

# Legal Profession Act 1987 No 109

[1987-109]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

*Legal Profession Amendment (Costs Assessment) Act 1998 No 83*, Sch 1 [4] and [15] (amended by *Motor Accidents Compensation Act 1999 No 41*) (not commenced)

*Conveyancers Licensing Act 2003 No 3* (not commenced)

*Legal Profession Legislation Amendment (Advertising) Act 2003 No 98*, so much of Sch 1 [3] as would insert sec 38JA (4)–(7) (not commenced)

*Legal Profession Amendment Act 2004 No 51* (not commenced)

### Authorisation

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# Legal Profession Act 1987 No 109



New South Wales

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# Legal Profession Act 1987 No 109



New South Wales

An Act to regulate the admission and practice of barristers and solicitors; to repeal the *Legal Practitioners Act 1898*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Legal Profession Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**accountant** means an accountant who is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).

**Admission Board** means the Legal Practitioners Admission Board constituted under Part 2.

**admission rules** means rules made under this Act by the Admission Board.

**Advisory Council** means the Legal Profession Advisory Council constituted under Part 5.

**Appeal Panel** of the Tribunal means an Appeal Panel constituted under the *Administrative Decisions Tribunal Act 1997*.

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

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

**barrister** means:

- (a) a legal practitioner who holds a current practising certificate as a barrister, or
- (b) an interstate legal practitioner who practises as a barrister in this State.

**barristers rules** means rules made under this Act by the Bar Council.

**Commissioner** means the Legal Services Commissioner appointed under Part 5A.

**corresponding law** see section 48N.

**costs** includes fees, charges, disbursements, expenses and remuneration.

**Council** means the Bar Council or the Law Society Council.

**Director-General** means the Director-General of the Attorney General's Department.

**domestic lawyer** see section 48ZE.

**Fidelity Fund** means the Solicitors' Fidelity Fund established and maintained under Part 7.

**foreign law** see section 48ZE.

**foreign lawyer** see section 48ZE.

**foreign lawyers rules** means rules made under section 57A (3), 57B (3) or 57CA.

**foreign registration authority** see section 48ZE.

**home registration authority** see section 48ZE.

**incorporated legal practice** means a corporation that is an incorporated legal practice within the meaning of Division 2A of Part 3.

**insurer** means a person (whether or not a corporation) who or which carries on insurance business in New South Wales or elsewhere.

**interstate legal practitioner** see section 48N.

**interstate practising certificate** see section 48N.

**investigator** means an investigator appointed under section 55.

**joint rules** means rules made under this Act jointly by the Bar Council and the Law Society Council.

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

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

**lay member** of a body means a member who is not a legal practitioner.

**legal practitioner** means a person enrolled in the Supreme Court as a legal practitioner.

**Legal Services Division** of the Tribunal means the Legal Services Division of the Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

**licensed conveyancer** means the holder of a licence in force under the [Conveyancers Licensing Act 1995](#).

**local legal practitioner** see section 48N.

**locally registered foreign lawyer** see section 48ZE.

**manager**, in relation to a solicitor's practice, means a manager appointed for the time being under Part 8A.

**Manager, Costs Assessment** means the person holding office, under Part 2 of the [Public Sector Management Act 1988](#), as "Manager, Costs Assessment" in the Attorney General's Department, and includes any person to whom that person has delegated the functions of that officer.

**money** includes an instrument enabling a bank, building society or credit union to credit or debit an amount of money to an account with the bank, building society or credit union.

**practising certificate** means a practising certificate issued under Part 3 by the Bar Council or by the Law Society Council.

**practising certificate fee** means the fee payable for the issue of a practising certificate under section 29A or 29B.

**Public Purpose Fund** means the Public Purpose Fund established under Division 2 of Part 6.

**receiver**, in relation to a solicitor's property, means a receiver appointed under Part 8.

**regulations** means regulations made under this Act.

**regulatory authority** see section 48N.

**solicitor** means:

- (a) a legal practitioner who holds a current practising certificate as a solicitor and barrister, or
- (b) an interstate legal practitioner who practises as a solicitor and barrister in this



State.

**solicitors rules** means rules made under this Act by the Law Society Council.

**Supreme Court Charter** means the Charter dated 13 October 1823 under the Act 4 Geo IV c 96 establishing Courts of Justice in New South Wales.

**tax offence** means any offence under the [Taxation Administration Act 1953](#) of the Commonwealth.

**Tribunal** means the Administrative Decisions Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

**trust account inspector** means a trust account inspector appointed under section 55.

**unrestricted practising certificate** means a practising certificate that is not subject to a condition, other than a condition requiring the holder of the certificate to undertake and complete one or more courses of continuing legal education.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) For the purposes of this Act, a person is taken to have committed an **act of bankruptcy** if the person:

- (a) is bankrupt or the subject of a creditor's petition presented to the Court under section 43 of the [Bankruptcy Act 1966](#) of the Commonwealth, or
- (b) has presented (as a debtor) a declaration to the Official Receiver under section 54A of the [Bankruptcy Act 1966](#) of the Commonwealth of his or her intention to present a debtor's petition or presented (as a debtor) such a petition under section 55 of that Act, or
- (c) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit.

### 3A Notes

The matter appearing under the heading "Note" in this Act does not form part of this Act.

## Part 2 Admission of legal practitioners

### Division 1 Role of Supreme Court

#### **4 Admission of legal practitioners**

- (1) The Supreme Court may admit and enrol natural persons as legal practitioners in accordance with subsection (2).
- (2) The Supreme Court is, on any day appointed by the Supreme Court for the purpose, to hear and determine any application made for the admission as a legal practitioner of a person approved by the Admission Board as a suitable candidate for admission.

#### **5 Legal practitioners and interstate legal practitioners to be officers of Supreme Court**

- (1) A legal practitioner is, on and from admission, an officer of the Supreme Court.
- (2) An interstate legal practitioner who practises as a barrister or solicitor and barrister in this State is an officer of the Supreme Court.

#### **5A Locally registered foreign lawyer not to be an officer of Supreme Court**

A locally registered foreign lawyer who practises foreign law in the State is not an officer of the Supreme Court.

### **Division 2 Legal Practitioners Admission Board**

#### **6 Rules for registration and admission**

The Admission Board may make rules for or with respect to all or any of the following:

- (a) the qualifications for registration, and registration, as a student-at-law,
- (b) the qualifications for admission as a legal practitioner,
- (c) without limiting paragraphs (a) and (b), the examination in such branches of knowledge as the Board thinks fit of candidates for admission as students-at-law or legal practitioners,
- (d) the establishment and conduct of boards or other bodies with functions concerning:
  - (i) the examination of candidates for admission as legal practitioners, and
  - (ii) the approval of a properly qualified person to be admitted as a legal practitioner,
- (e) applications for admission as a legal practitioner and the approval of such applications,
- (f) the fees payable to the Board in relation to registration, admission, examination and certificates,
- (g) any other matters relating to the exercise of its functions.

## **7 Provisions applying to admission rules**

Part 6 of the *Interpretation Act 1987* applies to a rule made under section 6 in the same way as it applies to a statutory rule within the meaning of that Act.

### **Note—**

Part 6 of the *Interpretation Act 1987* contains provisions relating to the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal of statutory rules.

## **8 Examiners**

The Admission Board may delegate the examination of candidates for admission as legal practitioners to such persons as it considers competent to examine the candidates.

## **9 Constitution of Admission Board**

- (1) There is constituted by this Act the Legal Practitioners Admission Board.
- (2) The Admission Board has and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) The Admission Board is not and does not represent the Crown for any purpose.
- (4) The Admission Board is a body corporate.
- (5) Schedule 2 has effect with respect to the Admission Board.

## **10 Membership of Admission Board**

- (1) The Admission Board is to consist of 9 members.
- (2) The members of the Admission Board are:
  - (a) the Chief Justice of New South Wales, and
  - (b) 3 Judges of the Supreme Court for the time being nominated by the Chief Justice of New South Wales, and
  - (c) the Attorney General or a person for the time being nominated by the Attorney General, and
  - (d) 2 persons for the time being nominated by the Committee of NSW Law Deans, and
  - (e) 2 barristers for the time being nominated by the Bar Council, and
  - (f) 2 solicitors for the time being nominated by the Law Society Council.

## **Division 3 Suitability of candidate for admission**

## **11 Character and suitability of candidates**

A candidate, however qualified in other respects, must not be admitted as a legal practitioner unless the Admission Board is satisfied that the candidate is of good fame and character and is otherwise suitable for admission.

## **12 Declaration on character and suitability**

- (1) When the Admission Board considers an application for admission as a legal practitioner, it must consider whether it is satisfied that the candidate is of good fame and character and is otherwise suitable for admission.
- (2) Unless the Admission Board declares that it is satisfied that the candidate is of good fame and character and is otherwise suitable for admission, it must refuse to approve of the application for admission.
- (3) The Admission Board must notify the Bar Council and the Law Society Council in accordance with the admission rules of any application for admission (unless a declaration has been made under section 13 with respect to the applicant).

## **13 Early consideration of character and suitability**

- (1) A person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board of his or her good fame or character or suitability for admission.
- (2) (Repealed)
- (3) The applicant must serve a copy of the application on the Bar Council and the Law Society Council in accordance with the admission rules.
- (4) The Admission Board is to consider each application under this section and make the declaration sought or refuse to do so.

## **13A Admission Board may refer certain matters to Supreme Court**

- (1) The Admission Board may refer to the Supreme Court any application for admission as a legal practitioner if, in the opinion of the Admission Board, it would be more practical in the circumstances of the case for the Supreme Court to consider whether or not the candidate is of good fame and character or is otherwise suitable for admission.
- (2) The Supreme Court has the same powers as the Admission Board to deal with an application and its decision on an application is taken to be a decision of the Admission Board.
- (3) On a referral under this section, the Supreme Court may make such order or declaration as it thinks fit.
- (4) Nothing in this section affects the operation of section 17.

## **14 Appeals**

- (1) If approval of an application for admission as a legal practitioner is refused by the Admission Board under section 12, the applicant may appeal to the Supreme Court against the refusal.
- (2) If a declaration sought under section 13 is refused, the applicant may appeal to the Supreme Court against the refusal of the declaration.
- (3) If a declaration is made under section 12 or 13, a Council may appeal to the Supreme Court against the making of the declaration. The applicant is entitled to be represented and to be heard on the appeal.
- (4) An appeal under this section is to be by way of rehearing and fresh evidence, or evidence in addition to or substitution for the evidence before the Admission Board, may be given on the appeal.
- (5) A Judge is disqualified from hearing an appeal under this section if the Judge was a member of the Admission Board when it made the decision to which the appeal relates.
- (6) On an appeal under this section, the Supreme Court may make such order or declaration as it thinks fit.

## **15 Binding effect of declaration**

A declaration made under section 13, or an order or declaration of the Supreme Court under section 13A or 14, is binding on the Admission Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought on the application or appeal.

## **16 Representation by Councils**

- (1) A Council is entitled to be represented before, and to be heard by, the Supreme Court at an inquiry under section 13A or on an appeal under section 14.
- (2) A Council is entitled to be represented before, and to be heard by, the Admission Board at an inquiry into a matter under this Division. A Council may make representations in writing to the Admission Board on any such matter.
- (3) The applicant concerned in the matter before the Admission Board, or before the Supreme Court under section 13A, is also entitled to be represented and heard at the inquiry and to make representations.

## **Division 4 Miscellaneous**

## **17 Miscellaneous provisions respecting admission**

- (1) Persons cannot be admitted or enrolled as barristers or solicitors.
- (2) Any inherent power or jurisdiction of the Supreme Court to admit barristers and solicitors (or legal practitioners) is revoked.
- (3) The Supreme Court Charter remains revoked in New South Wales in so far as it relates to the admission of barristers, advocates, proctors, solicitors and attorneys.

## **18 References to barristers and solicitors**

- (1) The regulations may require a reference in any other Act or in any instrument under any other Act to a barrister or solicitor to be construed as a reference to a specified class of legally qualified persons, including:
  - (a) as a reference to a legal practitioner within the meaning of this Act, or
  - (b) in the case of a reference to a barrister—as a reference to a barrister, or a barrister or solicitor, within the meaning of this Act, or
  - (c) in the case of a reference to a solicitor—as a reference to a solicitor, or a solicitor or barrister, within the meaning of this Act.
- (2) Subject to any such regulation, a reference in any other Act or in any instrument under any other Act to a barrister or solicitor is, so far as the reference relates to a barrister or solicitor of New South Wales, taken to be a reference to a legal practitioner within the meaning of this Act. This subsection has effect except in so far as the context or subject-matter otherwise indicates or requires.

## **19 Cancellation of practising certificates**

A practising certificate is automatically cancelled if the holder ceases to be a legal practitioner.

## **20-24A (Repealed)**

# **Part 3 Legal practice**

## **Division 1 Practising certificates**

### **25 Requirement for practising certificate**

- (1) A legal practitioner whose sole or principal place of legal practice is this State must not practise as a barrister or solicitor and barrister without being the holder of a current practising certificate.
- (2) A legal practitioner whose sole or principal place of legal practice is this State must not hold himself or herself out to be a barrister without being the holder of a current

practising certificate as a barrister.

- (3) A legal practitioner whose sole or principal place of legal practice is this State must not hold himself or herself out to be a solicitor without being the holder of a current practising certificate as a solicitor and barrister.
- (3A) An interstate legal practitioner must not practise as a barrister or solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of another State or a Territory.
- (3B) An interstate legal practitioner must not hold himself or herself out to be a barrister in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of another State or a Territory.
- (3C) An interstate legal practitioner must not hold himself or herself out to be a solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of another State or a Territory.
- (4) A legal practitioner or interstate legal practitioner who contravenes this section wilfully and without reasonable excuse is guilty of professional misconduct.

## **26 Election to practise as barrister or solicitor and barrister**

- (1) A legal practitioner may, subject to this Act, elect to practise as a barrister or as a solicitor and barrister.
- (2) A legal practitioner is, subject to this Act, entitled to be issued with a practising certificate as a barrister or solicitor and barrister.
- (3) An interstate legal practitioner may, subject to this Act, elect to practise in this State as a barrister or as a solicitor and barrister.

### **Note—**

A person may not hold current practising certificates at the same time as a barrister and as a solicitor and barrister, see section 38D.

## **27 Barristers**

- (1) The Bar Council may, on application, grant a practising certificate to a legal practitioner authorising the practitioner to practise as a barrister.
- (2) A legal practitioner who does not hold a current practising certificate as a barrister may at any time apply to the Bar Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.
- (3) A legal practitioner who holds a current practising certificate as a barrister may, during the prescribed period before the certificate expires, apply to the Bar Council for a new practising certificate.

- (4) Subsection (3) does not prevent the Bar Council from accepting an application made after the prescribed period and before the next 1 July.

## **28 Solicitors and barristers**

- (1) The Law Society Council may, on application, grant a practising certificate to a legal practitioner authorising the practitioner to practise as a solicitor and barrister.
- (2) A legal practitioner who does not hold a current practising certificate as a solicitor and barrister may at any time apply to the Law Society Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.
- (3) A legal practitioner who holds a current practising certificate as a solicitor and barrister may, during the prescribed period before the certificate expires, apply to the Law Society Council for a new practising certificate.
- (4) Subsection (3) does not prevent the Law Society Council from accepting an application made after the prescribed period and before the next 1 July.
- (5) (Repealed)

## **29 (Repealed)**

### **29A Fee for practising certificate—barristers**

- (1) A fee is payable for the issue of a practising certificate authorising a legal practitioner to practise as a barrister of such amount as is determined by the Bar Council and approved by the Attorney General.
- (2) The Bar Council may determine different practising certificate fees according to such different factors as are specified in the determination and approved by the Attorney General.
- (3) The Bar Council may waive payment of the practising certificate fee or any part of the fee.
- (4) Subject to the regulations (if any), the Bar Council is to determine the practising certificate fee on a cost recovery basis, with the fee being such amount as is required from time to time for the purpose of recovering the costs of or associated with the regulatory functions of the Bar Council or Bar Association.
- (5) The **regulatory functions** of the Bar Council or Bar Association are the functions of the Bar Council or Bar Association under this Act, and any other functions the Bar Council or Bar Association exercises that are associated with the regulation of legal practice or maintaining professional standards of legal practice.
- (6) The practising certificate fee is not to include any charge for membership of the Bar Association and is not to include any amount that is required for the purpose of



recovering any costs of or associated with providing services or benefits to which barristers become entitled as members of the Bar Association.

**Note—**

Section 57M provides for membership of the Bar Association. It is not compulsory for barristers to be members of the Bar Association.

- (7) In addition, in determining the practising certificate fee, the Bar Council must exclude costs that are otherwise recoverable under this Act (for example, costs payable from the Public Purpose Fund under Division 2 of Part 6).
- (8) The regulations may make provision for or with respect to the determination of practising certificate fees, including by specifying the costs that may or may not be recovered by the charging of practising certificate fees.
- (9) In this section, **costs** includes expenses.

**29B Fee for practising certificate—solicitors**

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

**Note—**

Section 57MA provides for membership of the Law Society. It is not compulsory for solicitors to be members of the Law Society.

- (7) In addition, in determining the practising certificate fee, the Law Society Council must exclude any costs that are otherwise recoverable under this Act (for example, costs payable from the Public Purpose Fund under Division 2 of Part 6).
- (8) The regulations may make provision for or with respect to the determination of practising certificate fees, including by specifying the costs that may or may not be recovered by the charging of practising certificate fees.
- (9) In this section, **costs** includes expenses.

### **29C Late fee**

If an application for a practising certificate is accepted by a Council after the end of the period prescribed by the regulations during which the application is authorised to be made, payment of a late fee prescribed by the regulations may, if the Council thinks fit, be required as a condition of acceptance of the application.

### **29D Submission of budget to Attorney General**

- (1) The Attorney General may from time to time require a Council to prepare and submit a budget to the Attorney General, in respect of such period as the Attorney General directs, relating to any costs (or projected costs) that are recoverable (or are proposed to be recovered) by the charging of a practising certificate fee.
- (2) The budget is to include such information as the Attorney General directs. In particular, the Attorney General may require the provision of information about the administration of the Council (including the Bar Association and the Law Society).
- (3) The Attorney General may refuse to approve the amount of a practising certificate fee under section 29A or 29B if the relevant Council has failed to submit a budget as required under this section.
- (4) In this section:  
**costs** includes expenses.

### **29E Audit of Council activities**

- (1) The Attorney General may appoint an appropriately qualified person to conduct an audit of all or any particular activities of a Council for the purpose of determining the following:
  - (a) whether any activities the costs of which are recoverable, or are proposed to be recovered, by the charging of a practising certificate fee are being carried out economically and efficiently and in accordance with the relevant laws,
  - (b) whether practising certificate fees are being expended for the purpose of defraying the costs in respect of which the fees are charged.

- (2) A Council is to provide all reasonable assistance to the person appointed to conduct the audit.
- (3) The person appointed to conduct the audit is to report to the Attorney General on the result of the audit.
- (4) An audit may be conducted under this section whenever the Attorney General considers it appropriate.
- (5) In this section:

**audit** includes an examination and inspection.

**costs** includes expenses.

**Council** includes the Bar Association and the Law Society.

### **30 Refusal of application for practising certificate as barrister or solicitor**

- (1) A Council must refuse to issue a practising certificate if the application for it:
  - (a) is not accompanied by the appropriate fee (unless payment of the fee has been waived by the Council), or
  - (b) is not accompanied by, or does not contain, such information as may be prescribed by the regulations.
- (2) A Council may refuse to issue a practising certificate applied for by the holder of a suspended practising certificate.
- (3) A Council may refuse to issue a practising certificate if a finding of unsatisfactory professional conduct or professional misconduct has been made in respect of the applicant and:
  - (a) a fine imposed because of the finding has not been paid, or
  - (b) costs awarded against the applicant because of the finding have been assessed but have not been paid or, if an arrangement for their payment has been made, the applicant is in default under the arrangement, or
  - (c) any costs of an inspection or investigation payable under section 55 by the applicant have not been paid, or
  - (d) any expenses of receivership payable under section 110 by the applicant have not been paid.
- (4) Other sections of this Act also provide for the refusal of applications for the issue of practising certificates.

### **31 Non-payment of contributions and levies by solicitors in respect of Indemnity Fund or**

### **Fidelity Fund**

The Law Society Council may refuse to issue a practising certificate if:

- (a) the applicant is required by section 45 to contribute to the Indemnity Fund and the application is not accompanied by the contribution payable under that section, or
- (b) the applicant is required by section 76 to contribute to the Fidelity Fund and the application is not accompanied by the contribution payable under that section, or
- (c) any levy payable by the applicant under section 46, 46A or 77 is unpaid.

#### **Note—**

Part 9 sets out further grounds on which the Law Society Council must refuse to issue a practising certificate to a solicitor or suspend a solicitor's practising certificate. These grounds relate to a failure by the solicitor to obtain fidelity insurance in respect of a regulated mortgage.

### **32 Conditions may be imposed on practising certificates**

- (1) A practising certificate may be issued unconditionally or subject to conditions.
- (2) A Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition.
- (3) A condition cannot be attached to a practising certificate unless it is of a kind authorised by this Act to be attached.
- (4) (Repealed)
- (5) A legal practitioner who is the holder of a current practising certificate must not fail to comply with a condition to which the certificate is subject.

### **33 Conditions on practising certificates generally**

- (1) Conditions of the following kinds can be attached to the practising certificate of a barrister or solicitor:
  - (a) a condition requiring the holder to undertake and complete one or more courses of continuing legal education,
  - (b) a condition requiring the holder to undertake additional academic or training courses,
  - (c) a condition, of a kind authorised by the regulations, limiting the practising rights of the holder as determined by the Bar Council or the Law Society Council,
  - (d) any other condition agreed to by the holder.
- (2) Other sections of this Act also provide for conditions that may be attached to practising certificates.

### **34 Additional conditions on practising certificates of barristers**

- (1) Conditions of the following kinds can be attached to the practising certificate of a barrister:
  - (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a full-time component or other component of a reading program applicable to the holder and determined or approved by the Bar Council,
  - (b) a condition requiring the holder to sit for and pass any examination set by the Bar Council as part of a reading program,
  - (c) a condition requiring the holder to read with a barrister of a specified class or description chosen by the holder (including a barrister chosen from a list of at least 10 barristers kept by the Bar Council for the purpose) for a specified period and to comply with such requirements as will enable the barrister, at the end of the specified period, to certify to the Bar Council that the holder is fit to practise as a barrister without restriction.
- (2) A condition of a kind referred to in subsection (1) which is attached to the practising certificate of a barrister may limit the practising rights of the barrister until the condition is complied with.
- (3) The following conditions may also be attached to the practising certificate of a barrister:
  - (a) a condition limiting the holder to practising as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right),
  - (b) a condition limiting the holder to practising as a barrister in any other office under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right),
  - (c) a condition limiting the holder to practising as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).

### **35 Additional conditions on practising certificates of solicitors and barristers**

Conditions of the following kinds can be attached to the practising certificate of a solicitor:

- (a) a condition requiring the holder to complete a period of supervised practice,
- (b) a condition restricting the solicitor to acting as a solicitor and barrister under particular conditions as to employment.

### **36 Duration of practising certificates**

- (1) A practising certificate issued on application by the holder of a current practising certificate takes effect on the relevant date next following the making of the application, and remains in force for 12 months or for such other period as may be specified by the regulations.
- (2) Any other practising certificate takes effect on the date it bears, and remains in force until immediately before the next relevant date.
- (3) If an application referred to in subsection (1) is not determined before the relevant date next following the making of the application, the practising certificate already held continues in force until a new practising certificate is issued or the application is refused.
- (4) In this section, **relevant date** means:
  - (a) subject to paragraph (b)—1 July, or
  - (b) another date specified by the regulations as the common date for the duration of practising certificates.
- (5) The regulations may contain savings and transitional provisions consequent on a change in the relevant date. In particular, the regulations may:
  - (a) specify the period for which practising certificates in force when the change is made are to remain in force, and
  - (b) specify the period for which practising certificates that take effect on the new relevant date are to remain in force, and
  - (c) modify the application of section 45 in respect of contributions payable in respect of any such certificates.
- (6) (Repealed)

### **37 Refusal, suspension or cancellation of practising certificate generally**

- (1) A Council may refuse to issue, may cancel or may suspend a practising certificate if the applicant or holder:
  - (a) is required by the Council to explain specified conduct (whether or not related to practice as a barrister or solicitor) that the Council considers may indicate that the applicant or holder is not a fit and proper person to hold a practising certificate and fails, within the period specified by the Council, to give an explanation satisfactory to the Council, or
  - (b) has, in the opinion of the Council, failed to comply with a condition attached to the certificate, or

- (c) has contravened an order made in respect of the applicant or holder by the Tribunal, or
  - (d) is a disqualified person within the meaning of section 48K, or
  - (e) has had the applicant's or holder's right to practise as a solicitor and barrister, barrister or legal practitioner in another State or a Territory suspended or cancelled, or
  - (f) has contravened a provision of this Act, or
  - (g) is in prison.
- (2) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.

**38 Refusal, suspension or cancellation of practising certificate as solicitor and barrister—trust accounts etc**

The Law Society Council may refuse to issue, may cancel or may suspend a practising certificate as a solicitor and barrister if the applicant or holder fails, and continues to fail, to comply with section 61 or any other law relating to money received on behalf of another by the solicitor or by a partnership of which, at the time of the failure, the solicitor is or was a member.

**38A Refusal, suspension or cancellation of practising certificate—infirmity**

- (1) A Council may refuse to issue, may cancel or may suspend a practising certificate if the Council is satisfied, on such evidence as to it seems proper:
- (a) that the applicant or holder is, because of infirmity, injury or mental or physical illness, unfit to practise as a barrister or solicitor and barrister, and
  - (b) that it is in the public interest or the interest of the barrister's or solicitor's clients that the practising certificate should not be issued or should be cancelled or suspended.
- (1A) For the purposes of this section, an applicant or holder is unfit to practise as a barrister or solicitor and barrister only if the applicant or holder, because of his or her infirmity, injury or mental or physical illness, would be unable to carry out the inherent requirements of practice as a barrister or solicitor and barrister.
- (1B) The following are to be taken into account in determining whether an applicant or holder would be unable to carry out the inherent requirements of practice as a barrister or solicitor and barrister:
- (a) the applicant's or holder's past training, qualifications and experience relevant to

such practice,

(b) if the applicant or holder is already practising as a barrister or solicitor and barrister, the applicant's or holder's performance in such practice,

(c) all other relevant factors that it is reasonable to take into account.

(2) Before acting under subsection (1), a Council:

(a) may require the applicant or holder to be medically examined by a medical practitioner nominated by the Council, and

(b) may hold an inquiry.

(3) A refusal or failure by a person to comply with a requirement for medical examination may be accepted by a Council as evidence of the unfitness of the person to practise as a barrister or solicitor and barrister.

### **38B Appeals relating to practising certificates**

(1) If a Council:

(a) refuses to issue a practising certificate, or

(b) refuses to issue a practising certificate of the kind applied for, or

(c) attaches a condition to a practising certificate or varies a condition attached to a practising certificate, or

(d) cancels or suspends a practising certificate,

the applicant for, or holder of, the practising certificate may appeal to the Supreme Court.

(1A) If the Commissioner:

(a) directs a Council to refuse to issue a practising certificate, or

(b) cancels or suspends a practising certificate,

the applicant for, or holder of, the practising certificate may appeal to the Supreme Court against the decision of the Commissioner to make the direction or to cancel or suspend the practising certificate.

(1B) An appeal may not be made under subsection (1) against the refusal of a Council to issue a practising certificate if the refusal was at the direction of the Commissioner.

(2) The Supreme Court may make such order in the matter as it thinks fit.

(3) Except to the extent (if any) that may be ordered by the Supreme Court, the lodging



of an appeal does not stay the effect of the refusal, cancellation or suspension, or the attaching or variation of a condition, appealed against.

- (4) This section does not apply if a Council acts in conformity with a decision of the Tribunal that is in force.

### **38C Registers of barristers and solicitors**

- (1) A Council is required to keep, in such form as it thinks fit, a register of the legal practitioners to whom it has issued current practising certificates.
- (2) A Council is required to keep, in such form as it thinks fit, a register of the interstate legal practitioners who have given notice under section 48T that they have established an office in this State.

### **38D Dual certificates**

- (1) A legal practitioner may not at the same time hold current practising certificates as barrister and solicitor and barrister.
- (2) A practising certificate may be issued to a person on the condition that it does not have effect while another practising certificate is in force in relation to the person.

### **38E Injunctions**

- (1) The Supreme Court may, on the application of a Council, grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining a legal practitioner from contravening section 25 or 32.
- (2) No undertaking as to damages or costs is required.

### **38F Application of provisions of Division**

- (1) The Attorney General, while admitted as a legal practitioner, is entitled to an unconditional practising certificate. The Attorney General may elect to hold a practising certificate as a barrister or as a solicitor and barrister.
- (2) Section 33 (1) (b) and (c) and section 34 (1) do not apply to:
- (a) a legal practitioner who is the holder of a statutory position under the Crown (whether in right of New South Wales or in another right), or
  - (b) a legal practitioner who acts as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right), or
  - (c) a legal practitioner who is, or is a member of a class or description of legal practitioners, specified by the Bar Council or the Law Society Council for the purposes of this subsection, or

(d) a legal practitioner who is, or is a member of a class or description of legal practitioners, prescribed by the regulations for the purposes of this subsection.

(3) Subsection (2) applies only while the person is a legal practitioner to whom at least one of the paragraphs of that subsection applies.

## **Division 1AA Special powers in relation to practising certificates**

### **38FA Relevant period**

(1) In this Division, **relevant period** means, in relation to a matter to be determined under section 38FC:

(a) the period of 3 months commencing on the date on which notification is given to the relevant Council of the commission of the act of bankruptcy or the finding of guilt of the indictable offence or tax offence concerned by the legal practitioner who committed the act of bankruptcy or the offence, or

(b) if the relevant Council has not received notification as referred to in paragraph (a) when it sends a notice under section 38FC (2) to that legal practitioner, the period of 3 months commencing on the date specified in the notice as the date of issue of the notice,

and includes any extension under subsection (2).

(2) The Commissioner may extend the 3-month period referred to in subsection (1) to 4 months in relation to a particular matter at the request of the Council dealing with the matter or, if the Commissioner is dealing with the matter, on the Commissioner's own motion.

(3) If the Commissioner extends a period under subsection (2), the Commissioner must give notice in writing to the legal practitioner concerned of the extension of the period.

### **38FB Requirements to show cause—bankruptcy, indictable offences, tax offences and failures to notify**

(1) An applicant for a practising certificate who, since being admitted as a legal practitioner:

(a) has committed an act of bankruptcy, or

(b) has been found guilty of an indictable offence or a tax offence,

must provide a written statement, in accordance with the regulations, showing why, despite the act of bankruptcy or finding of guilt and any circumstances surrounding the act or finding, the applicant considers that he or she is a fit and proper person to hold a practising certificate.

- (2) An applicant for a practising certificate who has failed to notify a matter as required by the regulations (being a failure declared by the regulations to be professional misconduct) must provide a written statement, in accordance with the regulations, showing why, despite the failure to notify, the applicant considers that he or she is a fit and proper person to hold a practising certificate.
- (3) A barrister or solicitor who, since being admitted as a legal practitioner:
- (a) has committed an act of bankruptcy, or
  - (b) has been found guilty of an indictable offence or a tax offence,
- must provide a written statement, in accordance with the regulations, showing why, despite the act of bankruptcy or finding of guilt and any circumstances surrounding the act or finding, the barrister or solicitor considers that he or she is a fit and proper person to hold a practising certificate.
- (4) A barrister or solicitor who fails to notify a matter as required by the regulations (being a failure declared by the regulations to be professional misconduct) must provide a written statement, in accordance with the regulations, showing why, despite the failure to notify, the barrister or solicitor considers that he or she is a fit and proper person to hold a practising certificate.
- (5) A person is not required to comply with subsection (1), (2), (3) or (4) if the person has previously provided a written statement in accordance with this section to the appropriate Council showing why, despite the act of bankruptcy, finding of guilt or failure to notify concerned, the person considers that he or she is a fit and proper person to hold a practising certificate.
- (6) Subsections (1) and (3) extend to acts of bankruptcy occurring before the commencement of this section.
- (7) This section:
- (a) applies to an indictable offence or a tax offence whether or not committed in the course of practice as a barrister or solicitor, and
  - (b) applies to a finding of guilt of an indictable offence or a tax offence whether or not the court proceeded to a conviction for the offence, and
  - (c) applies to an indictable offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an indictable offence if committed in New South Wales), and
  - (d) applies to a tax offence committed in or outside New South Wales, and
  - (e) applies to a finding of guilt of an indictable offence or a tax offence even if other persons are prohibited from disclosing the identity of the offender, and

- (f) extends to an indictable offence or a tax offence committed before the commencement of this section (and so extends whether the finding of guilt was made before or after that commencement).

**38FC Refusal, cancellation or suspension of practising certificates—bankruptcy, indictable offences and tax offences**

- (1) A Council must refuse to issue, or must cancel or suspend, a practising certificate if:
  - (a) the Council is aware that the applicant for or holder of the practising certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence, and
  - (b) the Council considers that the act of bankruptcy, indictable offence or tax offence was committed in circumstances that show that the applicant or holder is not a fit and proper person to hold a practising certificate.
- (2) A Council must, within 14 days after becoming aware that the applicant for or holder of a practising certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence, give notice in writing to the applicant or holder:
  - (a) if the Council has not received a statement under section 38FB in relation to the act of bankruptcy or the finding of guilt concerned, requiring the applicant or holder to make a statement in accordance with that section, and
  - (b) informing the applicant or holder that a determination in relation to the matter is required to be made under this section, and
  - (c) informing the applicant or holder of the relevant period in relation to the determination of the matter and that the applicant or holder will be notified of any extension of the relevant period, and
  - (d) informing the applicant or holder of the effect of the automatic suspension provisions in section 38FH in the event of the matter not being determined by the Council or the Commissioner within the relevant period.
- (3) Despite subsection (1), a Council may issue a practising certificate to an applicant referred to in that subsection who is a barrister or solicitor if the next relevant date (within the meaning of section 36) in relation to the barrister's or solicitor's current practising certificate is imminent and the Council has not made a determination under that section in relation to the applicant.
- (4) The issue of a practising certificate in the circumstances referred to in subsection (3) does not prevent a determination from subsequently being made under this Division to refuse to issue a practising certificate to the barrister or solicitor or to cancel or suspend the barrister's or solicitor's practising certificate.

- (5) Despite any other provision of this Act, a Council required to take action under subsection (1) in relation to a barrister or solicitor may, for the purpose of enabling the proper arrangement of the affairs of the barrister or solicitor:
  - (a) issue a practising certificate to the barrister or solicitor that remains in force for such period, specified in the practising certificate, as the Council considers necessary to achieve that purpose, or
  - (b) defer cancelling or suspending the practising certificate held by the barrister or solicitor for such period as the Council considers necessary to achieve that purpose.
- (6) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.
- (7) A Council is not required to take action under this section in relation to a person who has been bankrupt if the person was bankrupt because of an act of bankruptcy that has already been the subject of a determination under this section.

**38FD Refusal, cancellation or suspension of practising certificates—failure to notify**

- (1) A Council may refuse to issue, or may cancel or suspend, a practising certificate if the applicant or holder has failed to notify a matter (being a failure declared by the regulations to be professional misconduct) and the Council considers that the failure to notify occurred without reasonable cause.
- (2) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.

**38FE Refusal, cancellation or suspension of practising certificates—failure to show cause or furnish information**

- (1) A Council may refuse to issue, or may cancel or suspend, a practising certificate if the applicant or holder:
  - (a) is required by section 38FB to provide a written statement in relation to a matter and has failed to provide a written statement in accordance with that section, or
  - (b) has provided a written statement in accordance with section 38FB but, in the opinion of the Council to which the statement was provided, has failed to show in that statement that he or she is a fit and proper person to hold a practising certificate, or
  - (c) has failed to comply with a requirement under section 38FI or has wilfully contravened section 38FI (4).

- (2) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.

**38FF Restriction on making further applications**

- (1) A Council that determines under section 38FC, 38FD or 38FE to refuse to issue a practising certificate to a person or to cancel a person's practising certificate may also determine that the person is not entitled to apply for a practising certificate for a specified period (being a period not exceeding 5 years).
- (2) A person in respect of whom a determination has been made under this section is not entitled to apply for a practising certificate during the period specified in the determination.

**38FG Commissioner may take action**

- (1) The Commissioner may, at any time, take over the determination of a matter under section 38FC from a Council.
- (2) The Commissioner must take over the determination of a matter under section 38FC from a Council if the Council has not made the determination within the relevant period.
- (3) If the Commissioner takes over the determination of a matter from a Council:
  - (a) the Council is not required to make a determination in relation to the matter and is to cease to deal with the matter unless otherwise directed by the Supreme Court in an order under section 38FH (4), and
  - (b) the Commissioner may exercise any of the powers of the Council under this Division in relation to the matter (other than a refusal to issue a practising certificate), including powers under sections 38FD and 38FE if those powers are exercised in relation to a failure or contravention that is relevant to the matter, and
  - (c) the Commissioner may give a direction to the Council to refuse to issue a practising certificate to the legal practitioner concerned.
- (4) If the Commissioner gives a direction that the Council is to refuse to issue a practising certificate to a particular legal practitioner, the Council must refuse to issue the practising certificate.
- (5) The Commissioner may, in such a direction, specify a period during which the Council is not to issue the practising certificate.
- (6) If the Commissioner takes over the determination of a matter under section 38FC from a Council, the Council is to provide any assistance required by the Commissioner

to investigate the matter (including copies of or access to all documents held by the Council that relate to the matter or are required for the purpose of investigating the matter).

