

Passed by both Houses



New South Wales

Legal Profession Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Legal Profession Act 2004 No 112	2
4 Amendment of Public Notaries Act 1997 No 98	2
5 Amendment of other Acts	2

Schedules

1 Amendment of Chapter 1 of Legal Profession Act 2004	3
2 Amendment of Chapter 2 of Legal Profession Act 2004	4
3 Amendment of Chapter 3 of Legal Profession Act 2004	20
4 Amendment of Chapter 4 of Legal Profession Act 2004	32
5 Amendment of Chapter 5 of Legal Profession Act 2004	38
6 Amendment of Chapter 6 of Legal Profession Act 2004	46
7 Amendment of Chapter 7 of Legal Profession Act 2004	47
8 Amendment of Chapter 8 of Legal Profession Act 2004	48
9 Amendment of Schedule 9 to Legal Profession Act 2004	51
10 Amendment of Public Notaries Act 1997	55
11 Amendment of other Acts	59

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, , 2005*



New South Wales

Legal Profession Amendment Bill 2005

Act No , 2005

An Act to make amendments to the *Legal Profession Act 2004* of a minor, clarifying or machinery nature; to amend the *Public Notaries Act 1997* in relation to the powers of the Supreme Court and Legal Profession Admission Board; and to amend certain Acts to make amendments consequential on the enactment of the *Legal Profession Act 2004*; 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 2005*.

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 1–9.

4 Amendment of Public Notaries Act 1997 No 98

The *Public Notaries Act 1997* is amended as set out in Schedule 10.

5 Amendment of other Acts

The Acts specified in Schedule 11 are amended as set out in that Schedule.

Schedule 1 Amendment of Chapter 1 of Legal Profession Act 2004

(Section 3)

[1] Section 4 Definitions

Omit the definition of *foreign lawyer* from section 4 (1). Insert instead:

foreign lawyer—see the definitions of *Australian-registered foreign lawyer*, *interstate-registered foreign lawyer* and *locally registered foreign lawyer*.

[2] Section 4 (1), definition of “legal costs”

Insert “to” after “pay”.

[3] Section 4 (1), definition of “trust property”

Omit “property received in the course of or in connection with the provision of legal services by a law practice”.

Insert instead “property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice”.

[4] Section 4 (1), definition of “unrestricted practising certificate”

Omit paragraph (c) (iii). Insert instead:

- (iii) a condition under section 41 (4),
- (iv) a condition of a kind prescribed by the regulations, and

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

(Section 3)

[1] Section 17 Associates who are disqualified or convicted persons

Omit “If the Tribunal decides to refuse an application by a person for approval under subsection (3) (c) or to grant the approval subject to conditions, the person may appeal under Chapter 7 of the *Administrative Decisions Tribunal Act 1997* against the decision to an Appeal Panel of the Tribunal.” from section 17 (4).

[2] Section 17 (4)

Insert at the end of the subsection:

Note. Reviews are carried out under Chapter 5 of the *Administrative Decisions Tribunal Act 1997*. Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

[3] Section 18

Omit the section. Insert instead:

18 Prohibition on employment of certain lay associates

- (1) This section applies to a person who is not an Australian legal practitioner and who is or was a lay associate of a law practice that:
 - (a) engages in legal practice principally in this jurisdiction, or
 - (b) employs or employed the person to work principally in this jurisdiction,

and so applies whether or not the law practice subsequently ceased to exist or engage in legal practice principally in this jurisdiction and whether or not any person ceases, by death or otherwise, to be a legal practitioner associate of the law practice.

- (2) On application by a Council, the Tribunal may make an order prohibiting (without approval under section 17 (Associates who are disqualified or convicted persons)) any law practice from employing or paying in connection with the legal practice engaged in by the law practice a specified person to whom this section applies, if:
 - (a) the Tribunal is satisfied that the person is not a fit and proper person to be employed or paid in connection with that legal practice, or
 - (b) the Tribunal is satisfied 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.
- (3) An order under this section may apply to a specified law practice or specified class of law practices or may apply to law practices generally.
- (4) An order under this section may be revoked by the Tribunal on application by a Council or the person against whom the order was made.

[4] Section 24 Eligibility for admission

Omit section 24 (4). Insert instead:

- (4) The Admission Board may exempt a person from the requirements of subsection (1) (a) or (b) or both if satisfied that the person has:
 - (a) sufficient academic qualifications, or
 - (b) sufficient relevant experience in legal practice or relevant service with a government department or government agency,or both so as to render the person eligible for admission, whether the qualifications or experience were obtained wholly or partly in Australia or overseas.
- (4A) An exemption under subsection (4) may be given unconditionally or subject to such conditions relating to the obtaining of further academic qualifications or further legal training as the Admission Board thinks appropriate.

[5] Section 35 Determination of applications for admission

Insert after section 35 (2):

- (3) The Admission Board may require an applicant to provide such further information as it considers relevant to its determination of the application within such time as it specifies.

[6] Section 37A

Insert after section 37:

37A Communication with other authorities

- (1) Without limiting any other functions that it has to seek or obtain information, the Admission Board may communicate with and obtain relevant information from such Australian or overseas authorities as it thinks appropriate in connection with an application under this Part.
- (2) Without limiting any other power that it has to disclose information under this Act, the Admission Board may disclose information to such Australian and overseas authorities as it thinks appropriate 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 such an authority.
- (3) Section 722 (1) extends to the disclosure of information received under subsection (1).

[7] Section 38 Admission rules

Omit section 38 (2) (i) and (j). Insert instead:

- (i) registration and deregistration as, and the discipline of, students-at-law and the qualifications for registration,
- (j) the examination and assessment in academic subjects of candidates for registration, students-at-law or applicants for admission,

[8] Section 38 (2) (l)

Omit the paragraph. Insert instead:

- (l) the exemption by the Board of a person from the requirements of section 24 (1) (a) or (b) as provided by section 24 (4),

[9] Section 38 (3A)

Insert after section 38 (3):

- (3A) Without limiting subsection (1) or the power of the Admission Board to delegate functions under section 718, the rules may:
 - (a) provide for the establishment, dissolution and procedures of committees and subcommittees of the Board, and
 - (b) confer or provide for conferring functions on any such committee or subcommittee, including any functions of the Board, and
 - (c) provide that a committee or subcommittee exercises any of its functions in an advisory capacity or as delegate of the Board.

[10] Part 2.3 Admission of local lawyers

Insert after Division 5:

Division 6 Miscellaneous

38A Non-compellability of certain witnesses

- (1) A person referred to in section 601 (Protection from liability) is not compellable in any legal proceedings 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 Part.
- (2) This section does not apply to:
 - (a) proceedings under Part 3 of the *Royal Commissions Act 1923*, or
 - (b) proceedings before the Independent Commission Against Corruption, or

Legal Profession Amendment Bill 2005

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

- (c) a hearing under the *Special Commissions of Inquiry Act 1983*, or
- (d) an inquiry under the *Ombudsman Act 1974*.

[11] Section 41 Local practising certificates

Omit section 41 (4) and (5). Insert instead:

- (4) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the first-mentioned local practising certificate.

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

Omit “from” from section 45 (2) (a) (i). Insert instead “in”.

[13] Section 45 (3A)

Insert after section 45 (3):

- (3A) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.

[14] Section 45 (5)

Omit “intends”. Insert instead “can reasonably be expected”.

[15] Section 45 (6)–(9)

Omit the subsections.

[16] Section 46 Manner of application

Insert after section 46 (4):

- (5) The appropriate Council may require an applicant to provide such further information as it considers relevant to its determination of the application within such time as it specifies.

