (Complaints and discipline).
- (4) Accordingly, the provisions of Chapter 6 apply in relation to the matter referred to in subsection (2), and so apply with any necessary modifications and as if a reference to an Australian lawyer included a reference to a lay person.

- (5) This section does not limit any powers that may be exercised apart from this section by the Commissioner or by any other person.

[4] Section 696 Functions of Bar Council

Omit “or to an officer of the Bar Council” from section 696 (2).

Insert instead “, to an officer of the Bar Council or to an employee of the Bar Association”.

[5] Section 696 (3) (a)

Omit the paragraph. Insert instead:

- (a) a person to whom Chapter 4 (Complaints and discipline) applies, other than an Australian legal practitioner who is, or was at the relevant time, a solicitor, or

[6] Section 696 (4)

Insert after section 696 (3):

- (4) Without limiting any other provision of this section, the Bar Council may investigate and bring proceedings for a breach of Part 2.2 by any person, including a lay person.

[7] Section 699 Functions of Law Society Council

Omit “or to an officer of the Law Society Council” from section 699 (3).

Insert instead “, to an officer of the Law Society Council or to an employee of the Law Society”.

[8] Section 699 (4) (a)

Omit the paragraph. Insert instead:

- (a) a person to whom Chapter 4 (Complaints and discipline) applies, other than an Australian legal practitioner who is, or was at the relevant time, entitled to engage in legal practice only as or in the manner of a barrister, or

[9] Section 699 (5)

Insert after section 699 (4):

- (5) Without limiting any other provision of this section, the Law Society Council may investigate and bring proceedings for a breach of Part 2.2 by any person, including a lay person.

[10] Section 701 Purpose

Omit “locally registered foreign lawyers”.

Insert instead “Australian-registered foreign lawyers”.

[11] Section 702 Rules for barristers

Omit “practice” from section 702 (1).

Insert instead “engaging in legal practice”.

[12] Section 702 (2)

Omit the subsection. Insert instead:

- (2) The Bar Council may make rules for or with respect to engaging in legal practice as an Australian-registered foreign lawyer who engages in legal practice only as or in the manner of a barrister.

[13] Section 703 Rules for solicitors

Omit “practice” from section 703 (1).

Insert instead “engaging in legal practice”.

[14] Section 703 (2)

Omit the subsection. Insert instead:

- (2) The Law Society Council may make rules for or with respect to engaging in legal practice as an Australian-registered foreign lawyer who engages in legal practice as or in the manner of a solicitor.

Legal Profession Amendment Bill 2006

Schedule 6 Amendment of Chapter 7 of Legal Profession Act 2004

[15] Section 706 Subject-matter of legal profession rules

Omit “locally registered foreign lawyers” from section 706 (1).
Insert instead “Australian-registered foreign lawyers”.

[16] Section 711 Binding nature of legal profession rules

Omit “locally registered foreign lawyers” from section 711 (1).
Insert instead “Australian-registered foreign lawyers”.

Schedule 7 Amendment of Chapter 8 of Legal Profession Act 2004

(Section 3)

[1] Section 721 Disclosure of information by local regulatory authorities

Insert after section 721 (2):

- (2A) The regulations may authorise a local regulatory authority to disclose information to a person or body prescribed, or of a class prescribed, by the regulations relating to or arising under this Act or a corresponding law, subject to any limitations or restrictions specified in the regulations.

[2] Section 722A

Insert after section 722:

722A Protection of applications for referral for pro bono legal services

- (1) A protected person is not required to divulge or produce to any person, court or tribunal (whether in response to a subpoena or otherwise) any information or document received by a protected person in connection with an application made by or on behalf of a person for a referral for the provision of legal services on a pro bono basis.
- (2) This section has effect despite section 730A (Duty to report suspected offences).
- (3) In this section:
- protected person* means:
- (a) the Bar Association or Law Society, or
 - (b) a Council or a member of a Council, or
 - (c) a committee or member of a committee of the Bar Association, Law Society or a Council, or
 - (d) an Australian legal practitioner to whom a person or body mentioned in a preceding paragraph of this definition gives any information or document referred to in subsection (1) for the purpose of advising such a person or body on the application, or

Legal Profession Amendment Bill 2006

Schedule 7 Amendment of Chapter 8 of Legal Profession Act 2004

- (e) an employee or agent of, or a person acting at the direction of, a person or body mentioned in a preceding paragraph of this definition.

[3] Section 730A Duty to report suspected offences

Insert after section 730A (3):

- (4) This section does not apply to:
 - (a) offences against this Act or the *Legal Profession Act 1987* or the regulations under either Act, or
 - (b) offences specified, or of a class or description specified, by the regulations for the purposes of this section.