**38FH Automatic suspension of practising certificate**

- (1) This section applies to a matter to be determined under section 38FC in respect of the holder of a practising certificate.
- (2) If the relevant period in relation to a matter to be determined under section 38FC by a Council expires but no determination has been made under that section by the Council or the Commissioner, the practising certificate of the holder concerned is suspended until:
  - (a) the matter is determined by the Council or the Commissioner, or
  - (b) the suspension is removed by the Supreme Court under subsection (4),whichever occurs first.
- (3) A barrister or solicitor whose practising certificate is suspended by the operation of subsection (2) may make an application to the Supreme Court to remove the suspension.
- (4) When dealing with an application under subsection (3), the Supreme Court may make any one or more of the following orders:
  - (a) an order removing the suspension on the grounds that the applicant is a fit and proper person to hold a practising certificate,
  - (b) an order continuing the suspension for a specified period,
  - (c) an order cancelling the practising certificate concerned on the ground that the applicant is not a fit and proper person to hold a practising certificate,
  - (d) an order remitting the matter to the Council originally dealing with it or the Commissioner,
  - (e) an order that the matter cease to be the subject of investigation by a Council or the Commissioner.
- (5) A Council or the Commissioner may investigate a matter under this Division and exercise powers under this Division in relation to the matter despite a suspension under subsection (2) of the practising certificate concerned unless the Supreme Court otherwise orders under subsection (4).

**38FI Powers when investigating matter under this Division**

- (1) For the purpose of investigating a matter under this Division, a Council or the

Commissioner may, by notice in writing served on any legal practitioner, require the legal practitioner to do any one or more of the following:

- (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,
  - (b) to produce, at a time and place specified in the notice, any document (or copy of any document) specified in the notice,
  - (c) to otherwise assist in, or cooperate with, the investigation in a specified manner.
- (2) A Council or the Commissioner may inspect any document produced before the Council or the Commissioner under this section and may retain it for such period as the Council or Commissioner thinks necessary for the purposes of an investigation in relation to which it was produced. A Council or the Commissioner may make copies of the document or any part of the document.
- (3) A requirement under this section is to specify a reasonable time for compliance.
- (4) A legal practitioner must not mislead or obstruct a Council or the Commissioner in the exercise of any function under this Division.

### **38FJ Complaint may be made**

Nothing in this Division prevents a complaint from being made under Part 10 involving a matter that requires a determination to be made under this Division or in respect of which a determination has been made under this Division.

## **Division 1A Practice as a barrister or solicitor**

### **38G Practice as a barrister**

- (1) Practice as a barrister is subject to the barristers rules.
- (2) Practice as a barrister is not subject to any other rules, practice guidelines or rulings of the Bar Association or Bar Council.

### **38H Practice as a solicitor**

- (1) Practice as a solicitor is subject to the solicitors rules.
- (2) Practice as a solicitor is not subject to any other rules, practice guidelines or rulings of the Law Society or Law Society Council.

#### **Note—**

Barristers rules are made by the Bar Council and solicitors rules are made by the Law Society Council. The Bar Council and the Law Society Council may also make joint rules. See sections 57A-57C.



### **38I Client access**

- (1) **Barristers** Barristers may accept any clients, subject to the barristers rules and the conditions of any relevant practising certificate.
- (2) **Solicitors** Solicitors may accept any clients, subject to the solicitors rules and the conditions of any relevant practising certificate.
- (3) **Contracts** A barrister or solicitor may enter into a contract for the provision of services with a client or with another legal practitioner. The barrister or solicitor may accordingly sue and be sued in relation to the contract.
- (4) **Barristers contracts** A barrister may enter into a contract with a client even though the barrister has accepted a brief from a solicitor in the matter.
- (5) **Immunity** Nothing in this section affects any law relating to immunity to suit in relation to advocacy.

### **38J Advertising**

- (1) A barrister or solicitor may advertise in any way the barrister or solicitor thinks fit, subject to any regulations under section 38JA.
- (2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:
  - (a) false, misleading or deceptive, or
  - (b) in contravention of the *Trade Practices Act 1974* of the Commonwealth, the *Fair Trading Act 1987* or any similar legislation.
  - (c) (Repealed)
- (3) A contravention by a barrister or solicitor of subsection (2) is capable of being professional misconduct or unsatisfactory professional conduct, whether or not the barrister or solicitor is convicted of an offence in relation to the contravention.

### **38JA Regulation of advertising and other marketing of services**

- (1) The regulations may make provision for or with respect to regulating or prohibiting conduct by any person that relates to the marketing of legal services, including (without limitation) regulating or prohibiting any of the following:
  - (a) advertising by a barrister or solicitor,
  - (b) advertising by any person for or on behalf of a barrister or solicitor,
  - (c) advertising by any person in connection with the provision of legal services,
  - (d) advertising by any person of services connected with personal injury.

- (2) The regulations under this section may create an offence punishable by a penalty not exceeding 200 penalty units.
- (3) The Minister may direct a person in writing not to engage in conduct described in the direction if the Minister is satisfied that:
  - (a) the conduct contravenes the regulations under this section, and
  - (b) the person has been engaging in conduct of that or a similar kind.
- (8) A person who contravenes a direction under this section is guilty of an offence.  
Maximum penalty: 200 penalty units.
- (9) A barrister or solicitor is guilty of professional misconduct if the barrister or solicitor:
  - (a) contravenes a direction under this section or under section 142 of the *Workplace Injury Management and Workers Compensation Act 1998*, or
  - (b) contravenes a regulation under this section (or under section 142 of that Act), but only if the regulation declares the contravention to be professional misconduct.
- (10) The Minister is not required, before giving a direction under this section, to notify the person to whom the direction is given or any other person who may be affected by the direction.
- (11) A direction under this section may be amended or revoked.
- (12) Payments are to be made from the Public Purpose Fund for the purposes of meeting the costs and expenses of a Council or the Commissioner in exercising functions under this section (including the prosecution of offences under this section).
- (13) In this section:  
***personal injury*** includes pre-natal injury, impairment of a person's physical or mental condition or a disease.

### **38K Specialisation**

- (1) A barrister or solicitor must not advertise or hold himself or herself out as being a specialist or as offering specialist services, unless the barrister or solicitor:
  - (a) has appropriate expertise and experience, or
  - (b) is appropriately accredited under an accreditation scheme conducted or approved by the Bar Council or Law Society Council.
- (2) The Bar Council or Law Society Council is required to approve an accreditation scheme if directed to do so by the Attorney General.

### **38L Advocates**

- (1) Barristers and solicitors may act as advocates.
- (2) Barristers and solicitors may appear, and have a right of audience, in any court as advocates.
- (3) Joint rules may be made about ethical rules to be observed by barristers and solicitors in the practice of advocacy.
- (4) (Repealed)

### **38M Joint advocates**

- (1) In any proceedings, more than one barrister or solicitor or a solicitor and barrister may appear together as advocates.
- (2) The appearance together as advocates of a barrister and solicitor may be regulated by joint rules, but not by barristers rules or solicitors rules.

### **38N Attendance**

- (1) There is no rule or practice that prevents a barrister from attending on another barrister or solicitor or a solicitor from attending on another barrister or solicitor.
- (2) Nothing in this section prevents arrangements being made between individual legal practitioners with regard to attendance on each other.

### **38O Prohibition of official schemes for recognition of seniority or status**

- (1) Any prerogative right or power of the Crown to appoint persons as Queen's Counsel or to grant letters patent of precedence to counsel is abrogated.
- (2) Nothing in this section affects the appointment of a person who was appointed as Queen's Counsel before the commencement of this section.
- (3) Nothing in this section abrogates any prerogative right or power of the Crown to revoke such an appointment.
- (4) No law or practice prevents a person who was Queen's Counsel immediately before the commencement of this section from continuing to be Queen's Counsel while a barrister or solicitor.
- (5) Executive or judicial officers of the State have no authority to conduct a scheme for the recognition or assignment of seniority or status among legal practitioners.
- (6) Nothing in subsection (5) prevents the publication of a list of legal practitioners in the order of the dates of their admission, or a list of barristers or solicitors in the order of the dates of their becoming barristers or solicitors, or a list of Queen's Counsel in their

order of seniority.

(7) In this section:

***executive or judicial officers*** includes the Governor, Ministers of the Crown, Parliamentary Secretaries, statutory office holders, persons employed in the Public Service or by the State, an authority of the State or another public employer, and also includes judicial office holders or persons acting under the direction of the Chief Justice of New South Wales or other judicial office holder.

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

### **38P Barristers receiving money on behalf of other**

- (1) A barrister is not, in the course of practising as a barrister, to receive money on behalf of another person unless authorised under this section.
- (2) The regulations may authorise a barrister to do so. For that purpose, the regulations may apply to barristers any of the provisions of Part 6 (Trust Accounts) or make other provision relating to the matter.

### **38Q Service with the Crown**

Nothing in this Division affects:

- (a) practice as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right), or
- (b) practice as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).

## **Division 1B Barristers' indemnity insurance**

### **38R Indemnity insurance**

- (1) The Bar Council may not issue a practising certificate to an insurable barrister unless it is satisfied that there is, or will be, in force with respect to the barrister an approved indemnity insurance policy.
- (2) A policy of indemnity insurance is approved if:
  - (a) the policy is not to expire before the expiration of the practising certificate of the barrister to whom the policy relates, and
  - (b) the level of insurance and type of policy have been approved by the Attorney General by order in writing given to the Bar Council, and
  - (c) any conditions imposed by the order are complied with.

- (3) The Bar Council may not issue a practising certificate to an insurable barrister whose application for the practising certificate is not accompanied by evidence that there is, or will be, in force with respect to the barrister an approved indemnity insurance policy.
- (4) In this section, **insurable barrister** means a barrister required by the regulations to be an insured barrister.

## Division 2 Solicitors' Mutual Indemnity Fund

### 39 Definitions

In this Division:

**approved insurance policy** means a policy of indemnity insurance that is an approved insurance policy as provided by section 41.

**company** means the company that, immediately before the commencement of this Act, was managing the Solicitors' Mutual Indemnity Fund established by the [Legal Practitioners Act 1898](#).

**HIH group member** means:

- (a) HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited, or
- (b) any corporation that is, with respect to one of the corporations referred to in paragraph (a), a related body corporate (within the meaning of the [Corporations Law](#)).

**Indemnity Fund** means the Solicitors' Mutual Indemnity Fund managed by the company.

**insurable solicitor** means a solicitor required by the regulations to be an insured solicitor.

**insured person** means a person who is insured under an approved insurance policy.

### 40 Solicitors' Mutual Indemnity Fund

- (1) The Solicitors' Mutual Indemnity Fund managed by the company consists of:
  - (a) the Solicitors' Mutual Indemnity Fund established by the [Legal Practitioners Act 1898](#),
  - (b) the money paid on account of the Indemnity Fund by insurable solicitors either as annual contributions or as levies under this Division,
  - (c) the interest or other income accruing from investment of the money in the Indemnity Fund,
  - (d) any other money lawfully paid into the Indemnity Fund,

- (e) investments made under section 43, and
  - (f) such other assets as are acquired as part of the Indemnity Fund.
- (2) The company may arrange with an insurer for insurance of the Indemnity Fund or any part of it.
- (3) The Indemnity Fund is the property of the Law Society and may be used only for the purposes of this Division.

#### **41 Solicitor to be insured and to make contributions**

- (1) The Law Society Council must not issue a practising certificate to an insurable solicitor unless it is satisfied:
- (a) that there is, or will be, in force with respect to the solicitor an approved insurance policy, and
  - (b) that any contribution or levy, or instalment of a contribution, that is payable by the solicitor under section 45, 46 or 46A has been paid to the company.

#### **Note—**

See Schedule 2A, which qualifies the above arrangements, but only in relation to 2001–2002.

- (2) A policy of indemnity insurance is an approved insurance policy if:
- (a) the policy is not to expire before the expiration of the practising certificate of the solicitor to whom the policy relates,
  - (b) the insurer and the terms of the policy have been approved by the Attorney General by order in writing given to the Law Society, and
  - (c) any conditions imposed by the order are complied with.
- (3) (Repealed)
- (4) The Law Society may negotiate with insurers and other persons in relation to the provision of indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with:
- (a) the solicitor's or former solicitor's practice or former practice, or
  - (b) the solicitor's or former solicitor's administration of any trust or deceased estate of which the solicitor or former solicitor is or was a trustee or executor,
- and may do any other thing necessary for or in connection with the Law Society Council's functions under this section.

#### **42 Separate account**

The company shall maintain with a bank, building society or credit union in New South Wales a separate account with the name "Solicitors' Mutual Indemnity Fund".

#### **43 Investment of Indemnity Fund**

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

- (a) in any manner in which trustees are authorised by the *Trustee Act 1925* to invest trust funds,
- (b) on deposit with the Treasurer,
- (c) in the purchase of securities or shares listed for quotation on a prescribed financial market (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth),
- (d) in the acquisition of an interest in real estate in Australia, or
- (e) in bills of exchange drawn, accepted or endorsed by a bank, building society or credit union.

#### **44 Payments from the Indemnity Fund**

(1) There shall be paid from the Indemnity Fund in such order as the company decides:

- (a) the expenses incurred by the company in carrying on its business, and
  - (a1) premiums in respect of any approved insurance policy required by section 41, and
  - (b) such amount as the company determines towards meeting any difference between the indemnity provided by the approved insurance policy required by section 41 and the liability of a person insured under the policy, and
  - (c) such other amounts as the company determines.

(1A) The company is required to pay from the Indemnity Fund the costs of an investigation of the Indemnity Fund, as referred to in section 47AA, in accordance with a direction given by the Attorney General under that section.

(2) The company may make determinations under subsection (1):

- (a) that differ according to different circumstances, or
- (b) that are subject to compliance with conditions imposed by the company, or that do both.

(3) The company may:

- (a) divide solicitors into classes approved by the Law Society Council, and
- (b) under subsection (1) (b), make a different determination for each of the classes.

#### **44A Payments relating to HIH group insurance policies**

(1) Payments must be made by the company from the Indemnity Fund for the purpose of indemnifying any person who is insured under an approved insurance policy that was issued or renewed by an HIH group member, to the extent of the indemnity provided by the approved insurance policy.

**Note—**

HIH Casualty and General Insurance Limited (HIH) was the insurer under the approved insurance policy for the period from 1 July 1998 to 1 July 2001. HIH, together with other HIH group members, were also insurers under approved policies that pre-date that period. A provisional liquidator was appointed in respect of the HIH and other HIH group members on 15 March 2001.

- (2) On the making of such a payment from the Indemnity Fund, the company is subrogated to the rights and remedies of the insured person under the approved insurance policy, in connection with the subject matter of the payment, subject to the terms of any agreement entered into under this section.
- (3) Subsection (2) extends, but is not limited to, a right or remedy against any of the following:
  - (a) an HIH group member,
  - (b) any insurer or re-insurer of an HIH group member,
  - (c) any person who, under any Act or other law, is liable for a failure of an HIH group member to satisfy its obligations under or in connection with an approved insurance policy.
- (4) The company may exercise its rights and remedies under this section in its own name or in the name of an insured person.
- (5) If the company exercises its rights and remedies under this section in the name of an insured person, the company is to indemnify the insured person against any liability incurred by the insured person as a result of the exercise of those rights and remedies.
- (6) The Law Society and the company may enter into an agreement with an HIH group member (including a provisional liquidator or liquidator of an HIH group member), or with any insured person, in connection with the payment of amounts from the Indemnity Fund under this section.
- (7) In particular, any such agreement may provide for the following:
  - (a) the assignment or subrogation to the company of the rights and remedies of an



HIH group member or the insured person (or both) under or in connection with the approved insurance policy,

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

#### **44B Payments relating to other defaulting insurers**

- (1) Payments may be made by the company from the Indemnity Fund for the purpose of indemnifying any person who is insured under an approved insurance policy that was issued or renewed by a defaulting insurer, in accordance with arrangements approved from time to time by the Attorney General.
- (2) The Law Society and the company may enter into an agreement with a defaulting insurer (including a provisional liquidator or liquidator of a defaulting insurer), or with any insured person, in connection with the payment of amounts from the Indemnity Fund under this section.
- (3) In particular, any such agreement may provide for the following:
  - (a) the assignment or subrogation to the company of the rights and remedies of a defaulting insurer or the insured person (or both) under or in connection with the approved insurance policy,
  - (b) the recovery by the company from a defaulting insurer of any amount paid from the Indemnity Fund under this section.

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

#### 45 Contributions

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

- (4) A contribution required to be paid under this section must be paid to the company on account of the Indemnity Fund.
- (5) The company may permit a contribution to be paid by instalments under an arrangement approved by the Law Society Council.
- (6) In this section, **the relevant date** means 1 July or another relevant date specified by the regulations under section 36.

#### **46 Levies**

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

#### **46A Special contributions and levies: HIH liabilities**

- (1) The company may, for the purposes of ensuring that the Indemnity Fund, or any part of the Indemnity Fund, is sufficient to meet the purposes for which it may be used under section 44A:
  - (a) require any insurable solicitor who is or was insured under an approved insurance policy issued or renewed by an HIH group member to pay a special annual contribution to the Indemnity Fund, or
  - (b) require any solicitor or former solicitor who is or was insured under an approved insurance policy issued or renewed by an HIH group member to pay a special levy to the Indemnity Fund.
- (2) Any such special annual contribution or levy is to be of an amount determined by the company and approved by the Law Society Council.
- (3) The company may make a different determination under subsection (2) in relation to particular classes of solicitors or former solicitors.
- (4) The special annual contribution or levy is to be paid within the time and in the manner specified by the company by notice in writing to the solicitor or former solicitor concerned.
- (5) A special annual contribution or levy that is payable under this section:
  - (a) is to be paid to the company on account of the Indemnity Fund, and

- (b) is recoverable by the company as a debt in a court of competent jurisdiction, and
- (c) if payable by an insurable solicitor, is payable in addition to any contribution or levy that is payable under section 45 or 46.

#### **47 Failure to pay contribution or levy**

If, after being given written notice, an insurable solicitor fails to pay a contribution, instalment of a contribution, or levy in accordance with section 45, 46 or 46A:

- (a) the company shall report the failure to the Law Society Council, and
- (b) while the failure continues, the solicitor's practising certificate is suspended.

#### **47AA Investigation of Indemnity Fund**

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

#### **47AB Powers of investigators**

- (1) For the purpose of conducting an investigation under section 47AA, an investigator may, by notice in writing served on any person, require the person to provide to the investigator such information or records relating to the Indemnity Fund or the company's management of the Indemnity Fund as the investigator specifies in the notice.
- (2) The notice must specify the manner in which information or records are required to be provided and a reasonable time by which the information or records are required to be provided.
- (3) A person who, without reasonable excuse, neglects or fails to comply with a requirement made of the person under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (4) A person who provides any information in purported compliance with a requirement made under this section, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) In this section:

***investigator*** means a person appointed by the Attorney General under section 47AA to conduct an investigation in relation to the Indemnity Fund.

#### **47A Application of Division to other persons**

The company may apply this Division (sections 41, 46A and 47 excepted) to persons who:

- (a) are not insurable solicitors,
- (b) are within a class of persons approved by the Law Society Council for the purposes of this section,
- (c) are insured under a policy of insurance that, if the persons were insurable solicitors, would be an approved policy of indemnity insurance for the purposes of section 41, and
- (d) pay to the Indemnity Fund such contributions and levies as the company determines and the Law Society Council approves.

### **Division 2A Incorporated legal practices**

#### **47B Definitions**

In this Division:

**corporation** means:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a State owned corporation, or
- (c) an industrial organisation incorporated under a law of the Commonwealth, a State or a Territory, or
- (d) any other body corporate, or body corporate of a kind, prescribed by the regulations.

**director** means a director within the meaning of the *Corporations Act 2001* of the Commonwealth.

**legal services** means work done, or business transacted, in the capacity of a solicitor.

**solicitor director** means a director of an incorporated legal practice who holds an unrestricted practising certificate as a solicitor and barrister (including an interstate practising certificate that confers a similar authority to practise in this State).

#### **47C Nature of incorporated legal practice**

- (1) An incorporated legal practice is a corporation that provides legal services.
- (2) Any incorporated legal practice may provide any other service and conduct any other business that the corporation may lawfully provide or conduct (other than a managed investment scheme within the meaning of Chapter 5C of the *Corporations Act 2001* of the Commonwealth).
- (3) However, a corporation is not an incorporated legal practice if:
  - (a) the corporation does not receive any form of, or any expectation of, a fee, gain or reward for the legal services it provides, or
  - (b) the only legal services that the corporation provides are in-house legal services, namely, legal services concerning a proceeding or transaction to which the corporation (or a related body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth) is a party, or
  - (c) the regulations exempt the corporation from this Part.

#### **47D Corporations eligible to be incorporated legal practices**

- (1) Any corporation is eligible to be an incorporated legal practice.
- (2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by the Act or law under which it is incorporated or its affairs are regulated.

**Note—**

See sections 48D and 48E for offences relating to the provision of legal services by unauthorised corporations.

#### **47E Solicitor directors of incorporated legal practices**

(1) An incorporated legal practice is required to have at least one solicitor director.

**Note—**

Section 48D provides that an incorporated legal practice is guilty of an offence under that section if it does not have a solicitor director (except for any reasonable period required to appoint a replacement solicitor director).

(2) The solicitor director or directors of an incorporated legal practice are, for the purposes only of this Act, generally responsible for the management of the legal services provided in New South Wales by the incorporated legal practice.

(3) It is professional misconduct if any such solicitor director does not ensure that:

(a) appropriate management systems are implemented and maintained to enable the provision of those legal services in accordance with the professional obligations of solicitors and the other obligations imposed by or under this Act, and

(b) any conduct of another director of the practice that has resulted or is likely to result in a contravention of those obligations is reported to the Law Society Council promptly after the solicitor director becomes aware of it, and

(c) any professional misconduct of a solicitor employed by the practice to provide legal services is reported to the Law Society Council promptly after the solicitor director becomes aware of it, and

(d) all reasonable action available to the solicitor director is taken to deal with any professional misconduct or unsatisfactory professional conduct of a solicitor so employed by the practice.

(4) It is also professional misconduct for any such solicitor director to remain as a director of the corporation, and thereby authorise its continued provision of legal services, if it becomes apparent that the provision of those legal services will result in breaches of the professional obligations of solicitors or other obligations imposed by or under this Act (whether because of the unsuitability of any other director or directors or otherwise).

(5) The provisions of this section relating to a solicitor director of an incorporated legal practice that is an externally-administered body corporate under the *Corporations Act 2001* of the Commonwealth do not apply to the extent that they are inconsistent with the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth or of Parts 8 and 8A of this Act.

(6) This section does not apply to a community legal centre that complies with section 48H.

#### **47F Prohibition of repeat offender from managing a corporation that is an incorporated legal practice**

- (1) The Supreme Court may, on the application of the Law Society Council, disqualify a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate if the Court is satisfied that:
  - (a) the person is a person who could be disqualified under section 206E of the *Corporations Act 2001* of the Commonwealth from managing corporations, and
  - (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of the disqualified person, revoke a disqualification imposed under this section.
- (3) A corporation is not an incorporated legal practice (within the meaning of this Division) that is authorised to provide legal services if a disqualified person is a director or other officer (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the corporation.

**Note—**

See sections 48D and 48E for offences relating to the provision of legal services by unauthorised corporations.

- (4) A disqualification imposed under this section has effect for the purposes only of this Act and does not affect the *Corporations Act 2001* of the Commonwealth.

#### **47G Solicitors rules—application to incorporated legal practices**

- (1) The solicitors rules apply to solicitors who are officers or employees of an incorporated legal practice.
- (2) However, the solicitors rules cannot prohibit or regulate any of the following matters:
  - (a) the corporations eligible to be incorporated legal practices,
  - (b) the other services or other business that an incorporated legal practice may provide or conduct,
  - (c) the conduct of officers or employees of an incorporated legal practice (other than solicitors in connection with the provision of its legal services).

- (3) In this section:

***solicitors rules*** includes joint rules.

#### **47H Solicitors' professional obligations and privileges**

- (1) A solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice is not excused from compliance with the professional



obligations of a solicitor and does not lose the professional privileges of a solicitor.

- (2) For the purpose only of the application of those obligations and privileges, the persons provided with legal services by an incorporated legal practice are taken to be the clients of the solicitors engaged in providing those services.
- (3) To avoid doubt, the law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because the solicitor is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by the solicitors engaged by the practice.
- (5) In this section:

**professional obligations** includes:

- (a) duties to the court, and
- (b) obligations in connection with conflicts of interest, and
- (c) duties of disclosure to clients (including with respect to matters relating to costs under Part 11), and
- (d) ethical rules required to be observed by a solicitor.

#### **47I Advertising and disclosures with respect to legal services**

- (1) Any restriction imposed by or under this Act in connection with advertising by solicitors applies to advertising by an incorporated legal practice with respect to the provision of its legal services.

**Note—**

See sections 38J and 38K with respect to advertising by solicitors.

- (2) Any such advertisement is, for the purposes of disciplinary proceedings under this Act, taken to have been authorised by the solicitor directors of the practice.
- (3) The regulations may make provision for or with respect to disclosures by an incorporated legal practice in connection with the provision of legal services, including the kind of services provided by the practice and whether those services are or are not covered by the insurance or other provisions of this Act.

#### **47J Application of Part 11 (Legal fees and other costs)**

- (1) Part 11 applies to legal services provided by an incorporated legal practice as if a reference in that Part to a solicitor included a reference to the incorporated legal practice and to any external administrator.

- (2) The regulations may make other modifications to the application of Part 11 for the purposes of this section.

#### **47K Provisions relating to indemnity insurance**

- (1) An incorporated legal practice is required to comply with the obligations of an insurable solicitor under Division 2 with respect to insurance policies and payments to or on account of the Solicitors' Mutual Indemnity Fund. The Law Society Council may suspend the practising certificate of a solicitor director of the practice if any such obligation is not complied with.
- (2) The insurance premiums or other amounts payable under Division 2 by an incorporated legal practice may be determined by reference to the total number of solicitors employed by the practice and other relevant matters.
- (3) The amounts payable from the Solicitors' Mutual Indemnity Fund include amounts for such liability of an incorporated legal practice, and of the solicitors who are officers and employees of the practice, in connection with the provision of legal services as the Law Society Council determines with the approval of the Attorney General.
- (4) The Law Society Council may exempt an incorporated legal practice from this section on such grounds as the Council considers sufficient.

#### **47L Application of Part 6 (Trust accounts)**

- (1) Part 6 applies (subject to this section) to incorporated legal practices in the same way as it applies to solicitors.
- (2) Accordingly:
  - (a) the obligations and rights of a solicitor under Part 6 extend to an incorporated legal practice, but only in connection with legal services provided by the practice, and
  - (b) money received by a solicitor on behalf of another person in the course of practising as a solicitor (within the meaning of Part 6) includes money received by any officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (3) The Law Society Council may exercise its powers under section 38 (Refusal, suspension or cancellation of practising certificate as solicitor and barrister—trust accounts etc) with respect to a solicitor director of an incorporated legal practice for any relevant failure of the practice or any officer or employee of the practice.
- (4) The regulations may make any other modifications to the application of Part 6 for the purposes of this section.

**47M Application of Part 7 (Solicitors' Fidelity Fund)**

- (1) Part 7 applies (subject to this section) to incorporated legal practices in the same way it applies to solicitors.
- (2) Accordingly, an incorporated legal practice is required to make payments to or on account of the Solicitors' Fidelity Fund under Part 7 as if it were a solicitor applying for or holding a practising certificate. The Law Society Council may suspend the practising certificate of a solicitor director of the practice if any such payment is not made by the due date.
- (3) The amounts payable to that Fund by an incorporated legal practice may be determined by reference to the total number of solicitors employed by the practice and other relevant matters.
- (4) For the purposes of the application of Part 7 to incorporated legal practices:
  - (a) a failure to account by a solicitor extends to a failure to account by an incorporated legal practice, but only if it occurs in connection with the provision of legal services, and
  - (b) a dishonest default by a solicitor extends to a dishonest default by an incorporated legal practice, but only if it occurs in connection with the provision of legal services, and
  - (c) a reference to a firm of solicitors includes a reference to an incorporated legal practice.

**Note—**

See for example section 89 with respect to the ceiling on payments from the Fund for failures to account by the same firm.

- (5) The regulations may make any other modifications to the application of Part 7 for the purposes of this section.

**47N Extension of vicarious liability of incorporated practice relating to failures to account and dishonesty**

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):
  - (a) civil proceedings relating to a failure to account for, pay or deliver money or other valuable property received by, or entrusted to, the practice (or to any solicitor or other employee of the practice) in the course of the provision of legal services by the practice, being money or other valuable property under the direct or indirect control of the practice,
  - (b) civil proceedings for any other debt owed, or damages payable, to a client as a

result of a dishonest act or omission by a solicitor who is an employee of the practice in connection with the provision of legal services to the client.

- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in any such proceedings, but would be liable for those acts or omissions if the practice and those officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.

#### **470 Investigation of incorporated legal practices**

- (1) Section 55 and section 152 apply (subject to this section) to corporations that are or were incorporated legal practices in the same way that they apply to persons who are or were solicitors or legal practitioners.
- (2) An investigation under either of those sections extends to all of the affairs of an incorporated legal practice and to all of its documents, so long as the investigation relates to the provision of legal services.
- (3) The regulations may:
  - (a) extend the powers of investigation under section 55 or section 152 in relation to incorporated legal practices by reference to any powers of investigation conferred on the Australian Securities and Investment Commission under the *Corporations Act 2001* of the Commonwealth or under any Commonwealth Act with respect to the affairs of a corporation, and
  - (b) require a copy of any document that is to be furnished by an incorporated legal practice to the Australian Securities and Investment Commission under the *Corporations Act 2001* of the Commonwealth to be furnished also to the Law Society Council or the Commissioner, or both, and
  - (c) make other modifications to the application of section 55 or section 152 for the purposes of this section.

#### **47P Review of incorporated legal practices**

- (1) The Law Society Council or the Commissioner may conduct a review of the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of or made under this Act in connection with the provision of legal services by the practice.
- (2) The investigative powers referred to in section 470 may be exercised for the purposes of any such review.
- (3) Any such review may be conducted whether or not a complaint has been made with respect to the provision of legal services by the incorporated legal practice.

- (4) A report of any such review:
- (a) is to be provided to the incorporated legal practice concerned, and
  - (b) may be provided to the Commissioner by the Law Society Council or to that Council by the Commissioner (as the case may be), and
  - (c) may be taken into account in connection with any disciplinary proceedings under Part 10 or in connection with the issue, suspension or cancellation of practising certificates by the Law Society Council.

**47Q Disclosure of information to ASIC**

- (1) The Law Society Council (or a person referred to in section 56 (1) or (3)) or the Commissioner may disclose to the Australian Securities and Investment Commission information concerning an incorporated legal practice or former incorporated legal practice that has been acquired in connection with the exercise of functions under this Act.
- (2) Any such information may be provided despite any law relating to secrecy or confidentiality (including any provisions of section 56).

**47R External administration proceedings under Corporations Law**

- (1) This section applies to proceedings in any court under Chapter 5 (External administration) of the *Corporations Law*:
  - (a) relating to a corporation that is an externally-administered body corporate under that Law, or
  - (b) relating to a corporation becoming such a body corporate, being a corporation that is or was an incorporated legal practice.
- (2) The Law Society Council and the Commissioner are entitled to be a party to any such proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in any such proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice (even if those interests conflict with the interests of the creditors or shareholders of the practice). This subsection does not authorise the court to make any decision that is contrary to a specific provision of Chapter 5 of the *Corporations Law*.
- (4) Parts 8 (Receivers) and 8A (Managers) do not apply to corporations that are or were incorporated legal practices.

**47S This Act prevails over Corporations Law and certain other instruments**

- (1) The provisions of this Act or the regulations that apply to or in respect of an incorporated legal practice prevail, to the extent of any inconsistency, over the applicable corporate law.
- (2) For the purposes of this section, the **applicable corporate law** for an incorporated legal practice comprises the following:
  - (a) the provisions of or made under the *Corporations Law*,
  - (b) if the practice is not incorporated under the *Corporations Law*—the provisions of or made under the Act or law under which the practice is incorporated,
  - (c) the constitution or other constituent documents of the practice.
- (3) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation, or
  - (b) a specified provision of the Corporations legislation, or
  - (c) the Corporations legislation other than a specified provision, or
  - (d) the Corporations legislation other than to a specified extent.
- (4) In this section:

**matter** includes act, omission, body, person or thing.

**47T Regulations relating to incorporated legal practices**

- (1) The regulations may make provision for or with respect to legal services provided by incorporated legal practices.
- (2) A regulation prevails over any inconsistent provision of the solicitors rules or joint rules.
- (3) A regulation may provide that a breach of the regulations constitutes or may constitute professional misconduct or unsatisfactory professional conduct by a solicitor director or by the solicitor responsible for the breach, or both.

**48** (Renumbered as sec 47A)

**Division 3 Crown Solicitor**

#### **48A Crown Solicitor**

- (1) The Crown Solicitor may, in his or her official capacity, act as solicitor and barrister for:
  - (a) the State of New South Wales, or
  - (b) a person suing or being sued on behalf of the State of New South Wales, or
  - (c) a Minister of the Crown in his or her official capacity as such a Minister, or
  - (d) a body established by an Act or other law of New South Wales, or
  - (e) an officer or employee of the Public Service or any other service of the State of New South Wales or of a body established by an Act or other law of New South Wales, or
  - (f) a person holding office under an Act or other law of New South Wales or because of the person's appointment to that office by the Governor or a Minister of the Crown, or
  - (g) any other person or body, or any other class of persons or bodies, approved by the Attorney General.
- (2) The Crown Solicitor may act under subsection (1):
  - (a) with or without charge, or
  - (b) for a party in a matter that is not the subject of litigation, even if also acting under that subsection for another party in the matter.
- (3) The Crown Solicitor may, in his or her official capacity, act as agent for:
  - (a) another State or a Territory, or
  - (b) at the request of another State or a Territory—an instrumentality of, or a person in the service of, that State or Territory.
- (4) If, under subsection (1) (g), the Crown Solicitor is given approval to act as solicitor and barrister for a Minister of the Crown (otherwise than in his or her official capacity as such a Minister), the following must be included in the annual report under the [Annual Reports \(Departments\) Act 1985](#) of the Crown Solicitor's activities:
  - (a) the name of the Minister,
  - (b) the matter in which the Crown Solicitor acted (but without disclosure of any confidential client information),
  - (c) the costs incurred by the Crown Solicitor in acting for the Minister and the amount charged to the Minister for so acting.

- (5) In this section, a reference to a State or a Territory includes a reference to the Crown in right of the State or Territory and to the Government of the State or Territory.

### **Part 3A Unqualified practitioners**

#### **48B Unqualified person acting as barrister or solicitor and barrister**

- (1) A natural person must not act as a barrister or solicitor and barrister unless the person holds a current practising certificate.

Maximum penalty: 20 penalty units.

- (2) This section does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the [Conveyancers Licensing Act 1995](#).

- (3) A person who contravenes this section is, whether or not prosecuted or convicted for the contravention, guilty of contempt of any court in relation to which the contravention takes place.

- (4) If a person contravenes this section:

- (a) no action lies for the recovery of costs in respect of anything done in the course of the contravention, and
- (b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the person to the other person who paid them.

- (5) (Repealed)

- (6) A person who is an interstate legal practitioner does not contravene this section if the person is the holder of a current interstate practising certificate issued by a regulatory authority of another State or a Territory.

#### **48C Unqualified person making false representation to be a barrister or solicitor and barrister**

- (1) A natural person must not falsely pretend to be qualified to act as a barrister or solicitor and barrister.

- (2) A natural person who does not hold a current practising certificate must not:

- (a) take or use a name, title, addition or description implying that the person is qualified to act as a barrister or solicitor and barrister, or
- (b) do anything, or permit anything to be done, that holds out, advertises or represents that the person is so qualified.

Maximum penalty: 20 penalty units.



#### **48D Offence by corporation or officers**

- (1) A corporation must not do anything of a kind, or do anything in a manner, that is calculated to imply that the corporation is qualified to act as a barrister or solicitor and barrister.

Maximum penalty: 500 penalty units.

- (2) A director, officer or employee of a corporation must not:

(a) do anything of a kind, or do anything in a manner, or

(b) cause the corporation to do anything of a kind, or do anything in a manner,

that is calculated to imply that the corporation is qualified to act as a barrister or solicitor and barrister.

Maximum penalty: 20 penalty units.

- (3) This section does not apply to or in respect of an incorporated legal practice that has at least one solicitor director (within the meaning of Division 2A of Part 3). Any such practice does not contravene this section because it ceases to have such a solicitor director if a new solicitor director is appointed within the time prescribed by the regulations or, if no such time has been prescribed, within a reasonable time.

- (4) If a person contravenes this section:

(a) no action lies for the recovery of costs in respect of anything done in the course of the contravention, and

(b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the person to whom they were paid to the other person who paid them.

#### **48E Limitation on general legal work and probate work**

- (1) In this section:

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

**general legal work** means the work involved in drawing, filling up or preparing an instrument or other document that:

(a) is a will or other testamentary instrument, or

(b) creates, regulates or affects rights between parties (or purports to do so), or

(c) affects real or personal property, or

(d) relates to a legal proceeding.

**probate work** means the work involved in:

- (a) taking instructions for a grant of probate or letters of administration, or
- (b) drawing or preparing papers on which to found or oppose a grant of probate or letters of administration.

(2) A person must not directly or indirectly do any general legal work, or any probate work, for a fee unless the person is a barrister or solicitor or unless the person is an incorporated legal practice and the work is done on its behalf by a barrister or solicitor.

Maximum penalty: 20 penalty units.

(3) Any general legal work or probate work is taken to have been done for a fee if it relates to, or is done in conjunction with, other work done by the same person for a fee, unless it is proved that the general legal work or probate work:

- (a) was done without the person who did it receiving any advantage or benefit, and
- (b) was not offered as an inducement to do the other work.