[17] Section 47

Omit the section. Insert instead:

47 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 92 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.

[18] Section 48 Grant or renewal of local practising certificate

Insert after section 48 (2) (a) (ii):

- (iii) further information has not been provided as required under section 46 (5), or

[19] Section 48 (7)

Insert at the end of section 48 (7) (e):

- , or
- (f) the required application fees and costs have not been paid.

[20] Section 53 Statutory condition regarding practice as solicitor

Omit section 53 (3). Insert instead:

- (3) A Council may exempt a person from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for the person, if satisfied

Legal Profession Amendment Bill 2005

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

that the person does not need to be supervised or needs to be supervised only for a shorter period, having regard to:

- (a) the length and nature of any legal practice previously engaged in by the person, and
- (b) the length and nature of any legal practice engaged in by any person who previously supervised the person's legal practice.

- (4) An exemption under subsection (3) may be given unconditionally or subject to such conditions as the Council thinks appropriate.

[21] Section 58 Compliance with conditions

Omit section 58 (2).

[22] Section 60 Grounds for suspending or cancelling local practising certificate

Omit "amending,".

[23] Section 60 (2)

Insert at the end of section 60:

- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on a local practising certificate under section 50.

[24] Section 61 Amending, suspending or cancelling local practising certificates

Omit "authority" from section 61 (1). Insert instead "Council".

[25] Section 61 (1)

Omit "(the *show cause notice*)".

[26] Section 61 (2) (a)

Omit "show cause notice". Insert instead "notice under subsection (1)".

[27] Section 61 (2) (b) and (c)

Omit “show cause” wherever occurring.

[28] Section 61 (2) (c)

Insert at the end of section 61 (2) (c) (ii):

, or

- (iii) amend the certificate in a less onerous way the Council considers appropriate because of the representations.

[29] Section 61 (4)

Omit “the authority’s”. Insert instead “its”.

[30] Section 61 (6)

Insert after section 61 (5):

- (6) In this section, *amend* a certificate means amend the certificate under section 50 during its currency, other than at the request of the holder of the certificate.

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

Omit “the subject” from paragraph (a) of the definition of *show cause event*.
Insert instead “being served with notice”.

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

Omit “capable of being unsatisfactory professional conduct or” from section 66 (3).

[33] Section 66 (4)

Omit the subsection. Insert instead:

- (4) However, the applicant need not provide a statement under subsection (2) if the applicant (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously provided to the appropriate Council:
 - (a) a statement under this section, or

Legal Profession Amendment Bill 2005

Schedule 2 Amendment of Chapter 2 of Legal Profession Act 2004

(b) a notice and statement under section 67, explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a local practising certificate.

[34] Section 66 (5)

Omit “section 69”. Insert instead “section 68”.

[35] Section 66 (6)

Omit “a local legal practitioner”. Insert instead “the applicant”.

[36] Section 66 (7) (b)

Omit the paragraph. Insert instead:

(b) has provided a written statement in accordance with this section but, in the opinion of the Council, the applicant has failed to show in the statement that the applicant is a fit and proper person to hold a practising certificate, or

[37] Section 66 (8)

Insert after section 66 (7):

(8) If a Council refuses to issue a local practising certificate under subsection (7) to an applicant, the Council is not required to exercise its functions under section 68 in relation to the application.

[38] Section 67 Holder of local practising certificate—show cause event

Insert “written” before “notice” in section 67 (2) (a).

[39] Section 67 (3)

Omit “capable of being unsatisfactory professional conduct or”.

[40] Section 67 (6) (b)

Omit the paragraph. Insert instead:

- (b) has provided a written statement in accordance with this section but, in the opinion of the Council, the holder has failed to show in the statement that the holder is a fit and proper person to hold a practising certificate, or

[41] Section 67 (7)

Insert after section 67 (6):

- (7) If a Council cancels or suspends a local practising certificate under subsection (6), the Council is not required to exercise its functions under section 68 in relation to the matter.

[42] Section 68 Investigation and consideration of show cause event

Omit “14 days” from section 68 (2). Insert instead “28 days”.

[43] Section 68 (2) (a)

Omit “or notice”.

[44] Section 68 (5)

Omit “statement or notice” wherever occurring.
Insert instead “written statement”.

[45] Section 70 No decision in required period—suspension of practising certificate and referral to Commissioner

Insert “The decision of the Tribunal on the application is an original decision for the purposes of the *Administrative Decisions Tribunal Act 1997*.” at the end of section 70 (3).

[46] Section 75 Review of decisions by Tribunal

Insert at the end of the section:

Note. Reviews are carried out under Chapter 5 of the *Administrative Decisions Tribunal Act 1997*. Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

[47] Section 77 Relationship of this Division with Chapters 4 and 6

Omit “a Council from making a complaint” from section 77 (2).
Insert instead “a complaint from being made”.

[48] Section 79

Omit the section. Insert instead:

79 Surrender of local practising certificate

The regulations may make provision for or with respect to:

- (a) the surrender of a local practising certificate (and, if appropriate, the grant or issue of another certificate), and
- (b) the cancellation of a surrendered certificate, and
- (c) the refund of a fee or portion of a fee paid in respect of a surrendered certificate.

[49] Section 92

Omit the section. Insert instead:

92 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.

[50] Section 92A

Insert after section 92:

92A 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.

[51] Section 93 Refund of fees

Omit the section.

[52] Sections 96 and 97

Omit the sections.

[53] Section 98

Omit sections 98 and 99. Insert instead:

98 Professional indemnity insurance

An interstate legal practitioner must not engage in legal practice in this jurisdiction or advertise that the practitioner is entitled to engage in legal practice in this jurisdiction, unless the practitioner:

- (a) is covered by professional indemnity insurance that:
 - (i) covers legal practice in this jurisdiction, and
 - (ii) complies with the requirements prescribed under the regulations, being requirements that are no more onerous than the requirements under section 403 or 406, or
- (b) is employed by a corporation or by a prescribed body, other than an incorporated legal practice, and the only legal services provided by the practitioner in this jurisdiction are in-house legal services.

Maximum penalty: 100 penalty units.

[54] Section 100 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction

Omit section 100 (5).

[55] Section 106 Register of local practising certificates

Insert after section 106 (2) (d):

- (e) the removal of information from the register relating to former holders of certificates.

[56] Section 114 Government lawyers of other jurisdictions

Insert after section 114 (2):

- (2A) Without affecting the generality of subsection (1), that subsection extends to prohibitions under section 98 relating to professional indemnity insurance.

[57] Section 114 (3)

Omit “subsections (1) and (2)”.

Insert instead “subsections (1), (2) and (2A)”.

[58] Section 125 Provisions relating to requirement to notify

Omit section 125 (2).

[59] Section 141 Obligations of legal practitioner director relating to misconduct

Omit section 141 (3).

[60] Section 168 General obligations of legal practitioner partners

Omit section 168 (3).

[61] Section 169 Obligations of legal practitioner partner relating to misconduct

Omit section 169 (3).

[62] Section 178 Disqualified persons

Omit section 178 (2).

[63] Section 195 Trust money and trust accounts

Omit “Australian legal practitioners” from section 195 (1).
Insert instead “law practices”.

[64] Section 197 Fidelity cover

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to payments by locally registered foreign lawyers of contributions to the Fidelity Fund.

