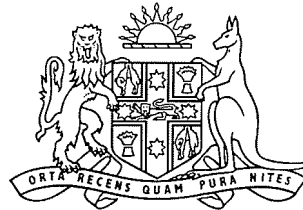


Passed by both Houses



New South Wales

Legal Profession Further 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 legislation	2
5 Repeal of Act	2
Schedule 1 Amendment of Legal Profession Act 2004	3
Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation	10
Schedule 3 Amendment of other legislation	60

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 Further Amendment Bill 2006

Act No , 2006

An Act to amend the *Legal Profession Act 2004* with respect to the role and procedures of the Legal Profession Admission Board, the grant of local practising certificates, payments from and to the Public Purpose Fund, the abolition of the Legal Profession Advisory Council, and other matters, and to align the Act more closely with legal profession model legislation; to amend the *Administrative Decisions Tribunal Act 1997*; 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 Further 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 and 2.

4 Amendment of other legislation

The Act and Regulation listed in Schedule 3 are amended as set out in that Schedule.

5 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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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 Legal Profession Act 2004

(Section 3)

[1] Section 4 Definitions

Omit the definition of *Advisory Council* from section 4 (1).

[2] Section 4 (1), definition of “pre-admission event”

Omit “(as defined in Division 7 of Part 2.4)”.

[3] Section 26 Early consideration of suitability

Omit “, subject to section 27 (Referral of matters to Supreme Court),” from section 26 (2).

[4] Section 27 Referral of matters to Supreme Court

Omit the section.

[5] Section 28 Appeals

Insert after section 28 (6):

- (7) On an appeal under this section, the Supreme Court may make an order as to costs as it thinks fit, other than:
 - (a) an order against the Admission Board in favour of an applicant where the appeal was not successful, and
 - (b) an order against the Admission Board in favour of a Council.

[6] Section 29 Binding effect of declaration or order

Omit “27 or”.

[7] Section 30 Entitlement to be represented, heard and make representations

Insert after section 30 (3):

- (4) The Admission Board is entitled to be represented and heard at any appeal under section 28.

[8] Sections 35 and 36

Omit the sections. Insert instead:

35 Consideration of applications for admission

- (1) The Admission Board is to consider whether or not:
 - (a) an applicant for admission is:
 - (i) eligible for admission (under section 24), and
 - (ii) a fit and proper person to be admitted (in accordance with section 25), and
 - (b) the application is made in accordance with any applicable admission rules and the applicant has complied with any applicable requirements of the admission rules.
- (2) The Admission Board may refuse to consider the application if the application was not made in accordance with the admission rules.
- (3) The Admission Board may require an applicant to provide such further information as it considers relevant to its consideration of the application within such time as it specifies.

36 Compliance certificates

- (1) The Admission Board is to complete its processing of an application for admission by giving a compliance certificate under this section for the applicant or by refusing to give such a certificate.
- (2) If, after considering an application for admission, the Admission Board considers:
 - (a) the applicant:
 - (i) is eligible for admission, and
 - (ii) is a fit and proper person to be admitted, and
 - (b) the application is made in accordance with any applicable admission rules and the applicant has complied with any applicable requirements of the admission rules, and

- (c) there are no grounds for refusing to give a certificate for the applicant,

the Board must, within 7 days of its decision or within the time specified in or determined in accordance with the admission rules, advise the Supreme Court to that effect by filing with the Prothonotary a certificate in the approved form (a *compliance certificate*).

- (3) The Admission Board must refuse to give a compliance certificate for an applicant unless the Board is satisfied that the applicant:
 - (a) is eligible for admission, and
 - (b) is a fit and proper person to be admitted.
- (4) The Admission Board may refuse to give a compliance certificate for an applicant if it is not satisfied that:
 - (a) the application is made in accordance with the admission rules, or
 - (b) the applicant has complied with any applicable requirements of the admission rules.
- (5) If the Admission Board refuses to give a compliance certificate for the applicant, the Board must, as soon as practicable after its decision or within the time specified in or determined in accordance with the admission rules, give the Prothonotary and the applicant an information notice about the refusal.
- (6) For the purposes of section 28 (1), the Admission Board is taken to have refused to give a compliance certificate for an applicant if a compliance certificate has been neither given nor refused for the applicant within 6 months after:
 - (a) the application for admission was lodged, or
 - (b) if the Board has given the applicant a notice under section 37 (1)—the applicant has complied with the notice to the Board's satisfaction.

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

Omit section 48 (13). Insert instead:

- (13) If an application made for the grant of a local practising certificate is not determined within:

Legal Profession Further Amendment Bill 2006

Schedule 1 Amendment of Legal Profession Act 2004

- (a) 3 months after the application is made, unless paragraph (b) applies, or
 - (b) the required period referred to in section 68 (Investigation and consideration of show cause event), if that section applies in relation to the applicant,
- the application is deemed to have been refused.

[10] Section 78 Immediate suspension of local practising certificate

Omit “(within the meaning of Division 7)” from section 78 (1) (b).

[11] Section 137 Notice of intention to start providing legal services

Omit “(a) or (b)” from section 137 (7). Insert instead “(a), (b) or (c)”.

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

Omit section 290 (1) (g). Insert instead:

- (g) the costs of the Admission Board in connection with an appeal under section 28,

[13] Section 290 (3A) and (3B)

Insert after section 290 (3):

- (3A) If the amount of costs or expenses actually expended or incurred by a beneficiary in or in respect of a relevant period:
 - (a) exceeds the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Director-General is to approve payment from the Fund of such additional amount as the Director-General considers necessary and reasonable for the purpose of meeting or contributing to any underpayment, or
 - (b) is less than the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Director-General is to require the beneficiary to repay to the Fund such amount already paid to the beneficiary as the Director-General specifies for the purpose of recouping the whole or a part of any overpayment.

(3B) Instead of dealing with an underpayment or overpayment in accordance with subsection (3A), the Director-General may deal with all or part of the underpayment or overpayment by way of adjustment of amounts approved under subsection (3) for payment to the beneficiary in or in respect of a future period.