(4) This section does not apply to:

- (a) a public officer drawing instruments in the course of his or her duty, or
- (b) a person employed merely to engross an instrument, or
- (c) a land agent in respect of an instrument he or she is entitled to draw, fill up or prepare, and to charge for, under the [Land Agents Act 1927](#), or
- (d) a licensed conveyancer acting in accordance with a licence in force under the [Conveyancers Licensing Act 1995](#).

(5) This section does not apply to a person acting as an employee if the person:

- (a) so acts in the ordinary course of his or her employment, and
- (b) receives no fee, gain or reward for so acting other than his or her ordinary remuneration as an employee.

(6) This section does not apply to a person or work, or a class of persons or work, declared by the regulations as being exempt from the operation of this section.

(7) (Repealed)

(8) A foreign lawyer does not contravene this section if he or she is a locally registered foreign lawyer and the work done is work the foreign lawyer is permitted to do under Part 3C.

#### **48F Sharing receipts**

- (1) A barrister or solicitor may share with any other person the receipts of a business of the kind ordinarily conducted by a barrister or solicitor, except to the extent (if any) that the regulations, barristers rules, solicitors rules or joint rules otherwise provide.
- (2) This section does not authorise a barrister or solicitor who is employed under a contract of service by a person who is not a barrister or solicitor to share with the employer the receipts of any business conducted by the barrister or solicitor on behalf of the employer.
- (3) However, this section does not affect any business conducted by barristers or solicitors on behalf of their employer if the business:
  - (a) concerns a proceeding or transaction to which the employer or a related body is a party, or
  - (b) is of a kind prescribed by the regulations or is carried out in circumstances of a kind prescribed by the regulations.
- (4) For the purposes of this section, a body is related to an employer if the body and the employer are related to each other in terms of section 50 of the [Corporations Act 2001](#) of the Commonwealth.
- (5) Despite anything to the contrary in this section, a solicitor may share with an incorporated legal practice the receipts of the business of the practice. The regulations, solicitors rules or joint rules may not prevent or restrict the solicitor from doing so.

#### **48G Multidisciplinary partnerships**

- (1) A barrister or solicitor (other than a barrister or solicitor who is an interstate legal practitioner) may be in partnership with a person who is not a barrister or solicitor.
- (2) This section applies only if the business of the partnership concerned includes business of a kind ordinarily conducted by a barrister or solicitor.
- (3) The following provisions apply in respect of a partnership in which a barrister or solicitor is authorised by this section to be a member:
  - (a) A partner who is not a barrister or solicitor does not contravene this Part merely because the partner conducts business of the partnership that is the business of a barrister or solicitor.
  - (b) A partner who is not a barrister or solicitor does not contravene this Part merely because the partner receives any fee, gain or reward for business of the partnership that is the business of a barrister or solicitor.

- (c) A partner who is not a barrister or solicitor does not contravene this Part merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting the business of a barrister or solicitor.
  - (d) A partner who is a barrister or solicitor does not contravene this Part merely because the partner shares with any other partner the receipts of business of the partnership that is the business of a barrister or solicitor.
  - (e) Part 6 (Trust Accounts), Part 7 (Solicitors' Fidelity Fund), Part 8 (Receivers) and Part 8A (Managers) apply, subject to the regulations, as if each partner who is not a solicitor were a solicitor. Those provisions so apply in connection with any business of the partnership (whether or not it is the business of a barrister or solicitor).
- (4) This section has effect despite anything to the contrary in this Part (except sections 48J and 48K) or anything to the contrary in the solicitors rules.
  - (5) However, in the case of barristers, this section has effect except to the extent (if any) that the barristers rules otherwise provide.
  - (6) The regulations may make provision for or with respect to the business of a partnership in which a barrister or solicitor is authorised by this section to be a member.

#### **48H Community legal centres**

- (1) An organisation, whether incorporated or not, is a community legal centre which complies with this section if:
  - (a) it is held out or holds itself out as being a community legal centre (or a centre or establishment of a similar description), and
  - (b) it provides legal services:
    - (i) which are directed generally to persons or organisations who or which lack the financial means to obtain privately funded legal services or whose cases are expected to raise issues of public interest or of general concern to disadvantaged groups in the community, and
    - (ii) which are made available to persons or organisations who or which have a special need arising from their location or the nature of the legal matter to be addressed or have a significant physical or social disability, and
    - (iii) which are not intended, or likely, to be provided at a profit to the community legal centre and the income (if any) from which cannot or will not be distributed to any member or employee of the centre otherwise than by way of reasonable remuneration under a contract of service or for services, and
    - (iv) which are funded or expected to be funded to a significant level by donations

or by grants from government, charitable or other organisations, and

(c) at least one of the persons who is employed or otherwise used by it to provide those legal services is a barrister or solicitor (other than a barrister or solicitor who is an interstate legal practitioner) with a current practising certificate and is generally responsible for the provision of those legal services (whether or not the person has an unrestricted practising certificate).

(2) A community legal centre which complies with this section does not contravene this Part merely because:

(a) it employs, or otherwise uses the services of, solicitors or barristers (or both) to provide legal services to members of the public, or

(b) it has a contractual relationship with a member of the public to whom those legal services are provided or receives any fee, gain or reward for providing those legal services, or

(c) it shares with a solicitor or barrister employed or otherwise used by it to provide those legal services receipts from the business of the centre, being business of a kind usually conducted by a solicitor or barrister, or

(d) it adopts or uses the word "legal" (or some related term) in its name or any registered business name under which it provides legal services to members of the public.

(3) This section has effect despite anything to the contrary in this Part.

#### **48I Prohibition on employment of certain non-legal clerks**

(1) This section applies to a person who:

(a) is not a legal practitioner or interstate legal practitioner, and

(b) is or was a clerk to a barrister or solicitor.

(2) On application by a Council, the Tribunal may make an order prohibiting (without approval under section 48K) any barrister or solicitor from employing or paying in connection with his or her 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 a barrister's or solicitor's practice, or

(b) the Tribunal is satisfied that the person has been guilty of conduct which, if the person were a barrister or solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.

(2A) The prohibition imposed by an order made under this section extends to a prohibition on the employment or payment of the person against whom the order was

made in connection with the legal services provided by an incorporated legal practice.

- (3) An order made under this section may be revoked by the Tribunal on application by a Council or by the person against whom the order was made.
- (4) (Repealed)
- (5) The death of a barrister or solicitor does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a clerk to the barrister or solicitor.

#### **48J Prohibition on partnerships with certain non-legal partners**

- (1) This section applies to a person who:
  - (a) is not a legal practitioner or interstate legal practitioner, and
  - (b) is or was a partner of a barrister or solicitor.
- (2) On application by a Council, the Tribunal may make an order prohibiting (without approval under section 48K) any barrister or solicitor from being a partner, in a business that includes the barrister's or solicitor's practice, of 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 such a partner, or
  - (b) the Tribunal is satisfied that the person has been guilty of conduct which, if the person were a barrister or solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.
- (3) An order made under this section may be revoked by the Tribunal on application by a Council or by the person against whom the order was made.
- (4) (Repealed)
- (5) The death of a barrister or solicitor does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the barrister or solicitor.

#### **48K Associates who are disqualified or convicted persons**

- (1) It is professional misconduct if a barrister or solicitor has an associate whom the barrister or solicitor knows to be:
  - (a) a disqualified person, or
  - (b) a person who has been convicted of an indictable offence and does not hold a current practising certificate.

- (2) Subsection (1) does not apply to an associate approved by:
- (a) in the case of a disqualified person who is an associate of a barrister—the Bar Council, or
  - (b) in the case of a disqualified person who is an associate of a solicitor—the Law Society Council,
  - (c) in the case of a person who has been convicted of an indictable offence—the Tribunal, or
  - (d) in any case—an Appeal Panel of the Tribunal on an appeal under subsection (3).
- (3) If a Council or the Tribunal decides to refuse an application by a person for approval under this section, the person may appeal against the decision to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#). On any such appeal, the Appeal Panel may:
- (a) confirm the decision appealed against, or
  - (b) approve of the associate.
- (4) An approval under this section may be subject to specified limitations or conditions.
- (5) A disqualified person, or a person convicted of an indictable offence, must not seek to become an associate of a barrister or solicitor unless the person first informs the barrister or solicitor of the disqualification or conviction.

Maximum penalty: 10 penalty units.

- (6) Proceedings for an offence under subsection (5) may be brought at any time within 6 months after discovery of the offence by the barrister or solicitor concerned.
- (7) In this section:

**associate** of a solicitor or barrister means:

- (a) a person (not being a legal practitioner or interstate legal practitioner) who is a partner of the solicitor or barrister in a business that includes the barrister's or solicitor's practice, or
- (b) a person (not being a legal practitioner or interstate legal practitioner) who shares the receipts of the barrister's or solicitor's practice, or
- (c) a person who is employed or paid in connection with the barrister's or solicitor's practice.

**disqualified person** means a person (other than a person who has been convicted of an indictable offence):

- (a) whose name has, otherwise than at his or her own request, been removed from the roll of legal practitioners in the Supreme Court, or
  - (b) whose name has been removed from a roll kept outside the State that corresponds to the roll of legal practitioners in the Supreme Court, or
  - (c) who is suspended from practising as a barrister or solicitor in New South Wales or another State or Territory, or
  - (d) who is the subject of an order in force under section 48I or 48J, or
  - (e) who is disqualified from holding a licence under the *Conveyancers Licensing Act 1995* by virtue of an order in force under Part 10 of this Act (as applying under Part 6 of that Act).
- (8) This section extends to solicitor directors of an incorporated legal practice. Accordingly, a solicitor director is guilty of professional misconduct if the solicitor director would be guilty of professional misconduct under this section:
- (a) if persons employed or paid by the incorporated legal practice in connection with the provision of legal services were taken to be employed or paid by the solicitor director, or
  - (b) if prescribed shareholders in the incorporated legal practice were taken to be sharing the receipts of the solicitor director's practice.

**48L Miscellaneous provisions—secs 48I–48K**

- (1) The parties to an application to the Tribunal under sections 48I–48K may be represented by a barrister or solicitor at the hearing of the application.
  - (2) On making an order under section 48I or 48J, or on determining an application for approval under section 48K, the Tribunal may make orders for costs.
- (2A) An order for costs:
- (a) may be for a specified amount or an unspecified amount, and
  - (b) if for an unspecified amount, may specify the basis on which the amount is to be determined, and
  - (c) may specify the terms on which costs must be paid.
- (3) A Council must:
- (a) retain in its office an order made under section 48I or 48J on its application, and
  - (b) permit any such order to be inspected during office hours and without charge, but only if the inspection is made by a barrister or solicitor.



- (4) In any proceedings under this Act, a document that purports:
- (a) to be an order under section 48I or 48J, and
  - (b) to be signed by the member constituting, or presiding at the sitting of, the Tribunal when the order was made,
- is, without further proof, evidence of the order it purports to be.
- (5) (Repealed)

#### **48M Injunctions**

The Supreme Court may, on the application of any person, grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining a person from contravening this Part.

### **Part 3B Interstate legal practitioners**

#### **Division 1 Preliminary**

##### **48N Definitions**

In this Act:

**conditions** means conditions, limitations, restrictions or prohibitions.

**corresponding law** means a law of another State or a Territory relating to regulation of legal practice.

**interstate legal practitioner** means a natural person:

- (a) who has been admitted to legal practice in another State or a Territory, and
- (b) who holds an interstate practising certificate issued or given by a regulatory authority in that State or Territory, and
- (c) whose sole or principal place of legal practice is that State or Territory.

**interstate practising certificate** means a certificate or other form of authorisation that confers an authority to practise that corresponds to the authority conferred by a practising certificate issued under Part 3 by the Bar Council or the Law Society Council.

**local legal practitioner** means a legal practitioner:

- (a) who holds a current practising certificate, and
- (b) whose sole or principal place of legal practice is this State,

and includes a person who is registered to practise law in this State in accordance with the [Mutual Recognition Act 1992](#) of the Commonwealth.

***regulatory authority:***

- (a) of this State, means the Supreme Court, the Bar Council, the Law Society Council, the Tribunal or the Commissioner, and
- (b) of another State or a Territory, means a person or body in that State or Territory having a function conferred by legislation relating to regulation of legal practice that corresponds to such a function exercised by a regulatory authority of this State.

**480 (Repealed)**

**Division 2 Entitlement of interstate practitioners to practise in this State**

**48P Object of Division**

The object of this Division is to enable any individual who is authorised to practise law in another State or a Territory and who holds an interstate practising certificate to practise law in an equivalent way in this State.

**48Q Entitlement of interstate legal practitioners to practise in this State**

- (1) A person who holds a current interstate practising certificate issued or given by a regulatory authority in any other State or a Territory is, by and subject to this Act, entitled to practise law in this State:
  - (a) as if the interstate practising certificate were a practising certificate issued under Part 3 by the Bar Council or the Law Society Council, and
  - (b) as if any conditions to which his or her practice of law in the other State or the Territory is subject under the interstate practising certificate were conditions attached to the practice of law in this State by a practising certificate issued under Part 3.
- (2) Without limiting anything in this Part, a person is entitled to practise law in this State only if the person does so:
  - (a) in compliance with any applicable requirements of this and any other Act relating to the practice of law that would apply to a local legal practitioner holding a practising certificate to which conditions corresponding to those attached to the interstate practising certificate were attached, and

**Note—**

Interstate legal practitioners are, for example, officers of the Supreme Court (see section 5) and are subject to the barristers rules, solicitors rules and joint rules and to requirements relating to matters such as advertising and specialisation (see sections 38G–38O) and the disciplinary processes set out in Part 10. Those who establish offices are also subject to other requirements. See sections 48T and 48U.

- (b) subject to any conditions imposed on the person by a regulatory authority in this

State or any other State or a Territory as a result of disciplinary action or that are of a kind referred to in section 33 (1) (a) or (b).

- (3) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct.
- (4) A condition imposed on a person by a regulatory authority in this State or any other State or a Territory has no effect for the purposes of this section to the extent (if any) to which it is inconsistent with a more onerous condition imposed on the person by another regulatory authority.

#### **48R Additional conditions on practice of interstate legal practitioners**

- (1) A regulatory authority of this State may, by notice in writing, at any time impose any condition on the practice of law by an interstate legal practitioner in this State that it might impose by attaching a condition to the practising certificate of a local legal practitioner:
  - (a) under Division 1 of Part 3 as a result of disciplinary action, or
  - (b) under section 33 (1) (a) or (b),and may at any time vary or revoke any such condition.
- (2) A regulatory authority of this State must not impose a condition that is more onerous than it would attach to the practising certificate of a local legal practitioner in the same or similar circumstances.

### **Division 3 Provisions applying to interstate legal practitioners who establish offices in this State**

#### **48S When does an interstate legal practitioner establish an office?**

For the purposes of this Act, an interstate legal practitioner establishes an office in this State when the practitioner offers and provides legal services to the public in this State from an office maintained by the practitioner, or by the employer or a partner in legal practice of the practitioner, for that purpose in this State.

#### **48T Notification of establishment of office required**

- (1) An interstate legal practitioner who establishes an office in this State must, within the period after establishing the office prescribed by the regulations, give written notice:
  - (a) if he or she proposes to practise as a barrister—to the Bar Council, or
  - (b) if he or she proposes to practise as a solicitor and barrister—to the Law Society Council.

Maximum penalty: 20 penalty units.

(2) A notice under this section is to contain the particulars prescribed by the regulations.

**Note—**

Interstate legal practitioners who establish an office in New South Wales have additional obligations relating to trust money, fidelity fund contributions and professional indemnity insurance under this Act to those interstate legal practitioners who have not established an office. See sections 48U, 60 and 76.

**48U Professional indemnity insurance required if office established**

(1) This section applies to an interstate legal practitioner:

- (a) who establishes an office in this State, and
- (b) who, if he or she were a local legal practitioner, would be an insurable barrister or insurable solicitor (within the meaning of section 38R or 39, respectively).

(2) An interstate legal practitioner to whom this section applies must not practise as a barrister or solicitor and barrister in this State unless he or she has **appropriate indemnity insurance** in respect of his or her practice in this State.

Maximum penalty: 20 penalty units.

(3) An interstate legal practitioner to whom this section applies who practises in this State as a barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of indemnity insurance that provides a level of insurance in respect of his or her practice in this State that is the same as (or higher than) that approved by the Attorney General in respect of insurable barristers under section 38R (2) (b).

(4) An interstate legal practitioner to whom this section applies who practises in this State as a solicitor and barrister has **appropriate indemnity insurance** if there is in force in respect of the interstate legal practitioner a policy of insurance that provides the same (or a higher) minimum level of indemnity in respect of his or her practice in this State, and the terms of which are broadly equivalent to, that provided by an approved insurance policy required by section 41.

**Note—**

Section 48ZD imposes requirements concerning professional indemnity insurance on interstate legal practitioners who do not establish an office in this State.

**Division 4 Disputes, complaints and discipline**

**Note—**

The provisions applicable generally to disputes, complaints and discipline of local legal practitioners also apply to interstate legal practitioners. See Part 10. Section 80 (1A) sets out the circumstances in which a claim may be made against the Fidelity Fund for pecuniary loss caused by the failure to account or a dishonest default of legal practitioners practising under the scheme.

**48V Disputes about the practice of local legal practitioners in other States or Territories**

- (1) A dispute between a person and a local legal practitioner in connection with the practitioner's legal practice in another State or a Territory may be resolved under Part 10 or in the other State or the Territory in accordance with the law of that State or Territory.
- (2) A complaint may be made about the conduct of a local legal practitioner in respect of his or her legal practice in another State or a Territory under Part 10 or in the other State or the Territory in accordance with the law of that State or Territory.
- (3) An investigation may be undertaken of the conduct of a local legal practitioner in respect of his or her legal practice in another State or a Territory under section 55 or Part 10 or in the other State or the Territory in accordance with the law of that State or Territory.
- (4) If a dispute or complaint of the kind referred to in this section has been dealt with and finally determined in another State or a Territory, no further action relating to the subject-matter of the dispute or complaint is to be taken under Part 10.

**48W Referral of disputes and disciplinary matters to other regulatory authorities**

- (1) If it considers it appropriate to do so, a regulatory authority in this State may refer a dispute lodged with it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in another State or a Territory, to be dealt with according to the law of that State or Territory.
- (2) If it considers it appropriate to do so, a regulatory authority in this State may refer a complaint made to it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in another State or a Territory, to be dealt with according to the law of that State or Territory.
- (3) If it considers it appropriate to do so, a regulatory authority in this State may request a regulatory authority in another State or a Territory to investigate the conduct of a local legal practitioner or an interstate legal practitioner, in accordance with the law of that State or Territory.
- (4) After a referral under subsection (1) or (2) or a request under subsection (3) has been made, no further action may be taken by any regulatory authority in this State in relation to the subject-matter of the referral or request, other than action required to comply with section 48Y.

**48X Dealing with matters referred by other regulatory authorities**

- (1) A regulatory authority in this State may resolve a dispute between a person and a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in another State or a Territory whether or not the subject-matter of the

dispute arose in or outside this State.

- (2) A regulatory authority in this State may investigate a complaint against a local legal practitioner or interstate legal practitioner referred to it by a regulatory authority in another State or a Territory whether or not the subject-matter of the complaint allegedly occurred in or outside this State.
- (3) If a regulatory authority in another State or a Territory requests a regulatory authority in this State to investigate the conduct of a local legal practitioner or interstate legal practitioner, the regulatory authority may investigate that conduct whether or not the conduct allegedly occurred in or outside this State.

#### **48Y Furnishing information**

- (1) A regulatory authority in this State must furnish without delay any information about a local legal practitioner or interstate legal practitioner reasonably required by a regulatory authority in another State or a Territory in connection with actual or possible disciplinary action against the practitioner.
- (2) A regulatory authority may provide the information despite any law relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

#### **48Z Local legal practitioners are subject to interstate regulatory authorities**

- (1) A local legal practitioner practising in this State must comply with any condition in respect of his or her practice imposed by a regulatory authority in another State or a Territory as a result of disciplinary action against the practitioner.
- (2) A contravention of subsection (1) does not of itself amount to a breach of this Act. However, failure to comply with subsection (1) is capable of being professional misconduct or unsatisfactory professional conduct.
- (3) A regulatory authority in another State or a Territory:
  - (a) that has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on, an interstate practising certificate issued to an interstate legal practitioner in that State or Territory as a result of disciplinary action against the practitioner, and
  - (b) to which a local legal practitioner is subject in that State or Territory,may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on, the local legal practitioner's practising certificate as a result of

disciplinary action against the practitioner.

- (4) A regulatory authority in this State must comply with an order of a regulatory authority in another State or a Territory under subsection (3).
- (5) A regulatory authority in another State or a Territory that has jurisdiction to order the removal of the name of a person from the roll kept in that State or Territory that corresponds to the roll of practitioners in the Supreme Court in this State may order that the name of the local legal practitioner be removed from the roll. If such an order is made the local legal practitioner's name is to be removed from the roll in this State.

## **Division 5 General**

### **48ZA Local legal practitioner receiving trust money interstate**

A local legal practitioner must deal with trust money received in the course of practising outside this State (other than trust money received in the course of practising in another State or a Territory in which the practitioner has established an office) in accordance with Part 6 as if the trust money had been received in the course of practising in this State.

### **48ZB Regulatory authority may exercise powers conferred by corresponding law**

A regulatory authority in this State may exercise in respect of a local legal practitioner or an interstate legal practitioner any function under a corresponding law conferred on it by the corresponding law.

### **48ZC Agreements and arrangements with other regulatory authorities**

A regulatory authority of this State may make agreements or arrangements with a regulatory authority of another State or a Territory for or with respect to:

- (a) the investigation of complaints,
- (b) professional indemnity insurance,
- (c) fidelity fund contributions and payments,
- (d) trust account inspections,
- (e) the appointment of managers and receivers,
- (f) the exchange of information under section 48Y.

### **48ZD Professional indemnity insurance where no office established in this State**

- (1) If the indemnity under a policy of indemnity insurance in force in respect of an interstate legal practitioner who has not established an office in this State is less than that required to be maintained by an interstate legal practitioner to whom section 48U applies, the interstate legal practitioner must disclose the difference to a client before

he or she is retained by the client.

- (2) A contravention of this section does not of itself amount to a breach of this Act. However, failure to comply with this section is capable of being professional misconduct or unsatisfactory professional conduct.

## Part 3C Foreign lawyers

### Division 1 Preliminary

#### 48ZE Definitions

In this Act:

**Australia** includes the external Territories.

**Australian law** means law of the Commonwealth, a State or a Territory.

**commercial legal presence** means an interest in a law firm practising foreign law.

**domestic lawyer** means a person (including a foreign lawyer) who is a barrister or solicitor.

**domestic registration authority** means the Bar Council or the Law Society Council.

**foreign law** means law of a place outside Australia.

**foreign lawyer** means a person who is duly registered to practise law in a place outside Australia by a foreign registration authority.

**foreign registration authority** means the person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place.

**home registration authority** of a foreign lawyer means a foreign registration authority stated in the lawyer's application for registration under section 48ZI.

**law firm** means:

- (a) a person practising as a lawyer on the person's own account, or
- (b) a partnership of two or more persons practising as lawyers, or
- (c) an incorporated legal practice or multidisciplinary partnership that is permitted by a law of the State.

**locally registered foreign lawyer** means a person who is registered as a foreign lawyer under this Part.

**practise foreign law** means doing work, or transacting business, in the State concerning



foreign law, being work or business of a kind that, if it concerned the law of the State, would ordinarily be done or transacted by a domestic lawyer.

**registered:**

- (a) when used in connection with a place outside Australia, means having all necessary licences, approvals, admissions, certifications or other forms of authorisation (including practising certificates) required by or under legislation for the carrying on of the practice of law in that place, or
- (b) when used in connection with the exercise of a function by a domestic registration authority in relation to a domestic lawyer, means the issue of a practising certificate.

**48ZF Principal purpose**

The principal purpose of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in the State by foreign-registered lawyers as a recognised aspect of legal practice in the State.

**48ZG Operation of this Part**

- (1) This Part applies to any individual (other than a domestic lawyer) who practises foreign law in the State.
- (2) Nothing in this Part requires a domestic lawyer (including a foreign lawyer who is also a domestic lawyer) to be registered as a foreign lawyer under this Part in order to practise foreign law in the State.

**Division 2 Local registration of foreign lawyer**

**48ZH Registration requirement**

- (1) A person must not practise foreign law in the State unless the person:
  - (a) is a locally registered foreign lawyer and practises foreign law in the State in accordance with this Part, or
  - (b) is a foreign lawyer who practises foreign law in the State for a period of 12 months or less or is subject to a migration restriction and who:
    - (i) does not maintain an office for the purpose of practising as a lawyer in the State, or
    - (ii) does not have a commercial legal presence in the State, or
  - (c) is a domestic lawyer, or is a person employed by a domestic lawyer to provide advice on foreign law to, and for use by, the domestic lawyer.

Maximum penalty: 20 penalty units.

(2) In this section:

**migration restriction** means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person.

#### **48ZI Registration application**

- (1) A foreign lawyer may lodge an application in writing with the domestic registration authority seeking registration as a foreign lawyer under this Part.
- (2) The application must:
  - (a) state the applicant's educational and professional qualifications, and
  - (b) state that the applicant is registered to practise law by one or more specified foreign registration authorities (the **home registration authorities**) in a place or places outside Australia, and
  - (c) state that the applicant is not the subject of any disciplinary proceedings in any place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration, and
  - (d) state that the applicant is not a party in any pending criminal or civil proceedings in any place that is likely to result in disciplinary action being taken against the applicant, and
  - (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action, and
  - (f) state 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 out the practice of law in any place, and is not subject to any special conditions in carrying on any practice as a result of criminal, civil or disciplinary proceedings in any place, and
  - (g) specify any special conditions imposed in any place as a restriction on the practice of law by the applicant or any undertaking given by the applicant restricting the applicant's practise of law, and
  - (h) give consent to the making of inquiries of, and the exchange of information with, such of the home registration authorities as the domestic registration authority considers appropriate regarding the applicant's activities in practising law in the places concerned or otherwise regarding matters relevant to the application.

- (3) The application must (if the domestic registration authority so requires) be accompanied by an original instrument, or a copy of an original instrument, from each home registration authority specified in the application that:
  - (a) verifies the applicant's educational and professional qualifications, and
  - (b) verifies the applicant's registration by the authority to practise law in the place concerned, and the date of registration, and
  - (c) describes anything done by the applicant in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.
- (4) The applicant must (if the domestic registration authority so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The domestic registration authority may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the authority.
- (6) If the accompanying instrument is not in English it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the domestic registration authority.

**48ZJ Fee for registration**

- (1) The application under section 48ZI is to be accompanied by such fee as the domestic registration authority may determine and as is approved by the Attorney General.
- (2) The fee is not to include any component for compulsory membership of any professional association.

**48ZK Entitlement to registration**

- (1) The domestic registration authority must register a person who lodges an application in accordance with section 48ZI as a foreign lawyer if:
  - (a) the domestic registration authority is satisfied that the person is registered to practise law in one or more places outside Australia, and
  - (b) the domestic registration authority considers that an effective system exists in one or more of the places referred to in paragraph (a) for the regulation of the practice of law, and
  - (c) the domestic registration authority considers that the person is not, as a result of criminal, civil or disciplinary proceedings, subject to any special conditions in

carrying on the practice of law in any of the places referred to in paragraph (a) or any undertakings concerning the person's practice of law in any of those places that would make it inappropriate to register the person, and

(d) the person demonstrates an intention to practise foreign law in the State and to establish an office or a commercial legal presence in the State within a reasonable period after grant of registration for the purpose of so practising.

(2) Residence or domicile in the State is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign lawyer under this Part.

#### **48ZL Conditions**

(1) The domestic registration authority may at any time impose any condition on the registration of a foreign lawyer under this Part:

(a) that it might impose by attaching a condition to the practising certificate of a domestic lawyer:

(i) under Division 1 of Part 3 as a result of disciplinary action, or

(ii) under section 33 (1), or

(b) that relates to appearances by the foreign lawyer before courts,

and may at any time by notice in writing revoke or vary such a condition.

(2) The domestic registration authority may not impose a condition that is more onerous than a condition that it would attach to the practising certificate of a domestic lawyer in the same or similar circumstances.

#### **48ZM Notification of decision**

(1) The domestic registration authority must give a foreign lawyer who lodges an application in accordance with section 48ZI written notice of its decision to grant registration under this Part, to refuse registration, or to impose conditions on registration.

(2) The domestic registration authority is taken to have refused registration if registration is not granted within the period prescribed by the regulations after an application is duly lodged in accordance with section 48ZI.

#### **48ZN Duration of registration and annual fee**

(1) When granted, registration under this Part takes effect as from the date on which the application under section 48ZI was lodged.

(2) Registration remains in force, unless sooner cancelled, until the next 1 July after the day on which it takes effect.

- (3) A foreign lawyer who has been granted registration under this Part may, during the period prescribed by the regulations before the registration expires, apply to the domestic registration authority for renewal of the registration.
- (4) Subsection (3) does not prevent the domestic registration authority from accepting an application made after the period prescribed by the regulations and before the next 1 July.
- (5) Registration may be renewed by payment of an annual fee determined by the domestic registration authority and approved by the Attorney General.
- (6) An application for renewal of registration is to be accompanied by the annual fee.
- (7) The annual fee is not to include any component for compulsory membership of any professional association.

**48ZO Refusal of application to register or renew registration**

- (1) The domestic registration authority must refuse to register, or renew the registration of, a foreign lawyer under this Part if the notice or approval for registration or renewal:
  - (a) is not accompanied by the appropriate fee, or
  - (b) is not accompanied by, or does not contain, the information required by this Part or prescribed by the regulations.
- (2) The domestic registration authority may refuse to renew the registration of a foreign lawyer under this Part if a finding that the lawyer has contravened section 48ZU has been made in respect of that lawyer and:
  - (a) a fine imposed because of the finding has not been paid, or
  - (b) costs awarded against the lawyer because of the finding have been assessed but have not been paid or, if an arrangement for their payment has been made, the lawyer is in default under the arrangement, or
  - (c) any costs of an inspection or investigation payable under section 55 by the lawyer have not been paid, or
  - (d) any expenses of receivership payable under section 110 by the lawyer have not been paid.

**48ZP Publication of information about locally registered foreign lawyers**

The domestic registration authority may publish, in circumstances which it considers appropriate, the names of persons registered by it as foreign lawyers under this Part and any relevant particulars concerning those persons.

#### **48ZQ Cancellation of registration**

- (1) The domestic registration authority may, by notice in writing to a locally registered foreign lawyer, cancel the lawyer's registration under this Part if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if:
  - (a) a home registration authority of the foreign lawyer cancels registration of the foreign lawyer as a result of criminal, civil or disciplinary proceedings, or
  - (b) the foreign lawyer fails to comply with any requirements of this Part, or
  - (c) the registration of the foreign lawyer by one or more of the lawyer's home registration authorities has lapsed, or
  - (d) the foreign lawyer has not established an office to practise foreign law or a commercial legal presence in the State within the period prescribed by the regulations after being granted registration, or
  - (e) the foreign lawyer fails to comply with any condition imposed on the lawyer's registration under this Part.
- (3) Registration is not to be cancelled on any of the above grounds unless the foreign lawyer is given reasonable opportunity to make written submissions to the domestic registration authority.
- (4) Registration is not to be cancelled on the ground that the foreign lawyer's registration has lapsed as referred to in subsection (2) (c) if the lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer but from circumstances beyond the lawyer's control.
- (5) Registration as a locally registered foreign lawyer under this Part is automatically cancelled if the lawyer concerned:
  - (a) is registered as a domestic lawyer, or
  - (b) requests the domestic registration authority to cancel the registration.
- (6) Cancellation of registration at the request of a foreign lawyer does not affect the exercise by the domestic registration authority of any power relating to disciplinary proceedings brought against the lawyer before the cancellation.

#### **48ZR Appeals**

- (1) If the domestic registration authority:
  - (a) refuses to register a foreign lawyer under this Part or to renew the registration of a locally registered foreign lawyer, or

**Note—**

See sections 48ZK and 48ZO.

(b) cancels the registration of a locally registered foreign lawyer under this Part, or

**Note—**

See section 48ZQ.

(c) takes any action under section 55 against a locally registered foreign lawyer,

**Note—**

See sections 48ZU and 48ZV.

the foreign lawyer may appeal to the Supreme Court against the refusal, cancellation or action.

(2) The Supreme Court may make such an order in the matter as it thinks fit.

### **Division 3 Legal practice**

#### **48ZS Scope of practice**

- (1) A locally registered foreign lawyer may provide only the following legal services:
  - (a) doing any work, or transacting any business, in the State concerning the law of any place in which the locally registered foreign lawyer is registered by a home registration authority of the lawyer,
  - (b) legal services (including appearances) in relation to arbitration proceedings in the State of a kind prescribed by the regulations,
  - (c) legal services (including appearances) in relation to proceedings before courts and other bodies in which knowledge of the foreign law of the place referred to in paragraph (a) is essential,
  - (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the State of a kind prescribed by the regulations.
- (2) Nothing in this Act authorises a locally registered foreign lawyer to practise Australian law.
- (3) Despite subsection (2), a locally registered foreign lawyer may advise on the effect of an Australian law if the giving of advice on Australian law is necessarily incidental to the practice of foreign law and the advice is expressly based on advice given on the Australian law by a domestic lawyer who is not an employee of the foreign lawyer.

#### **48ZT Form of practice**

- (1) A locally registered foreign lawyer may (subject to any condition imposed under

section 48ZL to the contrary) practise:

- (a) as a foreign lawyer on the lawyer's own account, or
  - (b) in partnership with other locally registered foreign lawyers or with domestic lawyers (or both) in circumstances in which, were the locally registered foreign lawyer practising as a domestic lawyer, such a partnership would be permitted by a law of the State, or
  - (c) as a member of an incorporated legal practice or multidisciplinary partnership that is permitted by a law of the State, or
  - (d) as an employee of a domestic lawyer or firm of domestic lawyers in circumstances in which, were the locally registered foreign lawyer practising as a domestic lawyer, such employment would be permitted by a law of the State.
- (2) Any such affiliation does not entitle the locally registered foreign lawyer to practise Australian law in the State.

**48ZU Application of Australian professional ethical and practice standards**

A locally registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by a domestic lawyer in practising Australian law in the State, constitute professional misconduct or unsatisfactory professional conduct.

**48ZV Disciplinary action for breach of Australian professional ethical and practice standards**

(1) Part 10 applies, subject to this section, to a person who:

- (a) is a locally registered foreign lawyer, or
- (b) was a locally registered foreign lawyer when professional misconduct or unsatisfactory professional conduct the subject of a complaint allegedly occurred but is no longer a locally registered foreign lawyer (in which case Part 10 applies as if the person were a locally registered foreign lawyer),

as if references in Part 10 to a legal practitioner were references to such a person.

(2) Without limiting the matters that the domestic registration authority may take into account in determining whether a locally registered foreign lawyer should be disciplined for a contravention of section 48ZU, the domestic registration authority may take into account:

- (a) whether the conduct of the lawyer was consistent with the standards of professional conduct of the legal profession in any foreign place of registration of the lawyer, and



(b) whether the lawyer contravened the section wilfully or without reasonable excuse.

(3) The regulations may exempt any foreign lawyer or class of foreign lawyers from compliance with all or specified disciplinary provisions or arrangements.

**48ZW Letterhead and other identifying documents**

(1) A locally registered foreign lawyer may describe himself or herself and any law firm with which the foreign lawyer is associated in any of the ways designated in section 48ZX.

(2) A locally registered foreign lawyer is required to indicate, on the lawyer's letterhead and any other document used when practising foreign law in the State to identify the lawyer as a lawyer, the fact that the lawyer is a locally registered foreign lawyer.

(3) A locally registered foreign lawyer may (but need not) indicate all States or Territories in which the lawyer (and any of the lawyer's partners) are registered as foreign lawyers on any document referred to in this section.

(4) A locally registered foreign lawyer may (but need not) indicate all places outside Australia in which the lawyer is registered to practise law on any document referred to in this section.

**48ZX Designation**

(1) A locally registered foreign lawyer may use the following designations:

(a) the lawyer's own name,

(b) the title the lawyer is authorised by law to use in the place outside Australia in which the lawyer is registered by a home registration authority,

(c) subject to subsection (2), the name of any law firm outside Australia with which the lawyer is affiliated (whether as a partner or otherwise),

(d) if the foreign lawyer is a member of any law firm in Australia that includes both locally registered foreign lawyers and domestic lawyers, a description of the firm that includes reference to both domestic lawyers and locally registered foreign lawyers (for example, "Solicitors and locally registered foreign lawyers" or "Australian Solicitors and US Attorneys").

(2) A locally registered foreign lawyer who is a partner of a law firm outside Australia may use the name of the firm in practising foreign law in the State, or use the name in connection with the practice, only if:

(a) the lawyer indicates, on the lawyer's letterhead and any other document used in the State to identify the lawyer as a lawyer, that the law firm practises only foreign law in the State, and

- (b) the lawyer has provided the domestic registration authority with a copy of the partnership agreement or other acceptable evidence that the lawyer is a partner of the law firm, and
  - (c) use of the name does not contravene any requirements of the law of the State concerning use of business names and will not lead to any confusion with the name of any established domestic or foreign law firm in the State.
- (3) A locally registered foreign lawyer who is a partner of a law firm may use the name of the firm as referred to in this section whether or not other partners of the firm are locally registered foreign lawyers.