[65] Section 203 Requirements regarding applications for grant or renewal of registration

Omit section 203 (2) (d). Insert instead:

- (d) state whether or not the applicant is a defendant or respondent in any pending criminal or civil proceedings in Australia or a foreign country, and

[66] Section 203 (2) (f)

Omit the paragraph. Insert instead:

- (f) state:
 - (i) that the applicant is not otherwise personally prohibited from carrying on the practice of law in any place or bound by any undertaking not to carry on the practice of law in any place, and
 - (ii) whether or not the applicant is subject to any special conditions in carrying on any practice of law in any place,as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country, and

[67] Section 204 Grant or renewal of registration

Omit “certificate” in section 204 (1). Insert instead “registration”.

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

Omit section 205 (1) (d). Insert instead:

- (d) is satisfied the applicant demonstrates an intention to practise foreign law in this jurisdiction within a reasonable period after grant of registration,

[69] Section 206 Refusal to grant or renew registration

Insert at the end of section 206 (2) (g):

, or

- (h) the applicant's foreign legal practice or an office at which the applicant carries on the practice of law in a foreign country is in receivership (however described).

[70] Section 208 Grounds for amending, suspending or cancelling local registration

Insert at the end of the section:

- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 224.

[71] Section 209 Amending, suspending or cancelling registration

Omit “(the *show cause notice*)” from section 209 (1).

[72] Section 209 (2) (a)

Omit “show cause notice”. Insert instead “notice under subsection (1)”.

[73] Section 209 (2) (b) and (c)

Omit “show cause” wherever occurring.

[74] Section 213 Applicant for local registration—show cause event

Omit “capable of being unsatisfactory professional conduct or” from section 213 (4).

[75] Section 214 Locally registered foreign lawyer—show cause event

Insert “written” before “notice” in section 214 (2) (a).

[76] Section 214 (3)

Omit “capable of being unsatisfactory professional conduct or”.

[77] Section 228 Compliance with conditions

Omit section 228 (2).

[78] Section 229 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction

Omit section 229 (5).

Schedule 3 Amendment of Chapter 3 of Legal Profession Act 2004

(Section 3)

[1] Section 243 Definitions

Omit “trust money received by a law practice in respect of which there is a written direction” from the definition of *controlled money* in section 243 (1).

Insert instead “money received or held by a law practice in respect of which the practice has a written direction”.

[2] Section 243 (1)

Omit “approved” from the definition of *controlled money account*.

[3] Section 243 (1)

Insert after the definition of *controlled money account*:

deposit record includes a deposit slip or duplicate deposit slip.

[4] Section 243 (1)

Omit “money received in the course of or in connection with the provision of legal services by a law practice” from the definition of *trust money*.

Insert instead “money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice”.

[5] Section 243 (1)

Omit paragraph (d) of the definition of *trust records*. Insert instead:

(d) deposit records,

[6] Section 244 Money involved in financial services or investments

Omit “or property” from section 244 (3) (a).

[7] Section 252

Omit the section. Insert instead:

252 Barristers not to receive money on behalf of other persons

A barrister is not, in the course of practising as a barrister, to receive money on behalf of another person.

[8] Section 253 Maintenance of general trust account

Omit section 253 (3). Insert instead:

(3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives only either or both of the following:

- (a) controlled money,
- (b) transit money received in a form other than cash.

[9] Section 254 Certain trust money to be deposited in general trust account

Omit “As soon as” from section 254 (1).

Insert instead “Subject to section 258A, as soon as”.

[10] Section 254 (2)

Omit “A law practice”.

Insert instead “Subject to section 258A, a law practice”.

[11] Section 254 (4)

Omit the subsection.

[12] Section 257 Transit money

Omit “A law practice” from section 257 (1).

Insert instead “Subject to section 258A, a law practice”.

[13] Section 258 Trust money subject to specific powers

Omit “A law practice” from section 258 (1).

Insert instead “Subject to section 258A, a law practice”.

[14] Section 258A

Insert after section 258:

258A Trust money received in the form of cash

- (1) **General trust money**
Trust money (other than controlled money and money that is the subject of a power) received in the form of cash must be deposited in a general trust account of the law practice concerned.
- (2) If the law practice has a written direction by an appropriate person to deal with trust money referred to in subsection (1) otherwise than by depositing it in a general trust account of the practice, the trust money must be deposited in the general trust account before it is otherwise dealt with in accordance with the direction, despite anything to the contrary in the direction.
- (3) **Controlled money**
Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 256.
- (4) **Transit money**
Transit money received in the form of cash must be deposited in a general trust account of the law practice concerned before it is otherwise dealt with in accordance with the instructions relating to the money, despite anything to the contrary in the instructions.
- (5) **Trust money subject of a power**
Trust money that is received in the form of cash and is the subject of a power must be deposited in a general trust account (or a controlled money account in the case of controlled money) of the law practice concerned before it is otherwise dealt with in accordance with the power, despite anything to the contrary in the power or any relevant direction.

[15] Section 271

Omit the section. Insert instead:

271 When costs of investigation are debt

(1) If:

- (a) an investigator states in his or her report of an investigation that there is evidence that a breach of this Act or the regulations has been committed or that fraud or defalcation has been committed, and
- (b) the Law Society Council is satisfied that the breach is wilful or of a substantial nature,

the Council may decide that the whole or part of the costs of carrying out the investigation is payable to the Council and may specify the amount payable.

(2) The amount specified by the Law Society Council is a debt owing to the Council by the law practice whose affairs are under investigation.

[16] Section 282 Reports, records and information

Insert “rule of law or” after “any” in section 282 (5).

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

Omit “section 653” from section 290 (1) (h). Insert instead “section 652”.

[18] Section 290 (1) (j)

Omit “, as provided for in section 607 (Costs of administering Part)”.

[19] Section 290 (1) (l)

Insert “or the Commissioner” after “Council” in section 290 (1) (l).

[20] Section 290 (1) (m)

Insert “or costs disputes under Division 8 of Part 3.2” after “Chapter 4”.

[21] Section 290 (1) (o)

Insert after section 290 (1) (n):

- (o) the costs of the Law Society Council or the Commissioner in connection with an audit of a law practice under section 670.

[22] Section 295 Restrictions on receipt of trust money

Omit section 295 (2) and (3).

[23] Section 300

Omit the section. Insert instead:

300 Regulations

The regulations may make provision for or with respect to any matter to which this Part relates, including for or with respect to:

- (a) the establishment, maintenance and closure of general trust accounts and controlled money accounts, and
- (b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money, and
- (c) without limiting paragraph (a) or (b):
 - (i) the keeping and reconciliation of trust records, and
 - (ii) the establishment and keeping of trust ledger accounts, and
 - (iii) the establishment and keeping of records about controlled money and transit money, and
 - (iv) the establishment and keeping of registers of powers and estates where trust money is involved, and
 - (v) the recording of information about the investment of trust money, and
 - (vi) the furnishing of statements regarding trust money, and

- (d) the notification to the Law Society Council of information relating directly or indirectly to matters to which this Part relates, including information about:
 - (i) trust accounts, trust money and trust records, and
 - (ii) the proposed or actual termination of a law practice that holds trust money, and
 - (iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money, and
 - (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money, and
- (e) the creation and exercise of liens over trust money, and
- (f) providing exemptions, or providing for the giving of exemptions, from all or any specified requirements of this Part.

[24] Section 306

Omit the section. Insert instead:

306 How and when does a client first instruct a law practice?

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, e-mail or other form of communication.

[25] Section 309 Disclosure of costs to clients

Omit “subsection (1) (l)” from section 309 (2).

Insert instead “subsection (1) (f)”.

[26] Section 310 Disclosure if another law practice is to be retained

Omit “(c), (d) and (e)” from section 310 (1). Insert instead “(c) and (d)”.

[27] Section 319 On what basis are legal costs recoverable?