[14] Section 290 (5)

Omit the subsection. Insert instead:

(5) Payments under this section may be made in advance of or by way of reimbursement of the relevant cost or expense.

[15] Section 291 Submission of budgets to Director-General

Insert “or supplementary budget” after “budget” wherever occurring in section 291 (1)–(3).

[16] Section 291 (1A)

Insert after section 291 (1):

(1A) Without limiting subsection (1), a budget or supplementary budget may relate wholly or partly to a past period if the Director-General so directs or approves, whether or not any cost or expense has already been incurred or met by the beneficiary.

[17] Section 347 Restrictions on commencing proceedings without reasonable prospects of success

Omit “is not to be accepted for lodgment” from section 347 (3).

Insert instead “, which has been lodged for filing, is not to be filed in a court or court registry”.

[18] Part 7.2 (sections 682–685) Legal Profession Advisory Council

Omit the Part.

[19] Section 707 Commissioner to be notified of proposed rules

Omit “and the Advisory Council” from section 707 (1).

Legal Profession Further Amendment Bill 2006

Schedule 1 Amendment of Legal Profession Act 2004

[20] Section 707 (3)

Omit “or the Advisory Council”.

[21] Section 715 Review of rules by Advisory Council

Omit the section.

[22] Section 716 Rules may be declared inoperative

Omit “but only” from section 716 (1).

[23] Section 716 (1) (b)

Omit the paragraph. Insert instead:

- (b) the Attorney General is of the opinion that the rule imposes restrictive or anti-competitive practices that are not in the public interest or the rule is not otherwise in the public interest.

[24] Schedule 3 Legal Profession Advisory Council

Omit the Schedule.

[25] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Legal Profession Further Amendment Act 2006

[26] Schedule 9, clause 10A Barristers of the Australian Capital Territory

Omit the clause.

[27] Schedule 9, clause 20 Legal Practitioners Advisory Council

Omit the clause.

[28] Schedule 9, Part 3

Insert at the end of the Schedule:

Part 3 Provisions consequent on enactment of Legal Profession Further Amendment Act 2006

32 Application for grant or renewal of local practising certificate

- (1) Applications for the grant or renewal of a local practising certificate made in accordance with section 45 as in force immediately before the commencement of section 45 as substituted by the *Legal Profession Further Amendment Act 2006* and pending immediately before that commencement are taken to be made in accordance with this Act and are to be dealt with accordingly.
- (2) Section 48 (13) as substituted by the *Legal Profession Further Amendment Act 2006* applies to applications pending immediately before the commencement of that substituted subsection as well as to applications made after that commencement.

33 Legal Profession Advisory Council

The Legal Profession Advisory Council is abolished with effect on and from 7 December 2006.

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

(Section 3)

[1] Section 4 Definitions

Omit “by the Supreme Court under this Act as a lawyer or by a Supreme Court under a corresponding law” from the definition of *admission to the legal profession* in section 4 (1).

Insert instead “by a Supreme Court”.

[2] Section 4 (1), definition of “admission to the legal profession”

Insert “under this Act or a corresponding law,” before “but”.

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

Omit the definition. Insert instead:

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

[4] Section 4 (1)

Insert in alphabetical order:

costs assessor has the meaning given in section 302 (1).

external territory means a Territory of the Commonwealth (not being the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory of Australia) for the government of which as a Territory provision is made by a Commonwealth Act.

[5] Section 4 (1), definition of “practical legal training”

Omit “legal training under the supervision of an Australian lawyer” from paragraph (b).

Insert instead “supervised legal training”.

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

Omit the definition. Insert instead:

unrestricted practising certificate means an Australian practising certificate that is not subject to any condition under this Act or a corresponding law requiring the holder to engage in supervised legal practice or restricting the holder to practise as or in the manner of a barrister.

[7] Section 7 Terms relating to associates and principals of law practices

Insert “, or consultant to,” after “employee of” in section 7 (1) (a) (vi).

[8] Section 7 (1) (d1)

Insert after section 7 (1) (d):

(d1) a person (not being an Australian legal practitioner) who is a partner in a multi-disciplinary partnership, or

[9] Section 9 Suitability matters

Omit section 9 (1) (m). Insert instead:

(m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.

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

Insert after section 17 (8):

(9) In this section:

lay associate of a law practice has the same meaning as in section 7 (Terms relating to associates and principals of law practices), and includes a consultant to the law practice (however described) who:

- (a) is not an Australian legal practitioner, and
- (b) provides legal or related services to the law practice, other than services of a kind prescribed by the regulations.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[11] Section 33 Local lawyer is officer of Supreme Court

Insert at the end of the section:

- (2) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

[12] Section 38 Admission rules

Omit section 38 (2) (n). Insert instead:

- (n) fees and costs payable under the rules and the refund or remission of fees,

[13] Section 42 Suitability to hold local practising certificate

Omit section 42 (2) (e) (ii). Insert instead:

- (ii) whether the person has contravened a requirement imposed by a Council about professional indemnity insurance, or

[14] Section 45

Omit the section. Insert instead:

45 Application for grant of local practising certificate

(1) Applications generally

An Australian lawyer may apply to the appropriate Council for the grant or renewal of a local practising certificate if eligible to do so under this section.

(2) General eligibility to make application

An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulations and legal profession rules relating to eligibility for the practising certificate and if:

- (a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application:
 - (i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for, or

- (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether it applies to the lawyer—the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia, or
- (b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application:
 - (i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction, or
 - (ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature, or
 - (iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for, or
 - (iv) if subparagraphs (i), (ii) and (iii) do not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i), (ii) or (iii) applies to the lawyer—the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.
- (3) **Determination of place of legal practice in Australia**

For the purposes of subsection (2) (b), the jurisdiction in which an Australian lawyer engages in legal practice solely or principally is to be decided by reference to the lawyer’s legal practice during the certificate period current at the time:

 - (a) the application is made, or
 - (b) in the case of a late application—the application should have been made.
- (4) **Circumstances in which application cannot be made (more than one Australian practising certificate)**

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.

(5) **Application must not be made by ineligible lawyer**

An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.