#### **48ZY Advertising**

- (1) A locally registered foreign lawyer is required to comply with any advertising restrictions imposed by the domestic registration authority or by law on the practice of law by a domestic lawyer that are relevant to the practice of foreign law in the State.
- (2) Without limiting subsection (1), a locally registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in the State to identify the lawyer as a lawyer) in any way that might reasonably be regarded as:
  - (a) false, misleading or deceptive, or
  - (b) suggesting that the locally registered foreign lawyer is a domestic lawyer, or that contravenes any requirements of the regulations.

#### **48ZZ Employment of domestic lawyer by foreign lawyer**

- (1) A locally registered foreign lawyer may employ one or more domestic lawyers.
- (2) Employment of a domestic lawyer does not entitle a locally registered foreign lawyer to practise Australian law in the State.
- (3) A domestic lawyer employed by a locally registered foreign lawyer may practise foreign law but must not provide advice on Australian law to, or for use by, the foreign lawyer or otherwise practise Australian law in the State in the course of that employment.
- (4) Subsection (3) does not apply to a domestic lawyer employed by a law firm a partner of which is a locally registered foreign lawyer if at least one other partner is a domestic lawyer.
- (5) A period of employment by a locally registered foreign lawyer may not be used by a domestic lawyer to satisfy any requirements concerning a period of supervised practice imposed on the domestic lawyer by the domestic registration authority.

#### **48ZAA Indemnity insurance**

- (1) A locally registered foreign lawyer who practises foreign law in the State must have appropriate indemnity insurance in respect of his or her practice in the State.
- (2) A locally registered foreign lawyer registered by the Bar Council has appropriate indemnity insurance if there is in force in respect of the lawyer a policy of indemnity insurance that provides a level of insurance in respect of his or her practice in the State that is the same as (or higher than) that approved by the Attorney General in respect of insurable barristers under section 38R (2) (b).
- (3) A locally registered foreign lawyer registered by the Law Society Council has appropriate indemnity insurance if there is in force in respect of the lawyer a policy of insurance:
  - (a) that provides a minimum level of indemnity in respect of his or her practice in the State that is the same as (or higher than) that provided by an approved insurance policy required by section 41, and
  - (b) the terms of which are broadly equivalent to such an approved insurance policy.

#### **48ZAB Trust accounts and fidelity fund contributions**

- (1) Part 6 applies to a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the State as if a reference in Part 6:
  - (a) to a solicitor were a reference to a locally registered foreign lawyer, and
  - (b) to practising as a solicitor were a reference to a locally registered foreign lawyer practising foreign law.
- (2) A locally registered foreign lawyer must not practise foreign law in the State in partnership with, or as an employee of, a domestic lawyer or firm of domestic lawyers unless the lawyer complies with any requirement made in accordance with the regulations under section 78A by the domestic registration authority concerning contributions to the Fidelity Fund.
- (3) In this section, a reference to money is not limited to a reference to money in the State.

#### **48ZAC Exemption by domestic registration authority**

The domestic registration authority may exempt a locally registered foreign lawyer or class of locally registered foreign lawyers from compliance with a specified provision of this Act or the regulations, or from compliance with a specified rule or part of a rule that would otherwise apply to the locally registered foreign lawyer or class of locally registered foreign lawyers.

## **Division 4 Miscellaneous**

### **48ZAD Membership of professional association**

A locally registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

### **48ZAE Joint rules**

Practice as a locally registered foreign lawyer is subject to the foreign lawyers rules.

## **Part 4 Bar Association and Law Society**

### **Division 1 Bar Association**

#### **49 Report on committees**

- (1) The Bar Council shall, at least once in each year, and at such times as the Attorney General directs, report to the Attorney General on the committees of the Bar Association and the Bar Council.
- (2) The report shall:
  - (a) list the committees that existed at any time during the last preceding 12 months or the period since the last report (whichever is the shorter period),
  - (b) specify the functions and membership of each committee, and
  - (c) include such other information relating to the committees as the Attorney General directs.
- (3) The report need not refer to any committee of a kind that the Attorney General for the time being exempts from the operation of this section.

#### **50 Lay representation on committees**

- (1) The Attorney General may, after consultation with the Bar Council, direct, by written order, that any specified committees or kinds of committees of the Bar Association or Bar Council must include in their membership a specified or determinable number of lay members.
- (2) A direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay members.
- (3) A lay member has such voting and other rights and such obligations as are provided in the constitution of the committee or as are provided by the regulations, and the regulations prevail to the extent of any inconsistency.

- (4) For the purposes of this section, a lay member is a person who is not a barrister or solicitor.

### **51 Functions of Bar Council**

- (1) In addition to its other functions, the Bar Council may:
  - (a) take such steps as in the opinion of the Bar Council may be necessary or proper for or with respect to the conduct of a barrister or conduct that is, or may be, a contravention of a provision of Part 3A, and
  - (b) appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under this Act or otherwise in relation to barristers.
- (2) The Bar Council may delegate to any of its committees or to an officer of the Bar Council the exercise of any of the Bar Council's functions under this Act, other than this power of delegation.

## **Division 2 Law Society**

### **52 Report on committees**

- (1) The Law Society Council shall, at least once in each year, and at such times as the Attorney General directs, report to the Attorney General on the committees of the Law Society and the Law Society Council.
- (2) The report shall:
  - (a) list the committees that existed at any time during the last preceding 12 months or the period since the last report (whichever is the shorter period),
  - (b) specify the functions and membership of each committee, and
  - (c) include such other information relating to the committees as the Attorney General directs.
- (3) The report need not refer to any committee of a kind that the Attorney General for the time being exempts from the operation of this section.

### **53 Lay representation on committees**

- (1) The Attorney General may, after consultation with the Law Society Council, direct, by written order, that any specified committees or kinds of committees of the Law Society or Law Society Council must include in their membership a specified or determinable number of lay members.
- (2) A direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay

members.

- (3) A lay member has such voting and other rights and such obligations as are provided in the constitution of the committee or as are provided by the regulations, and the regulations prevail to the extent of any inconsistency.
- (4) For the purposes of this section, a lay member is a person who is not a barrister or solicitor.

#### **54 Functions of Law Society**

- (1) In addition to its other functions, the Law Society Council may:
  - (a) take such steps as in the opinion of the Law Society Council may be necessary or proper for or with respect to the investigation in accordance with this Act of any question:
    - (i) as to the conduct of a solicitor,
    - (ii) as to the conduct of a person who is or was a clerk to a solicitor or who is or was employed or paid by a solicitor in connection with the solicitor's practice as a solicitor, or
    - (iii) as to conduct that is, or may be, a contravention of a provision of Part 3A, or
    - (iv) as to conduct that is, or may be, a contravention of a provision of Part 3C,
  - (b) appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under this Act or otherwise in relation to solicitors or locally registered foreign lawyers registered by the Law Society Council,
  - (c) institute prosecutions and other proceedings for the breach of any of the provisions of this Act or the regulations or rules made under this Act,
  - (d) appear by solicitor or counsel before, and be heard by, any court in any matter affecting the Law Society or its members or in which the Law Society is concerned or interested, and
  - (e) recover as a debt due to the Law Society any money payable to the Law Society under this Act or the regulations.
- (1AA) The Law Society Council also has the function of disseminating information to increase public awareness of the requirements of this Act and the [Corporations Act 2001](#) of the Commonwealth relating to solicitors who negotiate the making of or act in respect of regulated mortgages (within the meaning of Part 9) or are involved in managed investment schemes (within the meaning of the [Corporations Act 2001](#) of the Commonwealth).

(1A) The Law Society Council may delegate to any of its committees or to an officer of the Law Society Council the exercise of any of the Law Society Council's functions under this Act, other than this power of delegation.

(2) In this section:

**solicitor** includes:

- (a) a firm of solicitors,
- (b) a former solicitor, and
- (c) a deceased solicitor and a deceased former solicitor, and
- (d) in relation to the provision of legal services, an incorporated legal practice or a former or dissolved incorporated legal practice.

(3) (Repealed)

#### **55 Investigation of affairs of solicitor or locally registered foreign lawyer**

(1) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint:

- (a) one or more trust account inspectors to inspect, either generally or in a particular case, accounts kept under Part 6 by or on behalf of solicitors or to investigate (subject to Part 3B) the affairs, or specified affairs, of a solicitor or solicitors, and
- (b) an investigator to investigate the affairs, or specified affairs, of a solicitor or solicitors,

and any such trust account inspector or investigator shall provide the Law Society Council with a report on each inspection or investigation carried out.

(1A) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint:

- (a) one or more trust account inspectors to inspect, either generally or in a particular case, accounts (if any) required to be kept by regulations made for the purposes of section 48ZAB by a locally registered foreign lawyer registered by the Law Society Council, and
- (b) an investigator to investigate the affairs, or specified affairs, of a locally registered foreign lawyer or registered foreign lawyer.

(2) A trust account inspector or an investigator may, with the approval of the Law Society Council, appoint an assistant.

(3) A solicitor or locally registered foreign lawyer under inspection or investigation and

any other person who has possession or control of any records of the solicitor or foreign lawyer or relating to the affairs of the solicitor or foreign lawyer shall, if required to do so by a trust account inspector or an investigator who produces evidence of his or her appointment, provide the trust account inspector or investigator, or his or her assistant, with:

- (a) access to such of the records as relate to the accounts being inspected or the affairs being investigated,
- (b) information that the solicitor or foreign lawyer or other person is able to give in relation to those records, accounts and affairs, and
- (c) authorities or orders on bankers and others that relate to those records, accounts or affairs and that the solicitor or foreign lawyer or other person is able to provide.

Maximum penalty: 10 penalty units.

(4) If a record:

- (a) is not in writing,
- (b) is not written in the English language, or
- (c) is not decipherable on sight,

a requirement to provide access to the record is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.

(5) A person shall not hinder, obstruct or delay a trust account inspector or an investigator in the exercise of his or her functions.

Maximum penalty: 10 penalty units.

(6) A solicitor or locally registered foreign lawyer who contravenes subsection (3) or (5) is, whether or not convicted for the contravention, guilty of professional misconduct.

(7) A trust account inspector or an investigator shall:

- (a) send a copy of his or her report to the solicitor or locally registered foreign lawyer by post to the address of the solicitor or foreign lawyer last known to the Law Society, and
- (b) provide the Attorney General and the Commissioner with a copy of the report if it indicates that there are reasonable grounds for suspecting professional misconduct, improper conduct or irregularity in relation to affairs of the solicitor or foreign lawyer.

(8) The amount of the costs of an inspection or investigation, as certified by the Law



Society Council, is a debt due to the Law Society by the solicitor or locally registered foreign lawyer under inspection or investigation if:

- (a) in the case of an inspection of accounts kept under Part 6 by or on behalf of the solicitor or foreign lawyer—a trust account inspector states in his or her report that there is evidence that a breach of this Act or the regulations has been committed and the Law Society Council is of the opinion that the breach was wilful or of a substantial nature, or
- (b) in the case of an investigation of the affairs of the solicitor or foreign lawyer—a trust account inspector or an investigator states in his or her report that there are reasonable grounds for suspecting unsatisfactory professional conduct or professional misconduct in relation to the affairs investigated or a breach of this Act or the regulations and the Law Society Council is of the opinion that the conduct or breach was wilful or of a substantial nature,

unless payment is waived by the Law Society Council.

- (8A) If the inspection or investigation concerned relates to the accounts or affairs of a firm of solicitors, the Law Society Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each solicitor involved.
- (8B) If the inspection or investigation concerned relates to the accounts or affairs of a firm in which a locally registered foreign lawyer is practising in partnership as referred to in section 48ZT, the Law Society Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each partner involved.
- (9) A person who complies with a requirement made by a trust account inspector or an investigator under subsection (3) shall not be subject, merely because of that compliance, to any liability, claim or demand.
- (10) A person is not eligible to be appointed as a trust account inspector or an investigator under this section unless the person is:
  - (a) a solicitor,
  - (b) an accountant, or
  - (c) an officer or employee of the Law Society.

(11) In this section:

**affairs**, in relation to a solicitor or locally registered foreign lawyer, includes:

- (a) accounts kept under Part 3C or 6 or otherwise by or on behalf of the solicitor or foreign lawyer or an associate of the solicitor or foreign lawyer,
- (b) any other records kept by or on behalf of the solicitor or foreign lawyer or an

associate of the solicitor or foreign lawyer,

- (c) any transactions to which the solicitor or foreign lawyer was a party or in which the solicitor or foreign lawyer acted for a party, and
- (d) any related matter that an investigator considers should be further investigated.

**associate**, in relation to a solicitor or locally registered foreign lawyer, has the same meaning as it has in Part 6.

**locally registered foreign lawyer**, includes:

- (a) a firm of locally registered foreign lawyers,
- (b) a former locally registered foreign lawyer,
- (c) in relation to anything done or omitted by a locally registered foreign lawyer—a deceased locally registered foreign lawyer,
- (d) except in relation to anything done or omitted by a locally registered foreign lawyer—the personal representative of a deceased locally registered foreign lawyer.

**record** includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

**solicitor**, except as a trust account inspector or an investigator, includes:

- (a) a firm of solicitors,
- (b) a former solicitor,
- (c) in relation to anything done or omitted to be done by a solicitor—a deceased solicitor or deceased former solicitor, and
- (d) except in relation to anything done or omitted to be done by a solicitor—the personal representative of a deceased solicitor or deceased former solicitor.

## 56 Secrecy

- (1) A trust account inspector or an investigator shall not, unless making a requirement under section 55 (3), and his or her assistant shall not, make an unauthorised disclosure of:
  - (a) the appointment of the trust account inspector, investigator or assistant,
  - (b) any matter that comes to his or her notice in the course of the inspection or investigation, or

(c) anything in the trust account inspector's or investigator's report.

Maximum penalty: 10 penalty units.

(2) Subsection (1) is not contravened if:

(a) a trust account inspector or an investigator discloses anything to his or her assistant, or

(b) a trust account inspector's or an investigator's assistant discloses anything to the trust account inspector or the investigator.

(3) A member of the Law Society Council or a solicitor, officer or agent of the Law Society shall not make an unauthorised disclosure of:

(a) the appointment of a trust account inspector or an investigator or a trust account inspector's or an investigator's assistant, or

(b) anything in a trust account inspector's or an investigator's report.

Maximum penalty: 10 penalty units.

(4) Subsection (3) is not contravened if:

(a) a trust account inspector or an investigator states in his or her report that there are reasonable grounds for suspecting unsatisfactory professional conduct or professional misconduct, improper conduct or irregularity in relation to the affairs inspected or investigated, and

(b) a member of the Law Society Council, or a solicitor, officer or agent of the Law Society, discloses information in the report to a person to whom the Law Society Council decides that the information should be disclosed.

(5) For the purposes of subsections (1) and (3) but without affecting subsections (2) and (4), a disclosure is an unauthorised disclosure if it is made to a person other than:

(a) the Attorney General,

(b) a member of the Law Society Council,

(c) a solicitor, agent or officer of the Law Society,

(d) the Supreme Court,

(e) the Commissioner or the Tribunal,

(f) a member of the police force, or

(g) a person to whom a copy of the report is required by this Act to be sent.

- (6) Subsections (1) and (3) do not prevent a person referred to in those subsections from disclosing to the Australian Securities and Investment Commission particulars of the conduct of a solicitor in respect of any regulated mortgage (within the meaning of Part 9).

## **Division 3 Annual reports**

### **57 Council to submit annual report**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Bar Council and the Law Society Council shall each prepare and forward to the Attorney General a report of its work and activities under this Act for the 12 months ending on 30 June in that year.
- (2) The Attorney General shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) If the regulations so provide, a report shall include prescribed information.
- (4) This section does not affect any other provision of this Act requiring a report to be made to the Attorney General.

## **Division 4 Rules**

### **57A Rules of Bar Council**

- (1) The Bar Council may make rules for or with respect to practice as a barrister.
- (2) The power to make rules is not limited to the matters for which this Act specifically authorises the making of barristers rules.
- (3) The Bar Council may make rules for or with respect to practice as a locally registered foreign lawyer.
- (4) The power to make rules is not limited to the matters for which this Act specifically authorises the making of foreign lawyers rules.

### **57B Rules of Law Society Council**

- (1) The Law Society Council may make rules for or with respect to practice as a solicitor.
- (2) The power to make rules is not limited to the matters for which this Act specifically authorises the making of solicitors rules.
- (3) The Law Society Council may make rules for or with respect to practice as a locally registered foreign lawyer.
- (4) The power to make rules is not limited to the matters for which this Act specifically authorises the making of foreign lawyers rules.

**57C Joint rules other than joint rules on foreign lawyers**

- (1) The Bar Council and Law Society Council may jointly make rules for or with respect to:
  - (a) any matters about which joint rules are authorised to be made, or
  - (b) any matters about which they may separately make rules.
- (2) Joint rules may but need not apply in the same way to both barristers and solicitors.
- (3) Joint rules prevail, to the extent of any inconsistency, over barristers rules or solicitors rules (whether made before or after the joint rules).
- (4) If joint rules are made, references in this Act to barristers rules or solicitors rules extend to any such joint rules.
- (5) This section does not apply to joint rules made under section 57CA.

**57CA Joint rules on foreign legal practitioners**

The Bar Council and Law Society Council may jointly make rules for or with respect to practice as a locally registered foreign lawyer.

**57CB Commissioner and Advisory Council to be notified of proposed rules**

- (1) Each Council must notify the Commissioner and the Advisory Council of its intention to make a barristers rule, solicitors rule or joint rule.
- (2) The notification must be in writing and must give details of the proposal.
- (3) A Council that gives a notification under this section must wait at least 28 days after giving the notification before making the rule and must take into account any representations on the proposed rule made by the Commissioner or the Advisory Council.
- (4) A Council may make a rule without waiting for the 28-day period referred to in subsection (3) to expire if the Council considers that the urgency of the case warrants immediate action. However, in those circumstances the Council must indicate in its notification to the Commissioner and the Advisory Council that the case is urgent and that it intends to act immediately.

**57CC Councils to give public notice of proposed rules**

- (1) Before a barristers rule, solicitors rule or joint rule is made, the Council or Councils proposing to make the rule are required to ensure that a notice is published in the Gazette and in a daily newspaper circulating throughout New South Wales:
  - (a) explaining the object of the proposed rule, and
  - (b) advising where a copy of the proposed rule may be obtained or inspected, and

- (c) inviting comments and submissions within a specified period, being a period of not less than 21 days from the date of publication of the notice.
- (2) The Council or Councils must ensure that a copy of the proposed rule is given to the Attorney General before the notice is published.
- (3) The Council or Councils must not make the rule before the end of the period specified in the notice for the making of comments and submissions and must ensure that any comments and submissions received within that period are appropriately considered.
- (4) The Council or Councils may make the rule without waiting for the end of the period specified in the notice for the making of comments and submissions if the Council or Councils consider that the urgency of the case warrants immediate action. However, in those circumstances the Council or Councils must indicate in the notice that the case is urgent and that the Council or Councils intend to act immediately.
- (5) Section 75 of the *Interpretation Act 1987* does not apply to notices required to be published under this section.

#### **57D Rules binding**

- (1) Barristers rules are binding on barristers, solicitors rules are binding on solicitors and joint rules are binding on both barristers and solicitors.
- (2) Any such rules are binding on legal practitioners acting as barristers or solicitors without a practising certificate as if those legal practitioners were barristers or solicitors.
- (3) Any such rules are binding on barristers or solicitors even though they are not members of the Bar Association or the Law Society.
- (4) Failure to comply with any such rules does not of itself amount to a breach of this Act. However, failure to comply is capable of being professional misconduct or unsatisfactory professional conduct.

#### **57E Inconsistent rules**

Barristers rules, solicitors rules and joint rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

#### **57F Existing rules**

- (1) The Bar Council may, by a notice published in the Gazette, designate rules of the Bar Association (as in force at the commencement of this section) as barristers rules. Those rules are, to the extent that they could be made under this Act, taken to be barristers rules made under this Act and this Act (including section 57E) applies to those rules accordingly.

- (2) The Law Society Council may, by a notice published in the Gazette, designate rules, practice guidelines or rulings of the Council (as in force at the commencement of this section) as solicitors rules. Those rules are, to the extent that they could be made under this Act, taken to be solicitors rules made under this Act and this Act (including section 57E) applies to those rules accordingly.
- (3) Any such barristers or solicitors rules may be amended or revoked in the same way as any other barristers or solicitors rules made under this Act.
- (4) Unless they are sooner revoked, any such barristers or solicitors rules expire on the second anniversary of the commencement of this section.

#### **57G Initial review of rules**

- (1) Within 12 months after the commencement of this section, each Council is required to review its barristers or solicitors rules for the purpose of determining whether it considers any rule imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest.
- (2) Each Council must report to the Attorney General on completion of the review.
- (3) The Attorney General must make each report public within 28 days after it is received by the Attorney General.

#### **57GA Review of rules requested by Commissioner**

- (1) The Commissioner may, at any time, request a Council to review any barristers rule, solicitors rule or joint rule made by it.
- (2) If a Council is requested to review a rule under this section, the Council must furnish a report on the review to the Commissioner within 28 days after the request or within such further period as is agreed on by the Commissioner and the Council.
- (3) After receiving a report under this section, the Commissioner must give a report to the Attorney General about the request for the review and may include in the report submissions about the rule and a recommendation that the rule be declared inoperative.
- (4) Any such report by the Commissioner must include a copy of the report on the review of the rule concerned provided by the relevant Council.
- (5) The Attorney General may make public any report by the Commissioner under this section (including, if the Attorney General thinks fit, a copy of the relevant review).

#### **57H Review of rules by Advisory Council**

- (1) The Advisory Council may, from time to time, review the barristers rules, solicitors rules and joint rules. The Advisory Council is required to furnish reports to the Attorney

General on any such review of those rules.

- (2) The Advisory Council is required to conduct such a review and furnish a report if requested to do so by the Attorney General.
- (3) The Attorney General must make each report public within 28 days after it is received by the Attorney General.
- (4) Without limiting the matters about which the Advisory Council may report, the Advisory Council must report on whether it considers any rule imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest.

#### **57I Rules may be declared inoperative**

- (1) The Attorney General may, by order published in the Gazette, declare any barristers or solicitors rule or joint rule, or part of any such rule, inoperative, but only if:
  - (a) the Commissioner has reported to the Attorney General that the rule is not in the public interest, or
  - (b) the Advisory Council has reported to the Attorney General 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.
- (2) A rule or part of a rule may be declared inoperative even though it deals with a matter for which this Act specifically authorises the making of rules.
- (3) A declaration is effective to render the rule or the part of the rule inoperative.
- (4) A declaration takes effect on the date of the publication of the order in the Gazette or on a later date specified in the order.

#### **57J Publication of rules**

Barristers or solicitors rules or joint rules are to be published in the Gazette and in appropriate professional publications.

#### **57K Commencement of rules**

- (1) A barristers or solicitors rule or joint rule commences on the date specified in the rule for its commencement.
- (2) The date so specified is not to be earlier than the date of its publication in the Gazette and, unless the Attorney General approves, is not to be earlier than 1 month after the date of that publication.



### **57L Other provisions as to rules**

Sections 42–45 of the *Interpretation Act 1987* apply to barristers or solicitors rules or joint rules in the same way as they apply to statutory rules within the meaning of that Act.

**Note—**

The above provisions of the *Interpretation Act 1987* relate to standard provisions authorising the adoption of other publications by reference, the making of differential rules, the amendment or repeal of rules and judicial notice and presumptions as to validity for rules.

## **Division 5 General**

### **57M Membership of Bar Association**

- (1) The Bar Council may charge a fee for membership of the Bar Association.
- (2) Membership of the Bar Association is not compulsory for barristers.

### **57MA Membership of Law Society**

- (1) The Law Society Council may charge a fee for membership of the Law Society.
- (2) Membership of the Law Society is not compulsory for solicitors.

### **57N Continuing legal education**

Each Council may arrange for the establishment and administration of courses of continuing legal education.

## **Part 5 Legal Profession Advisory Council**

### **58 Constitution of the Advisory Council**

- (1) There is constituted by this Act a council with the name “Legal Profession Advisory Council”.
- (2) The Advisory Council is to consist of 11 members appointed by the Attorney General.
- (3) Of the members:
  - (a) 1 is to be appointed as the Chairperson of the Advisory Council, and
  - (b) 2 are to be barristers, of whom 1 is to be selected from a panel of at least 5 persons nominated by the Bar Council, and
  - (c) 3 are to be solicitors, of whom 2 are to be selected from a panel of at least 5 persons nominated by the Law Society Council, and
  - (d) 5 are to be lay persons appointed to represent the community.
- (4) Schedule 3 has effect with respect to the Advisory Council.

## **59 Functions of the Advisory Council**

- (1) The Advisory Council does not, for any purpose, represent the Crown.
- (2) The Advisory Council shall keep under constant review the structure and functions of the legal profession and shall make reports and recommendations to the Attorney General upon:
  - (a) any matter relating to the legal profession that is referred to it by the Attorney General,
  - (b) any matter relating to the legal profession that the Advisory Council considers should be brought to the notice of the Attorney General, including any matter relating to professional standards, advertising and the general regulation of the legal profession, and
  - (c) any proposed regulations referred to it by the Attorney General.
- (3) The Advisory Council is to furnish a report to the Attorney General on whether it considers any regulation made under section 216 (3) (b) or any such proposed regulation referred to it by the Attorney General imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest. The Attorney General must make each report public within 28 days after it is received by the Attorney General.
- (4) The Advisory Council may consult with representatives of the Bar Association, the Law Society or any other relevant organisation.
- (5) The Advisory Council has such other functions as may be conferred or imposed on it by or under this or any other Act.

### **59A Payment of costs of Advisory Council**

Any amount payable from the Public Purpose Fund for the purpose of meeting the costs of the Advisory Council (including remuneration payable under Schedule 3), is to be paid, in accordance with section 69G, to the Treasurer for the credit of the Consolidated Fund.

## **Part 5A Legal Services Commissioner**

### **59B Appointment of Commissioner**

- (1) The Governor may, on the recommendation of the Attorney General, appoint a person to be Legal Services Commissioner.
- (2) The person so appointed is to be a person who, in the opinion of the Attorney General:
  - (a) is familiar with the nature of the legal system and legal practice (but need not be a legal practitioner), and

- (b) possesses sufficient qualities of independence, fairness and integrity.
- (3) The employment of the Commissioner is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 or Part 8 of that Act.
- (4) The Commissioner may be appointed for a period of up to 7 years, despite anything to the contrary in section 42F of the *Public Sector Management Act 1988*.
- (5) The Governor may remove the Commissioner from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 42Q of the *Public Sector Management Act 1988*.

### **59C Acting Commissioner**

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

### **59D Functions of Commissioner**

- (1) The Commissioner has, in accordance with this Act, the following functions:
  - (a) to receive complaints about professional misconduct or unsatisfactory professional conduct of legal practitioners and interstate legal practitioners,
  - (b) to assist and advise complainants and potential complainants in making and pursuing complaints (including assisting complainants to clarify their complaints and to put their complaints in writing),
  - (c) to initiate a complaint against a legal practitioner or an interstate legal practitioner,
  - (d) to investigate, or take over the investigation of, a complaint if the Commissioner considers it appropriate,
  - (e) to refer complaints to the appropriate Council for investigation or mediation in appropriate cases,
  - (f) to monitor investigations and give directions and assistance to Councils in connection with the investigation of complaints,

- (g) to review the decisions of Councils to dismiss complaints or to reprimand legal practitioners or interstate legal practitioners in connection with complaints,
  - (h) to take over investigations or to institute proceedings in the Tribunal against legal practitioners or interstate legal practitioners following a review by the Commissioner,
  - (i) to conduct regular surveys of, and report on, the views and levels of satisfaction of complainants and respondent legal practitioners and interstate legal practitioners with the complaints handling and disciplinary system,
  - (j) to monitor the refusal to issue, cancellation and suspension of practising certificates under Part 3 on grounds relating to fitness to practise (for example, in connection with acts of bankruptcy, the commission of indictable offences or tax offences or failures to give required notifications),
  - (k) functions conferred on the Commissioner under Division 1AA of Part 3,
  - (l) to monitor generally the exercise of regulatory functions by the Councils (other than the imposition of conditions on practising certificates),
  - (m) to review barristers rules, solicitors rules and joint rules,
  - (n) to assist the Councils to promote community education about the regulation and discipline of the legal profession,
  - (o) to assist the Councils in the enhancement of professional ethics and standards, for example, through liaison with legal educators or directly through research, publications or educational seminars,
  - (p) to report on the Commissioner's activities under this Act.
- (2) The Commissioner may appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under this Act or otherwise in relation to barristers or solicitors.
- (3) The Commissioner has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

**Note—**

The [Conveyancers Licensing Act 1995](#) confers on the Commissioner the function of dealing with complaints against licensed conveyancers.

**59E Councils to provide information to Commissioner**

- (1) A Council must, within 7 days after receiving a notification from a legal practitioner that the legal practitioner has committed an act of bankruptcy, or been found guilty of an indictable offence or a tax offence, provide a copy of the notification to the

Commissioner.

- (2) A Council must, within 7 days after receiving a statement from a legal practitioner under section 38FB, provide a copy of the statement to the Commissioner.
- (3) The Commissioner may, for the purpose of exercising the Commissioner's functions, do any of the following:
  - (a) require a Council to provide information received by the Council that gives the Council reason to believe that a legal practitioner or an interstate legal practitioner has engaged in professional misconduct or unsatisfactory professional conduct within the meaning of Part 10,
  - (b) require a Council to provide information relating to an application for a practising certificate,
  - (c) require a Council to provide information relating to a notification made by a legal practitioner or interstate legal practitioner for the purposes of complying with this Act or the regulations,
  - (d) require a Council to notify the Commissioner of the Council's intention to issue, refuse to issue, cancel or suspend a practising certificate.
- (4) A requirement by the Commissioner under this section may relate to a specific case or may be made in general terms so as to relate to all cases or to a class of cases.
- (5) A Council must take into account any representations made by the Commissioner on a matter under this section.

#### **59F Protocols relating to monitoring of regulatory functions**

The Commissioner may, in consultation with each of the Councils, develop protocols relating to the exercise of the Commissioner's functions under section 59D (1) (j) and (l).

#### **59G Annual report of Commissioner**

- (1) As soon as practicable after 30 June (but before 31 December) in each year, the Commissioner is required to prepare and forward to the Attorney General a report on his or her activities for the 12 months ending on 30 June in that year.
- (2) The Attorney General is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) The Commissioner is required to include the following information in the annual report for a year:
  - (a) the number and type of complaints made during the year (including the number and type made by the Commissioner and the number and type made by each Council),

- (b) the sources of those complaints,
  - (c) the number of consumer disputes referred to mediation during the year and the results of mediation,
  - (d) the number and type of complaints investigated during the year by each Council, by the Commissioner and by an independent investigator under section 151,
  - (e) the number and type of complaints dismissed during the year by each Council and by the Commissioner,
  - (f) the number and type of complaints in respect of which a legal practitioner or interstate legal practitioner was reprimanded during the year by each Council and by the Commissioner,
  - (g) the number and type of complaints in respect of which proceedings were instituted in the Tribunal during the year by each Council and by the Commissioner,
  - (h) a summary of the results of proceedings in the Tribunal completed during the year,
  - (i) the number of complaints not finally dealt with at the end of the year (including the number at each stage of proceedings),
  - (j) the age of complaints not finally dealt with at the end of the year (that is, the number of those complaints made respectively in that year and in each previous year),
  - (k) time intervals involved in the complaints process,
  - (l) information about any review of a barristers rule, solicitors rule or joint rule requested by the Commissioner under this Act,
  - (m) information on the operation of the complaints process during the reporting year and any recommendations for legislative or other improvements to the complaints process,
  - (n) information about the costs incurred by the Commissioner during the reporting year, certified by the Auditor General,
  - (o) such other information as the Commissioner considers appropriate to be included or as the Attorney General directs to be included.
- (4) The Commissioner may include in the annual report a report on the exercise of functions by the Commissioner referred to in section 59D (1) (j), (k) and (l).
- (5) Matters included in a report must not identify individual clients, legal practitioners or

interstate legal practitioners, unless their names have already lawfully been made public in connection with the refusal to issue, suspension or cancellation of a practising certificate or the complaint concerned.

#### **59H Staff of Commissioner**

- (1) The staff of the Commissioner is (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Commissioner may employ other staff with the approval of the Attorney General. Part 2 of the *Public Sector Management Act 1988* does not apply to the employment of any such staff.
- (3) The Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency or other public authority. Any staff of whose services the Commissioner makes use is taken to be staff of the Commissioner for the purposes of this Act.
- (4) The Commissioner may, with the approval of the Attorney General, engage consultants or other persons for the purpose of getting assistance.

#### **59I Delegation of functions**

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

### **Part 6 Trust accounts**

#### **Note—**

This Part applies to locally registered foreign lawyers who receive money in the course of practising as a foreign lawyer in this State in the same way as it applies to a solicitor practising as a solicitor in this State. See section 48ZAB.

### **Division 1 General**

#### **60 Definitions**

- (1) In this Division:
  - (a) a reference to practising as a solicitor is a reference to a local legal practitioner acting as a solicitor, or an interstate legal practitioner who has established an office in New South Wales, acting as a solicitor in New South Wales, whether or not also acting as a trustee, stakeholder, agent or bailee or in any other capacity, and
  - (b) a reference to money is not limited to a reference to money in New South Wales.
- (2) In this Division, a reference to an associate of a solicitor is a reference to:
  - (a) a partner of the solicitor, whether or not the partner is a solicitor,

- (b) an employee or agent of the solicitor,
  - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the solicitor or a person referred to in paragraph (a), (b) or (e) has a beneficial interest,
  - (d) a co-trustee of the solicitor,
  - (e) a person who bears a prescribed relationship to the solicitor or to a person referred to in paragraphs (a)–(d), or
  - (f) a corporation that (if the solicitor or a person referred to in paragraphs (a)–(e) were, or is, a corporation) would be, or is, a subsidiary of the solicitor or person within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (g) a person prescribed by the regulations as an associate of the solicitor.
- (3) For the purposes of subsection (2), a person bears a prescribed relationship to a solicitor or other person if the relationship is that of:
- (a) a spouse,
  - (b) a de facto partner, being a person who has a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the solicitor or other person,
  - (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
  - (d) a kind prescribed by the regulations for the purposes of this section.
- (4) A reference in this Division to money received by a solicitor includes a reference to:
- (a) money coming under the direct control of the solicitor, whether or not by the exercise of an express power or authority or by operation of law,
  - (b) money paid to an associate of the solicitor on the advice of the solicitor, but only if the money is under the direct or indirect control of the solicitor, and
  - (c) money in relation to which the solicitor (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of the person.

### **61 Money received by solicitor on behalf of another**

- (1) A solicitor who, in the course of practising as a solicitor in this State, receives money on behalf of another person:
- (a) must pay the money, within the time prescribed by the regulations, into a general



- trust account in New South Wales at an approved financial institution and must hold the money in accordance with the regulations relating to trust money, or
- (b) if the person on whose behalf the money is received directs that it be paid or delivered to a third party free of the solicitor's control, must ensure that the money is paid or delivered:
- (i) before the end of the next working day or, if that is not practicable, as soon as practicable after the next working day, or
  - (ii) no later than the day allowed by the solicitor's authority or instructions (if that day is later than the day allowed under subparagraph (i)), or
- (c) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account or to a third party, must pay the money as directed and (if the money is to be held under the direct or indirect control of the solicitor) must hold the money in accordance with the regulations relating to controlled money.
- (2) In any of those three cases, the solicitor must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.
- (3) This section:
- (a) does not prevent a solicitor from depositing money with the Law Society in compliance with section 64, but this section continues to apply to any money so deposited that is repaid to the solicitor, and
  - (b) does not prevent a solicitor from withdrawing or receiving, from trust money or controlled money:
    - (i) reimbursement for disbursements paid by the solicitor, or
    - (ii) money for disbursements to be paid by the solicitor, or
    - (iii) money due, or to accrue due, to the solicitor for costs,so long as the procedure prescribed by the regulations is followed, and
  - (c) does not affect any enforceable lien or claim that a solicitor has to any money, and
  - (d) does not prevent a solicitor from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied), and
  - (e) does not prevent a solicitor from holding, or disposing of, a cheque or other

negotiable instrument payable to a third party if the solicitor does so on behalf of a client and in accordance with directions given by the client, and

(f) does not affect an authority that a solicitor has and that, apart from this section, is irrevocable.

(4) A lien referred to in subsection (3) (d):

(a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and

(b) may not be exercised unless the solicitor has delivered a bill of costs and disbursements to the client on whose behalf the money is held.

(5) Money received by a solicitor on behalf of another person:

(a) is not available for payment to a creditor of the solicitor, and

(b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the solicitor,

unless the creditor is the person on whose behalf the money is held by the solicitor.

(6) If a Crown Solicitor's Trust Account is established as prescribed by the regulations, this section applies to money received by the Crown Solicitor from a person for whom, or a body for which, the Crown Solicitor acts.

(7) If a trust account kept by a solicitor is, as authorised by or under the regulations, operated on by a person other than the solicitor, section 53 of the [Trustee Act 1925](#) does not apply to the person in relation to the operation on the trust account.

(8) It is professional misconduct for a solicitor to wilfully contravene subsection (1) or (2).

(9) In this section:

**approved financial institution** means a bank, building society or credit union that has an agreement with the trustees of the Public Purpose Fund relating to the payment of interest on general trust accounts (as referred to in section 69E).

**controlled money** means money required to be dealt with in accordance with subsection (1) (c) that, while under the direct or indirect control of the solicitor by whom or on whose behalf it is received, is for the time being held otherwise than in a general trust account at an approved financial institution.

**trust money** means money required to be dealt with in accordance with subsection (1) (a).

(10) A reference in subsection (1) to a third party does not include a reference to an associate of a solicitor.

### **61A Money received by solicitor for costs in workers compensation matters**

(1) Section 61 does not apply in respect of money received by a solicitor for a person claiming workers compensation for the payment of costs due to the solicitor in respect of the claim, being costs that have been awarded by a court or the Workers Compensation Commission.