Insert after section 319 (2) (b):

- (c) the costs associated with the making of a costs agreement with a client.

[28] Section 321 Interest on unpaid legal costs

Omit section 321 (2) and (3). Insert instead:

- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.

[29] Section 328 Setting aside costs agreements

Omit “, just” from section 328 (1) and (2) wherever occurring

[30] Section 328 (3)

Omit “adjourn the hearing of”. Insert instead “decline to deal with”.

[31] Section 328 (4)

Omit “it”. Insert instead “the assessor”.

[32] Section 328 (9)

Omit “a hearing”. Insert instead “determining an application”.

[33] Section 328 (9A)

Insert after section 328 (9):

- (9A) A costs assessor must ensure that an order or determination under this section is accompanied by a statement of the reasons for the order or determination.

[34] Section 328 (10)

Omit “subsection (4)”. Insert instead “subsection (1) or (4)”.

[35] Section 353 Application for assessment of party/party costs

Insert after section 353 (3):

- (4) An application or direction under this section may be made in relation to an application for and the issue of an apprehended violence order within the meaning of Part 15A of the *Crimes Act 1900*.

[36] Section 354 How to make an application for costs assessment

Omit “in the form prescribed by” from section 354 (1) (a).

Insert instead “made in accordance with”.

[37] Section 355 Consequences of application

Insert “or maintain” after “commence” in section 355 (b).

[38] Section 356A

Insert after section 356:

356A Regulations

The regulations may make provision for or with respect to the making and processing of applications for costs assessments.

[39] Section 360 Non-attendance of party

Omit the section.

[40] Section 363A

Insert after section 363:

363A Interest on amount outstanding

- (1) A costs assessor may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 321 (4)).
- (2) This section applies despite any costs agreement or section 321.
- (3) This section does not authorise the giving of interest on interest.

- (4) This section does not apply to or in respect of the assessment of costs referred to in Subdivision 3 (Party/party costs).

[41] Section 367 Determinations of costs assessments

Omit “Any amount substituted for the amount of the costs may include” from section 367 (2).

Insert instead “The costs assessor may include”.

[42] Section 367 (4)

Insert after section 367 (3):

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

[43] Section 367A

Insert after section 367:

367A Determinations of costs assessments for party/party costs

A costs assessor is to determine an application for an assessment of costs payable as a result of an order made by a court or tribunal by making a determination of the fair and reasonable amount of those costs.

[44] Section 368 Certificate as to determination

Insert “and the Manager, Costs Assessment” after “party” in section 368 (1).

[45] Section 368 (6)

Omit the subsection. Insert instead:

- (6) If the costs of the costs assessor are payable by a party to the assessment as referred to in section 369, the costs assessor must:
- (a) forward the certificate to the Manager, Costs Assessment, instead of forwarding it or copies of it to the parties, and

- (b) advise the parties that the certificate has been so forwarded and will be available to the parties on payment of the costs of the costs assessor.

[46] Section 368 (7) (a)

Omit “subsection (4)”. Insert instead “subsection (2)”.

[47] Section 369 Recovery of costs of costs assessment

Insert “and the Manager, Costs Assessment” after “party” in section 369 (5).

[48] Section 373 Application for review of determination

Insert “by party” after “Application” in the heading to the section.

[49] Section 373A

Insert after section 373:

373A Application by Manager for review of determination of costs of costs assessment

- (1) The Manager, Costs Assessment may, within 30 days after the issue of a certificate under section 369 (5) that sets out the costs of a costs assessment determined by a costs assessor, prepare an application for a review of the determination.
- (2) The Manager, Costs Assessment must ensure that notice of the Manager’s intention to apply for a review is given to the parties to the proposed review not less than 7 days before the application is referred to a panel under section 374 or as prescribed by the regulations.

[50] Section 374 Referral of application to panel

Omit section 374 (1). Insert instead:

- (1) The Manager, Costs Assessment:
 - (a) in the case of an application duly made under section 373—is to refer the application to a panel, or
 - (b) in the case of an application prepared under section 373A—may refer the application to a panel.

[51] Section 374 (3)

Omit “an assessment”. Insert instead “a review”.

[52] Section 375 General functions of panel in relation to review application

Insert after section 375 (3):

- (3A) A panel reviewing the determination of a costs assessor may determine that the amount of fair and reasonable costs is the amount agreed to by the parties to the review if during the course of the review the parties notify the panel that they have agreed on the amount of those costs.

[53] Section 375 (4)

Omit “assessment”. Insert instead “review”.

[54] Section 376 Relevant documents to be produced to panel

Omit “2 months” from section 376 (3) (a). Insert instead “12 months”.

[55] Section 376 (4) (a)

Omit “2 months”. Insert instead “12 months”.

[56] Section 378 Certificate as to determination of panel

Insert “and the Manager, Costs Assessment” after “party” in section 378 (1).

[57] Section 378 (5)

Omit the subsection. Insert instead:

- (5) If the costs of the panel are payable by a person referred to in section 379, the panel must:
- (a) forward the certificate to the Manager, Costs Assessment, instead of forwarding it or copies of it to the parties, and
 - (b) advise the parties that the certificate has been so forwarded and will be available to the parties on payment of the costs of the panel.

[58] Section 379 Recovery of costs of review

Insert “and the Manager, Costs Assessment,” after “party” in section 379 (5).

[59] Section 388 Notices of appeal

Omit “notice of appeal” from section 388 (1).
Insert instead “document initiating an appeal”.

[60] Section 393 Referral for disciplinary action

Insert “or review” after “costs assessment” in section 393 (1).

[61] Section 393 (1)

Insert “grossly” before “excessive”.

[62] Section 403 Professional indemnity insurance for barristers

Omit “and the level of insurance provided by the policy, and has approved of the terms of the policy as complying with agreed national standards for professional indemnity insurance for barristers” from section 403 (2) (b).
Insert instead “, the level of insurance provided by the policy and the terms of the policy”.

[63] Section 406 Solicitor to be insured and to make contributions

Omit “and of the terms of the policy as complying with agreed national standards for professional indemnity insurance for solicitors” from section 406 (2) (b).
Insert instead “the type of policy, the level of insurance provided by the policy and the terms of the policy”.

[64] Section 472 Interstate legal practitioner becoming authorised to withdraw from local trust account

Omit section 472 (3).

Schedule 4 Amendment of Chapter 4 of Legal Profession Act 2004

(Section 3)

[1] Section 498 Conduct capable of being unsatisfactory professional conduct or professional misconduct

Insert after section 498 (e):

- (f) conduct consisting of a failure to comply with the requirements of a notice under this Act or the regulations (other than an information notice).

[2] Section 498 (2)

Insert at the end of section 498:

- (2) Conduct of a person consisting of a contravention referred to in subsection (1) (a) is capable of being unsatisfactory professional conduct or professional misconduct whether or not the person is convicted of an offence in relation to the contravention.

[3] Section 501 Conduct to which this Chapter applies—generally

Insert after section 501 (5):

- (6) This Chapter extends to conduct as a public notary.

[4] Section 504 Making of complaints

Omit section 504 (3) (b). Insert instead:

- (b) identify the Australian legal practitioner about whom the complaint is made or, if it is not possible to do so, identify the law practice concerned, and

[5] Section 512 Withdrawal of complaints

Omit “it” from section 512 (3). Insert instead “the conduct”.