(6) **Circumstances in which application must be made**

An Australian legal practitioner who:

- (a) engages in legal practice solely or principally in this jurisdiction during a financial year, and
- (b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year,

must apply for the grant or renewal of a local practising certificate in respect of the following financial year.

(7) Subsection (6) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.

(8) The exemption provided by subsection (7) ceases to operate at the end of the period prescribed by the regulations for the purposes of this subsection.

(9) **Application for local practising certificate by lawyer who practises in Australia and overseas**

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 to the person's practice in Australia.

(10) **Application for local practising certificate by lawyer of prescribed class**

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.

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

Omit “and in granting or renewing the certificate may impose conditions as referred to in section 50 (Conditions imposed by Council)” from section 48 (1).

[16] Section 48 (1A)

Insert after section 48 (1):

(1A) The appropriate Council may, when granting or renewing a certificate, impose conditions as referred to in section 50 (Conditions imposed by Council).

[17] Section 50 Conditions imposed by Council

Omit section 50 (3) (a) (ii). Insert instead:

(ii) specific legal education or training, or

[18] Section 50 (5)

Omit “an academic or training course”.

Insert instead “specific legal education or training”.

[19] Section 50 (5) (a)

Omit the paragraph. Insert instead:

- (a) the Council is satisfied, having regard to:
 - (i) the nature or currency of the holder's academic studies, legal training or legal experience, or
 - (ii) the holder's conduct,
- that it is reasonable to require the specific legal education or training to be undertaken, or

[20] Section 53 Statutory condition regarding practice as a solicitor

Omit section 53 (3). Insert instead:

- (3) A Council may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for a person or class of persons, if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to:
 - (a) the length and nature of any legal practice previously engaged in by the person or persons, and
 - (b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or persons.

[21] Section 64 Relationship of this Division with Chapter 4

Omit "Council from making a complaint".
Insert instead "complaint from being made".

[22] Section 98

Omit the section. Insert instead:

98 Requirement for professional indemnity insurance

- (1) An interstate legal practitioner must not engage in legal practice in this jurisdiction, or represent 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) has been approved under or complies with the requirements of the corresponding law of the practitioner's home jurisdiction, and
 - (iii) is for at least \$1.5 million (inclusive of defence costs),unless (without affecting subparagraph (i) or (ii)) the practitioner engages in legal practice solely as or in the manner of a barrister, 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.

- (2) Subsection (1) does not apply to an interstate legal practitioner who:
 - (a) is a government lawyer as defined in section 114, and
 - (b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work, and
 - (c) has an indemnity or immunity (whether provided by law or governmental policy) that is applicable in respect of that legal practice.

[23] Section 101 Additional conditions on practice of interstate legal practitioners

Insert after section 101 (4):

- (5) An interstate legal practitioner must not contravene a condition imposed under this section.

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

Insert "interstate legal" before "practitioner" where firstly and secondly occurring in section 102 (a) and (b).

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[25] Section 102 (2)

Insert at the end of section 102:

(2) Subsection (1):

- (a) does not apply if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction, or
- (b) applies only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the interstate legal practitioner in the practitioner's home jurisdiction.

[26] Section 105 Consideration and investigation of applicants or holders

Insert "amend," after "renew," in section 105 (1).

[27] Section 105 (1)

Omit "or impose conditions on a local practising certificate,".

[28] Section 114 Government lawyers of other jurisdictions

Omit "employee" wherever occurring in section 114 (1), (2) and (3).
Insert instead "lawyer".

[29] Section 114 (4)

Omit the definition of *government employee*. Insert instead:

government lawyer means an Australian lawyer, or a person eligible for admission to the legal profession, employed in or by a government agency of another jurisdiction.

[30] Section 120 Official notification to other jurisdictions of removals from local roll

Omit "local lawyer's" from section 120 (1). Insert instead "person's".

[31] Section 120 (3)

Omit "lawyer's" wherever occurring. Insert instead "person's".

[32] Section 125

Omit the section. Insert instead:

125 Provisions relating to requirement to notify

A notice to be given under this Division by a person must:

- (a) state his or her name and address, and
- (b) disclose full details of the action to which the notice relates, including the date on which that action was taken, and
- (c) be accompanied by a copy of any official notification provided to him or her in connection with that action.

[33] Section 127 Peremptory cancellation of local practising certificate following removal of name from interstate roll

Insert “but he or she remains an Australian lawyer” after “roll” in section 127 (1) (a).

[34] Section 128 Show cause procedure for removal of lawyer’s name from local roll following foreign regulatory action

Omit “, at the time of that removal,” from section 128 (1) (b).

[35] Section 129 Show cause procedure for cancellation of local practising certificate following foreign regulatory action

Omit “, at the time the action was taken,” from section 129 (1) (b).

[36] Section 129 (2)

Omit “name should not be removed”.

Insert instead “practising certificate should not be cancelled”.

[37] Section 129 (4A)

Insert after section 129 (4):

- (4A) The Council must, as soon as practicable, give the practitioner an information notice about its decision to cancel the practising certificate.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[38] Section 140 Incorporated legal practice must have legal practitioner director

Omit “liability” from section 140 (6). Insert instead “liabilities”.

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

Insert after section 141 (1):

(1A) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subsection (1) if the director establishes that he or she took all reasonable steps to ensure that:

- (a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subsection (1) (a), or
- (b) directors (not being Australian legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subsection (1) (b), or
- (c) unsuitable directors (not being Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subsection (1) (c),

as the case requires.

[40] Section 149 Requirements relating to advertising

Omit “of the relevant class of Australian legal practitioners” from section 149 (2).

Insert instead “in that branch of the legal profession or in that style of legal practice”.

[41] Section 184 Definitions

Omit the definition of *commercial legal presence*.

[42] Section 184, definition of “local registration certificate”

Omit “or issued”.

[43] Section 186 Requirement for registration

Omit section 186 (2) (a) (i). Insert instead:

- (i) practises foreign law in this jurisdiction for one or more periods that do not in aggregate exceed 90 days in any period of 12 months, or

[44] Section 186 (2) (b) (ii)

Omit the subparagraph. Insert instead:

- (ii) does not become a partner or director of a law practice.