(2) In this section:

**workers compensation** means compensation under any of the following Acts:

- (a) *Workers Compensation Act 1987*,
- (b) *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (c) *Workers' Compensation (Dust Diseases) Act 1942*,
- (d) *Workplace Injury Management and Workers Compensation Act 1998*.

### **62 Keeping of accounts**

(1) A solicitor shall keep:

- (a) in the case of trust money (within the meaning of section 61)—accounting records, or
- (b) in the case of money other than trust money—such accounting records or other records (if any) as may be required by the regulations,

that disclose at all times the true position in relation to money received by the solicitor on behalf of another person.

(2) The accounting records referred to in subsection (1) shall be kept in a manner that enables them to be conveniently and properly audited.

(3) Without limiting the generality of subsection (2), the accounting records referred to in subsection (1) shall, if the regulations so require, be kept in such manner as the regulations prescribe.

(4) A wilful contravention of subsection (1), (2) or (3) is professional misconduct.

### **63 Audits**

(1) The regulations may make provision for or with respect to:

- (a) the auditing of a solicitor's records relating to mortgages of real property if, during the last preceding period of 12 months, the solicitor has acted for mortgagees:
  - (i) in respect of amounts secured totalling not less than \$500,000, or such other amount as may be prescribed, or

- (ii) in respect of more than 50 mortgages of real property,
  - (b) the reports to be made by auditors, and
  - (c) the submission of auditors' reports to the Law Society.
- (2) A solicitor shall, if required to do so by an auditor carrying out an audit referred to in subsection (1), and notwithstanding any legal professional privilege:
- (a) produce for inspection by the auditor any accounting or other records relating to the solicitor's practice, and
  - (b) give the auditor such other information as is reasonably necessary for the purposes of the audit.
- (3) If a record relating to a solicitor's practice:
- (a) is not in writing,
  - (b) is written in a language other than English, or
  - (c) is not decipherable on sight,
- a requirement under subsection (2) to produce the record is a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in English and decipherable on sight, that contains all the information in the record.
- (4) Except in proceedings under Part 10, the production of a record or statement, or the giving of information, under this section does not subsequently affect any legal professional privilege to which, but for subsection (2), the record, statement or information would be subject.
- (5) A wilful contravention of subsection (2) is professional misconduct.

#### **64 Deposit of trust funds with Law Society**

- (1) Out of the money that is paid to a trust account kept by a solicitor, the solicitor shall cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed.
  - (2) Subsection (1) applies to each member of a firm of solicitors, and to money paid to a trust account kept by the firm, in the same way as it applies to a solicitor and a trust account kept by the solicitor.
- (2A) Money is taken to have been deposited with the Law Society if it is deposited in the name of the Law Society with a bank, building society or credit union nominated by the Law Society in accordance with this section.

- (3) Subsection (1) does not apply:
  - (a) to a separate trust account kept on the instructions of a client for the exclusive use of the client, or
  - (b) to a Crown Solicitor's Trust Account established as prescribed.
- (4) This section does not affect any enforceable lien or claim that a solicitor has to any money.
- (5) It is professional misconduct by a solicitor if the solicitor wilfully contravenes subsection (1) in relation to a trust account kept by the solicitor or by a firm of solicitors of which the solicitor is a member.

#### **65 Repayment of deposit with Law Society**

- (1) Money deposited with the Law Society under section 64:
  - (a) is held by the Law Society in trust for the solicitor depositing the money, and
  - (b) is repayable on demand.
- (2) Subsection (1) does not excuse a failure to comply with section 64.
- (3) Until repaid, money deposited under section 64 may be invested by the Law Society:
  - (a) in securities authorised by the *Trustee Act 1925*, or
  - (b) on deposit with the Treasurer, or
  - (c) in an account with any bank, building society or credit union.

#### **66 Accounts to be kept by Law Society**

The Law Society shall:

- (a) keep accounts of money deposited with it under section 64,
- (b) have the accounts audited annually by a firm of accountants appointed by the Law Society Council, and
- (c) without delay, provide the Attorney General with a copy of the auditor's report.

#### **67 (Repealed)**

#### **68 Money not claimed from solicitor**

- (1) If a solicitor holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the solicitor may:
  - (a) pay the money to the Treasurer for credit to the Consolidated Fund, and

- (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the solicitor.
- (2) If a solicitor pays money to the Treasurer under subsection (1), the solicitor is relieved from any further liability in relation to the money.
- (3) The Treasurer shall pay money deposited under this section to a person who satisfies the Treasurer as to his or her entitlement to the money.
- (4) Payment of money to a person under subsection (3):
  - (a) discharges the Crown and the Treasurer from any liability in relation to the money, and
  - (b) does not discharge the person from any liability to another person who establishes a right to the money.
- (5) The Treasurer may require any person to provide information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this section and attempts made to locate the person.
- (6) A person of whom a requirement is made under subsection (5):
  - (a) shall comply with the requirement, and
  - (b) shall not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

Maximum penalty (subsection (6)): 5 penalty units.

## **69 Relief for financial organisation**

- (1) A bank, building society or credit union does not, in relation to a transaction on an account kept by a solicitor at the bank, building society or credit union or another bank, building society or credit union:
  - (a) incur any obligation to make inquiries, or any liability, other than an obligation or liability to which it would be subject apart from this Act, or
  - (b) have imputed to it any knowledge of the right of a person to money credited to the account,that it would not incur, or have imputed to it, if the account were kept by the bank, building society or credit union for a person absolutely entitled to the money credited to it.
- (2) A bank, building society or credit union at which a solicitor keeps an account for clients' money has no recourse against money at credit in the account in respect of a liability of the solicitor to the bank, building society or credit union other than a

liability in respect of the account.

(3) In subsection (2):

**recourse** includes any right, whether by way of set-off, counter-claim or charge or otherwise.

## **Division 2 Public Purpose Fund**

### **69A Definitions**

In this Division:

**general trust account** means a general trust account kept by a solicitor for the purposes of section 61 (1) (a).

**trustees** means the trustees of the Public Purpose Fund.

### **69B Public Purpose Fund**

(1) There is to be established a fund called the "Public Purpose Fund".

(2) The following amounts are to be paid to the credit of the Fund:

(a) all interest on investments made under section 65,

(b) any interest accruing on general trust accounts that is required to be paid to the Fund under an agreement referred to in section 69E,

(c) such other amounts as are payable to the Fund by or under this Act.

### **69C Trustees of Public Purpose Fund**

(1) There are to be trustees of the Public Purpose Fund.

(2) The trustees consist of:

(a) 3 persons appointed by the Attorney General, of whom:

(i) 2 are to be members of the Law Society Council nominated by the President of the Law Society, and

(ii) one is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and

(b) the Director-General.

(3) Schedule 3A has effect with respect to the trustees of the Public Purpose Fund.

### **69D Management and control of Fund**

(1) The trustees have the management and control of the Public Purpose Fund.

- (2) The trustees may invest any amount standing to the credit of the Fund in any investment in which a trustee may invest trust funds in accordance with the *Trustee Act 1925*.
- (3) The trustees may enter into any agreement or arrangement with a person or body under which:
  - (a) the person or body provides the trustees with advice concerning the investment of any amount standing to the credit of the Fund, or
  - (b) the person or body agrees to invest any such amount on behalf of the trustees.
- (4) The Law Society is to administer the Fund on behalf of, and in accordance with the directions of, the trustees.

**69E Agreements relating to payment of interest on general trust accounts**

- (1) The trustees may enter into an agreement with a bank, building society or credit union relating to the payment to the Public Purpose Fund of interest accrued on money held in any general trust account at the bank, building society or credit union.
- (2) Interest that accrues on money held in general trust accounts is to be paid to the trustees, for the credit of the Fund, in accordance with the terms of any such agreement.

**69F Payments from Fund**

- (1) The trustees are to pay from the Public Purpose Fund the following:
  - (a) any amounts payable from the Fund for a purpose referred to in section 69G, in accordance with the approval of the Director-General under that section,
  - (b) any amounts that the trustees, with the concurrence of the Attorney General, determine should be paid from the Fund for a purpose referred to in section 69I,
  - (c) any amounts required to be paid from the Fund in accordance with an order of the Tribunal under section 171E (2),
  - (d) any costs or expenses incurred in collecting the interest payable to the Fund and in the management or administration of the Fund.
- (2) Payments from the Public Purpose Fund may be made from the capital or income of the Fund, at the discretion of the trustees.
- (3) The fact that money is paid out of the Public Purpose Fund under this section does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Public Purpose Fund.



**69G Payment of certain costs and expenses from Fund**

- (1) Payments are to be made from the Public Purpose Fund for the purpose of meeting the following costs and expenses:
  - (a) the costs of a Council in exercising its functions under section 16,
  - (b) the legal costs of a Council in exercising its functions in relation to practising certificates under Division 1 or Division 1AA of Part 3, including in responding to an appeal referred to in section 38B,
  - (c) the costs of a Council in exercising its functions in taking action under section 38E to restrain a legal practitioner or interstate legal practitioner from contravening section 25,
  - (d) the costs of the Law Society Council (including its members, employees or agents) in respect of an inspection or investigation of the accounts or affairs of a solicitor or solicitors or a locally registered foreign lawyer under section 55, to the extent that such costs are not recoverable under section 55 (8),
  - (e) the costs of the Advisory Council in exercising its functions for the purposes of this Act, including remuneration payable under Schedule 3 (see section 59A),
  - (f) the expenses of the Law Society in connection with the management of a solicitor's practice under Part 8A (see section 114G), including any damages and costs reimbursed by the Law Society under section 114F,
  - (f1) the costs of the Commissioner in exercising functions under Division 1AA of Part 3,
  - (g) the costs of the Commissioner or the Tribunal in relation to the administration of Part 10 (see section 171T),
  - (h) the costs of the Commissioner or the Tribunal in relation to the administration of Part 10 as applied by section 82 of the *Conveyancers Licensing Act 1995*,
  - (i) the costs of a Council in exercising its functions for the purposes of Parts 3A and 10,
  - (j) the costs of a Council in relation to any proceedings in the Supreme Court with respect to the discipline of a legal practitioner or a locally registered foreign lawyer (as referred to in section 171M),
  - (k) the costs of a Council or the Commissioner in connection with the provision of mediators for the mediation of consumer disputes under Division 4 of Part 10,
  - (l) the costs of the costs assessors' rules committee in exercising its functions for the purposes of this Act (see section 208R (4A)).

- (2) Such payments are to be made by the trustees of the Fund in accordance with the approval of the Director-General.
- (3) The Director-General is to approve the payment from the Fund of such amounts as the Director-General considers necessary for the purpose of meeting any reasonable costs and expenses referred to in subsection (1), having regard to any budget submitted under section 69H.
- (4) An approval is subject to such conditions as the Director-General specifies in the approval.
- (5) Payments under this section are to be made in advance of the relevant cost or expense.

#### **69H Submission of budgets to Director-General**

- (1) For the purpose of determining the amount to be paid from the Public Purpose Fund for a purpose referred to in section 69G, the Director-General may require the beneficiary of the payment to prepare and submit a budget to the Director-General, in respect of such period as the Director-General directs, relating to the costs or expenses of the beneficiary (including projected costs and expenses).
- (2) The budget is to include such information as the Director-General directs. In particular, the Director-General may require the provision of information about the administration of the beneficiary.
- (3) The Director-General may refuse to approve a payment under section 69G if the beneficiary has failed to submit a budget as required under this section.
- (4) In this section:

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

#### **69I Discretionary payments from Fund for other purposes**

- (1) The trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from the Public Purpose Fund for any of the following purposes:
  - (a) the supplementation of any of the following funds:
    - (i) the Legal Aid Fund,
    - (ii) the Fidelity Fund,
    - (iii) the Law and Justice Foundation Fund,
  - (b) the promotion and furtherance of legal education in New South Wales,

- (c) the advancement, improvement and extension of the legal education of members of the community,
  - (d) the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
  - (e) the furtherance of law reform,
  - (f) the establishment and improvement of law libraries and the expansion of the community's access to legal information,
  - (g) the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal services,
  - (h) the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,
  - (i) the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services.
- (2) The trustees are to invite applications for payments from the Fund for the purposes referred to in this section at such intervals as the Director-General directs.
- (3) Before making a payment from the Fund for a purpose other than the supplementation of the Legal Aid Fund, the trustees are to consider whether adequate provision has been made from the Fund for the purpose of supplementation of the Legal Aid Fund.
- (4) The trustees may approve the making of a payment in advance under this section, but the period with respect to which the payment is made must not exceed 3 years.
- (5) A determination of the trustees under this section may be made only by a unanimous decision of the trustees. A unanimous decision is a decision supported unanimously at a meeting of the trustees at which all the trustees for the time being are present and vote.
- (6) This section does not require the trustees to distribute all of the income or any of the capital of the Public Purpose Fund.
- (7) In this section:

**Law and Justice Foundation Fund** means the Law and Justice Foundation Fund established under the [Law and Justice Foundation Act 2000](#).

**Legal Aid Fund** means the Legal Aid Fund established under the [Legal Aid Commission Act 1979](#).

## **69J Performance audits**

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

## **69K Information about Fund to be included in Law Society Council report**

- (1) As soon as practicable after 30 June in each year, the trustees are to provide the Law Society Council with a report about the income and expenditure of the Public Purpose Fund for the period of 12 months ending on 30 June in that year.
- (2) The Law Society Council is to include a copy of the report of the trustees in its annual report for the same period under section 57.

# **Part 7 Solicitors' Fidelity Fund**

## **Division 1 General**

### **70 The Solicitors' Fidelity Fund**

- (1) The Law Society shall establish and maintain a Solicitors' Fidelity Fund consisting of:
  - (a) the money (including invested money) that, immediately before the commencement of this Act, made up the Solicitors' Fidelity Fund maintained under the *Legal Practitioners Act 1898*,
  - (b) the money paid on account of the Fidelity Fund by solicitors, either as annual contributions or levies under this Part,
  - (b1) the money paid in accordance with the regulations under section 78A on account of the Fidelity Fund by locally registered foreign lawyers,
  - (c) the interest or other income accruing from investment of the money in the Fidelity Fund,
  - (d) money paid to the Fidelity Fund from the Public Purpose Fund, and

(e) any other money lawfully paid to the Fidelity Fund.

- (2) The Fidelity Fund is the property of the Law Society, shall be administered by the Law Society Council and shall be applied in accordance with this Part.
- (3) The Law Society may, on such terms as the Law Society Council thinks fit, arrange with an insurer for insurance of the Fidelity Fund.

#### **71 Separate account**

- (1) The Law Society shall maintain with a bank, building society or credit union in New South Wales a separate account with the name "Solicitors' Fidelity Fund Account" and shall pay to the credit of the account all money received on account of the Fidelity Fund.
- (2) The account shall be operated on in the manner determined by the Law Society Council.

#### **72 Investment of the Fidelity Fund**

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

- (a) in any manner in which trustees are authorised by the [Trustee Act 1925](#) to invest trust funds, or
- (b) on deposit with the Treasurer.
- (c) (Repealed)

#### **73 Payments from Fidelity Fund**

- (1) There shall be paid from the Fidelity Fund in such order as the Law Society Council decides:
  - (a) premiums for insurance of the Fidelity Fund,
  - (b) legal expenses incurred in investigating or defending claims made against the Fidelity Fund, or against the Law Society in relation to the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund,
  - (c) the amount of a claim (including interest and costs) allowed or established against the Law Society in respect of the Fidelity Fund,
  - (d) the expenses of administering the Fidelity Fund, including allowances and travelling expenses for members of the Law Society Council and the Fidelity Fund Management Committee in connection with the exercise of their functions in relation to the Fidelity Fund,

- (e) the costs of the Law Society Council in exercising its function under section 54 (1AA), and
  - (f) any other money payable from the Fidelity Fund under this Part or in respect of amounts paid or payable for the purposes of Part 8A or under rules or regulations made under this Act.
- (2) If there is insufficient money in the Fidelity Fund to meet any money payable under subsection (1), the Law Society, with the approval of the Attorney General:
- (a) may borrow money to meet the money payable, and
  - (b) may enter into an agreement or arrangement with the trustees of the Public Purpose Fund to secure the repayment of the money borrowed by creating a charge over money in the Public Purpose Fund.
- (3) The trustees of the Public Purpose Fund may create a charge over the money in the Public Purpose Fund pursuant to an agreement or arrangement with the Law Society under this section.

#### **74 Management Committee**

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

the member presiding at the meeting is entitled to an additional vote as a casting vote.

- (7) The Committee may call, adjourn, and regulate the conduct of, its meetings as it thinks fit.

## **75 Audit**

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

## **Division 2 Contributions and levies**

### **76 Contributions**

- (1) A solicitor (other than a solicitor who is an interstate legal practitioner) shall, when applying for a practising certificate, pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which the practising certificate would be in force.
- (1A) A solicitor who is an interstate legal practitioner who has established an office in this State must, when notifying the Law Society Council under section 48T, pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which any legal services are to be provided at that office.

#### **Note—**

Section 48S provides for when an office is established.

- (2) The amount of a contribution to the Fidelity Fund is an amount determined by the Law Society Council and approved by the Attorney General.
- (3) The Law Society Council may determine different contributions for different classes of solicitors and may permit a contribution to be paid by instalments under an arrangement approved by the Council.
- (4) If application for a practising certificate is made after 31 December in a year ending on 30 June, the amount of the contribution that would otherwise be payable for that year is reduced by one-half.
- (4A) If a solicitor who has paid a contribution for a year ending on 30 June ceases to practise as a solicitor at any time before 30 June in that year, the Law Society may refund a part of the contribution at a rate determined by the Law Society Council.
- (5) In this section:
- solicitor** does not include the Crown Solicitor or any other solicitor who:
- (a) is employed by the Crown or by a corporation prescribed for the purposes of this

section, and

(b) practises as a solicitor only in the course of that employment.

## **77 Levies**

- (1) If the Law Society Council is at any time of the opinion that the Fidelity Fund is likely to be insufficient to meet the liabilities to which it is subject, the Council may, by resolution, impose on each solicitor liable to contribute to the Fidelity Fund a levy payable to the Council on account of the Fidelity Fund.
- (2) A levy shall be of such amount as the Law Society Council determines and may differ according to whether the solicitor is an interstate legal practitioner and to whether a solicitor is practising:
  - (a) on his or her own account or in partnership,
  - (b) as an employee of another solicitor, or
  - (c) as an employee of a person who is not a solicitor, or of a corporation.
- (3) A levy is payable at the time, and in the manner, fixed by the Law Society Council which may, in a special case, allow time for payment.

## **78 Failure to pay contribution or levy**

If a solicitor fails to pay a contribution required under section 76 or, after being given the prescribed notice, fails to pay a levy in accordance with this Part, the Law Society Council may:

- (a) in the case of a local legal practitioner—suspend the solicitor’s practising certificate while the failure continues, or
- (b) in the case of an interstate legal practitioner—suspend that practitioner’s entitlement under Part 3B to practise in this State while the failure continues and request the regulatory authority in the State or Territory in which the practitioner has his or her sole or principal place of legal practice to suspend the solicitor’s interstate practising certificate until the Law Society Council notifies the regulatory authority that the contribution or levy has been paid.

## **78A Contributions and levies from locally registered foreign lawyers**

The regulations may make provision for or with respect to payments by locally registered foreign lawyers of contributions to the Fidelity Fund and claims against the Fidelity Fund in respect of the actions of locally registered foreign lawyers.

## **Division 3 Claims**



## 79 Definitions

(1) In this Division:

**associate** of a solicitor, has the same meaning as it has in Part 6 (see section 60).

**claim** means a claim against the Fidelity Fund that relates to a failure to account or to a dishonest default.

**contributing interstate legal practitioner** means an interstate legal practitioner who has paid any contribution required under section 76.

**dishonest default** of a solicitor, has the meaning set out in section 79B.

**failure to account** by a solicitor, has the meaning set out in section 79A.

**legal costs** of any aspect of a claim, includes the costs incurred by a claimant that would have been legal costs if the claimant had engaged a legal practitioner or interstate legal practitioner to deal with that aspect of the claim.

**pecuniary loss** from a failure to account or dishonest default, has the meaning set out in section 79C.

**solicitor** means a solicitor required by section 76 to contribute to the Fidelity Fund.

**successful claim** means:

- (a) a claim allowed by the Law Society Council, or
- (b) a claim in respect of which judgment is recovered against the Law Society.

(2) A reference in this Division to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor's practice in this State.

(3) This Division applies to a locally registered foreign lawyer required to pay money in accordance with the regulations under section 78A on account of the Fidelity Fund as if a reference to:

- (a) a solicitor were a reference to the locally registered foreign lawyer, and
- (b) a reference to the practice of a solicitor were a reference to the practice of foreign law in this State of the locally registered foreign lawyer.

### 79A Meaning of "failure to account"

(1) In this Division, a reference to a **failure to account** is a reference to a failure by a solicitor to account for, pay or deliver money or other valuable property received by, or entrusted to, the solicitor or an associate in the course of the solicitor's practice (in the case of an associate, being money or valuable property under the direct or indirect control of the solicitor).

- (2) This section applies only to a failure to account that arises from an act or omission of the solicitor or associate:
  - (a) for which the solicitor or associate has been convicted of a crime or an offence involving dishonesty, or
  - (b) which the Law Society Council has found to be dishonest.
- (3) A finding by the Law Society Council under subsection (2) (b) that an act or omission is, or is not, dishonest is final and conclusive.
- (4) This section applies whether the money or other property was received by the solicitor or associate as trustee, agent, bailee or stakeholder or in any other capacity.
- (5) This section applies whether the failure to account, or the act, omission, conviction or finding of dishonesty, took place before or after the commencement of this Act.

#### **79B Meaning of “dishonest default”**

- (1) In this Division, a reference to a ***dishonest default*** is a reference to a dishonest act or omission (other than a failure to account) by the solicitor in the course of the solicitor’s practice, but only if:
  - (a) a final judgment debt has been obtained against the solicitor as a result of the dishonest act or omission, and
  - (b) the judgment debt is not fully satisfied.
- (2) A dishonest act or omission is an act or omission:
  - (a) for which the solicitor has been convicted of a crime or an offence involving dishonesty, or
  - (b) which a State or Commonwealth Court has, in the course of delivering a final judgment, found to be dishonest, or
  - (c) which the Tribunal has found to be dishonest in connection with a final determination of the Tribunal.
- (3) A judgment debt is fully satisfied if the solicitor provides adequate security to cover the relevant judgment debt or pays the relevant judgment debt by agreed instalments.
- (4) This division does not apply to a dishonest default unless the relevant judgment debt remains unsatisfied for at least 3 months after it was obtained (or an agreed instalment remains unpaid for at least 3 months after it was due to be paid).
- (5) This Division does not apply to a dishonest default that occurred before the commencement of Schedule 4 (10) to the [Legal Profession Reform Act 1993](#).

### **79C Meaning of “pecuniary loss”**

- (1) For the purpose of this Division, **pecuniary loss** resulting from a failure to account includes:
  - (a) the legal costs of a claimant that are due to the failure to account, and
  - (b) the legal costs involved in making and proving a claim, and
  - (c) interest that, but for the failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate that does not exceed the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date.
- (2) For the purpose of this Division, **pecuniary loss** resulting from a dishonest default is limited to:
  - (a) the amount required to satisfy the relevant judgment debt on the date on which the claim succeeds, and
  - (b) any interest required by law to be paid on the relevant judgment debt, and
  - (c) legal costs ordered by the court which delivered the relevant judgment to be paid by the solicitor to the claimant, and
  - (d) the reasonable costs of attempted enforcement of the relevant judgment, and
  - (e) the legal costs of the claimant in making and proving a claim.
- (3) The amount of legal costs of making and proving a claim is:
  - (a) an amount agreed between the claimant and the Law Society Council, or
  - (b) if agreement cannot be reached—an amount assessed by a costs assessor under Division 6 of Part 11 on a reference by the Law Society Council.

### **80 Claims against Fidelity Fund**

- (1) The Fidelity Fund is held, and is to be applied, by the Law Society for the purpose of compensating persons who suffer pecuniary loss because of a failure to account or a dishonest default.
- (1A) Without limiting subsection (1), a claim lies against the Fidelity Fund for the purpose of compensating persons who suffer pecuniary loss:
  - (a) occurring wholly in this State from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner or a contributing interstate legal practitioner, or
  - (b) occurring both in this State and in another State or a Territory from a failure to

account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or

- (c) occurring both in this State and in another State or a Territory from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or
- (d) occurring in this State or another State or a Territory, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (whether or not in the course of practising in this or another State) of a solicitor who is a local legal practitioner, or
- (e) occurring in this State or in another State or a Territory, or both, in circumstances in which it cannot be determined precisely where the loss occurred, from a failure to account or a dishonest default (in the course of practising in this State) of a solicitor who is a contributing interstate legal practitioner, or
- (f) in any other circumstances in which an agreement or arrangement under section 48ZC provides that a claim is payable.

(1B) Without limiting subsection (1), a claim lies against the Fidelity Fund for the purpose of compensating persons who suffer pecuniary loss occurring wholly in this State from a failure to account or a dishonest default (whether or not in this State) of a locally registered foreign lawyer who has paid a contribution required to be paid in accordance with regulations under section 78A.

(2) A claim against the Fidelity Fund is to be made in writing in the form approved by the Law Society.

(3) If a claim is made against the Fidelity Fund, the Law Society Council must:

- (a) investigate the claim, and
- (b) determine the claim by wholly or partly allowing, compromising, settling or disallowing it.

(4) If a solicitor has failed to account or made a dishonest default, the Law Society Council may wholly or partly disallow a claim:

- (a) if satisfied that the claim does not have sufficient connection with practice as a New South Wales solicitor in Australia (for example, because the claim arises from the receipt or entrustment of money or valuable property that was received by or entrusted to a solicitor outside Australia and the act or omission giving rise to the claim occurred outside Australia), or
- (b) if the person who made the claim knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission from which the failure to account

or dishonest default arose, or

- (c) if satisfied that the negligence of the person who made the claim contributed to the loss, or
- (d) if satisfied that the conduct of the transaction with the solicitor was illegal, and the person who made the claim knew or ought reasonably to have known of that illegality, or
- (e) if satisfied that proper and usual records were not brought into existence during the conduct of the transaction (or were destroyed), and the person who made the claim knew or ought reasonably to have known that such records would not be kept or would be destroyed.

(4A) Subsection (4) does not limit the Law Society Council's power to otherwise disallow a claim.

(5) A person is not prevented from making a claim just because, after the act or omission by a solicitor from which the failure to account or the dishonest default arises, the solicitor:

- (a) being a natural person, dies or ceases to be a legal practitioner or interstate legal practitioner, or
- (b) (Repealed)
- (c) ceases to practice as a solicitor, or
- (d) ceases to hold a current practising certificate or interstate practising certificate.

(6) If the amount of a claim against the Fidelity Fund does not exceed \$2,500 or such other amount as may be prescribed, the Law Society Council may allow the claim after waiving compliance with such of the provisions of this Division as it thinks fit.

(7) A claim does not lie against the Fidelity Fund unless the prospective claimant notifies the Law Society of the failure to account or dishonest default:

- (a) in the case of failure to account—not later than 3 months after the prospective claimant becomes aware of the failure, or
- (b) in the case of dishonest default—not later than 3 months after the prospective claimant becomes aware that there has been a failure to satisfy the relevant judgment debt for the period required before a claim can be made, or
- (c) if the Law Society Council allows further time after the period of 3 months referred to in paragraph (a) or (b)—within the further time allowed, or
- (d) if the Supreme Court allows further time after the Law Society Council refuses to

do so—within the time allowed by the Supreme Court.

**Note—**

There are constraints on the making of claims against the Fidelity Fund in respect of certain mortgage work carried out by solicitors. See Part 9.

**80A Reduction of claim**

A person is not entitled to recover against the Fidelity Fund in respect of a failure to account or dishonest default an amount greater than the balance of the pecuniary loss suffered by the person because of the failure to account or dishonest default after deducting the amount or value of all money or other benefits which in the opinion of the Law Society Council might but for the person's neglect or default have been received or recovered by the person from any source other than the Fidelity Fund in respect of the pecuniary loss.

**81 Claims by solicitor who pays compensation for failure to account or dishonest default**

(1) If, in respect of a failure to account or dishonest default by an associate of a solicitor:

- (a) the solicitor has paid compensation for a pecuniary loss due to the failure to account or dishonest default, and
- (b) the solicitor has, in the opinion of the Law Society Council, at all times acted honestly and reasonably in relation to the failure to account or dishonest default, and
- (c) all claims in relation to failures to account or dishonest defaults by the associate (other than claims under this section) have been met,

the solicitor may make a claim as if the compensation paid by the solicitor were a pecuniary loss suffered as a result of the failure to account or dishonest default.

(2) The solicitor may not claim under this section more than the amount that could have been claimed under this Division by the person who suffered the pecuniary loss.

(3) In this section, **solicitor** includes:

- (a) a former solicitor, and
- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased solicitor or a deceased former solicitor.

**82 Special provisions relating to failure to account**

(1) If, in accordance with the regulations, a solicitor authorises a person to operate on an account for clients' money kept by the solicitor at a bank, building society or credit union, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the solicitor.

- (2) If a claim arising from a failure to account is partly disallowed, there is to be paid to the claimant from the Fidelity Fund in respect of legal costs incurred by the claimant as a result of the failure to account:
  - (a) an amount agreed between the claimant and the Law Society Council, or
  - (b) if agreement cannot be reached—an amount assessed by a costs assessor under Division 6 of Part 11 on a reference by the Law Society Council.
- (3) If a claim arising from a failure to account is wholly disallowed but the Law Society Council decides that a specified amount should be paid in respect of legal costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant from the Fidelity Fund.

### **83 Special provisions relating to claims based on dishonest default**

- (1) Before determining a claim against the Fidelity Fund as a result of a dishonest default, the Law Society Council may require the claimant to take action to enforce the judgment debt to which the default relates.
- (2) Such action includes (but is not limited to) taking proceedings to prevent the defaulting solicitor from disposing of property for the purpose of defeating the judgment debt.
- (3) If a judgment debt results partly from a dishonest default and partly from other conduct of the solicitor, the Law Society Council is to determine the amount of the pecuniary loss resulting from the dishonest default having regard to the findings of any relevant court or tribunal.
- (4) A determination by the Law Society Council under subsection (3) is final and conclusive.

### **84 Claimant required to pursue claims etc**

- (1) The Law Society Council may give a claimant not less than 21 days written notice requiring the claimant to do such of the following as are specified in the notice:
  - (a) take specified steps for the purpose of pursuing the claim,
  - (b) supply the Law Society Council with specified particulars in relation to the claim,
  - (c) produce or deliver to the Law Society Council any securities or documents necessary or available to support the claim or to enable the Law Society Council to establish any rights of the Law Society against the solicitor or an associate of the solicitor,
  - (d) do specified things in connection with the claim.
- (2) If the claimant fails to comply with the notice, the Law Society Council may:

- (a) wholly or partly disallow the claim, or
- (b) direct that the whole, or a specified part of, any interest otherwise payable under section 85 not be paid.

#### **85 Interest payable even if not claimed**

- (1) Even if a successful claim did not include a claim for interest, there is payable to the claimant from the Fidelity Fund interest at the prescribed rate on:
  - (a) the amount allowed by the Law Society Council, or
  - (b) the amount of the judgment recovered against the Law Society,from the date on which the claim was made until the date on which it succeeded.
- (2) This section does not apply to a claim to any extent directed by the Law Society Council under section 84 (2) (b).

#### **86 Avoidance of double compensation**

- (1) If a claimant:
  - (a) receives a payment from the Fidelity Fund in respect of the claim, and
  - (b) receives or recovers from another source a payment on account of the pecuniary loss, and
  - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant,the amount of the surplus is a debt payable by the claimant to the Law Society.
- (2) If a claimant:
  - (a) receives or recovers a payment on account of the pecuniary loss from a source other than the Fidelity Fund, and
  - (b) recovers judgment against the Law Society, and
  - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant (including the amount of the judgment),the amount of the judgment is reduced by the amount of the surplus.

#### **87 Final date for making claim on failure to account**

- (1) If the Law Society Council considers that there has been, or may have been, a failure to account by a solicitor, it may publish a notice in the form approved by the Attorney General that fixes a final date on or before which claims relating to the failure to



account must be made.

- (2) The final date fixed by the notice for making a claim must be a date that is at least 3 months later than the first or only publication of the notice.
- (3) The notice must be published:
  - (a) in a newspaper published and circulating in the district in which the solicitor is, or was, practising or carrying on business, and
  - (b) in a newspaper published and circulating in Sydney.
- (4) A claim arising from a failure to account and made after the final date fixed by the notice is barred unless:
  - (a) the Law Society Council allows further time, or
  - (b) the Supreme Court allows further time, if the Law Society Council refuses to do so.
- (5) The publication in a newspaper in good faith of a notice under this section does not subject any of the following to any liability:
  - (a) the Law Society,
  - (b) the Law Society Council,
  - (c) a Management Committee established under section 74,
  - (d) a member, employee or agent of the Society, Council or Committee,
  - (e) the proprietor, editor or publisher of the newspaper.
- (6) The Law Society may, after such date as it may fix in each case, pay from the Fidelity Fund successful claims arising from a failure to account.

#### **88 Final date for making claim on dishonest default**

- (1) If the Law Society Council considers that there has been, or may have been, a dishonest default by a solicitor, it may give to any prospective claimant a copy of the approved claim form and notification of the date (being not less than 3 months) by which the claim must be made.
- (2) A claim arising from dishonest default by a solicitor and made after the date so notified to the claimant is barred unless:
  - (a) the Law Society Council allows further time, or
  - (b) the Supreme Court allows further time, if the Law Society refuses to do so.
- (3) The Law Society may, after such date as it may fix in each case, pay from the Fidelity

Fund successful claims arising from a dishonest default.

### **89 Ceiling on payments from the Fidelity Fund—failure to account**

- (1) If a failure to account by a solicitor, or by a firm of solicitors, that occurred before the commencement of this Act was the first such failure by the solicitor or firm in respect of which:
  - (a) a claim was made against the Fidelity Fund maintained under the *Legal Practitioners Act 1898*, or
  - (b) judgment to be satisfied from the Fidelity Fund so maintained was entered against the Law Society,the maximum aggregate amount that may be paid from the Fidelity Fund under this Act in respect of all such failures by the solicitor or firm is the maximum amount fixed by section 57 of the *Legal Practitioners Act 1898* at the time of the failure.
- (2) Except as provided by subsection (1), the maximum aggregate amount that may be paid from the Fidelity Fund in respect of all failures to account by the same solicitor or firm of solicitors is such amount as the Law Society Council determines.
- (3) The Law Society Council may make a payment from the Fidelity Fund that, but for this subsection, could not be made because of the limit otherwise imposed by this section, but may do so only if satisfied that it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Fidelity Fund.

### **90 Ceiling on payments from the Fidelity Fund—dishonest default**

The maximum amount that may be paid from the Fidelity Fund under this Act in respect of a particular dishonest default by a solicitor must not exceed the maximum amount the Law Society Council determines for claims relating to dishonest defaults.

### **90A Subrogation**

- (1) On payment of a successful claim against the Fidelity Fund, the Law Society is subrogated to the rights and remedies of the claimant against any person in relation to the failure to account or dishonest default.
- (2) Subsection (1) extends, for example, to a right or remedy against any of the following:
  - (a) the solicitor or associate in respect of whom the claim was made,
  - (b) the person authorised to administer the estate of any such solicitor who is deceased, bankrupt or insolvent.
  - (c) (Repealed)
- (3) Subsection (1) does not extend to a right or remedy against a solicitor who is a

partner of a claimant under section 81 and who, in the opinion of the Law Society Council, acted honestly and reasonably in relation to the failure to account.

- (4) The Law Society may exercise its rights and remedies under this section in its own name or in the name of the claimant and must pay into the Fidelity Fund any money paid to it as a result of doing so.
- (5) If the Law Society brings proceedings under this section in the name of a claimant, the Society must indemnify the claimant against any costs awarded against the claimant in the proceedings.

### **90B Sufficiency of Fidelity Fund**

If the Fidelity Fund is at any time insufficient to meet all outstanding judgments and claims then enforceable against it:

- (a) the Law Society Council may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available in the Fidelity Fund, and
- (b) the judgments and claims are to be finally satisfied from future accumulations of the Fidelity Fund, subject to any limitations imposed by this Act.

### **90C Availability of property of the Law Society**

- (1) The Fidelity Fund is the only property of the Law Society available for the satisfaction of a successful claim.
- (2) Proceedings based on, or for the enforcement of, a judgment against the Law Society that is to be satisfied from the Fidelity Fund may not be taken without the leave of the Supreme Court.

### **90D Proceedings against Law Society**

- (1) An action does not lie against the Law Society in relation to the Fidelity Fund except:
  - (a) with the leave of the Law Society Council, or
  - (b) as provided by this section.
- (2) If the Law Society Council wholly or partly disallows a claim, it must (without delay) give written notice of the disallowance to the claimant.
- (3) A claimant may appeal to the Supreme Court against:
  - (a) a decision by the Law Society Council to wholly or partly disallow a claim, or
  - (b) a decision by the Law Society Council to reduce the amount allowed in respect of a claim, by virtue of section 80A, or

- (c) a failure by the Law Society Council to determine a claim within such period as is prescribed by the regulations.
- (4) On an appeal under this section, the Supreme Court may make such order as it thinks fit.
- (5) If the Law Society Council wholly or partly disallows a claim relating to a failure to account in respect of which a solicitor or an associate has been convicted of an offence involving dishonesty:
  - (a) the claimant may take proceedings in the Supreme Court as for a debt due by the Law Society, and
  - (b) in any such proceedings, the defences that would have been available to the solicitor are available to the Law Society.

Any such claimant may take proceedings instead under subsection (3).