[6] Section 531A

Insert after section 531:

531A Authorised persons

- (1) The Commissioner or a Council may, in writing, appoint suitably qualified persons to be authorised persons for the purposes of this Part.
- (2) An authorised person may exercise any or all of the functions of an investigator that are or would be exercisable by an investigator appointed by the Commissioner or Council, as the case may be, and accordingly references in this Act and the regulations to such an investigator extend to an authorised person.
- (3) An authorised person may exercise any such functions in relation to a complaint whether or not an investigator has been appointed in relation to the complaint.
- (4) An appointment under this section may be made generally (to apply for all complaints or for all complaints of a specified class) or for a specified complaint.

[7] Section 536 Application of Part 15

Omit “**Part 15**” from the heading. Insert instead “Chapter 6”.

[8] Section 539 Dismissal of complaint

Insert at the end of the section:

- (2) The Commissioner or Council may make a compensation order under Part 4.9 if the complaint is dismissed under this section on the ground of the public interest and the complainant requested a compensation order in respect of the complaint.

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

Insert at the end of the section:

Note. Reviews are carried out under Chapter 5 of the *Administrative Decisions Tribunal Act 1997*. Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

[10] Section 545 Decision of Commissioner on review

Insert at the end of the section:

Note. Reviews are carried out under Chapter 5 of the *Administrative Decisions Tribunal Act 1997*. Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

[11] Section 555 Variation of disciplinary application

Omit section 555 (4) and (5). Insert instead:

- (4) 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.

[12] Section 557 Substitution of applicant

Omit section 557 (1). Insert instead:

- (1) If a disciplinary application was made by the Commissioner, the Tribunal may, on the application of the Commissioner or a 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.
- (1A) If a disciplinary application was made by a Council, the Tribunal may, on the application of the Commissioner or the Council, and if satisfied that it is appropriate to do so, direct that the Commissioner is to be regarded as the applicant in connection with the disciplinary application.

[13] Section 561 Procedural lapses and defects in appointments

Insert “or Chapter 6” after “this Chapter” in section 561 (3).

[14] Section 562 Determinations of Tribunal

Omit section 562 (2) (e). Insert instead:

- (e) an order reprimanding the practitioner,

[15] Section 562 (2) (f)

Insert after section 562 (2) (e):

- (f) an order that the name of the practitioner be removed from the roll of public notaries maintained under the *Public Notaries Act 1997*.

[16] Section 562 (4) Orders requiring compliance by practitioner

Insert at the end of the subsection:

Note. This subsection is not an exhaustive statement of orders that must be complied with by the practitioner.

[17] Section 562 (8) Public reprimands

Omit “**Public reprimands**” from the heading. Insert instead “**Reprimands**”.

[18] Section 562 (8)

Omit “publicly”.

[19] Section 562 (10) Private reprimands

Omit the subsection.

[20] Section 573 Making of compensation orders

Omit section 573 (3)–(5). Insert instead:

- (3) The Commissioner or relevant Council may:
 - (a) where proceedings are not proposed to be commenced in the Tribunal with respect to the complaint concerned—make a compensation order referred to in:
 - (i) section 540 (in the case of the Commissioner or Council), or
 - (ii) section 545 (in the case of the Commissioner), or

- (b) where proceedings are proposed to be commenced in the Tribunal with respect to the complaint concerned—make a compensation order before the proceedings are commenced, if the Commissioner or Council is satisfied that the Australian legal practitioner against whom the complaint is made is likely to be found to have engaged in unsatisfactory professional conduct or professional misconduct.
- (4) To avoid any doubt, subsection (3) (b) extends to the making of a compensation order referred to in section 545, where proceedings are proposed to be commenced in the Tribunal with respect to the complaint concerned.
- (5) If the Commissioner or relevant Council decides to make a compensation order against an Australian legal practitioner under subsection (3) (b), the practitioner may apply to the Tribunal for a review of the decision. The review is to be undertaken by the Tribunal:
 - (a) when conducting a hearing with respect to the complaint, or
 - (b) if the matter does not proceed to a hearing or the proceedings with respect to the complaint are terminated—during separate proceedings with respect to the application for review.

Note. Reviews are carried out under Chapter 5 of the *Administrative Decisions Tribunal Act 1997*. Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

- (6) If:
 - (a) the Commissioner or relevant Council makes a compensation order, and
 - (b) proceedings are subsequently commenced in the Tribunal with respect to the complaint concerned,

the Tribunal may make a further order under subsection (1), but the order, if requiring payment of an amount (when added to the amount in the original order) exceeding \$25,000, is not to be made unless the complainant and the Australian legal practitioner both consent to the order.

[21] Section 574 Enforcement of compensation orders

Omit “capable of being unsatisfactory professional conduct or” from section 574 (2).

[22] Section 576 Definitions

Omit “or privately reprimanding” from paragraph (d) of the definition of *disciplinary action*.

[23] Section 577 Register of Disciplinary Action

Omit “, and may include the date and jurisdiction of the person’s first and any later admission to the legal profession” from section 577 (2).

[24] Section 595 Pre-complaint powers where client is denied access to documents

Omit “prescribed distance” from section 595 (3) (b).
Insert instead “distance prescribed by or determined under the regulations”.

[25] Section 599 Duty to report suspected offences

Omit the section.

[26] Section 602 Non-compellability of certain witnesses

Omit “Part” from section 602 (1). Insert instead “Chapter”.

[27] Section 606 Appeals against orders and decisions of Tribunal

Omit the section.

[28] Section 607 Costs of administering Chapter

Omit the section.

Schedule 5 Amendment of Chapter 5 of Legal Profession Act 2004

(Section 3)

[1] Section 611 Definitions

Omit paragraph (d) of the definition of *regulated property* in section 611 (1).

Insert instead:

- (d) any computer hardware or software, or other device, in the custody or control of the practice by which any records referred to in paragraph (c) may be produced or reproduced in visible form.

[2] Section 611 (2)

Omit “this Part”. Insert instead “this Chapter”.

[3] Section 616 Determination regarding external intervention

Omit “, owners and employees” from section 616 (1).

[4] Section 616 (2) (b)

Omit the paragraph. Insert instead:

- (b) to appoint a manager for the law practice, if the Council is of the opinion:
 - (i) that external intervention is required because of issues relating to the 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 practice, or

[5] Section 617 Appointment of supervisor

Omit section 617 (3) (a). Insert instead:

- (a) an Australian legal practitioner who holds an unrestricted practising certificate, or

[6] Section 619 Effect of service of notice of appointment

Insert “or a nominee of the supervisor” after “the supervisor” wherever occurring in section 619 (1).

[7] Section 620 Role of supervisor

Omit section 620 (1). Insert instead:

- (1) A supervisor for a law practice has the powers and duties of the practice in relation to trust money, including powers:
 - (a) to receive trust money entrusted to the practice, and
 - (b) to open and close trust accounts.

[8] Section 622 Termination of supervisor’s appointment

Insert after section 622 (1) (a):

- (a1) the appointment is set aside on appeal under section 649,

[9] Section 623 Appointment of manager

Omit “The appointee” from section 623 (3).

Insert instead “Subject to subsection (3A), the appointee”.

[10] Section 623 (3)

Omit “Council”.

[11] Section 623 (3A)

Insert after section 623 (3):

- (3A) In the case of the appointment of a manager for a law practice that consists of a barrister, the appointee may (but need not) be an employee of the Bar Association and need not be an Australian lawyer or the holder of an Australian practising certificate.

[12] Section 625 Effect of service of notice of appointment

Omit section 625 (2) (a)–(c). Insert instead:

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by:
- (i) the manager, or
 - (ii) a receiver appointed for the practice, or
 - (iii) a nominee of the manager or receiver, or
- (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by:
- (i) the manager, or
 - (ii) a receiver appointed for the practice, or
 - (iii) 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 signed by:
- (i) the manager, or
 - (ii) a receiver appointed for the practice, or
 - (iii) a nominee of the manager or receiver.