[45] Section 196

Omit the section. Insert instead:

196 Professional indemnity insurance

- (1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with one of the following:
 - (a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction,
 - (b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a)—the foreign lawyer:
 - (i) must have professional indemnity insurance that covers the practice of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority, and
 - (ii) if the insurance is for less than \$1.5 million (inclusive of defence costs)—must provide a disclosure statement to each client disclosing the level of cover,
 - (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b)—the foreign lawyer must provide a disclosure

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

statement to each client stating that the lawyer does not have complying professional indemnity insurance.

- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
- (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this section.
- (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

[46] Section 202 Manner of application

Omit section 202 (6) (a). Insert instead:

- (a) matters that may affect the domestic registration authority's consideration of the application for the grant or renewal of registration, and

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

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

- (d) state whether the applicant has been convicted of an offence in Australia or a foreign country, and if so:
 - (i) the nature of the offence, and
 - (ii) how long ago the offence was committed, and
 - (iii) the applicant's age when the offence was committed, and

[48] Section 203 (2) (h1)

Insert after section 203 (2) (h):

- (h1) specify which of the paragraphs of section 196 (1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters, and

[49] Section 204 Grant or renewal of registration

Insert after section 204 (1):

- (1A) The domestic registration authority may, when granting or renewing registration, impose conditions as referred to in section 224 (Conditions imposed by domestic registration authority).

[50] Section 204 (2A)

Insert after section 204 (2):

- (2A) If the domestic registration authority:
- (a) refuses to grant or renew registration, or
 - (b) imposes a condition of the registration and the applicant does not agree to the condition,
- the authority must, as soon as practicable, give the applicant an information notice.

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

Insert “engaging in” after “regulating” in section 205 (1) (b).

[52] Section 205 (1) (c) (ii)

Insert “engaging in” after “concerning”.

[53] Section 205 (1) (d)

Omit the paragraph. Insert instead:

- (d) is satisfied the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were to be granted,

[54] Section 206 Refusal to grant or renew registration

Omit “or an office at which the applicant engages in legal practice in a foreign country” from section 206 (2) (h).

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

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

Omit section 208 (1) (e). Insert instead:

- (e) the person has been convicted of an offence in Australia or a foreign country,

[56] Section 208 (1) (g)

Omit section 208 (1) (g)–(i). Insert instead:

- (g) the person does not meet the requirements of section 196 (Professional indemnity insurance),

[57] Section 209 Amending, suspending or cancelling registration

Omit section 209 (2) (b) and (c). Insert instead:

- (b) if the notice stated the action proposed was to suspend the registration for a specified period—suspend the registration for a period no longer than the specified period, or
- (c) if the notice stated the action proposed was to cancel the registration:
 - (i) cancel the registration, or
 - (ii) suspend the registration for a period, or
 - (iii) amend the registration in a less onerous way the authority considers appropriate because of the representations.

[58] Section 209 (6)

Insert after section 209 (5):

- (6) In this section, *amend* registration means amend the registration under section 224 during its currency, otherwise than at the request of the foreign lawyer concerned.

[59] Section 217 Relationship of this Division with Chapters 4 and 6

Omit “the domestic registration authority from making a complaint” from section 217 (3).

Insert instead “a complaint from being made”.

[60] Section 231 Consideration and investigation of applicants and locally registered foreign lawyers

Insert “amend,” after “renew,” in section 231 (1).

[61] Section 231 (1)

Omit “or impose conditions on a person’s registration under this Part.”.

[62] Section 243 Definitions

Omit the definition of *trust money* from section 243 (1). Insert instead:

trust money means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes:

- (a) money received by the practice on account of legal costs in advance of providing the services, and
- (b) controlled money received by the practice, and
- (c) transit money received by the practice, and
- (d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

[63] Section 243 (3)

Insert after section 243 (2):

- (3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by:
 - (a) the practice alone, or
 - (b) an associate of the practice alone (otherwise than in a private and personal capacity), or
 - (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following:
 - (i) one or more associates of the practice,

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

- (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

[64] Section 248 When money is received

Insert “of the practice” after “associate” in section 248 (1) (b).

[65] Section 248 (1) (c)

Omit section 248 (1) (c) and (d). Insert instead:

- (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of another person.

[66] Section 250 Liability of principals of law practice

Omit “Accordingly, references” from section 250 (2).
Insert instead “References”.

[67] Section 252 Barristers not to receive trust money

Omit “money on behalf of another person”. Insert instead “trust money”.

[68] Section 253 Maintenance of general trust account

Insert “or holds” after “receives” in section 253 (3).

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

Omit section 254 (1) (d). Insert instead:

- (d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

[70] Section 255A

Insert after section 255:

255A Manner of withdrawal of trust money from general trust account

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.

Maximum penalty: 50 penalty units.

- (2) Without limiting subsection (1), the following are specifically prohibited:
 - (a) cash withdrawals,
 - (b) ATM withdrawals or transfers,
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the trust money.

[71] Section 256A

Insert after section 256:

256A Manner of withdrawal of controlled money from controlled money account

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.

Maximum penalty: 50 penalty units.

- (2) Without limiting subsection (1), the following are specifically prohibited:
 - (a) cash withdrawals,
 - (b) ATM withdrawals or transfers,

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

- (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.

[72] Section 258 Trust money subject to specific powers

Omit section 258 (1). Insert instead:

- (1) Subject to section 258A, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Maximum penalty: 50 penalty units.

[73] Section 258 (2)

Omit “as required”. Insert instead “in the way prescribed”.

[74] Section 258A

Omit the section. Insert instead:

258A Trust money received in the form of cash

- (1) **General trust money**
A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.
Maximum penalty: 50 penalty units.
- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice:

- (a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (1), and
 - (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).
- (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**
A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.
Maximum penalty: 50 penalty units.
- (5) **Trust money subject of a power**
A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.
Maximum penalty: 50 penalty units.
- (6) **Paramount operation of this section**
This section has effect despite anything to the contrary in any relevant direction, instruction or power.
- (7) **Definitions**
In this section:
appropriate person, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in respect of dealings with the money.
general trust money means trust money, other than:
 - (a) controlled money, and
 - (b) transit money, and
 - (c) money that is the subject of a power.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[75] Section 260 Intermixing money

Omit “allowed by the regulations”.
Insert instead “permitted by subsection (2)”.