[4] Section 738 Regulations

Insert “, unless another maximum penalty is authorised by another provision of this Act to be included in relation to the offence concerned” after “units” in section 738 (3).

Schedule 8 Amendment of Schedule 9 to Legal Profession Act 2004

(Section 3)

[1] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Legal Profession Amendment Act 2006

[2] Schedule 9, clause 13 Multi-disciplinary partnerships

Omit “section 137 (Notice of intention to start providing legal services)” from clause 13 (1).

Insert instead “section 167 (Notice of intention to start practice in multi-disciplinary partnership)”.

[3] Schedule 9, clause 17A

Insert after clause 17:

17A Proceedings before Tribunal instituted on or after 1 October 2005

(1) Proceedings before the Tribunal that were instituted on or after 1 October 2005 but before the commencement of this clause in respect of a complaint about conduct occurring before 1 October 2005 are to be dealt with in accordance with:

- (a) this Act (including clauses 16 and 17 of this Schedule), and
- (b) the *Administrative Decisions Tribunal Act 1997* (as in force on or after 1 October 2005),

except in so far as a direction of the President of the Tribunal under this clause otherwise provides.

(2) The President of the Tribunal may direct that the proceedings be dealt with in accordance with:

- (a) the old Act, or
- (b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction.

- (3) The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the *Administrative Decisions Tribunal Act 1997* at or at any time before the commencement of this clause.
- (4) The President of the Tribunal may give any such direction at any stage of the proceedings.
- (5) Any decisions of the Tribunal or directions of the President of the Tribunal that:
 - (a) were made or given before the commencement of this clause, and
 - (b) would have been valid had the *Legal Profession Amendment Act 2006* (which inserted this clause and omitted clause 41 (2) (Pending proceedings) of Schedule 5 (Savings and transitional provisions) to the *Administrative Decisions Tribunal Act 1997*) been in force at the relevant time,

are taken to have been validly made or given.

Note. The purpose of clause 17A is to provide for determining how disciplinary proceedings commenced in the Tribunal on or after 1 October 2005 but before the commencement of the clause are to be dealt with.

Clauses 16 and 17 in effect provide that those proceedings are to be dealt with substantially in accordance with this Act. However, clause 41 (2) of Schedule 5 to the *Administrative Decisions Tribunal Act 1997* in effect provided that those proceedings are to be initiated and dealt with in accordance with the *Legal Profession Act 1987* and in accordance with the *Administrative Decisions Tribunal Act 1997* as in force before the commencement of clause 41. Clause 41 (2) was repealed by the *Legal Profession Amendment Act 2006*.

Clause 17A provides that the proceedings are to be dealt with in accordance with this Act and the *Administrative Decisions Tribunal Act 1997* as currently in force, subject to any directions that the President is authorised to give under the clause.

[4] Schedule 9, clauses 22 and 22A

Omit clause 22. Insert instead:

22 Pending appeals or reviews

- (1) An appeal or review that was pending under or in relation to any matter under the old Act immediately before 1 October

2005 is to be dealt with as if this Act had not been enacted, except in so far as a direction of the Supreme Court or the President of the Tribunal, as the case requires, under this clause otherwise provides.

- (2) The Supreme Court or the President of the Tribunal, as the case requires, may direct that the appeal or review proceedings be dealt with in accordance with the provisions of:
 - (a) this Act, or
 - (b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction.

Those provisions apply accordingly, and so apply with any necessary adaptations.

- (3) The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the *Administrative Decisions Tribunal Act 1997* at or at any time before the commencement of this clause.
- (4) The Supreme Court or the President of the Tribunal, as the case requires, may give any such direction at any stage of the proceedings.
- (5) The Supreme Court or the Tribunal, as the case requires, may make orders declaring how the decision on the appeal or review is to have effect in relation to the provisions of this Act.
- (6) Any decisions of the Supreme Court or the Tribunal or directions of the Supreme Court or the President of the Tribunal that:
 - (a) were made or given before the commencement of this clause, and
 - (b) would have been valid had the *Legal Profession Amendment Act 2006* (which substituted this clause) been in force at the relevant time,

are taken to have been validly made or given.