[13] Section 629 Termination of manager's appointment

Insert after section 629 (1) (a):

- (a1) the appointment is set aside on appeal under section 649,

[14] Section 630 Appointment of receiver

Insert "an officer or employee of a party," after "party," where firstly occurring in section 630 (4) (b).

[15] Section 630 (5)

Insert “either” after “must be”.

[16] Section 630 (5) (a)

Omit the paragraph. Insert instead:

- (a) an Australian legal practitioner who holds an unrestricted practising certificate, or

[17] Section 631 Notice of appointment

Insert after section 631 (2) (c):

- (c1) indicate the extent to which the receiver has the powers of a manager for the practice, and

[18] Section 632 Effect of service of notice of appointment

Omit section 632 (2) (a)–(c). Insert instead:

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by:
 - (i) the receiver, or
 - (ii) a manager appointed for the practice, or
 - (iii) a nominee of the receiver or manager, or
- (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by:
 - (i) the receiver, or
 - (ii) a manager appointed for the practice, or
 - (iii) 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:
 - (i) the receiver, or
 - (ii) a manager appointed for the practice, or
 - (iii) a nominee of the receiver or manager.

[19] Section 633 Role of receiver

Omit “authorise” from section 633 (2) (b).

[20] Section 633 (5)–(7)

Insert after section 633 (4):

- (5) For the purpose of exercising his or her powers 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 practice, an associate or former associate of the 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 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 Law Society Council 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.

[21] Section 638 Power of receiver to require documents or information

Omit “having” from section 638 (1) (b).
Insert instead “who has or has had”.

[22] Section 640 Lien for costs on regulated property

Insert “the practice or” before “a legal” in section 640 (1) (b).

[23] Section 640 (2)

Insert “law practice or” before “legal”.

[24] Section 640 (2)

Insert “practice or” before “associate to”.

[25] Section 640 (3)

Insert “law practice or” before “legal”.

[26] Section 640 (3)

Insert “practice or” before “associate to”.

[27] Section 642 Recovery of regulated property where there has been a breach of trust etc

Insert “paid to,” after “taken by,” in section 642 (1).

[28] Section 643 Improperly destroying property etc

Omit “purpose”. Insert instead “operation”.

[29] Section 645 Termination of receiver’s appointment

Insert “, on application by the Law Society Council or the receiver made at any time,” after “may” in section 645 (2).

[30] Section 645 (2A) and (2B)

Insert after section 645 (2):

- (2A) A receiver for a law practice must apply to the Supreme Court for termination of the appointment when the affairs of the practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (2B) The appointment of a receiver is not stayed by the making of an application under this section, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the Supreme Court's decision on the application except to the extent (if any) that the Court otherwise directs.

[31] Section 649 Appeal against appointment

Insert after section 649 (3):

- (4) The appointment of a supervisor or manager is not stayed by the making of an appeal, and the supervisor or manager may accordingly continue to exercise his or her powers and functions as supervisor or manager during the currency of the appeal except to the extent (if any) that the Supreme Court otherwise directs.

[32] Section 650A

Insert after section 650:

650A 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.

[33] Section 651

Omit the section. Insert instead:

651 ADI records and information

- (1) An ADI at which a trust account is or has been maintained must without charge:

- (a) produce for inspection or copying by an external intervener any records relating to any such trust accounts or trust money deposited in any such trust account, and
- (b) provide the intervener with full details of any transactions relating to any such trust account or trust money,

on demand by the intervener and on production to the ADI of evidence of the appointment of the intervener in relation to the law practice concerned.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) applies despite any rule of law or duty of confidence to the contrary.
- (3) 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 subsection (1).

Schedule 6 Amendment of Chapter 6 of Legal Profession Act 2004

(Section 3)

[1] Section 660 Requirements in relation to complaint investigations

Insert after section 660 (4):

- (5) A person who is subject to a requirement under subsection (1) or (2) is not entitled to charge the investigator for doing anything in compliance with the requirement.

[2] Section 671 Failure to comply with investigatory powers etc

Omit “capable of being” from section 671 (1).

[3] Section 674 Obstruction or misleading of investigator

Insert “or mislead” after “obstruct” in section 674 (1).

[4] Section 677 Permitted disclosure of confidential information obtained in course of investigation, examination or audit

Omit “599” from the note to section 677 (1) (f). Insert instead “730A”.

Schedule 7 Amendment of Chapter 7 of Legal Profession Act 2004

(Section 3)

[1] Section 698 Lay representation on committees

Omit “professional standards committee” from section 698 (3).
Insert instead “professional conduct committee”.

[2] Section 711 Binding nature of legal profession rules

Omit section 711 (2).

Schedule 8 Amendment of Chapter 8 of Legal Profession Act 2004

(Section 3)

[1] Section 722 Confidentiality of personal information

Omit section 722 (1) and (2). Insert instead:

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any personal information obtained by reason of being a relevant person.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information:

- (a) to the extent the disclosure is reasonably required to perform duties or exercise functions under this Act, the regulations or the legal profession rules or under any other Act or regulations made under any other Act, or
- (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act, the regulations or the legal profession rules or under any other Act or regulations made under any other Act, 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 Act or 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.

[2] Section 727 Service of notices on practitioners

Insert “or given to” after “served on” wherever occurring.

[3] Section 727 (a)

Insert “or given personally to” after “on”.

[4] Section 727 (b)

Insert “or delivered” after “post”.

[5] Section 729A

Insert after section 729:

729A Appeals against orders and decisions of Tribunal

- (1) An order or other decision made by the Tribunal under this Act may be appealed to the Supreme Court by a party to the proceedings in which the order or decision was made.
- (2) Section 75A of the *Supreme Court Act 1970* accordingly applies to an appeal under this section, and the appeal is to be:
 - (a) by way of rehearing, and
 - (b) not by way of a new hearing (a de novo hearing).
- (3) Subsection (2) does not affect the provisions of section 75A of the *Supreme Court Act 1970* relating to the receipt of evidence by the Supreme Court.
- (4) Despite subsection (1), an appeal does not lie to the Supreme Court under this section against any of the following decisions of the Tribunal except by leave of the Supreme Court:
 - (a) an interlocutory decision,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.
- (5) No appeals lie under Part 1 or 1A of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* to an Appeal Panel against an order or other decision of the Tribunal under this Act.
- (6) Subsection (1) includes original decisions made by the Tribunal and decisions made by the Tribunal in the review of reviewable decisions, but does not include:
 - (a) decisions of the Tribunal under section 385 (2), or

- (b) decisions of the Tribunal of a class prescribed by the regulations.

[6] Section 730 Protection from liability

Insert at the end of section 730 (d):

or

- (e) the Commissioner, or
- (f) the Trustees of the Public Purpose Fund,

[7] Section 730A

Insert after section 730:

730A Duty to report suspected offences

- (1) This section applies if the Commissioner or a Council suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law.
- (2) The Commissioner or Council must:
 - (a) report the suspected offence to any relevant law enforcement or prosecution authority, and
 - (b) make available to the authority the information and documents relevant to the suspected offence in its possession or under its control.
- (3) The obligation under subsection (2) (b) to make available the information and documents continues while the Commissioner or Council holds the relevant suspicion.

[8] Section 734 Approved forms

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to the approval of forms for use under or in connection with this Act or the regulations.