[76] Section 260 (2)

Insert at the end of section 260:

- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the Law Society Council and in accordance with any conditions imposed by the Law Society Council in relation to the authorisation.

[77] Section 261 Dealing with trust money: legal costs and unclaimed money

Omit “practitioner” from section 261 (1) (a). Insert instead “practice”.

[78] Section 261 (1) (b)

Omit the paragraph. Insert instead:

- (b) withdraw money for payment to the practice’s account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are complied with,

[79] Section 271 When costs of investigation are debt

Omit section 271 (1) (a). Insert instead:

- (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 evidence that a default (within the meaning of Part 3.4) has occurred in relation to the law practice whose affairs are under investigation, and

[80] Section 274 Trust records to be externally examined

Omit section 274 (2) and (3). Insert instead:

- (2) The Law Society Council may appoint an external examiner to examine a law practice's trust records if the Council is not satisfied:
 - (a) that the practice has had its trust records externally examined as required by this section, or
 - (b) that an external examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of section 300, this section has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this section.

[81] Section 282 Records, reports and information

Omit "rule of law" from section 282 (5). Insert instead "legislation".

[82] Section 296

Omit the section. Insert instead:

296 Application of Part to incorporated legal practices and multi-disciplinary partnerships

- (1) The obligations imposed on law practices by this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.
- (2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.

[83] Sections 298 and 299

Omit the sections. Insert instead:

298 Disclosure to clients—money not received or held as trust money

(1) In this section:

non-trust money means money that is not trust money for the purposes of this Act because of section 244 (Money involved in financial services or investments) or because of a determination under section 245 (Determinations about status of money).

(2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this section and the regulations, notify the person who entrusted the money to the practice that:

- (a) the money is not treated as trust money for the purposes of this Act and is not subject to any supervision, investigation or audit requirements of this Act, and
- (b) a claim against the Fidelity Fund under this Act cannot be made in respect of the money.

Maximum penalty: 20 penalty units.

(3) The notification must be given, in writing, to the person at the time:

- (a) the money was entrusted to the law practice, if the money was non-trust money when it was entrusted to the practice, or
- (b) the money becomes non-trust money, if the money was trust money when it was entrusted to the practice.

(4) The regulations may make provision for or with respect to the form and manner in which notification required by this section is to be given and the contents of the notification.

299 Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate

(1) A law practice must, in accordance with the regulations, notify the appropriate Council of the details required by the regulations of each account maintained at an ADI in which the

practice or any legal practitioner associate of the practice holds money entrusted to the practice or legal practitioner associate.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) applies whether or not the money is trust money and whether or not section 244 (Money involved in financial services or investments) or 245 (Determinations about status of money) applies to the money.

[84] Section 301 Purposes

Omit “and prospective clients” from section 301 (a).

[85] Section 301 (d)

Omit “review” from section 301 (d). Insert instead “assessment”.

[86] Section 302 Definitions

Insert in alphabetical order in section 302 (1):

public authority means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest.

sophisticated client means a client to whom, because of section 312 (1) (c) or (d), disclosure under section 309 or 310 (1) is not or was not required.

third party payer—see section 302A (Terms relating to third party payers).

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

[87] Section 302A

Insert after section 302:

302A Terms relating to third party payers

- (1) For the purposes of this Part:
 - (a) a person is a *third party payer*, in relation to a client of a law practice, if the person is not the client and:
 - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client, or
 - (ii) being under that obligation, has already paid all or a part of those legal costs, and
 - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person, and
 - (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

[88] Section 304 Part also applies by agreement or at client's election

Omit "signs" from section 304 (1) (c) (i).

Insert instead "accepts, in writing or by other conduct, a written offer to enter into".

[89] Section 304 (2) (a)

Omit "sign a written".

Insert instead "accept, in writing or by other conduct, a written offer that complies with subsection (2A) to enter into an".

[90] Section 304 (2A)

Insert after section 304 (2):

(2A) An offer referred to in subsection (2) (a) must clearly state:

- (a) that it is an offer to enter into an agreement that this Part is to apply to the matter, and
- (b) that the client may accept it in writing or by other conduct, and
- (c) the type of conduct that will constitute acceptance.

[91] Section 305 Displacement of Part

Omit “signs under the corresponding law of the other jurisdiction a written” from section 305 (2) (b) (i).

Insert instead “enters under the corresponding law of the other jurisdiction into an”.

[92] Section 306 How and when does a client first instruct a law practice?

Insert “or on behalf of” after “from”.

[93] Section 308 What happens when different laws apply to a matter?

Omit “sign” from section 308 (4) (a). Insert instead “enter into”.

[94] Section 308 (4) (b)

Omit “signs”. Insert instead “enters into”.

[95] Section 308 (4A) and (4B)

Insert after section 308 (4):

- (4A) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client’s acceptance must be communicated to the law practice by facsimile transmission, e-mail or some other written form.
- (4B) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[96] Section 309 Disclosure of costs to clients

Omit “or prospective client” and “or prospective client’s” wherever occurring.

[97] Section 309 (1) (b) (iii)

Omit “within 30 days”.

[98] Section 309 (1) (c)

Omit “it is not reasonably practicable to estimate the total legal costs”.

Insert instead “that is not reasonably practicable”.

[99] Section 309 (1) (e)

Insert “, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (1A))” after “costs”.

[100] Section 309 (1) (l)

Omit “sign under a corresponding law a written”.

Insert instead “accept under a corresponding law a written offer to enter into an”.

[101] Section 309 (3)

Insert after section 309 (2):

- (3) A law practice may disclose any or all of the details referred to in subsection (1) (b) (i)–(iii), (g), (i), (j) and (l) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so at the time the other details are disclosed as required by this section the practice is taken to have complied with this section in relation to the details so disclosed.