22A New appeals or reviews about old matters

- (1) A matter arising under the old Act may be the subject of an appeal or review made or applied for on or after 1 October 2005 if the appeal or review could have been made or applied for had this Act not been enacted.
- (2) The appeal or review may be made or applied for under the provisions of either the old Act or this Act (even if the matter could not otherwise be the subject of appeal or review under this Act if the matter had arisen on or after 1 October 2005).
- (3) The appeal or review may be dealt with under this Act (even if the matter could not otherwise be the subject of appeal or review under this Act if the matter had arisen after 1 October 2005), except in so far as a direction of the Supreme Court or the President of the Tribunal, as the case requires, under this clause otherwise provides.
- (4) The Supreme Court or the President of the Tribunal, as the case requires, may direct that the appeal or review proceedings be dealt with in accordance with the provisions of:
 - (a) the old Act, or
 - (b) the old Act and this Act as regards different aspects of the proceedings, as indicated in the direction.

Those provisions apply accordingly, and so apply with any necessary adaptations.

- (5) The President of the Tribunal may, for the purposes of this clause, direct that the Tribunal be constituted as determined by the President or the Divisional Head of the Legal Services Division, being a determination that is consistent with requirements for the constitution of the Division under the *Administrative Decisions Tribunal Act 1997* at or at any time before the commencement of this clause.
- (6) The President may give any such direction at any stage of the proceedings.
- (7) The Supreme Court or the Tribunal, as the case requires, may make orders declaring how the decision on the appeal or review is to have effect in relation to the provisions of this Act.

- (8) Any decisions of the Supreme Court or the Tribunal or directions of the Supreme Court or the President of the Tribunal that:
- (a) were made or given before the commencement of this clause, and
 - (b) would have been valid had the *Legal Profession Amendment Act 2006* (which inserted this clause) been in force at the relevant time,
- are taken to have been validly made or given.

[5] Schedule 9, clauses 28–30

Insert after clause 27:

28 Existing solicitor corporations

- (1) This clause applies to a solicitor corporation that was formed under Division 1 of Part 10A of the old Act and that was in existence immediately before the repeal of that Part by the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.
- (2) Any such solicitor corporation in existence immediately before 1 October 2005 is taken for all purposes to have continued in existence on and from that date, and Part 10A of the old Act continues to apply to the solicitor corporation (despite its repeal), until:
 - (a) the registration of the corporation as a company under the *Corporations Act 2001* of the Commonwealth, or
 - (b) the winding up of the corporation in accordance with that Part or with the regulations made under this Schedule.
- (3) Any such regulations may apply provisions of the *Corporations Act 2001* of the Commonwealth or any other Act, with or without modification.
- (4) Solicitor corporations are taken to be, and to have been on and after 1 October 2005, law practices within the meaning of this Act. The regulations may modify the operation of this Act in relation to solicitor corporations.

- (5) The transfer, in accordance with the *Corporations Act 2001* of the Commonwealth, of the incorporation of any such solicitor corporation to incorporation under that Act is authorised.

29 Solicitor corporation becoming company

- (1) This clause applies to a corporation that is registered as a company under the *Corporations Act 2001* of the Commonwealth and that immediately before its registration as such a company was a solicitor corporation to which clause 28 applied.
- (2) The corporation:
- (a) ceases to be a solicitor corporation when it is registered as a company under the *Corporations Act 2001* of the Commonwealth, and
 - (b) becomes an incorporated legal practice (subject to and in accordance with section 134 of this Act and any other relevant provisions of Part 2.6 of this Act).
- (3) Part 10A of the old Act ceases to apply to the corporation.
- (4) The corporation must, within the period of 7 days commencing with the day on which the corporation becomes registered as a company, give:
- (a) the Law Society Council, and
 - (b) the Commissioner for Fair Trading in the Department of Commerce or (if that position does not exist) the Director-General of the Department of Commerce,
- a written notice of that fact.
- Maximum penalty: 50 penalty units.
- (5) Sections 137 and 138 do not apply, and are taken not to have applied, to the corporation if it gives the Law Society Council the notice referred to in subclause (4) within the required period and in the approved form.

30 Costs in criminal matters

- (1) Section 353 (3) (Application for assessment of party/party costs) does not affect, and is taken never to have affected, rules of court, or the power to make rules of court, under section 253

(Court may order payment of costs) of the *Criminal Procedure Act 1986* in connection with criminal proceedings in any court.

- (2) The *Land and Environment Court Rules (Amendment No 16) 2005* (the **amending Rules**) are taken to have been validly made.
- (3) References in Division 3 of Part 16 of the *Land and Environment Court Rules 1996* as inserted by the amending Rules to provisions of the old Act are taken to include references to the corresponding provisions of this Act.

31 Qualifications of members of Medical Board and Mental Health Review Tribunal

Despite clause 26, an amendment made by Schedule 9.11 or 9.12 [1], [2] or [5] to the *Legal Profession Amendment Act 2006* is taken to have effect on and from the commencement day.