## Part 8 Receivers

### 91 Definitions

- (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

**associate**, in relation to a solicitor, has the same meaning as it has in Part 6.

**expenses**, in relation to a receivership, means:

- (a) the remuneration payable to the receiver,
- (b) the expenses incurred in the course of the receivership,
- (c) the costs of legal proceedings involved in the receivership, or
- (d) any reimbursement of the receiver under section 109.

**firm of solicitors** includes any solicitors who share remuneration as solicitors, whether or not on the same basis for each of them.

**property**, in relation to a solicitor, means:

- (a) money or other property that could, in accordance with Part 7, be the subject of a pecuniary loss for which compensation would be payable from the Fidelity Fund,
- (b) interest, dividends or other income or profits or any other property derived from money or property or acquired with money,
- (c) documents and records of any description relating to anything referred to in paragraphs (a) and (b) or to the practice of the solicitor, or

(d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing.

**receivable property** means property of a solicitor or an associate of a solicitor that is the subject of an order appointing a receiver.

**receiver** means a receiver appointed by the Supreme Court under section 92.

**relevant associate** means an associate of a solicitor of whose property a receiver has been appointed under section 92 (5).

**relevant solicitor** means a solicitor of whose property a receiver has been appointed.

**solicitor** includes:

- (a) a firm of solicitors,
- (b) a former solicitor,
- (c) in relation to anything done or omitted to be done by a solicitor—a deceased solicitor or deceased former solicitor, and
- (d) except in relation to anything done or omitted to be done by a solicitor—the personal representative of a deceased solicitor or deceased former solicitor.

(2) A reference in this Part to the practice of a solicitor who is an interstate legal practitioner is a reference to the solicitor's practice in this State.

### **91A Application of Part to locally registered foreign lawyers**

- (1) This Part applies to a locally registered foreign lawyer as if a reference to a solicitor in this Part were a reference to a locally registered foreign lawyer.
- (2) The regulations may make provisions modifying the application of this Part to locally registered foreign lawyers.

### **92 Supreme Court may appoint receiver**

- (1) The Supreme Court may, on the application of the Law Society, appoint a receiver of all or any property of a solicitor if it is satisfied:
  - (a) that an opinion of the Law Society Council referred to in subsection (2) was formed in relation to the solicitor on reasonable grounds, or
  - (b) that an action of the Law Society Council referred to in subsection (3) was taken in relation to the solicitor on reasonable grounds within the period of 12 months that preceded the application, or
  - (c) that the solicitor's practising certificate has been suspended,

and may make the appointment whether or not the solicitor has been notified of the application or is a party to the proceedings.

- (2) An opinion of the Law Society Council in relation to a solicitor is an opinion for the purposes of subsection (1) (a) if it is:
- (a) an opinion that there has, or may have been, a failure to account by the solicitor, or
  - (b) an opinion that a person is unable to obtain payment or delivery of property of the solicitor because the solicitor:
    - (i) is mentally or physically infirm,
    - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit,
    - (iii) is in prison,
    - (iv) has died,
    - (v) has abandoned his or her practice as a solicitor,
    - (vi) has had his or her name removed from the roll of solicitors otherwise than at his or her own request, or
    - (vii) has ceased to hold a practising certificate.
- (3) An action of the Law Society Council in relation to a solicitor is an action for the purposes of subsection (1) (b) if it is:
- (a) a refusal to issue a practising certificate to the solicitor,
  - (b) the cancellation of the solicitor's practising certificate, or
  - (b1) a request for the regulatory authority of another State or a Territory to refuse to issue an interstate practising certificate to a solicitor who is an interstate legal practitioner or to cancel the solicitor's interstate practising certificate, or
  - (c) a decision to make a complaint against the solicitor under Part 10.
- (4) A receiver is not, in the exercise of his or her functions as receiver, a personal representative of a deceased solicitor.
- (5) If, on application by a receiver, the Supreme Court is satisfied that all or any of the property of an associate of a solicitor should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property.
- (6) Nothing in this Part prevents a manager of a solicitor's practice from being appointed

as a receiver of the solicitor's property.

- (7) In this section, **failure to account** has the same meaning as in section 79A, except that:
- (a) section 79A (2) (a) is to be read as if there occurred after the words "has been convicted" the words ", or is likely to be convicted,", and
  - (b) section 79A (2) (b) is to be read as if there occurred after the words "has found to be" the words ", or is likely to find to be,".

### **93 Court to be closed**

- (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court shall order from the precincts of the Court any person who is not:
- (a) an officer of the Court,
  - (b) a party, a legal representative of a party or a clerk of such a legal representative,
  - (c) a member of the same firm of solicitors as the respondent,
  - (c1) (Repealed)
  - (d) a person who is in the course of giving evidence, or
  - (e) a person permitted by the Court to be present in the interests of justice.
- (2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or an order made on the hearing of an application for the appointment of a receiver.

### **94 Order to be served**

- (1) Upon the appointment of a receiver, the Law Society shall serve a copy of the order of appointment on:
- (a) the relevant solicitor or relevant associate, and
  - (b) any other person upon whom the Supreme Court directs the Law Society to serve a copy of the order.
- (2) The Supreme Court may give directions as to the manner of service of a copy of the order, and may dispense with service of the order if it thinks fit.

### **95 Receiver may take possession of property**

- (1) A receiver may take possession of receivable property of the relevant solicitor or relevant associate.
- (2) A person in possession, or having control, of receivable property shall permit the

receiver to take possession of the property if required by the receiver to do so.

- (3) If a person fails to comply with a requirement of a receiver under subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the property to the receiver.
- (4) If, on application by a receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the Court may:
  - (a) order the seizure of any receivable property located on premises specified in the order, and
  - (b) make such further order in the matter as it thinks fit.
- (5) An order under subsection (4) (a) operates to authorise:
  - (a) any member of the police force, or
  - (b) the receiver, or a person authorised by the receiver, together with any member of the police force,to enter the premises specified in the order and search for, seize and remove any property that appears to be receivable property.
- (6) An application by a receiver under subsection (3) may be made:
  - (a) if the property is in the possession, or under the control, of the relevant solicitor or relevant associate—in the name of the receiver, or
  - (b) in any other case—in the name of the relevant solicitor or relevant associate.
- (7) A receiver shall, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

## **96 Information about receivable property**

- (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, shall give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

- (2) Without limiting the generality of subsection (1), a solicitor who has information referred to in subsection (1) retained on behalf of a client or former client of the solicitor shall give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

- (3) A person shall not hinder, obstruct or delay a receiver in the exercise of his or her functions.



Maximum penalty: 50 penalty units.

- (4) A person who complies with a requirement made by a receiver under this section shall not be subject, merely because of that compliance, to any liability, claim or demand.
- (5) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:
  - (a) proceedings taken by a receiver for the recovery of receivable property,
  - (b) proceedings taken under this Part, or
  - (c) proceedings taken under Part 10 against a solicitor where the information:
    - (i) consists of information given to the receiver otherwise than by the solicitor, or
    - (ii) consists of information given to the receiver by the solicitor and is given in evidence in those proceedings with the solicitor's consent.

#### **97 Stop order on account**

- (1) A receiver who believes on reasonable grounds that money at credit in an account with a bank, building society or credit union is receivable property may serve on the bank, building society or credit union an order prohibiting operations on the account by a person other than the receiver or a person authorised by the receiver.
- (2) An order referred to in subsection (1):
  - (a) may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank, building society or credit union at which the account is kept, and
  - (b) is ineffective unless there is annexed to it a copy of the order appointing the receiver.
- (3) A bank, building society or credit union served with an order under subsection (1) in relation to an account:
  - (a) shall permit the receiver, or a person authorised by the receiver, to operate on the account, and
  - (b) shall not permit any withdrawal from the account except by, or by the authority of, the receiver.
- (4) A receiver may withdraw money from an account the subject of an order under subsection (1) and pay it to the credit of an account with the bank, building society or credit union in the name of the receiver to be dealt with as receivable property.
- (5) In connection with an account:

- (a) referred to in subsection (3)—the bank, building society or credit union has the same obligations and protections, or
  - (b) referred to in subsection (4)—the bank, building society or credit union has the same protections,
- as it would have if the receiver were the relevant solicitor or relevant associate.

**98 Recovery of compensation for disposal of receivable property**

- (1) If receivable property has been taken by, or paid or transferred to, a person unlawfully or in breach of trust and:
  - (a) the person knew or believed at the time of the taking, payment or transfer that it was unlawful or in breach of trust—the receiver may recover from the person as a debt the amount of the payment or the value of the property,
  - (b) there was no consideration for the taking, payment or transfer—the receiver may recover from the person as a debt the amount of the payment or the value of the property,
  - (c) there was inadequate consideration for the taking, payment or transfer—the receiver may recover from the person as a debt the amount of the inadequacy, or
  - (d) because of the taking, payment or transfer, the person became indebted or otherwise liable to the relevant solicitor or relevant associate or a client of the solicitor—the receiver may recover from the person as a debt the amount of the debt or liability of the person to the solicitor, associate or client.
- (2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.
- (3) If receivable property has been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another, the receiver:
  - (a) may recover from the person as a debt the amount of the payment or the value of the property, or
  - (b) to the extent that the full amount or value is not recovered from the person under paragraph (a)—may, in the name of the receiver and as if the receiver were beneficially entitled, or in the name of the person, take such proceedings in relation to the claimed cause of action as the person could have taken.
- (4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3)
  - (a) to recover property paid or transferred to the person in respect of the cause of action.

- (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.
- (6) If, under Part 7, a claimant is paid from the Fidelity Fund compensation for a pecuniary loss relating to receivable property and is later paid another amount in respect of the pecuniary loss, the receiver may recover from the claimant as a debt:
  - (a) if the amount paid from the Fidelity Fund is compensation for the whole pecuniary loss—the amount of the later payment, or
  - (b) if the amount paid from the Fidelity Fund is compensation for part only of the pecuniary loss—any amount by which the amount of the pecuniary loss is exceeded by the sum of:
    - (i) the amount paid from the Fidelity Fund, and
    - (ii) the amount of the later payment received.
- (7) Recovery proceedings under this section may be taken in the name of the receiver as if the receiver were beneficially entitled or in the name of any person who, if the receiver had not been appointed, would have been entitled to take the proceedings.
- (8) A receiver, or a person authorised by the Law Society, may give a certificate as to all or any of the following:
  - (a) the receipt of property by a solicitor or an associate of a solicitor, the nature and value of the property, the date of its receipt by the solicitor or an associate of a solicitor and the identity of the person from whom it was received,
  - (b) the taking of property by a person or the transfer of property to a person, the nature and value of the property, the date of its taking or transfer and the identity of the person,
  - (c) the payment of money to a person, the amount of money paid, the date of the payment and the identity of the person who received the payment,
  - (d) the entries made in the records of a solicitor or an associate of a solicitor and the truth or falsity of the entries,
  - (e) the use of property unlawfully or in breach of trust.
- (9) A certificate given under subsection (8) is, in any proceedings taken by a receiver under subsection (1), (3) or (5), evidence of the matters specified in the certificate.
- (10) Proceedings taken under this section in the name of a receiver in relation to any money or other property may be so taken as if the receiver were beneficially entitled

to the money or property.

(11) In addition to any other proceedings that may be taken under this section, a receiver may, if receivable property has been taken by, or paid or transferred to, a person, or otherwise used unlawfully or in breach of trust, take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

(12) In this section:

**receivable property** includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

### **99 Improper dealing with property**

(1) A person shall not, with intent to defeat the purposes of this Part:

- (a) operate on an account with a bank, building society or credit union,
- (b) destroy or conceal receivable property,
- (c) move receivable property from one place to another,
- (d) deliver possession of receivable property to another person, or
- (e) deliver control of receivable property to another person.

Maximum penalty: 20 penalty units.

(2) In this section:

**receivable property** includes property likely to become receivable property.

### **100 Receiver may deal with property**

(1) A receiver may deal with receivable property in any manner in which the relevant solicitor or relevant associate could, but for the appointment of the receiver, have dealt with it.

(2) A receiver shall, as soon as possible, vest receivable property in the person by whom it was given to the relevant solicitor or relevant associate.

### **101 Other powers of receiver**

(1) A receiver may, in his or her own name or the name of the relevant solicitor or relevant associate:

(a) prove, grant, claim or draw a dividend in respect of a debt that is receivable property,

(b) take proceedings to recover damages for a tort committed in relation to receivable

property,

(c) give a receipt for money that is receivable property, or

(d) employ a legal practitioner or interstate legal practitioner or other person to advise or act in relation to receivable property.

(2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which the receipt was given.

### **102 Application for directions**

(1) A receiver, a solicitor or an associate of a solicitor who held receivable property or a person who claims receivable property may apply to the Supreme Court for directions as to the performance of the functions of the receiver.

(2) On an application under subsection (1), the Supreme Court may give such directions as it thinks fit.

### **103 Notice to claim receivable property**

(1) A receiver may give notice to:

(a) the relevant solicitor or relevant associate, or

(b) any other person,

that any claim the solicitor, associate or other person has to receivable property must be submitted to the receiver within 1 month from the giving of the notice or such longer period as is stated in the notice.

(2) A claim submitted in response to such a notice must state:

(a) full particulars of the property, and

(b) the grounds of the claim.

(3) A receiver may disregard a claim made by a solicitor, associate of a solicitor or other person given a notice under this section unless the claim is made in accordance with the notice.

(4) The relevant solicitor or relevant associate is not entitled:

(a) to enforce a claim to receivable property, or

(b) except against a client—to the benefit of a lien against a document that is receivable property,

unless all other enforceable claims against the property have been satisfied and the expenses of the receivership paid.

#### **104 Lien for costs on receivable property**

- (1) If a solicitor claims a lien for costs on receivable property, the receiver may serve on the solicitor a written notice requiring the solicitor to give the receiver within a specified period of not less than 1 month:
  - (a) particulars sufficient to identify the property, and
  - (b) a detailed bill of costs.
- (2) The notice, or a subsequent written notice served on the solicitor, may require the solicitor to apply for an assessment under Part 11 of the bill of costs within a reasonable time specified in the notice.
- (3) If the solicitor requests the receiver in writing to allow such access to receivable property as is reasonably necessary to enable the solicitor to have a bill of costs assessed in compliance with a notice under subsection (1) or (2), the time allowed for assessment does not begin to run until the access is provided.
- (4) If a requirement of a notice under subsection (1) or (2) is not complied with, the receiver may, in dealing with the property claimed to be subject to a lien, disregard the claim.

#### **105 Examination by receiver**

- (1) The Supreme Court may, on application by a receiver, make such order as it thinks fit for the examination by the receiver of a solicitor or other person in relation to receivable property.
- (2) On an examination under this section:
  - (a) the solicitor or other person may be represented by solicitor or counsel, and
  - (b) the Supreme Court may put, or allow to be put, to the solicitor or other person such questions as it thinks fit.
- (3) The solicitor or other person shall be examined on oath or affirmation.
- (4) The solicitor or other person is compellable to answer all questions put to him or her in the course of the examination.
- (5) Subsection (4) applies to any question to which objection is made on the ground that the answer would tend to incriminate the person to whom it is put.
- (6) An answer given by a person to a question referred to in subsection (5) is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

### **106 Termination of appointment of receiver**

- (1) The Supreme Court may:
  - (a) terminate the appointment of a receiver, and
  - (b) if it thinks fit, appoint a new receiver then or within the next 14 days.
- (2) If a new receiver is appointed under subsection (1) (b), the former receiver shall:
  - (a) as soon as possible, and
  - (b) in compliance with any directions given by the Supreme Court,transfer or deliver the receivable property to the new receiver.

Maximum penalty: 10 penalty units.

- (3) If a new receiver is not appointed under subsection (1) (b), the former receiver shall, if the relevant solicitor or relevant associate so requires by notice in writing served on the receiver, transfer and deliver the receivable property to the solicitor or associate:
  - (a) as soon as possible, and
  - (b) in compliance with any directions given by the Supreme Court.

Maximum penalty: 10 penalty units.

- (4) A former receiver is not required to comply with subsection (3) unless:
  - (a) the expenses of the receivership have been paid to the Law Society, or
  - (b) the Law Society Council otherwise directs in relation to those expenses.
- (5) Subject to any directions given by the Supreme Court, a former receiver may, without being given a notice under subsection (3), transfer and deliver the receivable property to the relevant solicitor or relevant associate.

### **107 Property not dealt with by receiver**

- (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Part, the receiver shall notify the Law Society accordingly and:
  - (a) if the Law Society so requires within 1 month after being notified—shall transfer and deliver the property to the Law Society, or
  - (b) if such a requirement is not made—shall transfer and deliver the property to the relevant solicitor or relevant associate.
- (2) If property other than money is transferred or delivered to the Law Society under subsection (1), the Law Society:

- (a) shall deal with it as the Supreme Court directs on application by the Law Society, and
  - (b) if the property is sold—shall treat the proceeds as money paid to it under subsection (1).
- (3) The Law Society shall apply money paid to it under subsection (1):
- (a) firstly—in reimbursing the Fidelity Fund for claims paid from it in relation to the relevant solicitor,
  - (b) secondly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant solicitor, and
  - (c) thirdly—in payment of the expenses of the receivership.
- (4) Any money paid to the Law Society under subsection (1) that is surplus to the requirements of this section shall be paid to the relevant solicitor or relevant associate.

#### **108 Investment of money by receiver**

- (1) A receiver may invest money that is receivable property in any manner in which trustees are authorised by the [Trustee Act 1925](#) to invest trust funds.
- (2) Income received from an investment under subsection (1), and any profit made on the sale of such an investment, is receivable property.

#### **109 Receiver may be reimbursed for damages**

- (1) The Law Society may reimburse a receiver for any damages and costs recovered against the receiver, or an employee or agent of the receiver, for an act or omission in good faith and the purported exercise of a function under this Act.
- (2) Reimbursement under subsection (1) shall be by way of payment from the Fidelity Fund.

#### **110 Payment of expenses of receivership**

- (1) So much of the expenses of receivership as have not otherwise been paid to the receiver shall be paid to the receiver by the Law Society from the Fidelity Fund.
- (2) An amount paid under subsection (1) is recoverable by the Law Society as a debt owed by the relevant solicitor.
- (3) If the Law Society Council and a receiver fail to agree upon the remuneration to be paid to the receiver, the Supreme Court shall, on the application of the Law Society or the receiver, determine the amount to be paid.



- (4) The Supreme Court may, on application by the relevant solicitor:
  - (a) re-open any agreement by the Law Society Council for remuneration of the receiver, and
  - (b) determine the amount to be paid.

**111 Supreme Court may review expenses of receivership**

- (1) This section applies to a receivership if the Supreme Court is satisfied:
  - (a) by evidence given in proceedings (whether or not in the Supreme Court) under section 110 (2) for recovery by the Law Society of the expenses of receivership, or
  - (b) on application by the relevant solicitor,that the expenses of the receivership are excessive.
- (2) If this section applies to a receivership, the Supreme Court may order the taking of an account between the Law Society and the receiver and:
  - (a) relieve the relevant solicitor from payment of any amount in excess of that determined by the Supreme Court to be fairly payable, or
  - (b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—order the receiver to repay the excess.

**112 Receivable property not to be attached**

The receivable property of a relevant solicitor or relevant associate is not liable to be taken in execution of an order or process of any court.

**113 Supreme Court may give general directions**

- (1) The Supreme Court may:
  - (a) authorise a receiver to do such things in the exercise of his or her functions as the Supreme Court considers to be necessary or desirable, and
  - (b) give directions for the exercise of authority conferred under paragraph (a).
- (2) Subject to any applicable directions given by the Supreme Court, a receiver may exercise any authority conferred under subsection (1).

**114 Receiver to report to the Supreme Court**

- (1) A receiver shall:
  - (a) at such times as are fixed by the Supreme Court, and
  - (b) in accordance with any directions given by the Supreme Court,

report to the Supreme Court and the Law Society Council on the receivership.

- (2) A report shall include such information as the Supreme Court directs.
- (3) Upon the conclusion of a receivership, the receiver shall, when giving the Supreme Court his or her final report, lodge with the Court all the records of the receiver that relate to the receivership.
- (4) Unless the Supreme Court orders their destruction, records lodged under subsection (3) shall remain in the custody of the Court.

## **Part 8A Managers**

### **114A Definitions**

- (1) In this Part, the expressions, ***firm of solicitors*** and ***solicitor*** have the same meanings as they have in Part 8.
- (2) In this Part, the expression ***expenses***, in relation to a solicitor's practice, has the same meaning as it has in Part 8, but as if a reference in the definition of that expression in section 91 to a receiver were a reference to the manager of the solicitor's practice.
- (3) In this Part, the expression ***property***, in relation to a solicitor, has the same meaning as it has in Part 8, and includes the property of the solicitor's practice.
- (4) A reference in this Part to a solicitor's practice is a reference, in the case of a solicitor who is an interstate legal practitioner, to the solicitor's practice in this State.

### **114B Appointment of manager**

- (1) The Law Society Council may appoint a manager for a solicitor's practice if it forms an opinion of the kind referred to in section 92 (2), or takes an action of the kind referred to in section 92 (3), in respect of the solicitor or, in the case of a firm of solicitors, in respect of each member of the firm.
- (2) A person is not eligible to be appointed as the manager of a solicitor's practice unless the person is a solicitor who holds an unrestricted practising certificate.
- (3) A person may not act as a solicitor and barrister in respect of a practice for which a manager has been appointed otherwise than as an employee of the manager.
- (4) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the practice for which the manager is appointed.

### **114C Powers of manager**

- (1) The manager of a solicitor's practice may, subject to the terms of his or her

appointment:

- (a) act as a solicitor and barrister on behalf of the existing clients of the practice,
- (b) accept instructions from, and act as a solicitor and barrister on behalf of, new clients,
- (c) dispose of, and otherwise deal with, any property in relation to the solicitor,
- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the practice,
- (e) incur such expenses as are reasonably related to the conduct of the practice, and
- (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)-(e),

as if he or she were the solicitor to whom the practice belongs.

- (2) The manager of a solicitor's practice may not exercise any of the functions conferred by this section in relation to the affairs of a client of the practice unless the consent of the client has been obtained to the manager's exercise of those functions.

#### **114D Management continues under receivership**

- (1) The manager of a solicitor's practice may continue to exercise his or her functions under this Part even if a receiver is appointed under Part 8 in respect of the solicitor's property.
- (2) The manager of a solicitor's practice for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the practice.

#### **114E Acts of manager to be taken as acts of solicitor**

- (1) An act done by the manager of a solicitor's practice is, for the purposes of any proceedings or transaction that relies on that act, to be taken to have been done by the solicitor.
- (2) Nothing in this section subjects a solicitor to any personal liability in relation to any act done by the manager of the solicitor's practice.

#### **114F Manager may be reimbursed for damages**

- (1) The Law Society may reimburse a manager for any damages and costs recovered against the manager, or an employee or agent of the manager, for an act or omission in good faith and the purported exercise of a function under this Act.
- (2) (Repealed)

- (3) Neither the manager of a solicitor's practice nor the Law Society Council are liable for any loss incurred by the solicitor as a consequence of any act or omission of the manager or the Council in the conduct of the solicitor's practice if it was done or omitted in good faith and in purported exercise of a function under this Act.

**114G Payment of expenses of management**

- (1) So much of the expenses of the management of a solicitor's practice as have not otherwise been paid to the manager out of the receipts of the practice are to be paid to the manager by the Law Society.
- (2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant solicitor.
- (3) If the Law Society recovers such a debt, it is to reimburse the Public Purpose Fund for any amount paid from the Fund in satisfaction of the expenses of the management of the solicitor's practice.

**114H Manager to report to the Law Society**

- (1) The manager of a solicitor's practice must:
  - (a) at such times as are fixed by the Law Society Council, and
  - (b) in accordance with any directions given by the Law Society Council,report to the Council on the management of the practice.
- (2) A report is to include such information as the Law Society Council directs.
- (3) On the conclusion of the management of a solicitor's practice, the manager must, when giving the Law Society Council his or her final report, lodge with the Council all the records of the manager that relate to the management.

**114I Application of Part 6**

- (1) Part 6 applies to the accounts kept by a manager in the same way as it applies to those kept by any other solicitor.
- (2) Trust accounts and controlled money accounts concerning a particular practice under management are to be maintained separately from the trust accounts and controlled money accounts of any other practice under management.

**114J Office accounts**

The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a solicitor's practice in connection with the conduct of the

practice, and

(b) the purposes for which money in any such account may be expended.

#### **114K Termination of management**

When a solicitor's practice ceases to be under management, any money held by the manager in connection with the practice is (after re-imburement of any money paid by the Law Society or out of the Public Purpose Fund in satisfaction of claims and amounts paid or payable under Parts 7, 8 and 8A and after payment of the expenses of the management of the practice) to become the property of the solicitor.

## **Part 9 Mortgage practices and managed investment schemes**

### **Division 1 Preliminary**

#### **115 Definitions**

In this Part:

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

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

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

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

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

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

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

**financial institution** means:

- (a) an authorised deposit-taking institution, or
- (b) a body that, immediately before 1 July 1999, was a society within the meaning of the

*Friendly Societies (NSW) Code* or a body that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth, or

- (c) a trustee company referred to in the Second Schedule to the *Trustee Companies Act 1964*, or
- (d) a property trust or other body corporate established by or in respect of a church that may invest money in accordance with an Act, or
- (e) a corporation or other body, or a corporation or body of a class, prescribed by the regulations for the purpose of this definition.

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

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

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

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

- (a) any instrument that is prescribed by the regulations as being a mortgage, and
- (b) a proposed mortgage.

**professional misconduct** has the same meaning as in Part 10.

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

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

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

Commonwealth.

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

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

**State regulated mortgage** is defined in section 116.

**State regulated mortgage practice** means a solicitor's practice in respect of which a nomination made in accordance with section 118 is in force.

#### **116 State regulated mortgage—meaning**

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

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

## **Division 2 Mortgage practices**

### **117 Conduct of mortgage practices**

- (1) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage unless:
  - (a) the mortgage is a State regulated mortgage, or
  - (b) the mortgage is a run-out mortgage, or
  - (c) the mortgage forms part of a managed investment scheme that is operated by a responsible entity.
- (2) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage except in accordance with:

(a) the *Corporations Act 2001* of the Commonwealth, or that Act as modified by any ASIC exemption or the regulations under that Act, and

(b) this Act, the regulations and solicitors rules.

(3) A solicitor must not, in the solicitor's capacity as solicitor for a lender or contributor, negotiate the making of or act in respect of a regulated mortgage that forms part of a managed investment scheme unless the solicitor complies with any ASIC exemption that applies to managed investment schemes that:

(a) have more than 20 members, and

(b) are operated under the supervision of the Law Society in accordance with that exemption.

This subsection applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.

(4) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.

(5) A solicitor who knows that an associate has contravened a requirement referred to in subsection (1), (2) or (3) must notify the Law Society Council of that fact in writing within 21 days after becoming aware of the contravention.

(6) A solicitor who contravenes this section commits professional misconduct.

### **118 Nomination of practice as State regulated mortgage practice**

(1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage, or who proposes to do so, may, by notice in writing given to the Law Society Council, nominate the solicitor's practice as a State regulated mortgage practice.

(2) A nomination may, with the approval of the Law Society Council, be made for a solicitor by another solicitor (for example, by a solicitor on behalf of members of a firm of solicitors).

(3) A nomination of a solicitor's practice as a State regulated mortgage practice takes effect on the date the notice of the nomination is given to the Law Society Council.

(4) A nomination ceases to be in force, in respect of a solicitor, if:

(a) the solicitor revokes the nomination by notice in writing given to the Law Society Council, or

(b) the practising certificate of the solicitor ceases to be in force, or

(c) the Law Society Council, by notice in writing served on the solicitor, rejects the



nomination of the solicitor's practice.

(5) A nomination under this section is to include such information as may be required by the regulations or the solicitors rules.

(6) In this section:

***practising certificate*** includes, in respect of an interstate legal practitioner, an interstate practising certificate.

### **119 Requirement to notify Law Society of State regulated mortgages**

(1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a State regulated mortgage must give the Law Society Council notice in writing of that fact in accordance with the regulations or solicitors rules.

Maximum penalty: 20 penalty units.

(2) A solicitor who contravenes this section commits professional misconduct.

### **120 Solicitor to have fidelity cover in respect of regulated mortgages**

(1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage must ensure that an approved policy of fidelity insurance is in force in respect of the solicitor for the purpose of compensating persons who suffer pecuniary loss because of any dishonest failure to pay money payable under the mortgage.

(2) A policy of fidelity insurance is an approved policy of fidelity insurance if:

(a) the insurer and the terms of the policy have been approved by the Attorney General by order in writing given to the Law Society, and

(b) any conditions imposed by the order are complied with.

(3) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage without ensuring that an approved policy of fidelity insurance is in force in respect of the solicitor in accordance with this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) A solicitor who contravenes this section commits professional misconduct.

(5) This section does not apply in respect of any regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

**Note—**

See Division 4 for transitional arrangements applying to mortgages entered into before the commencement of this section.

### **121 Bar on claims against Fidelity Fund relating to regulated mortgages**

- (1) A person who is a lender or contributor under a regulated mortgage is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for a pecuniary loss if the claim relates to a regulated mortgage in respect of which a solicitor is required to have fidelity insurance under section 120.
- (2) Subsection (1) does not apply if the solicitor who acts for the lender or contributor fails to comply with the requirements of section 120 in respect of the mortgage.
- (3) However, any claim on the Fidelity Fund by a lender or contributor to whom subsection (2) relates is to be dealt with as if the solicitor had complied with section 120 and, in particular, is to be subject to the same restrictions (including as to the amount of any compensation payable) as would have applied to a claim under a policy of fidelity insurance had such a policy been in force in respect of the solicitor as required by that section.

### **122 Notification of insurance arrangements for regulated mortgage**

- (1) If a client entrusts money to a solicitor and the money, or part of the money, is proposed to be advanced to a borrower for a regulated mortgage, the solicitor must, within 7 days after the money is entrusted to the solicitor, give the client a notice in writing that:
  - (a) advises the client of the effect of section 121, and
  - (b) includes details of the policy of fidelity insurance referred to in section 120 (1).
- (2) The solicitor must not advance any of the money to a borrower for a regulated mortgage unless:
  - (a) the client has been given the notice referred to in subsection (1), and
  - (b) after having been given that notice, the client has given the solicitor a specific authority in writing to advance the money for that mortgage.
- (3) A solicitor who contravenes this section commits professional misconduct.
- (4) A contravention of this section does not limit the operation of section 121.
- (5) This section does not apply in respect of a regulated mortgage that forms part of a managed investment scheme that is operated by a responsible entity.

### **122A Failure to obtain fidelity insurance for regulated mortgage**

- (1) The Law Society Council must not issue a practising certificate to an applicant who is

or will be required to comply with section 120 unless it is satisfied that:

- (a) there is, or will be, in force with respect to the applicant an approved policy of fidelity insurance within the meaning of section 120, and
  - (b) the policy is, or will be, in force with respect to the applicant during the currency of the applicant's practising certificate.
- (2) The Law Society Council must suspend the practising certificate of a solicitor who is required to comply with section 120 unless it is satisfied that:
- (a) there is in force with respect to the solicitor an approved policy of fidelity insurance within the meaning of section 120, and
  - (b) the policy is in force with respect to the solicitor during the currency of the solicitor's practising certificate.
- (3) The Law Society Council must suspend the entitlement under Part 3B to practise in this State of a solicitor who is required to comply with section 120 unless it is satisfied that:
- (a) there is, or will be, in force with respect to the solicitor an approved policy of fidelity insurance within the meaning of section 120, and
  - (b) the policy is not to expire before the expiration of the entitlement under Part 3B to practise in this State of the solicitor to whom the policy relates.

### **Division 3 Managed investment schemes**

#### **122B Involvement of solicitors in managed investment schemes**

- (1) This Part does not prevent a solicitor from carrying out any legal work in connection with a managed investment scheme that is operated by a responsible entity, or from having an interest in such a managed investment scheme or in the responsible entity for such a managed investment scheme.
- (2) However, if a client entrusts, or proposes to entrust, money to a solicitor to be invested in a managed investment scheme that is operated by a responsible entity, and the solicitor has a prescribed interest in the managed investment scheme, the solicitor must give the client a notice in writing that advises the client that:
  - (a) the solicitor has an interest in the managed investment scheme, and
  - (b) the operation of the managed investment scheme does not form part of the solicitor's practice, and
  - (c) there is no claim against the Fidelity Fund for a pecuniary loss arising from an investment in the managed investment scheme.

- (3) The notice is to include such other matters as may be required by the regulations or the solicitors rules.
- (4) The solicitor must not advance the money entrusted to the solicitor to the responsible entity for the managed investment scheme or to any other person unless the client has been given the notice.
- (5) A solicitor who knows that an associate has contravened a requirement referred to in this section must notify the Law Society Council in writing of that fact within 21 days after becoming aware of the contravention.
- (6) A solicitor who contravenes this section commits professional misconduct.
- (7) For the purposes of this section, a solicitor has a **prescribed interest** in a managed investment scheme if:
  - (a) the solicitor, or an associate of the solicitor, is a director of or concerned in the management of the responsible entity for the managed investment scheme, or
  - (b) the solicitor, or an associate of the solicitor, is a shareholder in the responsible entity for the managed investment scheme, or
  - (c) the solicitor, or an associate of the solicitor, is taken to be an agent of the responsible entity under Chapter 5C of the *Corporations Act 2001* of the Commonwealth, or
  - (d) the solicitor, or an associate of the solicitor, receives any pecuniary benefit from the managed investment scheme or the responsible entity for the managed investment scheme if a client of the solicitor invests in the managed investment scheme, or
  - (e) the solicitor, or an associate of the solicitor, has an interest of a kind prescribed by the regulations or solicitors rules in the managed investment scheme or the responsible entity for the managed investment scheme.

- (8) In this section:

**legal work** includes general legal work (within the meaning of section 48E).

### **122C Claims against Fidelity Fund relating to managed investment schemes connected with solicitors**

- (1) A person who entrusts money to a solicitor to be invested in a managed investment scheme that is operated by a responsible entity is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for any pecuniary loss arising from that investment if section 122B (2) applied in respect of the entrustment of that money.

- (2) Subsection (1) does not apply if the solicitor who acted for the person failed to comply with the notice requirements set out in section 122B.
- (3) The **notice requirements** set out in section 122B are the requirements of subsections (2), (3) and (4) of that section.

#### **122D Transfer of mortgages to responsible entity**

- (1) A solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, is responsible for the administration of a regulated mortgage must not transfer that mortgage to a responsible entity for a managed investment scheme unless the lender or contributor has given the solicitor authority in writing to transfer the regulated mortgage to the responsible entity.
- (2) A solicitor who contravenes this section commits professional misconduct.
- (3) For the purposes of this section, a solicitor transfers a regulated mortgage to a responsible entity when the solicitor does anything that results in:
  - (a) a responsible entity for a managed investment scheme becoming the holder or custodian of the regulated mortgage, or
  - (b) any advances of money made in respect of the mortgage, or the property that is charged or encumbered by the mortgage, becoming scheme property (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a managed investment scheme.

#### **122E Regulations and rules relating to managed investment schemes**

Without limiting section 122M, the regulations and solicitors rules may include provisions for the purpose of:

- (a) ensuring that the operation of a managed investment scheme by a responsible entity is kept separate from a solicitor's practice, and
- (b) ensuring that clients of a solicitor are aware that the operation of such a managed investment scheme does not form part of the solicitor's practice.

### **Division 4 Transitional arrangements—pre-existing mortgages**

#### **122F Part extends to pre-existing mortgages**

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

#### **122G Requirement to obtain fidelity insurance in respect of pre-existing mortgages**

- (1) Section 120 does not apply in respect of a regulated mortgage that was entered into

before the relevant commencement date.

- (2) Despite subsection (1), section 120 applies in respect of a solicitor if money entrusted to the solicitor by a client (whether before, on or after the relevant commencement date) is advanced or proposed to be advanced on or after the relevant commencement date to a borrower for a regulated mortgage entered into before the relevant commencement date. In such a case:
  - (a) the solicitor must ensure that a policy of fidelity insurance is in force in respect of the advance in accordance with section 120, and comply with section 122, and
  - (b) section 121 (1) applies to any claim against the Fidelity Fund in so far as it relates to such an advance.
- (3) For the purpose of applying section 122 (1) in such a case, the date that money is entrusted to the solicitor by a client is taken to be the relevant commencement date, or the date on which the money is entrusted to the solicitor, whichever is the later.
- (4) This section is subject to section 122I (which allows solicitors to substitute lenders under a run-out mortgage without obtaining fidelity insurance).
- (5) In this section, the **relevant commencement date** means the date of commencement of section 120, as inserted by the [Legal Profession Amendment \(Mortgage Practices\) Act 2000](#).

#### **122H No further action to be taken in respect of run-out mortgages**

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

#### **122I Substitution of lender or contributor under run-out mortgage**

- (1) A solicitor may, despite section 122H, accept money from a client, and do any other work that is necessary, solely for the purpose of substituting a lender or contributor under a run-out mortgage.
- (2) Section 120 does not apply in respect of such action. Accordingly, the solicitor is not

required to obtain fidelity insurance for the purpose of compensating the substitute lender or contributor for any pecuniary loss.

- (3) If a client entrusts or proposes to entrust money to a solicitor for the purpose of substituting a lender or contributor under a run-out mortgage, the solicitor must give the client a notice in writing that advises the client:
  - (a) of the effect of section 122J, and
  - (b) that the solicitor is not required to have fidelity insurance in respect of the run-out mortgage.
- (4) The solicitor must not advance the money to a borrower for a run-out mortgage unless the solicitor has given the client the notice referred to in subsection (3).
- (5) A solicitor who contravenes this section commits professional misconduct.