[102] Section 311 How and when must disclosure be made to a client?

Omit section 311 (2). Insert instead:

- (2) Disclosure under section 310 (1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of sections 309 and 310.

[103] Section 312 Exceptions to requirement for disclosure

Insert “(exclusive of GST)” after “\$750” wherever occurring in section 312 (1) and (2).

[104] Section 312 (1)

Omit “or prospective client” wherever occurring.

[105] Section 312 (1) (c) (ii)

Omit “respectively”. Insert instead “each”.

[106] Section 312 (1) (c) (v)

Omit “20 or more”. Insert instead “more than 20”.

[107] Section 312 (1) (c) (vii)

Omit the subparagraph. Insert instead:

- (vii) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure, or

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[108] Section 314

Omit the section. Insert instead:

314 Additional disclosure—uplift fees

- (1) If a costs agreement involves an uplift fee, the law practice must, before entering into the agreement, disclose to the client in writing:
 - (a) the law practice’s legal costs, and
 - (b) the uplift fee (or the basis of calculation of the uplift fee), and
 - (c) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

[109] Section 315 Form of disclosure

Insert “to a client” after “disclosures” in section 315 (1).

[110] Section 315

Omit “or prospective client” wherever occurring.

[111] Section 316

Omit the section. Insert instead:

316 Ongoing obligation to disclose

A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under this Division as soon as is reasonably practicable after the law practice becomes aware of that change.

[112] Section 317

Omit the section. Insert instead:

317 Effect of failure to disclose

(1) Postponement of payment of legal costs until assessed

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under Division 11.

Note. Under section 369, the costs of an assessment in these circumstances are generally payable by the law practice.

(2) Bar on recovering proceedings until legal costs assessed

A law practice that does not disclose to a client or an associated third party payer anything required by this Division to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under Division 11.

(3) Setting costs agreement aside

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client or associated third party payer may also apply under section 328 for the costs agreement to be set aside.

(4) Reduction of legal costs on assessment

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, then, on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the costs assessor to be proportionate to the seriousness of the failure to disclose.

(5) Effect on legal costs where law practice retains another law practice that fails to disclose

If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to

disclose relevant information to the first law practice as required by section 310 (2), then subsections (1)–(4):

- (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information, and
- (b) do apply to the legal costs owing to the retained law practice.

(6) **Circumstances where associated third party payer involved**

In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other:

- (a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs, and
- (b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

(7) **Non-disclosure capable of constituting unsatisfactory professional conduct or professional misconduct**

Failure by a law practice to comply with this Division is capable of being unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner or Australian-registered foreign lawyer involved in the failure.

[113] Section 318A

Insert after section 318:

318A Disclosure to associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.

- (2) A disclosure under subsection (1) must be made in writing:
 - (a) at the time the disclosure to the client is required under this Division, or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.
- (3) Section 315 (Form of disclosure) applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 318 (Progress reports) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

[114] Section 321 Interest on unpaid legal costs

Omit section 321 (1)–(4). Insert instead:

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the practice has given a bill for the costs in accordance with this Part.
- (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.
- (4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[115] Section 322 Making costs agreements

Insert at the end of section 322 (1) (c):

, or

- (d) between a law practice and an associated third party payer.

[116] Section 322 (4) (a)

Insert “into” after “enter”.

[117] Section 322 (5)

Omit “A costs agreement”.

Insert instead “Except as provided by section 395A, a costs agreement”.

[118] Section 322 (6)

Insert after section 322 (5):

- (6) A reference in section 328 and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1) (d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

[119] Section 323 Conditional costs agreements

Omit “, and a costs agreement containing a provision of that kind is referred to in this Act as a *conditional costs agreement*” from section 323 (1).

[120] Section 323 (4B)

Insert after section 323 (4A):

- (4B) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement made with a sophisticated client.

[121] Section 323 (5)

Omit the subsection. Insert instead:

- (5) If a client terminates an agreement within the period referred to in subsection (3) (e), the law practice:
 - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period, and
 - (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

[122] Section 324

Omit the section. Insert instead:

324 Conditional costs agreements involving uplift fees

- (1) A law practice must not enter into a conditional costs agreement in relation to a claim for damages that provides for the payment of an uplift fee on the successful outcome of the claim to which the fee relates.
- (2) Except as provided by subsection (1), a conditional costs agreement may provide for the payment of an uplift fee.
- (3) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (4) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable:
 - (a) a range of estimates of the uplift fee, and
 - (b) an explanation of the major variables that will affect the calculation of the uplift fee.
- (5) If a conditional costs agreement relates to a litigious matter, the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

(6) A law practice must not enter into a costs agreement in contravention of this section.

Maximum penalty: 100 penalty units.

[123] Section 325 Contingency fees are prohibited

Omit section 325 (1) (a).

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

Insert “and without limiting the matters to which the costs assessor can have regard,” after “reasonable,” in section 328 (2).

[125] Section 328 (2) (d)–(g)

Omit section 328 (2) (d). Insert instead:

- (d) the circumstances and the conduct of the parties before and when the agreement was made,
- (e) the circumstances and the conduct of the parties in the matters after the agreement was made,
- (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement,
- (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.

[126] Section 328 (12)

Insert after section 328 (11):

(12) In this section:

client means a person to whom or for whom legal services are or have been provided.

Note. See also section 322 (6), which extends the application of this section to associated third party payers.

[127] Section 332 Bills

Insert after section 332 (6):

- (6A) Despite anything in subsections (2)–(6), a bill may be given to a client electronically if the client is a sophisticated client and requested the bill to be given electronically.

[128] Section 332A

Omit the section. Insert instead:

332A Request for itemised bill

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.
- (3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.
- (4) Subject to subsection (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.
- (5) If the person makes a request for an itemised bill in accordance with this section, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.
- (6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (7) Section 332 (2), (5) and (6) apply to the giving of an itemised bill under this section.

[129] Section 333 Notification of client's rights

Insert after section 333 (2):

- (3) Subsection (1) does not apply in relation to a sophisticated client.
- (4) A law practice may provide the written statement referred to in subsection (1) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.