Schedule 9 Amendment of Schedule 9 to Legal Profession Act 2004

(Section 3)

[1] Schedule 9 Savings, transitional and other provisions

Insert after clause 9 (2):

- (3) Applications for practising certificates under this Act made during the period of 6 months commencing on the commencement day may be made in the form used for applications for practising certificates under the old Act, but are to be dealt with under this Act.

[2] Schedule 9, clause 10A

Insert after clause 10:

10A Barristers of the Australian Capital Territory

- (1) This clause applies to an Australian lawyer who reasonably expects:
 - (a) to be engaged in legal practice in a financial year principally in the Australian Capital Territory, and
 - (b) not to be the holder of an interstate practising certificate, or a local practising certificate as a solicitor, in that year.
- (2) The lawyer may apply for and be granted a local practising certificate as a barrister for that year as if references in this Act to this jurisdiction included references to the Australian Capital Territory, but the provisions of this Act are otherwise applicable to the lawyer.
- (3) This clause ceases to apply to the lawyer in respect of that year if the lawyer becomes the holder of an interstate practising certificate, or a local practising certificate as a solicitor, that is in force in that year.

[3] Schedule 9, clause 12 (3)

Insert "is" before "to have".

Legal Profession Amendment Bill 2005

Schedule 9 Amendment of Schedule 9 to Legal Profession Act 2004

[4] Schedule 9, clause 17 (3)

Omit “to those proceedings”.

Insert instead “to and in respect of such a complaint and any proceedings relating to it”.

[5] Schedule 9, clause 18

Omit clause 18 (3) and (4). Insert instead:

(3) If:

- (a) an application for assessment of costs was referred to a costs assessor for assessment under Part 11 of the old Act, and
- (b) the assessment was not commenced or completed before that day,

the application may be dealt with under that Part as if that Part had not been repealed.

[6] Schedule 9, clause 23A

Insert after clause 23:

23A Admission rules

Any rules made by the Legal Practitioners Admission Board constituted under the old Act and in force immediately before the commencement day are taken to have been made under Part 2.3, and have effect with any necessary adaptations.

[7] Schedule 9, clause 24

Insert “, and have effect with any necessary adaptations” after “Part 7.5”.

[8] Schedule 9, clause 26

Omit the clause. Insert instead:

26 References to barristers, solicitors, legal practitioners and other terms

- (1) A reference in another Act or statutory rule enacted or made before the commencement day to:

- (a) a barrister is to be read as a reference to a barrister within the meaning of this Act, and
- (b) a solicitor, or a solicitor and barrister, is to be read as a reference to a solicitor within the meaning of this Act, and
- (c) a legal practitioner (where the term is expressed to be as defined in or within the meaning of the old Act) is to be read:
 - (i) as a reference to a local lawyer within the meaning of this Act, and
 - (ii) as including a reference to a barrister or a solicitor respectively within the meaning of this Act,

except where the regulations otherwise provide or the context or subject-matter indicates that the term is to have a different meaning.

- (2) Without limiting subclause (1) or the power to make regulations under this Schedule, the regulations may provide that a reference in another Act or statutory rule or other document to:
 - (a) a legal practitioner (where the term is expressed to be as defined in or within the meaning of the old Act), or
 - (b) a legal practitioner (where the term is not so expressed), or
 - (c) a lawyer, an attorney, counsel or similar term,

is to be read as a reference to an Australian legal practitioner or to an Australian legal practitioner of a class specified in the regulations.

[9] Schedule 9, clause 27

Insert after clause 26:

27 Trust money and trust accounts

An offence is not committed under the provisions of Part 3.1 or of the regulations made for the purposes of that Part for anything done or omitted to be done in good faith during the period of 3 months after the commencement of this clause, if:

Legal Profession Amendment Bill 2005

Schedule 9

Amendment of Schedule 9 to Legal Profession Act 2004

- (a) it was done for the purpose of attempting to comply with any of those provisions, or
- (b) it was done in substantial conformity with the requirements of the old Act or the regulations under the old Act had that Act and those regulations continued in force.

Schedule 10 Amendment of Public Notaries Act 1997

(Section 4)

[1] Section 3 Definitions

Omit “Part 2 of the *Legal Profession Act 1987*” from the definition of *Admission Board*.

Insert instead “Part 7.1 of the *Legal Profession Act 2004*”.

[2] Section 3

Omit “*Legal Profession Act 1987*” wherever occurring in the definitions of *barrister* and *solicitor*.

Insert instead “*Legal Profession Act 2004*”.

[3] Section 3

Omit the definition of *legal practitioner*. Insert instead:

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Act 2004*.

[4] Section 6 Appointment of public notaries

Insert after section 6 (2):

- (3) The Court may order that the name of a person be removed from the roll for misconduct as a public notary, incompetence as a public notary or for any other reason the Court considers warrants removal.
- (4) Misconduct as a public notary includes conduct that, had it been done as an Australian legal practitioner, would be or be capable of being unsatisfactory professional conduct or professional misconduct under Chapter 4 of the *Legal Profession Act 2004*.

[5] Section 7 Roll of public notaries

Omit section 7 (3). Insert instead:

- (3) The registrar may remove the name of a public notary from the roll at the request of the public notary.

[6] Section 7 (4)

Omit “barrister or solicitor”. Insert instead “legal practitioner”.

[7] Section 7 (5)

Omit the subsection. Insert instead:

- (5) The registrar must remove the name of a public notary from the roll in accordance with:
 - (a) an order of the Court under this Act, or
 - (b) an order of the Administrative Decisions Tribunal under the *Legal Profession Act 2004*.

[8] Section 8

Omit the section. Insert instead:

8 Publication of information on roll of public notaries

The Admission Board may, in circumstances that it considers appropriate, publish:

- (a) the name of any person on the roll, and
- (b) the name of the person’s firm (if any), and
- (c) the address at which the person or the person’s firm practises.

[9] Section 9 Rules for public notaries

Omit section 9 (e). Insert instead:

- (e) the keeping of records concerning public notaries,

[10] Section 11 Employed public notaries not to carry out certain work

Omit “a solicitor or an incorporated legal practice within the meaning of the *Legal Profession Act 1987*” from section 11 (2).

Insert instead “a law practice within the meaning of the *Legal Profession Act 2004*”.

[11] Section 14 Application of Legal Profession Act 2004 regarding complaints and discipline

Omit “Part 10 (Complaints and discipline) of the *Legal Profession Act 1987* applies to public notaries in the same way as it applies”.

Insert instead “Chapters 4 and 6 of the *Legal Profession Act 2004* apply to public notaries in the same way as they apply”.

[12] Schedule 1 Savings, transitional and other provisions

Omit “of this Act.” from clause 2 (1). Insert instead:

of:

this Act

Legal Profession Amendment Act 2005

[13] Schedule 1, clause 2 (2)

Omit “this Act”. Insert instead “the Act concerned”.

[14] Schedule 1, clause 9

Insert after clause 8:

9 Provisions consequent on enactment of Legal Profession Amendment Act 2005—new complaints about old conduct

- (1) This clause applies to conduct that occurred or is alleged to have occurred before the commencement of this clause and that could have been the subject of a complaint under Part 10 of the *Legal Profession Act 1987* as applied by section 14 of this Act.
- (2) A complaint about the conduct may be made, and dealt with, under this Act and the *Legal Profession Act 2004*, even if the conduct could not be the subject of a complaint if it had occurred after the commencement of this clause.
- (3) Chapter 4 of the *Legal Profession Act 2004*, and any other relevant provisions of that Act, apply to and in respect of such a complaint and any proceedings relating to it, and so apply with any necessary adaptations.
- (4) However, the Legal Services Commissioner, the Bar Council, the Law Society Council or the Administrative Decisions Tribunal may not make any determination or order of a

Legal Profession Amendment Bill 2005

Schedule 10

Amendment of Public Notaries Act 1997

disciplinary nature against the person in respect of whom the complaint was made that is more onerous than that which could have been made under the *Legal Profession Act 1987*.