Schedule 9 Amendment of other Acts

(Section 4)

9.1 Aboriginal Land Rights Act 1983 No 42

Section 179 Constitution of Pecuniary Interest Tribunal

Omit “a barrister or solicitor” from section 179 (1).

Insert instead “an Australian legal practitioner”.

9.2 Administrative Decisions Tribunal Act 1997 No 76

Schedule 5 Savings and transitional provisions

Omit clause 41 (2).

9.3 Architects Act 2003 No 89

Sections 45 (3) and 60 (2) (d)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

9.4 Casino Control Act 1992 No 15

Sections 23 (7), 59 (7), 135 (2) (b) and 143A (1) (b)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian lawyer”.

9.5 Chiropractors Act 2001 No 15

[1] Section 87 Membership of the Board

Omit “legal practitioner” from section 87 (2) (f).
Insert instead “Australian lawyer”.

[2] Section 100 Chairperson and Deputy Chairpersons of the Tribunal

Omit “a legal practitioner” from section 100 (1).
Insert instead “an Australian lawyer”.

[3] Section 100 (1)

Omit “legal practitioners”. Insert instead “Australian lawyers”.

9.6 Health Services Act 1997 No 154

Section 108 Constitution of Committee of Review

Omit “a legal practitioner” from section 108 (2) (a).
Insert instead “an Australian lawyer”.

9.7 Judicial Officers Act 1986 No 100

Section 5 The Commission

Omit “a legal practitioner” from section 5 (5) (a).
Insert instead “an Australian legal practitioner”.

9.8 Law and Justice Foundation Act 2000 No 97

Schedule 1 Constitution and procedure of Board

Omit “a legal practitioner” wherever occurring in clause 2 (2) (c) and (d) and (4).

Insert instead “an Australian legal practitioner”.

9.9 Law Reform Commission Act 1967 No 39

Section 3 Constitution of the Commission

Omit “a lawyer” from section 3 (3) (b).

Insert instead “an Australian legal practitioner”.

9.10 Local Government Act 1993 No 30

Section 488 Constitution of Pecuniary Interest and Disciplinary Tribunal

Omit “a barrister or solicitor” from section 488 (1).

Insert instead “an Australian lawyer”.

9.11 Medical Practice Act 1992 No 94

Section 130 Membership

Omit “a barrister or solicitor” from section 130 (2) (b).

Insert instead “an Australian lawyer”.

9.12 Mental Health Act 1990 No 9

[1] Section 253 Additional provisions relating to members

Omit “barristers and solicitors” from section 253 (1) (a).
Insert instead “Australian lawyers”.

[2] Section 264 Composition of the Tribunal generally

Omit “a barrister or solicitor” from 264 (a).
Insert instead “an Australian lawyer”.

[3] Section 264 (c)

Omit “a barrister, solicitor”. Insert instead “an Australian lawyer”.

[4] Section 265 Composition of the Tribunal for dealing with forensic patients

Omit “a psychiatrist or a barrister or solicitor” from section 265 (c).
Insert instead “an Australian lawyer or a psychiatrist”.

[5] Section 270 Chairperson and votes of members

Omit “a barrister or solicitor, as the case may be,” from section 270 (a).
Insert instead “an Australian lawyer”.

[6] Schedule 4, clause 1 (2) (a) and Schedule 6, clause 1 (1)

Omit “a legal practitioner” wherever occurring.
Insert instead “an Australian lawyer”.

[7] Schedule 6 Provisions relating to members of the Tribunal

Omit “a barrister or a solicitor” from clause 1 (2).
Insert instead “an Australian legal practitioner”.

Schedule 10 Amendment of Legal Profession Regulation 2005

(Section 5)

[1] Clause 24 Restriction on advertising personal injury services

Omit “100 penalty units” from clause 24 (1).
Insert instead “200 penalty units”.

[2] Clause 34 Restrictions on personal injury advertisements

Omit “100 penalty units” wherever occurring.
Insert instead “200 penalty units”.

[3] Clause 110A

Omit the clause. Insert instead:

110A Interest on unpaid legal costs—section 321 (4) (b) of the Act

- (1) This clause is made for the purposes of section 321 (4) (b) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 321 of the Act or under a costs agreement.
- (2) The rate for the period commencing with 1 October 2005 and ending immediately before the date of commencement of subclause (3) is 9%.
- (3) The rate for the period commencing with the date of commencement of this subclause is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.

(4) In this clause:

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target.

relevant date means the date the bill was issued by the law practice concerned.