[130] Section 349A

Insert before section 350:

349A Definition

In this Division:

client means a person to whom or for whom legal services are or have been provided.

[131] Section 350 Application by client or third party payers for costs assessment

Omit section 350 (1)–(4). Insert instead:

- (1) A client may apply to the Manager, Costs Assessment for an assessment of the whole or any part of legal costs.
- (2) A third party payer may apply to a costs assessor for an assessment of the whole or any part of legal costs payable by the third party payer.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (3A) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for a costs assessment.
- (4) An application by a client or third party payer for a costs assessment under this section must be made within 12 months after:

- (a) the bill was given or the request for payment was made to the client or third party payer, or
- (b) the costs were paid if neither a bill was given nor a request was made.

[132] Section 350 (5)

Omit the subsection. Insert instead:

- (5) However, an application that is made out of time, otherwise than by:
 - (a) a sophisticated client, or
 - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned,

may be dealt with by the costs assessor if the Supreme Court, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.

[133] Section 350 (6)–(9)

Omit section 350 (6). Insert instead:

- (6) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (7) If there is an associated third party payer for a client of a law practice:
 - (a) nothing in this section prevents:
 - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is solely liable, and
 - (ii) the associated third party payer from making one or more applications for assessment under this

Legal Profession Further Amendment Bill 2006

Schedule 2

Amendment of Legal Profession Act 2004 for consistency with model legislation

section in relation to costs for which the associated third party payer is solely liable, and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately, and

- (b) the client or the associated third party payer:
 - (i) may participate in the costs assessment process where the other of them makes an application for assessment under this section in relation to costs for which they are both liable, and
 - (ii) is taken to be a party to the assessment and is bound by the assessment, and
- (c) the law practice:
 - (i) must participate in the costs assessment process where an application is made under this section by the associated third party payer in the same way as the practice must participate in the process where an application is made under this section by a client, and
 - (ii) is taken to be a party to the assessment and is bound by the assessment.

(8) If there is a non-associated third party payer for a client of a law practice:

- (a) nothing in this section prevents:
 - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is liable, and
 - (ii) the non-associated third party payer from making one or more applications for assessment under this section in relation to costs for which the non-associated third party payer is liable,and those applications may be made by them at the same time or at different times but must be dealt with separately, and
- (b) the client:
 - (i) may participate in the costs assessment process where the non-associated third party payer makes an application under this section in

- relation to the legal costs for which the non-associated third party payer is liable, and
 - (ii) is taken to be a party to the assessment and is bound by the assessment, and
 - (c) the law practice:
 - (i) must participate in the costs assessment process, and
 - (ii) is taken to be a party to the assessment, and
 - (d) despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.
 - (9) In this section:
 - client* includes the following:
 - (a) an executor or administrator of a client,
 - (b) a trustee of the estate of a client.
 - third party payer* includes the following:
 - (a) an executor or administrator of a third party payer,
 - (b) a trustee of the estate of a third party payer.

[134] Section 351 Application for costs assessment by law practice retaining another law practice

Omit section 351 (2) and (3). Insert instead:

- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (2A) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (3) An application under this section must be made within 60 days after:
 - (a) the bill was given or the request for payment was made, or
 - (b) the costs were paid if neither a bill was given nor a request was made.

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

Omit section 352 (2) and (3). Insert instead:

- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this section unless at least 30 days have passed since:
 - (a) the bill was given or the request for payment was made, or
 - (b) the costs were paid if neither a bill was given nor a request was made, or
 - (c) an application has been made under this Division by another person in respect of the legal costs.

[136] Section 356 Persons to be notified of application

Insert at the end of the section:

- (2) A person who is notified by the Manager, Costs Assessment under subsection (1):
 - (a) is entitled to participate in the costs assessment process, and
 - (b) is taken to be a party to the assessment, and
 - (c) if the costs assessor so determines, is bound by the assessment.

[137] Section 361

Omit the section. Insert instead:

361 Assessment of costs by reference to costs agreement

- (1) A costs assessor must assess the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if:

- (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs, and
- (b) the agreement has not been set aside under section 328 (Setting aside costs agreements),
unless the assessor is satisfied:
 - (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of Division 3 (Costs disclosure), or
 - (d) that Division 5 (Costs agreements) precludes the law practice concerned from recovering the amount of the costs, or
 - (e) that the parties otherwise agree.
- (2) The costs assessor is not required to initiate an examination of the matters referred to in subsection (1) (c) and (d).

[138] Section 363 Criteria for costs assessment

Insert “, except to the extent that section 361 or 362 applies to any disputed costs” after “work” in section 363 (1) (c).

[139] Section 363 (2) (b)

Omit “or the failure to make any disclosure required under that Division,”.

[140] Section 363 (2) (d)

Omit the paragraph.

[141] Section 369 Costs of costs assessment

Insert at the end of section 369 (1) (b):

- , and
- (c) costs that on assessment are reduced by 15% or more.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[142] Section 369 (3)

Insert at the end of section 369 (3) (b):

, or

- (c) for a costs assessment in relation to costs that on assessment are reduced by 15% or more—by the law practice that provided the legal services concerned or, if the costs assessor so determines, by such persons, and to such extent, as may be determined by the costs assessor.

[143] Section 395A

Insert after section 395:

395A Contracting out of Division by sophisticated clients

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Division.

[144] Section 419 Definitions

Omit “that arises from” from the definition of *concerted interstate default*.
Insert instead “arising from or constituted by”.

[145] Section 419, definition of “default”

Omit “or an associate of the practice” wherever occurring.

[146] Section 419, definition of “default”

Omit “or an associate” where secondly occurring in paragraphs (a) and (b).

[147] Section 419, definition of “default”

Omit “is constituted by or arises from” from paragraph (b).
Insert instead “arises from or is constituted by”.

[148] Section 433 Meaning of “relevant jurisdiction”

Insert “or constitutes” after “rise to” in section 433 (1).

[149] Section 433 (1), note

Insert “or constituted by” after “from”.

[150] Section 434 Defaults to which this Part applies

Insert “or constituted by” after “from” in section 434 (1).