Schedule 11 Amendment of other Acts

(Section 5)

11.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Section 4 Definitions

Omit the definition of *practising legal practitioner* in section 4 (1).

Insert instead:

practising legal practitioner means an Australian legal practitioner.

[2] Section 17 Qualifications for membership

Omit “a legal practitioner” from section 17 (2) (b).

Insert instead “an Australian lawyer (within the meaning of the *Legal Profession Act 2004*)”.

[3] Section 17 (4)

Omit the subsection.

[4] Section 88 Costs

Omit “on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987*” from section 88 (2) (b).

Insert instead “on a basis set out in Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[5] Schedule 2 Composition and functions of Divisions

Omit “legal practitioners” from clause 1 (2) (c) of Part 3.

Insert instead “Australian lawyers (within the meaning of the *Legal Profession Act 2004*)”.

Legal Profession Amendment Bill 2005

Schedule 11 Amendment of other Acts

[6] Schedule 2, Part 3, clause 2

Omit “*Legal Profession Act 1987*”.

Insert instead “*Legal Profession Act 2004*”.

[7] Schedule 2, Part 3, clause 3 (1)

Omit “Part 10 of the *Legal Profession Act 1987*”.

Insert instead “Chapters 4 and 6 of the *Legal Profession Act 2004*”.

[8] Schedule 2, Part 3, clause 4, heading

Omit “**Legal Profession Act 1987**”.

Insert instead “**Legal Profession Act 2004**”.

[9] Schedule 2, Part 3, clause 4 (1) (c)

Omit “a legal practitioner”.

Insert instead “an Australian lawyer (within the meaning of the *Legal Profession Act 2004*) who is neither a barrister nor a solicitor”.

[10] Schedule 2, Part 3, clause 4 (2) and (2A)

Omit clause 4 (2). Insert instead:

(2) For the purposes of conducting a hearing in relation to any matter under the Act, the Tribunal in each case is to be constituted as determined by the Divisional Head from Division members.

(2A) Subclause (2) does not apply to hearings in relation to:

- (a) a complaint made under the Act, or
- (b) proceedings referred to in clause 4AA, or
- (c) proceedings referred to in clause 4AB.

[11] Schedule 2, Part 3, clause 4 (3)

Omit “*Legal Profession Act 1987*”.

Insert instead “*Legal Profession Act 2004*”.

[12] Schedule 2, Part 3, clause 4AA Legal Profession Act 2004 (Advertising contraventions)

Omit “section 38JA (Regulation of advertising and other marketing of services) of the *Legal Profession Act 1987*”.

Insert instead “section 85 (Regulation of advertising and other marketing of services) of the *Legal Profession Act 2004*”.

[13] Schedule 2, Part 3, clause 4AB

Insert after clause 4AA:

4AB Legal Profession Act 2004 (Reviews)

For the purpose of proceedings on a review under the *Legal Profession Act 2004*, the Tribunal is to be constituted as determined by the President or the Divisional Head from Division members.

[14] Schedule 2, Part 3, clause 4A

Omit “Part 10 of the *Legal Profession Act 1987*” from clause 4A (1).

Insert instead “Chapter 4 of the *Legal Profession Act 2004*”.

[15] Schedule 2, Part 3, clause 5

Omit “*Legal Profession Act 1987*” wherever occurring in the definitions of *barrister* and *solicitor*.

Insert instead “*Legal Profession Act 2004*”.

[16] Schedule 2, Part 3, clause 5

Omit the definition of *legal practitioner*.

[17] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Legal Profession Act 2004

Legal Profession Amendment Act 2005

[18] Schedule 5

Insert at the end of the Schedule (with appropriate Part and clause numbers):

Part Provisions consequent on enactment of Legal Profession Act 2004 and Legal Profession Amendment Act 2005

Pending proceedings

- (1) Any proceedings pending before the Tribunal before the commencement of any amendment made to this Act by the *Legal Profession Amendment Act 2005* are to continue to be dealt with as if the *Legal Profession Act 2004* and the *Legal Profession Amendment Act 2005* had not been enacted.
- (2) Proceedings may be initiated and dealt with under this Act in respect of any matter arising under or in connection with the *Legal Profession Act 1987* as if the *Legal Profession Act 2004* and the *Legal Profession Amendment Act 2005* had not been enacted.

11.2 Commercial Arbitration Act 1984 No 160

[1] Section 4 Definitions

Omit the definition of *assess* from section 4 (1). Insert instead:

assess, in relation to costs, means assess under Division 11 of Part 3.2 of the *Legal Profession Act 2004*.

[2] Section 20 Representation

Omit “1987” from section 20 (5). Insert instead “2004”.

[3] Section 34 Costs

Omit “solicitor” from section 34 (1) (c). Insert instead “legal practitioner”.

[4] Section 35A Application of Division 11 of Part 3.2 of Legal Profession Act 2004

Omit “Division 6 of Part 11 of the *Legal Profession Act 1987*”.

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

11.3 Conveyancers Licensing Act 2003 No 3

[1] Section 4 Conveyancing work

Omit the definition of *legal work* from section 4 (4). Insert instead:

legal work means work that, if done for fee or reward by a person who is not an Australian legal practitioner, would give rise to an offence under Part 2.2 of the *Legal Profession Act 2004*.

[2] Section 6 Persons conducting conveyancing business required to be licensed

Omit “a solicitor or barrister” from section 6 (2) (a).

Insert instead “an Australian legal practitioner”.

[3] Section 6 (2) (b)

Omit “a barrister or solicitor”.

Insert instead “an Australian legal practitioner”.

[4] Section 7 Effect of licence

Omit “Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987*” from section 7 (1).

Insert instead “Part 2.2 of the *Legal Profession Act 2004*”.

[5] Section 10 Disqualified persons

Omit “legal practitioners” from section 10 (1) (o) wherever occurring.

Insert instead “lawyers”.

Legal Profession Amendment Bill 2005

Schedule 11 Amendment of other Acts

[6] Section 10 (1) (p)

Omit the paragraph. Insert instead:

- (p) is disqualified from being employed in a law practice by virtue of an order made under Division 3 of Part 2.2 of the *Legal Profession Act 2004*, or

[7] Section 27 Multidisciplinary partnerships

Omit “Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987*” from section 27 (5) (a).

Insert instead “Part 2.2 of the *Legal Profession Act 2004*”.

[8] Section 27 (5) (b) and (c)

Omit “Part 3A of the *Legal Profession Act 1987*” wherever occurring.

Insert instead “Part 2.2 of the *Legal Profession Act 2004*”.

[9] Section 94 Qualifications for appointment as a manager

Omit “a solicitor” from section 94 (b).

Insert instead “an Australian legal practitioner”.

[10] Section 120 Examination by receiver

Omit “represented by a solicitor or barrister” from section 120 (2) (a).

Insert instead “legally represented”.

11.4 Interpretation Act 1987 No 15

Section 21 Meaning of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

Australian legal practitioner has the same meaning as in the *Legal Profession Act 2004*.

Legal Profession Amendment Bill 2005

Amendment of other Acts

Schedule 11

11.5 Ombudsman Act 1974 No 68

Schedule 1 Excluded conduct of public authorities

Omit “Part 10 of the *Legal Profession Act 1987*” from item 26.

Insert instead “Chapter 4 or 6 of the *Legal Profession Act 2004*”.