#### **122J No claims against Fidelity Fund by substitute lenders**

- (1) A person who becomes a lender or contributor under a run-out mortgage after the commencement of section 117, as inserted by the *Legal Profession Amendment (Mortgage Practices) Act 2000*, is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for a pecuniary loss if the claim relates to that mortgage.
- (2) Subsection (1) does not apply if the solicitor who acts for the person fails to give the client the notice referred to in section 122I in accordance with that section.

### **Division 5 Miscellaneous**

#### **122K Law Society may require information about mortgage practices**

- (1) The Law Society Council may, by notice in writing, require a solicitor to provide information to the Law Society Council about any of the following:
  - (a) whether the solicitor, an associate of the solicitor or a person engaged by the solicitor negotiates the making of or acts in respect of regulated mortgages or has done so in the past,
  - (b) details of regulated mortgages that continue to have effect,
  - (c) whether the solicitor proposes:
    - (i) to nominate the solicitor's practice as a State regulated mortgage practice, or
    - (ii) to transfer responsibility for any regulated mortgage, or
    - (iii) to take no further action in respect of any regulated mortgage,
  - (d) such other information, relating to regulated mortgages, as the regulations or the

solicitors rules may require to be provided.

(2) A solicitor who fails to comply with such a notice commits professional misconduct.

### **122L Indemnity insurance**

Nothing in this Part affects the terms of any policy of indemnity insurance approved under section 41.

### **122M Regulations and rules relating to Part**

(1) The regulations and, subject to the regulations, the solicitors rules may make provision for or with respect to:

- (a) regulated mortgages, including run-out mortgages, and
- (b) the involvement of solicitors in managed investment schemes.

(2) In particular, the regulations and the solicitors rules may make provision for or with respect to the following:

- (a) the negotiation of the making of or acting in respect of regulated mortgages by solicitors,
- (b) the manner in which the Law Society Council is to be given any notice or other information under this Part,
- (c) the form of notices and authorities for the purposes of this Part,
- (d) the manner in which notices are to be given in accordance with this Part.

(3) If the regulations or the solicitors rules prescribe a form of notice or authority for the purposes of this Part, the notice or authority is to be given in the prescribed form.

## **Part 10 Complaints and discipline**

### **Division 1 Preliminary**

#### **123 Objects of Part generally**

The general objects of this Part are:

- (a) to redress the consumer complaints of users of legal services, and
- (b) to ensure compliance by individual legal practitioners with the necessary standards of honesty, competence and diligence, and
- (c) to maintain at a sufficiently high level the ethical and practice standards of the legal profession as a whole.



#### **124 Objects of Part relating to users of legal services**

The objects of this Part relating to the users of legal services are:

- (a) to give every person the right to complain about the conduct of legal practitioners, and
- (b) to give users of legal services access to sufficient advice and assistance in order to make and pursue complaints in accordance with this Part and to understand their rights and responsibilities under this Part, and
- (c) to provide an opportunity for mediation of consumer disputes relating to legal services, and
- (d) to give complainants immunity from civil liability for communications made by them in connection with the official complaints and disciplinary system, and
- (e) to provide complainants with a reasonable opportunity to rebut statements of the legal practitioner against whom the complaint is made before the complaint is disposed of, and
- (f) to ensure that complainants receive adequate notice of the institution and status of disciplinary proceedings at relevant stages of the proceedings (including notice of the dismissal of complaints and the reasons for the dismissal), and
- (g) to give complainants the right to seek an independent review of decisions of Councils to dismiss complaints or merely reprimand legal practitioners.

#### **125 Objects of Part relating to providers of legal services**

The objects of this Part relating to the providers of legal services are:

- (a) to ensure that the rules of natural justice (being rules for procedural fairness) are applied to any disciplinary proceedings taken against legal practitioners, and
- (b) to give legal practitioners immunity from civil liability for communications made by them in connection with the official complaints and disciplinary system, and
- (c) to ensure that legal practitioners are aware of the standards of honesty, competence and diligence expected of them.

#### **126 Definitions**

In this Part:

***appropriate Council*** means:

- (a) in relation to a complaint concerning a person who was a barrister when the conduct the subject of the complaint allegedly occurred—the Bar Council, or

- (b) in relation to a complaint concerning a person who was a solicitor when the conduct the subject of the complaint allegedly occurred—the Law Society Council, or
- (c) in relation to a complaint concerning a person who was neither a barrister nor a solicitor when the conduct the subject of the complaint allegedly occurred—the Bar Council or the Law Society Council, whichever the Commissioner nominates for the purposes of the complaint.

**compensation order** means an order of the Tribunal under section 171D.

**complaint** means a complaint under this Part.

**information** means an information laid in the Tribunal in relation to a complaint against a legal practitioner.

**investigation** means an investigation under this Part by a Council or the Commissioner into a complaint, and includes an independent investigation under section 151.

**legal practitioner** includes an interstate legal practitioner.

**professional misconduct** and **unsatisfactory professional conduct** are defined in section 127.

## 127 Professional misconduct and unsatisfactory professional conduct

(1) For the purposes of this Part, **professional misconduct** includes:

- (a) unsatisfactory professional conduct, where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence, or
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that a legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of legal practitioners, or
- (b1) (Repealed)
- (c) conduct that is declared to be professional misconduct by any provision of this Act, or
- (d) a contravention of a provision of this Act or the regulations, being a contravention that is declared by the regulations to be professional misconduct.

(2) For the purposes of this Part:

**unsatisfactory professional conduct** includes conduct (whether consisting of an act or omission) occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to

expect of a reasonably competent legal practitioner.

- (3) Maintenance or champerty by a legal practitioner (except in connection with a conditional costs agreement under Part 11) may constitute professional misconduct despite the *Maintenance and Champerty Abolition Act 1993*.
- (4) For the avoidance of doubt, conduct:
  - (a) involving an act or acts of bankruptcy, or
  - (b) that gave rise to a finding of guilt of the commission of an indictable offence or a tax offence,

whether occurring before, on or after the commencement of this subsection, is professional misconduct if the conduct would justify a finding that the legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of legal practitioners.

#### **128 Legal practitioner to whom Part applies**

- (1) This Part applies to any legal practitioner, including:
  - (a) a legal practitioner who does not hold a practising certificate, and
  - (b) (Repealed)
  - (c) a person who was a legal practitioner when the unsatisfactory professional conduct or professional misconduct the subject of a complaint allegedly occurred but who is no longer a legal practitioner (in which case this Part applies as if the person were still a legal practitioner).
- (2) However, this Part does not apply:
  - (a) to a judicial officer within the meaning of the *Judicial Officers Act 1986*, or
  - (b) to a Justice of the High Court, or
  - (c) to a judge of a court created by the Parliament of the Commonwealth, regardless of whether the unsatisfactory professional conduct or professional misconduct the subject of a complaint allegedly occurred before or after the person's appointment as such a judicial officer, Justice or judge.
- (3) This Part applies to a person who is or was an interstate legal practitioner only if the person practises or practised as a barrister or solicitor and barrister in this State.

#### **Note—**

This Part also applies to locally registered foreign lawyers. See section 48ZV.

### **128A Investigations not related to complaints under this Part**

This Part does not affect the power of a Council to conduct an investigation into the affairs of a legal practitioner under the provisions of any other Part of this Act or under any other Act.

**Note—**

See for example the power of the Law Society Council to appoint a person to conduct an investigation under section 55.

## **Division 2**

### **129-133 (Repealed)**

## **Division 3 Complaints about legal practitioners**

### **134 Making of complaints**

- (1) A complaint may be made under this Part about the conduct of a legal practitioner.
- (2) A complaint may be made by:
  - (a) a Council, or
  - (b) the Commissioner, or
  - (c) any other person.
- (3) A complaint that is duly made is to be dealt with in accordance with this Part.
- (4) A complaint may be made about conduct that is alleged to have occurred either within or outside this State.
- (5) This section does not affect any other right of a person to complain about the conduct of a legal practitioner.

### **135 To whom complaint made**

- (1) A complaint is to be made to the Commissioner, unless it is made by the Commissioner or by a Council.
- (2) A complaint that is made to a Council instead of the Commissioner is to be forwarded immediately to the Commissioner by the Council.
- (3) A copy of a complaint made by a Council is to be forwarded immediately to the Commissioner by the Council.

### **136 Requirements for making complaints**

- (1) A complaint must be in writing.

- (2) A complaint must:
  - (a) identify the complainant and the legal practitioner against whom the complaint is made, and
  - (b) describe the alleged conduct of the legal practitioner the subject of the complaint.
- (3) The Commissioner, or the Council to which a complaint is referred for investigation, may require the complainant to do either or both of the following:
  - (a) to give further information about the complaint,
  - (b) to verify the complaint, or any further information, by statutory declaration.

### **137 Complaints made over 3 years after conduct concerned**

- (1) A complaint may be made about conduct of a legal practitioner irrespective of when the conduct is alleged to have occurred.
- (2) However, a complaint cannot be made more than 3 years after that conduct is alleged to have occurred unless a determination is made under this section that:
  - (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay, or
  - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (3) A determination under this section:
  - (a) in the case of a complaint made to or by the Commissioner—is to be made by the Commissioner, or
  - (b) in the case of a complaint made by a Council—is to be made by the Council.
- (4) A determination made under this section is final and cannot be challenged in any proceedings by the complainant or the legal practitioner concerned.

### **138 Request by complainant for compensation order**

- (1) A complainant who has suffered a loss because of the conduct the subject of the complaint may request a compensation order.
- (2) A complainant who makes such a request must describe the loss suffered by the complainant.
- (3) Such a request may be made in the complaint. The request may also be made, by notice in writing to the Commissioner or the appropriate Council, at any time after the making and before the disposal of the complaint.

- (4) However, such a request may not be made after proceedings have been instituted in the Tribunal with respect to the complaint unless the Tribunal grants the complainant leave to make the request.
- (5) Such a request may only be made within 6 years after the conduct that caused the loss is alleged to have occurred.

### **139 Summary dismissal of complaints**

- (1) A complaint may be dismissed by the Commissioner, or by the Council to which it is referred for investigation, if:
  - (a) further information about the complaint is not given as required by the Commissioner or Council, or
  - (b) the complaint or further information is not verified as required by the Commissioner or Council.
- (2) A complaint made to the Commissioner may be dismissed by the Commissioner if the complaint is vexatious, misconceived, frivolous or lacking in substance.
- (3) A complaint may be dismissed under this section without any investigation or without completing an investigation.

**Note—**

Complaints may also be dismissed at any time under section 155A if it is in the public interest to do so.

### **140 Withdrawal of complaints**

- (1) A complaint may, subject to this section, be withdrawn by the person who made it unless proceedings with respect to the complaint have been instituted in the Tribunal.
- (2) If the complaint was made to the Commissioner, the withdrawal of the complaint is not effective unless notice in writing of the withdrawal is given by the complainant to the Commissioner or to the Council to which the complaint has been referred.
- (3) The Commissioner or the Council to which the complaint has been referred may reject the withdrawal of the complaint if satisfied that it may involve unsatisfactory professional conduct or professional misconduct.
- (4) If a complaint is duly withdrawn, no further action is to be taken under this Part with respect to the complaint.
- (5) The withdrawal of a complaint does not prevent:
  - (a) a further complaint being made under this Part, by the same or any other person, with respect to the matter the subject of the withdrawn complaint, or
  - (b) action being taken on any other complaint made with respect to that matter.

#### **141 Referral of complaints to Council**

- (1) The Commissioner may refer a complaint made to or by the Commissioner to the appropriate Council if the complaint is not to be investigated by the Commissioner under Division 5.
- (2) When referring a complaint to a Council, the Commissioner may recommend that the Council investigate the complaint or refer it to mediation, or both.
- (3) A decision to refer a complaint to a Council is to be made, as far as practicable, within 21 days after the complaint is made or, if further information or verification is required, within 21 days after the further information or verification is given or provided. A Council is not excused from dealing with a complaint because it is referred to the Council after the time prescribed by this subsection.
- (4) The Commissioner may refer a complaint to a Council even though the Commissioner commenced but did not complete an investigation into the complaint.
- (5) This section does not apply to a complaint that is dismissed by the Commissioner under this Division.

#### **142 (Repealed)**

### **Division 4 Mediation of consumer disputes**

#### **143 Consumer dispute**

- (1) For the purposes of this Division, a **consumer dispute** is a dispute between a person and a legal practitioner in which the person seeks redress or a remedy by making a complaint under this Part.
- (2) The person may make a complaint in connection with the consumer dispute even though the dispute may not involve an issue of professional misconduct or unsatisfactory professional conduct.

#### **144 Referral for mediation**

- (1) A Council or the Commissioner, when dealing with a complaint, may refer a consumer dispute for mediation.
- (2) If the consumer dispute involves an issue of professional misconduct or unsatisfactory professional conduct, the complaint is to continue to be dealt with under this Part after or during the attempt at mediation.
- (3) If the consumer dispute does not involve an issue of professional misconduct or unsatisfactory professional conduct, the dispute may be referred for mediation but no other action is required on the complaint.

### **145 Mediation to be voluntary**

Participation in the mediation by the parties to a consumer dispute is voluntary.

#### **145A Nature of mediation**

Mediation of a consumer dispute is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, such as the giving of informal advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute.

#### **146 Mediators**

- (1) The Commissioner is to maintain a list of mediators who are available to attempt a mediation of a consumer dispute.
- (2) The Commissioner is to consult the Councils and may consult any other relevant body about the selection and training of mediators.

#### **147 Confidentiality of mediation process**

- (1) Evidence of anything said or admitted during the mediation or attempted mediation of a consumer dispute and a document prepared for the purposes of any such mediation are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.
- (2) A mediator may recommend to the appropriate Council and the Commissioner that a complaint should be investigated (without disclosing any such evidence, admission or document).

## **Division 5 Investigation of complaints**

### **147A Investigation of complaints by Commissioner**

- (1) The Commissioner may conduct an investigation into a complaint instead of referring it to a Council for investigation, or may take over the investigation of a complaint from a Council, if the Commissioner considers it appropriate.
- (1A) The Commissioner may, with the consent of a Council, refer a complaint to the Council after the Commissioner has completed an investigation into the complaint (including after proceedings with respect to the complaint have been instituted in the Tribunal by the Commissioner).
- (2) A Council is to provide any assistance required by the Commissioner to conduct an investigation into a complaint (including copies of or access to all documents held by the Council that relate to the complaint or are required for the purpose of investigating the complaint).



#### **148 Investigation of complaints by Council**

- (1) A Council must, subject to this section, conduct an investigation into each complaint referred to it by the Commissioner or made by the Council.
- (2) (Repealed)
- (2A) The Law Society Council and the Bar Council may consult and cooperate when dealing with a complaint against a legal practitioner arising from the same, or related, facts as a complaint against another legal practitioner for which the other Council is the appropriate Council. For the purposes of this subsection, the Councils may exchange information concerning the complaints.
- (2B) The Law Society Council or Bar Council may consult and cooperate with the appropriate regulatory authority of another State or a Territory when dealing with a complaint against an interstate legal practitioner under this Act or under a corresponding law. For the purposes of this subsection, the Councils and regulatory authority may exchange information concerning the complaint.
- (3) This section does not apply to a complaint which is taken over by the Commissioner under section 147A, a complaint which is referred to an independent investigator under section 151 or a complaint which is referred only to mediation.

#### **149 Monitoring by Commissioner of conduct of investigation**

- (1) The Commissioner is to monitor investigations by a Council into complaints.
- (2) A Council investigating a complaint is to report to the Commissioner on the progress of the investigation if required to do so by the Commissioner.
- (3) A Council is required to provide any assistance required by the Commissioner to monitor investigations by the Council (including access to or a copy of all documents held by the Council that relate to the complaint or are required for the purpose of monitoring the investigation).

#### **150 Directions by Commissioner about conduct of investigation**

- (1) The Commissioner may give the Council directions on the handling of a complaint being investigated by the Council if the Commissioner considers that it is in the public interest to do so having regard to the seriousness of the complaint.
- (2) The directions may include, for example, directions to pursue a particular line of inquiry or directions concerning the time for completing the investigation.
- (3) Directions may not be given on the decision to be taken by a Council following the investigation.
- (4) If the directions of the Commissioner about the investigation of a complaint are not

complied with, the Commissioner may, under section 147A, take over the investigation of the complaint.

- (5) The Commissioner may also issue general guidelines to a Council about the investigation of complaints.

#### **151 Independent investigation of certain complaints**

- (1) The Commissioner is to arrange for a complaint to be investigated by an independent investigator if requested to do so by the appropriate Council and if the Commissioner decides not to conduct the investigation into the complaint under section 147A.
- (2) The independent investigator is to report to the Council on his or her investigation of the complaint.
- (3) This Part applies to any such investigation as if it were conducted by the Council (except that the decision on the complaint is to be made by the Council after consideration of the report of the independent investigator).
- (4) A complaint is to be referred for an independent investigation if the Council is satisfied that it is in the interests of justice or in the public interest to do so.
- (5) A Council is to provide any assistance required by the independent investigator to conduct an investigation into a complaint (including copies of or access to all documents held by the Council that relate to the complaint or are required for the purpose of investigating the complaint).
- (6) The independent investigator is to provide a copy of his or her report on the investigation to the Commissioner.

#### **152 Powers of Council or Commissioner when investigating complaint**

- (1) For the purpose of investigating a complaint, a Council or the Commissioner may, by notice in writing served on any legal practitioner, require the legal practitioner to do any one or more of the following:
  - (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,
  - (b) to produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
  - (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.
- (1A) A Council or the Commissioner may inspect any document produced before the Council or Commissioner under this section and may retain it for such period as the Council or Commissioner thinks necessary for the purposes of an investigation in

relation to which it was produced. A Council or the Commissioner may make copies of the document or any part of the document.

- (2) If a legal practitioner against whom a complaint is made claims a lien over documents relating to the matter the subject of the complaint, the Council or the Commissioner may require the legal practitioner to waive the lien if satisfied it is necessary for the orderly transaction of the client's business.
- (3) A requirement under this section is to be notified in writing to the legal practitioner and is to specify a reasonable time for compliance.
- (4) A legal practitioner who, without reasonable excuse, fails to comply with such a requirement is guilty of professional misconduct.
- (5) A legal practitioner must not mislead or obstruct a Council or the Commissioner in the exercise of any function under this Division. The wilful contravention of this subsection is capable of being professional misconduct.

**Note—**

**Documents** has a wide meaning. The term is defined in the [Interpretation Act 1987](#) to mean any record of information. The term would include any file that was itself a record of information.

**153 Referral of matters to costs assessors**

- (1) A Council or the Commissioner may, for the purpose of investigating a complaint, apply under Part 11 for an assessment of costs claimed by a legal practitioner.
- (2) Part 11 applies to any such application as if the Council or the Commissioner were a client of the legal practitioner.

**154 Investigation to be conducted expeditiously**

An investigation by a Council or the Commissioner is to be conducted as expeditiously as possible.

**155 Decision after investigation of complaint**

- (1) After a Council or the Commissioner has completed an investigation into a complaint against a legal practitioner, the complaint is to be dealt with in accordance with this section.
- (2) The Council or the Commissioner must institute proceedings in the Tribunal with respect to the complaint against the legal practitioner if satisfied that there is a reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct.
- (3) However, if the Council or the Commissioner is satisfied that there is a reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of

unsatisfactory professional conduct (but not professional misconduct), the Council or the Commissioner may instead:

- (a) reprimand the legal practitioner if the legal practitioner consents to the reprimand, or
  - (b) dismiss the complaint if satisfied that the legal practitioner is generally competent and diligent and that no other material complaints have been made against the legal practitioner.
- (4) The Council or the Commissioner is to dismiss the complaint against the legal practitioner if satisfied that there is no reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.
- (5) If a Council or the Commissioner decides to dismiss a complaint or to reprimand a legal practitioner under subsection (3) and the complainant requested a compensation order in connection with the complaint, the Council or the Commissioner may require the payment of compensation by the legal practitioner or the successful mediation of the consumer dispute before the decision takes effect.

#### **155A Dismissal of complaints if in public interest**

- (1) The Commissioner or the Council may dismiss a complaint, whether before, during or after the investigation of the complaint, if satisfied that it is in the public interest to do so.
- (2) The circumstances in which a complaint may be so dismissed include (but are not limited to) a complaint about a legal practitioner who has retired from practice or is prevented from practising or a complaint about conduct that is the subject of another complaint under this Part.
- (3) If proceedings with respect to a dismissed complaint have been instituted in the Tribunal by the Commissioner or Council, the Tribunal may, on the application of the Commissioner or Council, dismiss the proceedings.

#### **156 Record of decision after investigation of complaint**

A Council or the Commissioner must cause a record of its decision with respect to a complaint, together with the reasons for the decision, to be kept in respect of each investigation conducted under this Division.

#### **157 (Repealed)**

### **Division 6 Review of Councils' decisions**

### **158 Application for review**

- (1) A complainant may apply to the Commissioner for a review of any of the following decisions made by a Council:
  - (a) a decision to dismiss a complaint made by the complainant,
  - (b) a decision to reprimand the legal practitioner because of the complaint,
  - (c) a decision to omit, from the allegations particularised in an information laid before the Tribunal in respect of a complaint, matter that was originally part of the complaint made to the Council.
- (2) The application for review is to be in writing.
- (3) The application for review may be made at any time within 2 months after the decision is notified to the complainant.
- (4) If the Council does not notify the complainant of its decision with respect to the complaint within 6 months after the complaint was referred to the Council, the matter may be reviewed under this section or section 159. In that case, the Council is taken to have dismissed the complaint for the purposes of this Division.
- (5) The Commissioner may postpone a review referred to in subsection (4) for a specified period if satisfied that there is good reason for the Council's delay in making a decision with respect to the complaint. In that case, the Council is taken to have dismissed the complaint for the purposes of this Division if it does not notify the complainant of its decision within that further specified period.

### **159 Reviews**

- (1) The Commissioner is to review each decision of a Council that is the subject of an application for review under this Division.
- (2) The Commissioner may also review a Council's decision (of a type referred to in section 158 (1)) at the request of the Council or on the Commissioner's own initiative.
- (3) The Commissioner must consult with a Council before completing a review of the Council's decision.
- (4) The Commissioner has the same powers when reviewing a decision of the Council as the Commissioner has under section 152 when investigating a complaint.

### **160 Decision of Commissioner on review**

- (1) When the Commissioner has completed the review of a Council's decision, the Commissioner may:
  - (a) confirm that the complaint is dismissed or that the legal practitioner is

reprimanded, or

(b) refer the matter to mediation, or

(c) re-investigate the complaint or direct the appropriate Council to do so, or

(c1) investigate any part of the complaint that was omitted by the Council from the allegations particularised in the information laid by the Council, or

(c2) direct the appropriate Council to investigate, or re-investigate, any part of the complaint that was omitted by the Council from the allegations particularised in the information laid by the Council, or

(c3) reprimand the legal practitioner if the practitioner consents to the reprimand, or

(d) institute proceedings in the Tribunal against the legal practitioner or direct the appropriate Council to do so.

(2) If the Commissioner decides to re-investigate a complaint, or to investigate part of a complaint, the provisions of this Part apply as if the Commissioner had taken over the investigation of the complaint.

(3) Before instituting proceedings in the Tribunal, the Commissioner must notify the relevant Council of the Commissioner's intention to do so and of the reasons for the decision.

(4) A Council is required to comply with a direction of the Commissioner under this section. The Commissioner may take further action under this section if the Council fails to comply with the direction.

#### **161 Assistance etc by Council**

The Council is required to provide any assistance required by the Commissioner to conduct a review or re-investigation (including access to or a copy of all documents held by the Council that relate to the complaint or are required for the purpose of the review or re-investigation).

#### **162-166 (Repealed)**

### **Division 7 Applications to the Tribunal**

#### **167 Institution of proceedings and hearings**

(1) Proceedings may be instituted in the Tribunal with respect to a complaint against a legal practitioner by an information laid by the appropriate Council or the Commissioner in accordance with this Part.

(2) The Tribunal is to conduct a hearing into each allegation particularised in the information.

- (3) Before the commencement of the hearing, the legal practitioner must file a reply to the allegations in the information in accordance with the rules of the Tribunal and the directions of the Registrar of the Tribunal.
- (4) The Tribunal may, subject to its rules and the rules of procedural fairness, order the joinder of any 2 informations against the same or different legal practitioners.
- (5) This includes the power to order, if it is in the interests of justice to do so, the joinder of:
  - (a) more than one information against the same solicitor or barrister, or
  - (b) an information against one or more barristers and an information against one or more solicitors if all informations are founded on the same, or closely related, acts or omissions.

#### **167A Tribunal may vary an information**

- (1) The Tribunal may, on the application of a Council or the Commissioner who laid an information, vary the information laid so as to omit allegations or to include additional allegations if the Tribunal is satisfied, having regard to all the circumstances, that it is reasonable to do so.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary an information, the Tribunal is to have regard to whether varying the information will affect the fairness of the proceedings.
- (3) The variation of an information by the Tribunal to include an additional allegation is not precluded because the alleged conduct concerned occurred more than 3 years before the variation is made.

#### **167B Substitution of informant**

- (1) If a Council or the Commissioner takes over a complaint after an information has been laid in respect of the complaint, the Tribunal may, on the application of the Council or Commissioner, direct that the informant in the proceedings is to be the Council or Commissioner, whichever has taken over the complaint.
- (2) This section has effect even if a hearing of the matter has commenced before the Tribunal.

#### **168 Rules of evidence**

- (1) For the purpose of conducting a hearing into a question of professional misconduct, the Tribunal is to observe the rules of law governing the admission of evidence despite any contrary provisions of section 73 (Procedure of the Tribunal generally) of the [Administrative Decisions Tribunal Act 1997](#).

- (2) In relation to the conduct of any other hearing of a matter allocated to the Legal Services Division of the Tribunal by the *Administrative Decisions Tribunal Act 1997*, section 73 of that Act applies to the determination of that matter.

### **169 Parties**

- (1) The following persons are entitled to appear at a hearing conducted by the Tribunal:
- (a) the legal practitioner against whom the complaint has been made,
  - (b) the appropriate Council,
  - (c) the Commissioner,
  - (d) the Attorney General,
  - (e) the complainant, subject to subsection (2).
- (2) Unless a complainant is granted leave to appear at the hearing by the Tribunal, the complainant's entitlement to appear is limited to those aspects of the hearing that relate to a request by the complainant for a compensation order.
- (3) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.
- (4) Despite section 71 of the *Administrative Decisions Tribunal Act 1997*, any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a barrister or solicitor or, with the leave of the Tribunal, by any other person.
- (5) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the hearing.

### **170 Certain hearings to be held in private**

- (1) The Tribunal is to direct that a hearing (or part of a hearing) relating only to a question of unsatisfactory professional conduct be held in the absence of the public unless it is of the opinion that the presence of the public is in the public interest or the interests of justice.
- (2) Nothing in this section affects the generality of section 75 (Proceedings on hearing to be conducted in public) of the *Administrative Decisions Tribunal Act 1997* in relation to hearings other than those referred to in subsection (1).

### **171-171B (Repealed)**

### **171C Determinations of Tribunal**

- (1) If, after it has completed a hearing relating to a complaint against a legal practitioner,



the Tribunal is satisfied that the legal practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the Tribunal may do any one or more of the following:

- (a) order that the name of the legal practitioner be removed from the roll of legal practitioners if the legal practitioner is guilty of professional misconduct,
- (a1) order that the name of the interstate legal practitioner be removed by the appropriate regulatory authority of another State or a Territory from the roll of that State or Territory that corresponds to the roll of legal practitioners if the interstate legal practitioner is guilty of professional misconduct,
- (b) order that the legal practitioner's practising certificate be cancelled,
- (c) order that a practising certificate not be issued to the legal practitioner until the end of the period specified in the order,
- (c1) order that the appropriate regulatory authority of another State or a Territory cancel the interstate legal practitioner's practising certificate or order that an interstate practising certificate not be issued to the interstate legal practitioner until the end of the period specified in the order,
- (d) order that the legal practitioner pay a fine specified in the order, not exceeding \$50,000 if the legal practitioner is guilty of professional misconduct or not exceeding \$5,000 if the legal practitioner is guilty of unsatisfactory professional conduct,
- (e) publicly reprimand the legal practitioner or, if there are special circumstances, privately reprimand the legal practitioner,
- (f) order that the legal practitioner undertake and complete a course of further legal education specified in the order,
- (f1) in the case of a barrister who is a public notary, order that the barrister cease to accept instructions in relation to notarial services,
- (g) in the case of a solicitor, make any one or more of the orders referred to in subsection (2),
- (g1) in the case of a locally registered foreign lawyer, order that the registration of the foreign lawyer under Part 3C be cancelled,

**Note—**

This section applies to locally registered foreign lawyers. See section 48ZV.

- (h) if applicable, make a compensation order,
- (i) make ancillary orders.

- (2) In the case of a solicitor, the Tribunal may do any one or more of the following:
- (a) (Repealed)
  - (b) order that the solicitor's practice be subject to periodic inspection by the person, and for the period, specified in the order,
  - (c) order that the solicitor seek advice in relation to the management of the solicitor's practice from the person specified in the order,
  - (d) order that the solicitor cease to employ in the solicitor's practice the person specified in the order,
  - (e) order that the solicitor employ in the solicitor's practice a person belonging to the class of persons specified in the order,
  - (f) order that the solicitor cease to accept instructions in relation to the class of legal services specified in the order,
  - (g) order that the solicitor's practising certificate be endorsed with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate,
  - (h) order that the appropriate regulatory authority of another State or a Territory endorse the interstate practising certificate of a solicitor who is an interstate legal practitioner with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate (or its equivalent) in that State or Territory.

#### **171D Compensation orders of Tribunal**

- (1) If, after it has completed a hearing relating to a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss because of the conduct concerned, the Tribunal may do any one or more of the following to compensate the complainant:
- (a) order that the legal practitioner waive or repay the whole or a specified part of the amount charged to the complainant by the legal practitioner in respect of the legal services specified in the order,
  - (b) order that the legal practitioner provide to the complainant the legal services specified in the order, either free of charge or for a specified charge,
  - (c) order that the legal practitioner waive any lien in respect of the document or class of documents specified in the order,
  - (d) order that the legal practitioner pay to the complainant, by way of monetary

compensation for the loss, the amount specified in the order.

- (2) A compensation order for the payment, waiver or repayment of an amount exceeding \$10,000 is not to be made unless the complainant and the legal practitioner both consent to the making of the order.
- (3) A compensation order is not to be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation under an order made by a court or compensation from the Fidelity Fund.
- (4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.
- (5) In this section, **legal practitioner** includes an incorporated legal practice of which the legal practitioner is an officer or employee.

#### **171E Award of costs by Tribunal**

- (1) The Tribunal may make orders requiring a legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including the costs of the Commissioner, the appropriate Council and the complainant).
- (2) If, after it has completed a hearing relating to a complaint against a legal practitioner, the Tribunal is satisfied that the practitioner is not guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Public Purpose Fund to the practitioner of the legal practitioner's costs.
- (3) An order for costs:
  - (a) may be for a specified amount or an unspecified amount, and
  - (b) if for an unspecified amount, may specify the basis on which the amount is to be determined, and
  - (c) may specify the terms on which costs must be paid.

#### **171F Appeals against decisions and orders of Tribunal**

- (1) An order or other decision made by the Tribunal under this Act (other than a decision made by the Tribunal when its constitution includes a Judge of the District Court) may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#) by a party to the proceedings in which the order or decision is made.

- (2) An order or other decision made by the Tribunal under this Act when its constitution includes a Judge of the District Court may be appealed to the Supreme Court by a party to the proceedings in which the order or decision is made.
- (3) An appeal under subsection (2):
  - (a) may be made on any question of law, and
  - (b) with the leave of the Supreme Court, may extend to a review of the merits of the order or decision concerned.
- (4) Sections 114 and 115 of the *Administrative Decisions Tribunal Act 1997* apply to an appeal to the Supreme Court under subsection (2) in the same way as they apply to an appeal to an Appeal Panel against a decision of the Tribunal.
- (5) An appeal to the Supreme Court by a person under this section must be made:
  - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
  - (b) within such further time as the Supreme Court may allow.

**171G, 171H (Repealed)**

**171I Payment of fines**

Any fine imposed on a legal practitioner by the Tribunal must be paid to the trustees of the Public Purpose Fund for credit of that Fund.

**Division 9 Notifications to complainant and legal practitioner**

**171J Notification of decisions of Council or Commissioner**

- (1) A Council or the Commissioner must cause the decision with respect to a complaint, together with the reasons for the decision, to be notified in writing to the complainant and to the legal practitioner against whom the complaint was made.
- (2) In the case of a decision of a Council to dismiss the complaint or reprimand the legal practitioner, the right of the complainant to apply to the Commissioner for a review of the decision must also be included in the notice to the complainant.
- (3) A notice to a complainant is not required under this section if the complaint was made by the Commissioner or a Council.

**171K Notification about review of Council decisions**

- (1) The Commissioner must cause his or her decision on a review of a Council's decision with respect to a complaint, together with his or her reasons for the decision, to be notified in writing to the complainant and the legal practitioner against whom the

complaint was made.

(2) This section applies even if the complainant did not apply for the review.

#### **171L Notification of progress and result of disciplinary proceedings**

(1) The informant in disciplinary proceedings in the Tribunal must cause the complainant to be notified in writing of the date set down by the Tribunal for hearing the matter and of the determination of the Tribunal.

(2) This section does not apply to disciplinary proceedings to which the complainant is a party.

### **Division 9A Publicising disciplinary action**

#### **171LA Definitions**

In this Division:

**barrister** includes a former barrister.

**disciplinary action** means any of the following actions, whether or not taken under this Part:

- (a) the suspension or cancellation of the practising certificate of a legal practitioner,
- (b) the refusal to issue a practising certificate to a qualified person,
- (c) the removal of the name of a legal practitioner from the roll of legal practitioners,
- (d) any order made by a regulatory authority in respect of a legal practitioner following a finding of professional misconduct or unsatisfactory professional conduct by the legal practitioner,
- (e) the appointment of a receiver of all or any property of a solicitor,
- (f) the appointment of a manager of a solicitor's practice.

**Note—**

**Legal practitioner** includes an interstate legal practitioner (see section 126).

**solicitor** includes a former solicitor.

#### **171LB Publicising disciplinary action**

(1) A Council may publicise disciplinary action taken against a legal practitioner in any manner the Council thinks fit.

(2) However:

- (a) the Bar Council must publicise disciplinary action taken against a barrister (including the name and other identifying particulars of the person against whom the disciplinary action was taken), and
  - (b) the Law Society Council must publicise disciplinary action taken against a solicitor (including the name and other identifying particulars of the person against whom the disciplinary action was taken).
- (3) Without limiting subsection (1), it is sufficient compliance with subsection (2) if a Council provides to the Commissioner sufficient information to enable the Commissioner to exercise the Commissioner's functions in respect of the register of disciplinary action required to be kept under this Division.
  - (4) The requirement to publicise disciplinary action applies only to disciplinary action taken after the commencement of this section. However, a Council may publicise disciplinary action taken before the commencement of this section in accordance with this Division.
  - (5) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to a Council.

**171LC Register of disciplinary action**

- (1) The Commissioner must keep a register of disciplinary action taken against barristers and solicitors.
- (2) The register is to include the following:
  - (a) the name and other identifying particulars of the person against whom the disciplinary action was taken,
  - (b) particulars of the disciplinary action taken.
- (3) The register is to be made available for public inspection on the internet site of the Commissioner.
- (4) The Commissioner may, on request, provide information recorded in the register to members of the public in any other manner.
- (5) The Commissioner may correct any error in or omission from the register.
- (6) In addition to keeping the register, the Commissioner may publicise disciplinary action taken against any legal practitioner in any other manner the Commissioner thinks fit.
- (7) The requirement to keep a register of disciplinary action applies only to disciplinary action taken after the commencement of this section. However, the Commissioner may include in the register disciplinary action taken before the commencement of this section, or publicise such action in any other manner, in accordance with this Division.

- (8) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to the Commissioner.

**171LD Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review after the action was publicised by a Council or the Commissioner under this Division, the result of the appeal or review is to be publicised with equal prominence by the Council or Commissioner.
- (2) If a Council publicised the disciplinary action by providing information about it to the Commissioner, the Council must provide information about the result of the appeal or review to the Commissioner.
- (3) If the disciplinary action was recorded in the register kept by the Commissioner under this Division, any reference to that disciplinary action is to be removed from the register.

**171LE Liability for publicising disciplinary action**

- (1) No liability is incurred by the State, the Commissioner, a Council or any person acting at the direction of the Commissioner or a Council in respect of anything done in good faith for the purpose of:
- (a) publicising disciplinary action under this Division, or
- (b) exercising the functions of the Commissioner or a Council under this Division.
- (2) No liability is incurred by a person publishing in good faith disciplinary action, or a fair report or summary of disciplinary action, recorded in a register kept by the Commissioner, or otherwise publicised by the Commissioner or a Council, under this Division.
- (3) In this section:

**liability** includes liability in defamation.

**171LF General**

- (1) The provisions of this Division are subject to section 56 (Secrecy), but apply despite section 171P (Offence: improper disclosure of information).
- (2) The provisions of this Division are subject to any order made by the Tribunal under section 75 of the *Administrative Decisions Tribunal Act 1997*.

**Note—**

Section 75 of the *Administrative Decisions Tribunal Act 1997* allows the Tribunal to make an order prohibiting or restricting the disclosure of information.

- (3) If disciplinary action involves a suspension or cancellation of the practising certificate of a person, or a refusal to issue a practising certificate to a person, because of the

infirmity, injury or mental or physical illness of the person, the reason for the suspension, cancellation or refusal, and any other information relating to the infirmity, injury or mental or physical illness of the person, is not to be recorded in the register kept under this Division or otherwise publicised.

- (4) Despite subsections (2) and (3), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be publicised, and recorded in the register kept under this Division, in accordance with the requirements set out in this Division.