[151] Section 434 (3)

Insert “or constituting” after “giving rise to”.

[152] Section 440 Claims not affected by certain matters

Omit “from which the default arose”.

Insert instead “giving rise to or constituting the default”.

[153] Section 458 Claims by law practices or associates about defaults

Insert “or constituted by” after “arising from” in section 458 (1).

[154] Section 459 Claims by law practices or associates about notional defaults

Insert “or constituted by” after “arising from” in section 459 (1).

[155] Section 461 Defaults involving interstate elements where committed by one associate only

Omit “that arises from” from section 461 (1).

Insert instead “arising from or constituted by”.

[156] Section 475 Application of Part to sole practitioners whose practising certificates lapse

Insert “and the lawyer was a sole practitioner immediately before the certificate lapsed” after “lapsed” in section 475 (1).

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[157] Section 475 (1) (b)

Insert “or renewed” after “granted”.

[158] Section 475 (3)

Omit the subsection. Insert instead:

(3) Subsection (2) ceases to apply:

- (a) if a manager or receiver is appointed under this Act for the law practice, or
- (b) when the period of 6 months after the practising certificate actually lapsed expires, or
- (c) if the lawyer’s application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law,

whichever first occurs.

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

Insert after section 498 (1) (f):

- (g) conduct of an Australian legal practitioner in failing to comply with an order of the Disciplinary Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law),
- (h) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

[160] Section 508 Practitioner to be notified of complaint

Insert after section 508 (4):

- (5) Nothing in this section requires the Commissioner or a Council to give written notice under this section to the practitioner until the Commissioner or Council has had time to consider the complaint, seek further information about the complaint from

the complainant or otherwise undertake preliminary inquiries
into the complaint, and properly prepare the notice.

[161] Section 574 Enforcement of compensation orders

Omit section 574 (2).

[162] Section 596 Failure to comply with orders

Omit section 596 (1).

[163] Section 611 Definitions

Insert “or an associate of the practice” after “practice” in paragraph (d) of
the definition of *regulated property* in section 611 (1).

[164] Section 618 Notice of appointment

Insert “of trust money” after “supervisor” in section 618 (2) (a).

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

Omit “for” wherever occurring in section 619 (1) and (2).
Insert instead “of”.

[166] Section 619 (3)

Insert “of trust money” after “supervisor”.

[167] Section 620 Role of supervisor of trust money

Omit “for” from section 620 (1). Insert instead “of trust money of”.

[168] Section 620 (2) (b)

Insert “either or both of the following” after “supervisor” where firstly
occurring.

[169] Section 620 (2) (b) (i)

Insert “files and” before “documents”.

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

[170] Section 625 Effect of service of notice

Insert “trust” after “another” in section 625 (5).

[171] Section 626 Role of manager

Insert “either or both of the following” after “manager” where firstly occurring in section 626 (2) (b).

[172] Section 632 Effect of service of notice

Insert “trust” after “another” in section 632 (5).

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

Omit section 638 (1). Insert instead:

(1) A receiver for a law practice may require:

- (a) a person who is an associate or former associate of the practice, or
- (b) a person who has or has had control of documents relating to the affairs of the practice, or
- (c) a person who has information relating to regulated property of the practice or property that the receiver believes on reasonable grounds to be regulated property of the practice,

to give the receiver either or both of the following:

- (d) access to the documents relating to the affairs of the practice the receiver reasonably requires,
- (e) information relating to the affairs of the practice the receiver reasonably requires (verified by statutory declaration if the requirement so states).

[174] Section 638 (3)

Omit the subsection.

[175] Section 645 Termination of receiver’s appointment

Insert “by the Supreme Court” after “appointment” where first occurring in section 645 (1).

[176] Section 645 (2AA)

Insert after section 645 (2A):

(2AA) The Supreme Court may make any order it considers appropriate in relation to an application under this section.

[177] Section 645 (2B)

Omit “under this section”.

Insert instead “for termination of the receiver’s appointment”.

[178] Section 651

Omit the section. Insert instead:

651 ADI disclosure requirements

(1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener without charge:

- (a) whether or not the practice, or an associate of the practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener, and
- (b) details identifying every account so maintained.

Maximum penalty: 50 penalty units.

(2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge:

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

Maximum penalty: 50 penalty units.

(3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited

Legal Profession Further Amendment Bill 2006

Schedule 2 Amendment of Legal Profession Act 2004 for consistency with model legislation

into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener without charge:

- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener, and
- (b) the details of any such account.

Maximum penalty: 50 penalty units.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

[179] Section 659 Requirement to provide access to documents and information relating to affairs of law practice

Insert “either or both of the following” after “investigator” where secondly occurring in section 659 (2).

[180] Section 659 (2) (a) and (b)

Omit “practice’s affairs” wherever occurring.
Insert instead “affairs of the practice”.

[181] Section 659 (2) (a)

Omit “and”.

[182] Section 660 Requirements in relation to complaint investigations

Omit “the lawyer” where firstly occurring in section 660 (2).

Insert instead “a law practice of which the lawyer is or was an associate”.

[183] Section 660 (2)

Insert “either or both of the following” after “investigator” where secondly occurring in section 660 (2).

[184] Section 660 (2) (a) and (b)

Omit “lawyer’s affairs” wherever occurring.

Insert instead “affairs of the lawyer”.

[185] Section 660 (2) (a)

Omit “and”.

[186] Section 724 Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements

Insert at the end of section 724 (3) (c):

, or

- (d) proceedings taken by the receiver for the recovery of regulated property (as defined in Chapter 5).

Schedule 3 Amendment of other legislation

Schedule 3 Amendment of other legislation

(Section 4)

3.1 Administrative Decisions Tribunal Act 1997 No 76

Schedule 2, Part 3, clause 1 Composition of Division

Omit “from the barrister members or solicitor members” from clause 1 (3).

3.2 Legal Profession Regulation 2005

[1] Clause 18 Requirements for professional indemnity insurance for interstate legal practitioners—section 98 of the Act

Omit the clause.

[2] Clause 87 Intermixing money—section 260 of the Act

Omit the clause.