## **Division 10 Miscellaneous**

### **171M Jurisdiction of Supreme Court not affected**

- (1) The inherent power or jurisdiction of the Supreme Court with respect to the discipline of legal practitioners is not affected by anything in this Part or Part 2.
- (2) That inherent power or jurisdiction extends to interstate legal practitioners and locally registered foreign lawyers.

### **171MA Information about complaints procedure**

Each Council and the Commissioner must produce information about the procedure for dealing with complaints under this Act and ensure that such information is made available to members of the public on request.

### **171MB Performance criteria relating to handling of complaints by Councils and Commissioner**

- (1) Each Council and the Commissioner must develop performance criteria relating to the handling of complaints under this Part.
- (2) The criteria may be developed jointly or independently by each of the Councils and the Commissioner.
- (3) Each Council is to include the relevant criteria in its annual report under section 57, together with an assessment of its performance against the criteria in the period to which the report relates.
- (4) The Commissioner is to include the relevant criteria in the Commissioner's annual report under section 59G, together with an assessment of the Commissioner's performance against the criteria in the period to which the report relates.

### **171N (Repealed)**

### **171O Reports required by Attorney General**

- (1) Each Council and the Commissioner must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the



handling of complaints.

- (2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council or Commissioner considers appropriate to include in the report.
- (3) The obligations under this section are in addition to any obligation to provide an annual report under this or any other Act.

**1710A (Repealed)**

**171P Offence: improper disclosure of information**

- (1) A person who discloses information obtained in the administration of this Part, or in relation to any notification required by the regulations, or statement given or investigation carried out under Division 1AA of Part 3, is guilty of an offence unless the disclosure is made:
  - (a) with the consent of the person to whom the information relates, or
  - (b) in connection with the administration of this Part, or
  - (c) for the purpose of legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) Subsection (1) does not apply to the disclosure of information by the Commissioner, or a member of the Law Society Council, to the Chief Commissioner of State Revenue.

**171Q Protection from liability**

- (1) A matter or thing done or omitted to be done by:
  - (a) a Council, or
  - (b) any member of a Council, or
  - (c) any committee or subcommittee of a Council, or any member of a committee or subcommittee of a Council, or
  - (d) the Tribunal, or
  - (e) any member of the Tribunal, or
  - (f) the Registrar of the Tribunal, or
  - (g) the Commissioner, or

- (h) the Bar Association, or
- (i) the Law Society, or
- (j) a consultant engaged by the Commissioner pursuant to section 59H (4), or
- (k) a mediator to whom a dispute is referred under Division 4, or
- (l) any member of the staff of any of the above,

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Part, subject any such member, the Commissioner, the Registrar, the consultant, the mediator or the member of staff personally to any action, liability, claim or demand.

(2) In this section:

- (a) a reference to a Council includes a reference to a committee of the Council, and
- (b) a reference to a member of a Council includes a reference to a member of any such committee.

#### **171R Certain persons not compellable witnesses**

- (1) A person referred to in section 171Q is not compellable in any legal proceedings (including proceedings before the Tribunal) 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 proceedings under Part 3 of the *Royal Commissions Act 1923* or before the Independent Commission Against Corruption.

#### **171S Duty of confidentiality of client communications**

- (1) A legal practitioner must comply with a requirement under this Part to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between the practitioner and a client (but only if the client is the complainant or consents to its disclosure).
- (2) A legal practitioner may disclose a matter to the Commissioner, a Council or the Tribunal in breach of any such duty of confidentiality if the Commissioner, Council or Tribunal is satisfied that it is necessary for the practitioner to do so in order to rebut an allegation in the complaint.

#### **171T Costs of administering Part**

Any amount payable from the Public Purpose Fund for the purpose of meeting the costs of the Commissioner or the Tribunal is to be paid, in accordance with section 69G, to the Treasurer for credit of the Consolidated Fund.

**172 (Repealed)**

**Part 10A**

**172A-172X (Repealed)**

**Part 11 Legal fees and other costs**

**Division 1 Preliminary**

**173 Definitions**

(1) In this Part:

**bill of costs** means a bill of costs for providing legal services, and includes a memorandum of fees.

**conditional costs agreement** means an agreement of the kind referred to in section 186.

**costs**—see section 3.

**Note—**

**Costs** includes barristers' and solicitors' fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

**costs agreement** means an agreement referred to in section 184 as to costs for the provision of legal services.

**costs assessor** means a person appointed as a costs assessor under Division 6.

**legal services** means work done, or business transacted, in the capacity of a barrister or solicitor.

(2) In this Part, a reference to a **barrister** or to a **solicitor** includes:

- (a) a person who was a barrister or solicitor when the legal services concerned were provided, or
- (b) the assignee of a barrister or solicitor, or
- (c) the executor of the will or other testamentary instrument of a barrister or solicitor, or
- (d) the trustee or administrator of the estate of a barrister or solicitor, or
- (e) in the case of a solicitor, the receiver of the solicitor's property appointed under Part 8.
- (f) (Repealed)

- (3) In this Part, a reference to the costs of a costs assessor or the costs incurred by a costs assessor includes a reference to the costs related to the remuneration of a costs assessor.

#### **174 Clients' rights under Part**

- (1) This Part gives the following rights to any client of a barrister or solicitor:
- (a) the client is to be given information about how a barrister or solicitor will charge for costs for legal services and an estimate of the likely cost of legal services (Division 2),
  - (b) the client need not pay the barrister's or solicitor's bill until it has been assessed by a costs assessor if the client is not given the information about how costs will be charged (Division 2),
  - (c) the client can enter into a costs agreement with the barrister or solicitor, including a conditional costs agreement under which costs are only payable if the matter is successful (Division 3),
  - (d) the client is not liable to pay interest on unpaid costs unless notice that interest will be charged is set out in the bill of costs (Division 4),
  - (e) proceedings against the client for the recovery of costs cannot be brought unless a bill of costs in the proper form has been given to the client and at least 30 days have passed (Division 5),
  - (f) if the client disputes the barrister's or solicitor's bill, or is ordered to pay costs in proceedings, the client may apply to have the bill or costs assessed by a costs assessor (Division 6). The client has no right to have a bill as to costs that are covered by a costs agreement assessed unless there is some inequality affecting the agreement as set out in Division 6.
- (2) Nothing in this section confers any additional rights on a client or derogates from any rights conferred on a client under this Part.

#### **174A Application of Part to cross-vested matters**

- (1) The regulations may make provisions modifying the application of this Part to matters commenced in another jurisdiction and transferred to the Supreme Court of New South Wales under cross-vesting legislation of the Commonwealth or another State or Territory.
- (2) Without limiting subsection (1), the regulations may modify the application of this Part by removing an obligation that a legal practitioner or interstate legal practitioner would otherwise have (in relation to such matters) under this Part.

**174B Application of Part to locally registered foreign lawyers**

- (1) This Part applies to a locally registered foreign lawyer as if a reference to a barrister or solicitor in this Part were a reference to a locally registered foreign lawyer.
- (2) The regulations may make provisions modifying the application of this Part to locally registered foreign lawyers.

**Division 2 Disclosure of matters relating to costs**

**175 Obligation to disclose to clients basis of costs**

- (1) A barrister or solicitor must disclose to a client in accordance with this Division the basis of the costs of legal services to be provided to the client by the barrister or solicitor.
- (2) The following matters are to be disclosed to the client:
  - (a) the amount of the costs, if known,
  - (b) if the amount of the costs is not known, the basis of calculating the costs,
  - (c) the billing arrangements,
  - (d) the client's rights under Division 6 in relation to a review of costs,
  - (e) the client's rights under Division 4 to receive a bill of costs,
  - (f) any other matter required to be disclosed by the regulations.
- (3) The disclosure to a client is not required to be made by a barrister or solicitor who is retained on behalf of the client by another barrister or solicitor. However, the disclosure to the client is to include the costs of the barrister or solicitor so retained.

**176 Obligation to disclose basis of costs to instructing practitioner**

- (1) A barrister or solicitor who is retained on behalf of a client by another barrister or solicitor must disclose to that other barrister or solicitor in accordance with this Division the basis of the costs of legal services to be provided to the client by the barrister or solicitor.
- (2) The following matters are to be disclosed to the other barrister or solicitor:
  - (a) the amount of the costs, if known,
  - (b) if the amount of the costs is not known, the basis of calculating the costs,
  - (c) the billing arrangements,
  - (d) any other matter required to be disclosed by the regulations.

### **177 Obligation to disclose estimated costs**

- (1) A barrister or solicitor must disclose to a client in accordance with this Division an estimate of the likely amount of the costs of legal services to be provided to the client by the barrister or solicitor, if the amount of the costs is not disclosed under section 175.
- (2) A barrister or solicitor who is retained on behalf of a client by another barrister or solicitor must disclose to that other barrister or solicitor in accordance with this Division an estimate of the likely amount of the costs of legal services to be provided to the client by the barrister or solicitor, if the amount of the costs is not disclosed under section 176.
- (3) A barrister or solicitor who has disclosed to a person an estimate of the likely amount of the costs of legal services is to disclose to that person any significant increase in that estimate.

### **178 When disclosure to be made**

- (1) A disclosure under this Division is to be made before the barrister or solicitor is retained to provide the legal services concerned, unless this section otherwise provides.
- (2) If it is not reasonably practicable to make the disclosure before the barrister or solicitor is retained, the disclosure is to be made as soon as practicable after the barrister or solicitor is so retained.
- (3) A disclosure under this Division to a client as to the costs of a barrister or solicitor who is retained on behalf of the client by another barrister or solicitor is to be made as soon as practicable after the other barrister or solicitor becomes aware of the costs.
- (4) A disclosure under this Division as to any significant increase in the estimated costs of legal services is to be made as soon as practicable after the barrister or solicitor becomes aware of the likely increase in costs.

### **179 Disclosure to be in writing**

- (1) A disclosure under this Division must be made in writing and be expressed in clear plain language.
- (2) The disclosure may be made separately or in a costs agreement or in any other contract relating to the provision of the legal services concerned.

### **180 Exception to disclosure**

A disclosure is not required to be made under this Division when it would not be reasonable to be required to do so.

### **181 Regulations, rules and guidelines as to disclosure**

The regulations and, subject to the regulations, the barristers rules, solicitors rules or joint rules may make provision for or with respect to:

- (a) the information to be disclosed under this Division, and
- (b) with the approval of the Attorney General, when it would not be reasonable to require a disclosure to be made under this Division.

### **182 Effect of non-disclosure of matters related to basis of costs**

- (1) If a barrister or solicitor fails to make a disclosure to a client in accordance with this Division of the matters required to be disclosed by section 175 in relation to costs, the client need not pay the costs of the legal services unless the costs have been assessed under Division 6.
- (2) A barrister or solicitor who fails to make a disclosure in accordance with this Division of the matters required to be disclosed by section 175 or 176 in relation to costs may not maintain proceedings for the recovery of the costs unless the costs have been assessed under Division 6.
- (3) The costs of any assessment referred to in this section (including the costs of the costs assessor) are payable by the barrister or solicitor seeking to recover costs.
- (4) Any failure referred to in this section does not of itself amount to a breach of this Act. However, the failure is capable of being unsatisfactory professional conduct or professional misconduct.

### **183 Effect of non-disclosure of estimated costs**

- (1) A failure by a barrister or solicitor to make a disclosure in accordance with this Division under section 177 of an estimate of the likely amount of the costs of legal services to be provided by the barrister or solicitor (or any significant increase in the estimate) does not of itself amount to a breach of this Act.
- (2) However, the failure is capable of being unsatisfactory professional conduct or professional misconduct.

## **Division 3 Costs agreements**

### **184 Agreements about costs**

- (1) An agreement as to the costs of the provision of legal services may be made with a client by:
  - (a) the barrister or solicitor who is retained by the client to provide the services, or
  - (b) the barrister or solicitor retained on behalf of the client by another barrister or

solicitor.

- (2) An agreement as to the costs of the provision of legal services may also be made between the barrister or solicitor providing the services and another barrister or solicitor who retained that barrister or solicitor on behalf of the client.
- (3) An agreement under this section is called a **costs agreement**.
- (4) A costs agreement is void if it is not in writing or evidenced in writing.
- (5) A costs agreement may form part of a contract for the provision of legal services.
- (6) A costs agreement may consist of a written offer that is accepted in writing or by other conduct. A disclosure in accordance with Division 2 under section 175 or 176 may constitute an offer for the purposes of this subsection.

### **185 Regulations, rules and guidelines as to costs agreements**

The regulations and, subject to the regulations, the barristers rules, solicitors rules or joint rules may make provision for or with respect to the information to be included in costs agreements.

### **186 Conditional costs agreements**

- (1) A barrister or solicitor may make a costs agreement under which the payment of all of the barrister's or solicitor's costs is contingent on the successful outcome of the matter in which the barrister or solicitor provides the legal services.
- (2) Any such costs agreement is called a **conditional costs agreement**.
- (3) A conditional costs agreement may relate to proceedings in a court or tribunal, except criminal proceedings.
- (4) A conditional costs agreement must set out the circumstances constituting the successful outcome of the matter.
- (5) A conditional costs agreement may exclude disbursements from the costs that are payable only on the successful outcome of the matter.

### **187 Payment of premium under conditional costs agreement**

- (1) A conditional costs agreement may provide for the payment of a premium on those costs otherwise payable under the agreement only on the successful outcome of the matter.
- (2) The premium is to be a specified percentage of those costs or a specified additional amount. The premium is to be separately identified in the agreement.
- (3) The premium is not to exceed 25% of those costs.



- (4) However, the regulations may vary that maximum percentage of costs. Different percentages may be prescribed for different circumstances.

### **188 Costs not to be calculated on amount recovered in proceedings**

A costs agreement may not provide that costs are to be determined as a proportion of, or are to vary according to, the amount recovered in any proceedings to which the agreement relates.

### **189 Rights may not be waived**

- (1) Any provision of a costs agreement or other agreement that is inconsistent with this Division is void to the extent of the inconsistency.
- (2) In particular, any provision of a costs agreement or other agreement that purports to waive rights to an assessment of costs under this Part, or the right to receive a bill of costs in the form required for assessment under this Part, is void.

## **Division 4 Interest, security for costs and bills of costs**

### **190 Interest on outstanding costs**

- (1) A barrister or solicitor may charge interest on the unpaid costs for legal services provided by the barrister or solicitor, if the costs are unpaid 30 days or more after the barrister or solicitor has given a bill of costs for those services in accordance with this Division.
- (2) A barrister or solicitor may not charge interest on the unpaid costs for legal services unless the bill of costs for those services contains a statement that interest is payable and of the rate of interest.
- (3) A barrister or solicitor may also charge interest on the unpaid costs for legal services in accordance with a costs agreement.
- (4) A barrister or solicitor may not charge interest under this section or under a costs agreement at a rate that exceeds:
- (a) except as provided by paragraph (b)—the rate prescribed under the *Supreme Court Act 1970* in respect of unpaid judgments of the Supreme Court, or
  - (b) the rate prescribed by the regulations.

### **191 Security for costs**

A barrister or solicitor may take from a client security for the costs of providing legal services to the client.

### **192 Bill of costs to be given before costs can be recovered from client**

- (1) Proceedings for the recovery of costs by a barrister or solicitor for providing legal services must not be commenced or maintained against any person unless at least 30 days have passed since a bill for those costs was given to the person in accordance with this Division.
- (2) The Supreme Court may make an order authorising a barrister or solicitor to commence or maintain proceedings against a person sooner, if the Supreme Court is satisfied that the person is about to leave New South Wales.

### **193 Form of bill of costs**

- (1) The regulations may make provision for or with respect to the form of, and the particulars to be included in, bills of costs.
- (2) A bill of costs may be described as a memorandum of fees or in any other way authorised by the regulations.

### **194 Signing of bill of costs**

- (1) A bill of costs must be signed by the barrister or by the solicitor, or by his or her partner or employee. It is sufficient compliance with this section if a letter that is so signed is attached to, or enclosed with, the bill of costs.
- (2) A bill of costs is taken to have been signed by a solicitor (if it relates to legal services provided by an incorporated legal practice) if it has the corporation's seal affixed to it or is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

### **195 Delivery of bill of costs**

A bill of costs may be given to a person in any one of the following ways:

- (a) by delivering it personally to the person,
- (b) by sending it by post to, or by leaving it for the person at, the person's place of business or residence last known to the barrister or solicitor,
- (c) by sending it by facsimile transmission to a number specified by the person (by correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent,
- (d) by delivering it to the appropriate place in a document exchange in which the person has receiving facilities,
- (e) in any other way authorised by the regulations.

## **Division 5 Costs fixed by regulations**

### **196 Regulations to provide for related costs**

- (1) The regulations may make provision for or with respect to the following:
  - (a) fixing fair and reasonable costs for legal services provided in any workers compensation matter,
  - (a2) fixing the costs payable for legal services provided in connection with any claim for personal injury damages (within the meaning of the *Civil Liability Act 2002*),
  - (b) fixing the costs payable for the enforcement of a lump sum debt or liquidated sum for damages,
  - (b1) fixing the costs payable for the enforcement of a judgment by a judgment creditor,
  - (b2) fixing the costs payable for legal services provided in respect of probate or the administration of estates,
  - (c) fixing an amount of costs for a matter that is not a legal service but is related to proceedings (for example, expenses for witnesses).
- (2) A barrister or solicitor is not entitled to be paid or recover for a legal service an amount that exceeds the fair and reasonable cost fixed for the service by the regulations under this section.

**Note—**

Amounts fixed for matters that are not legal services may be taken into account by a costs assessor in assessing costs under this Part.

### **197 Regulations to provide for amounts of costs passed on to other parties**

- (1) This section applies to a legal service of a kind prescribed by the regulations for the purposes of this section.
- (2) The regulations may make provision for or with respect to fixing the fair and reasonable cost for any such legal service provided by a barrister or solicitor.
- (3) A barrister or solicitor is not entitled to recover for any such legal service an amount that exceeds the fair and reasonable cost so fixed if:
  - (a) liability to pay the cost of the legal service has been passed on by the client of the barrister or solicitor to a person who is not entitled to apply for an assessment of the cost under this Part, and
  - (b) the barrister or solicitor is seeking to recover the cost from that person.

### **198 Provisions relating to regulations generally**

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

## **Division 5A Mediation of costs disputes**

### **198A Costs dispute**

For the purposes of this Division, a **costs dispute** is a dispute between a client and a legal practitioner or interstate legal practitioner concerning a bill of costs.

### **198B Referral for mediation**

- (1) A client who is given a bill of costs may refer a costs dispute about the bill of costs to the Commissioner or to a Council for mediation if the amount in dispute is less than \$2,500.
- (2) The Manager, Costs Assessment may refer a costs dispute about a bill of costs to the Commissioner if the amount in dispute is less than \$2,500.
- (3) A costs dispute about a bill of costs may be referred under this section at any time before an application for an assessment of the whole or part of a bill of costs is accepted by the Manager, Costs Assessment.
- (4) Mediation is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, such as the giving of informal advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute.

## **Division 5B Maximum costs in personal injury damages matters**

### **198C Interpretation and application**

- (1) In this Division:

**defendant** means a person against whom a claim for personal injury damages is or may be made.

**party** means plaintiff or defendant.

**personal injury damages** has the same meaning as in Part 2 of the *Civil Liability Act 2002*.

**plaintiff** means a person who makes or is entitled to make a claim for personal injury damages.

- (2) This Division does not apply to the following costs:
- (a) costs payable to an applicant for compensation under Part 2 of the *Victims Support and Rehabilitation Act 1996* in respect of the application for compensation,
  - (b) costs for legal services provided in respect of a claim under the *Motor Accidents Act 1988* or *Motor Accidents Compensation Act 1999*,
  - (c) costs for legal services provided in respect of a claim for work injury damages (as defined in the *Workplace Injury Management and Workers Compensation Act 1998*),
  - (d) costs for legal services provided in respect of a claim for damages in proceedings of the kind referred to in section 11 (Claims for damages for dust diseases etc to be brought under this Act) of the *Dust Diseases Tribunal Act 1989*.

**198D Maximum costs fixed for claims up to \$100,000**

- (1) If the amount recovered on a claim for personal injury damages does not exceed \$100,000, the maximum costs for legal services provided to a party in connection with the claim are fixed as follows:
- (a) in the case of legal services provided to a plaintiff maximum costs are fixed at 20% of the amount recovered or \$10,000, whichever is greater,
  - (b) in the case of legal services provided to a defendant maximum costs are fixed at 20% of the amount sought to be recovered by the plaintiff or \$10,000, whichever is greater.
- (2) The regulations may prescribe an amount to replace the amount of \$100,000 or \$10,000 in subsection (1) and may prescribe a percentage to replace the percentage of 20% in subsection (1). When such a replacement amount or percentage is prescribed, it applies for the purposes of subsection (1) in place of the amount or percentage that it replaces.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this section.
- (4) When the maximum costs for legal services provided to a party are fixed by this Division the following provisions apply (subject to sections 198E-198G):

- (a) a solicitor or barrister is not entitled to be paid or recover for those legal services an amount that exceeds those maximum costs,
  - (b) a court or tribunal cannot order the payment by another party to the claim of costs in respect of those legal services in an amount that exceeds that maximum,
  - (c) in assessing the amount of those costs that is a fair and reasonable amount, a costs assessor cannot determine an amount that exceeds the maximum set by this section.
- (5) A reference in this Division to legal services provided to a party is a reference to legal services provided to the party by a solicitor or barrister (including by an agent or employee of the solicitor or barrister). Costs for legal services do not include costs charged as disbursements for services provided by any other person or other disbursements.
- (6) If proceedings are commenced on a claim, the amount sought to be recovered by the plaintiff is taken to be the amount sought to be proved by the plaintiff at the hearing of the claim.
- (7) Maximum costs fixed by this section apply despite regulations under section 196 (1) (a2) fixing those costs.

**198E Maximum costs do not affect solicitor-client costs under costs agreements**

- (1) This Division does not apply to the recovery of costs payable as between a solicitor or barrister and the solicitor's or barrister's client to the extent that recovery of those costs is provided for by a costs agreement that complies with Division 3.
- (2) The regulations may make provision for or with respect to requiring disclosure by a solicitor or barrister to the solicitor's or barrister's client of information in relation to the effect of a costs agreement in connection with the operation of this Division.
- (3) The regulations may provide that a failure by a solicitor or barrister to comply with the requirements of the regulations under this section disentitles the solicitor or barrister to the benefit of this section, and in such a case this Division applies in respect of the claim concerned despite the terms of any costs agreement.

**198F Costs can be awarded on indemnity basis for costs incurred after failure to accept offer of compromise**

- (1) If a party to a claim for personal injury damages makes a reasonable offer of compromise on the claim that is not accepted, this Division does not prevent the awarding of costs against another party to be assessed on an indemnity basis in respect of legal services provided after the offer is made.
- (2) An offer of compromise on a claim by a party is **reasonable** if the court determines or

makes an order or award on the claim in terms that are no less favourable to the party than the terms of the offer.

- (3) The regulations may make provision for or with respect to requiring disclosure by a solicitor or barrister to the solicitor's or barrister's client of information in relation to the operation of this section in respect of any refusal by the client to accept an offer of compromise.
- (4) If it appears to the court in which proceedings are taken on a claim for damages that a solicitor or barrister has failed to comply with any provision of the regulations under this section, and that the client of the solicitor or barrister has incurred an increased liability for costs as a result of refusing a reasonable offer of compromise in connection with the claim concerned, the court may of its own motion or on the application of the client make either or both of the following orders:
  - (a) an order directing the solicitor or barrister to repay to the client the whole or any part of those increased costs that the client has been ordered to pay to any other party,
  - (b) an order directing the solicitor or barrister to indemnify any party other than the client against the whole or any part of the costs payable by the party indemnified in respect of legal services provided after the offer is refused.

**198G Court may order certain legal services to be excluded from maximum costs limitation**

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

**198H Apportionment of maximum costs between solicitors and barristers**

- (1) If more than one person (solicitor or barrister) provides legal services to a party in connection with a claim, the maximum costs fixed by this Division are to be apportioned between them as agreed by them or (failing agreement) as ordered by the court hearing proceedings on the claim.
- (2) The maximum then applicable to a particular solicitor or barrister is the solicitor's or barrister's apportioned share of those maximum costs.

**198I Meaning of "amount recovered" on a claim**

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

have been instituted).

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

## **Division 5C Costs in civil claims where no reasonable prospects of success**

### **198J Solicitor or barrister not to act unless there are reasonable prospects of success**

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

### **198K Preliminary legal work not affected**

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

### **198L Restrictions on commencing proceedings without reasonable prospects of success**

- (1) The provision of legal services without reasonable prospects of success does not constitute an offence but is capable of being professional misconduct or unsatisfactory professional conduct.
- (2) A solicitor or barrister cannot file originating process or a defence on a claim for damages unless the solicitor or barrister certifies that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.



- (3) Originating process or a defence on a claim for damages is not to be accepted for lodgment unless accompanied by the certification required by this section. Rules of court may make provision for or with respect to the form of that certification.

**198M Costs order against solicitor or barrister who acts without reasonable prospects of success**

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

**198N Onus on solicitor or barrister to show facts provided reasonable prospects of success**

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

court do not form a basis for a reasonable belief that the claim or the defence had reasonable prospects of success, there is a presumption for the purposes of this Division that legal services provided on the claim or the defence (as appropriate) were provided without reasonable prospects of success.

- (3) A presumption arising under this section is rebuttable and a solicitor or barrister who seeks to rebut it bears the onus of establishing that at the time legal services were provided there were provable facts (as provided by section 198J) that provided a basis for a reasonable belief that the claim or the defence on which they were provided had reasonable prospects of success.
- (4) A solicitor or barrister may, for the purpose of establishing that at the time legal services were provided there were provable facts (as provided by section 198J) that provided a basis for a reasonable belief that the claim or the defence on which they were provided had reasonable prospects of success, produce information or a document despite any duty of confidentiality in respect of a communication between the solicitor or barrister and a client, but only if:
  - (a) the client is the client to whom the legal services were provided or consents to its disclosure, or
  - (b) the court is satisfied that it is necessary for the solicitor or barrister to do so in order to rebut a presumption arising under this section.

## **Division 6 Assessment of costs**

### **Subdivision 1 Applications and referrals for assessment**

#### **199 Applications by clients for assessment of costs in bills**

- (1) A client who is given a bill of costs may apply to the Manager, Costs Assessment for an assessment of the whole of, or any part of, those costs.
- (2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid. If the costs have been wholly or partly paid, the application is to be made within the period prescribed by the regulations for the purposes of this subsection.
- (3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the barrister or solicitor is taken to be the bill of costs.
- (4) In this section, **client** includes:
  - (a) any person who is a party to a costs agreement relating to legal services for which the bill of costs is given (other than the barrister or solicitor who gave the bill or provided the services), and

- (b) any person, being a lessee under a lease, who is given a bill of costs, concerning legal services relating to the preparation of that lease, by a barrister or solicitor acting on behalf of the lessor, and
- (c) any person, being a mortgagor under a mortgage, who is given a bill of costs, concerning legal services relating to the preparation of that mortgage, by a barrister or solicitor acting on behalf of the mortgagee.

#### **200 Applications by instructing practitioners for assessment of costs in bills**

- (1) A barrister or solicitor who retains another barrister or solicitor to act on behalf of a client may apply to the Manager, Costs Assessment for an assessment of the whole of, or any part of, a bill of costs given in accordance with this Part by the other barrister or solicitor in relation to the matter.
- (2) An application may not be made if there is a costs agreement between the client and the other barrister or solicitor.
- (3) An application is to be made within 30 days after the bill of costs is given, or within such further time as the Manager, Costs Assessment may allow, and may be made even if the costs have been wholly or partly paid.
- (4) Further time is to be allowed as referred to in subsection (3) only if the Manager, Costs Assessment is satisfied that the bill of costs was received more than 7 days after it was given and that it would be impracticable for an application to be made under this section unless further time were allowed.

#### **201 Application for assessment of costs by barrister or solicitor giving bill**

- (1) A barrister or solicitor who has given a bill of costs in accordance with this Part may apply to the Manager, Costs Assessment for an assessment of the whole of, or any part of, those costs.
- (2) An application may not be made unless at least 30 days have passed since the bill of costs was given or an application has been made under this Division by another person in respect of the bill of costs.

#### **202 Application for assessment of party/party costs**

- (1) A person who has paid or is liable to pay, or who is entitled to receive or who has received, costs as a result of an order for the payment of an unspecified amount of costs made by a court or a tribunal may apply to the Manager, Costs Assessment for an assessment of the whole of, or any part of, those costs.
- (2) A court or tribunal may direct the Manager, Costs Assessment to refer for assessment costs payable as a result of an order made by the court or tribunal. Any such direction is taken to be an application for assessment duly made under this Division.

- (3) An application or direction under this section may not be made in relation to costs arising out of criminal proceedings in a court.
- (4) Subsection (3) does not affect regulations made for the purposes of section 52 of the *Land and Environment Court Act 1979* in connection with criminal proceedings in the Land and Environment Court.

**Note—**

Matters may also be referred to costs assessors by the Legal Services Commissioner or a Council under Part 10.

**203 How is an application to be made?**

- (1) An application for assessment is to be made in accordance with the regulations and is, subject to subsection (4), to be accompanied by the fee prescribed by the regulations.
- (2) The application must authorise a costs assessor to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any barrister or solicitor concerned, in respect of the matter to which the application relates.
- (3) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.
- (4) The Manager, Costs Assessment may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (5) The Manager, Costs Assessment may refund the fee paid under this section either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

**204 Persons to be notified of application**

The Manager, Costs Assessment is to take such steps as are reasonably practicable to provide a copy of an application for assessment to any barrister, solicitor or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify.

**205 (Repealed)**

**206 Referral of matters to costs assessors**

- (1) The Manager, Costs Assessment is to refer each application for assessment to a costs assessor to be dealt with under this Division.
- (2) A costs assessor who has an interest in an application must, as soon as practicable after becoming aware of that fact, refer the application to the Manager, Costs Assessment for referral to another costs assessor.

- (3) If the Manager, Costs Assessment is satisfied that it is inappropriate for a costs assessor to determine a particular application that has been referred to the costs assessor, the Manager, Costs Assessment may:
  - (a) revoke the referral of the application, and
  - (b) refer the application for assessment to another costs assessor.
- (4) An application that has been referred to another costs assessor under this section is to be dealt with as a new assessment or, if the Manager, Costs Assessment so directs, by continuing the assessment.
- (5) When a referral has been revoked, the costs assessor to whom the application was initially referred must return all documents relating to the assessment of the application to the Manager, Costs Assessment. This includes documents relating to any work done on the assessment and a statement of the amount calculated for costs in respect of any work done on the assessment.

#### **207 Costs assessor may require documents or further particulars**

- (1) A costs assessor may, by notice in writing, require a person (including the applicant, the barrister or solicitor concerned, or any other barrister, solicitor or client) to produce any relevant documents of or held by the person in respect of the matter.
- (2) The costs assessor may, by any such notice, require further particulars to be furnished by the applicant, barrister, solicitor, client or other person as to instructions given to, or work done by, the barrister or solicitor or any other legal practitioner in respect of the matter and as to the basis on which costs were ascertained.
- (2A) If the notice referred to in subsection (1) or (2) so directs, and if it is practicable for the person to whom the notice is given to comply with such a direction, the document or particulars required by the notice must be provided in electronic form in addition to, or instead of, in paper form (as the notice may specify).
- (3) The costs assessor may require any such particulars to be verified by statutory declaration.
- (4) A notice under this section is to specify the period within which the notice is to be complied with.
- (5) If a person fails, without reasonable excuse, to comply with a notice under this section, the costs assessor may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (6) A barrister or solicitor who fails, without reasonable excuse, to comply with a notice under this section is guilty of professional misconduct.

## **208 Consideration of applications by costs assessors**

- (1) A costs assessor must not determine an application for assessment unless the costs assessor:
  - (a) has given both the applicant and any barrister, solicitor or client or other person concerned a reasonable opportunity to make written submissions to the costs assessor in relation to the application, and
  - (b) has given due consideration to any submissions so made.
- (2) In considering an application, a costs assessor is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.
- (3) For the purposes of determining whether an application for assessment may be or is required to be made, or for the purpose of exercising any other function, a costs assessor may determine any of the following:
  - (a) whether or not disclosure has been made in accordance with Division 2 and whether or not it was reasonably practicable to disclose any matter required to be disclosed under Division 2,
  - (b) whether a costs agreement exists, and its terms.

## **Subdivision 2 Assessments of bills of costs**

### **208A Assessment of bills generally**

- (1) When considering an application relating to a bill of costs, the costs assessor must consider:
  - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
  - (b) whether or not the work was carried out in a reasonable manner, and
  - (c) the fairness and reasonableness of the amount of the costs in relation to that work.
- (2) A costs assessor is to determine the application by confirming the bill of costs or, if the assessor is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in his or her opinion, is a fair and reasonable amount.
- (3) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.
- (4) If the barrister or solicitor is liable under section 182 (3) to pay the costs of the costs assessment (including the costs of the costs assessor), the costs assessor is to

determine the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the costs assessor are to be paid to the Manager, Costs Assessment.

- (5) A costs assessor may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

**208B Additional matters to be considered by costs assessors in assessing bills of costs**

In assessing what is a fair and reasonable amount of costs, a costs assessor may have regard to any or all of the following matters:

- (a) whether the barrister or solicitor complied with any relevant regulation, barristers rule, solicitors rule or joint rule,
- (b) whether the barrister or solicitor disclosed the basis of the costs or an estimate of the costs under Division 2 and any disclosures made,
- (c) any relevant advertisement as to the barrister's or solicitor's costs or skills,
- (d) any relevant costs agreement (subject to section 208C),
- (e) the skill, labour and responsibility displayed on the part of the barrister or solicitor responsible for the matter,
- (f) the instructions and whether the work done was within the scope of the instructions,
- (g) the complexity, novelty or difficulty of the matter,
- (h) the quality of the work done,
- (i) the place where and circumstances in which the legal services were provided,
- (j) the time within which the work was required to be done.

**208C Costs agreements not subject to assessment**

- (1) A costs assessor is to decline to assess a bill of costs if:
  - (a) the disputed costs are subject to a costs agreement that complies with Division 3, and
  - (b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.
- (2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite section 208A. The costs assessor is bound by a provision for the payment of a premium that is not determined to be unjust under section 208D.
- (3) This section does not apply to any provision of a costs agreement that the costs

assessor determines to be unjust under section 208D.

- (4) This section does not apply to a costs agreement applicable to the costs of legal services if a barrister or solicitor failed to make a disclosure in accordance with Division 2 of the matters required to be disclosed by section 175 or 176 in relation to those costs.

#### **208D Unjust costs agreements**

- (1) A costs assessor may determine whether a term of a particular costs agreement entered into by a barrister or solicitor and a client is unjust in the circumstances relating to it at the time it was made.
- (2) For that purpose, the costs assessor is to have regard to the public interest and to all the circumstances of the case and may have regard to:
- (a) the consequences of compliance, or non-compliance, with all or any of the provisions of the agreement, and
  - (b) the relative bargaining power of the parties, and
  - (c) whether or not, at the time the agreement was made its provisions were the subject of negotiation, and
  - (d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the agreement, and
  - (e) whether or not any of the provisions of the agreement impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the agreement, and
  - (f) whether or not any party to the agreement was reasonably able to protect his or her interests because of his or her age or physical or mental condition, and
  - (g) the relative economic circumstances, educational background and literacy of the parties to the agreement and of any person who represented any of the parties to the agreement, and
  - (h) the form of the agreement and the intelligibility of the language in which it is expressed, and
  - (i) the extent to which the provisions of the agreement and their legal and practical effect were accurately explained to the applicant and whether or not the applicant understood those provisions and their effect, and
  - (j) whether the barrister or solicitor or any other person exerted or used unfair pressure, undue influence or unfair tactics on the applicant and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics.



- (3) For the purposes of this section, a person is taken to have represented a person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement was made.
- (4) In determining whether a provision of the agreement is unjust, the costs assessor is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the agreement was made.

**208E 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 190 (4)).
- (2) This section applies despite any costs agreement or section 190.
- (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).

**Subdivision 3 Assessment of party/party costs**

**208F Assessment of costs—costs ordered by court or tribunal**

- (1) When dealing with an application relating to costs payable as a result of an order made by a court or a tribunal, the costs assessor must consider:
  - (a) whether or not it was reasonable to carry out the work to which the costs relate, and
  - (b) what is a fair and reasonable amount of costs for the work concerned.
- (1A) An assessment must be made in accordance with the operation of the rules of the relevant court or tribunal that made the order for costs.
- (2) A costs assessor is to determine the costs payable as a result of the order by assessing the amount of the costs that, in his or her opinion, is a fair and reasonable amount.
- (3) If a court or a tribunal has ordered that costs are to be assessed on an indemnity basis, the costs assessor must assess the costs on that basis, having regard to any relevant rules of the court or tribunal.
- (4) The costs assessed are to include the costs of the assessment (including the costs of the parties to the assessment, and the costs assessor). The costs assessor may determine by whom and to what extent the costs of the assessment are to be paid.
- (5) The costs of the costs assessor are to be paid to the Manager, Costs Assessment.

**Note—**

Section 208JA provides for the recovery of the costs of a costs assessor.

**208G Additional matters to be considered by costs assessors in assessing costs ordered by court or tribunal**

In assessing what is a fair and reasonable amount of costs, a costs assessor may have regard to any or all of the following matters:

- (a) the skill, labour and responsibility displayed on the part of the barrister or solicitor responsible for the matter,
- (b) the complexity, novelty or difficulty of the matter,
- (c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done,
- (d) the place where and circumstances in which the legal services were provided,
- (e) the time within which the work was required to be done,
- (f) the outcome of the matter.

**208H Effect of costs agreements in assessments of party/party costs**

- (1) A costs assessor may obtain a copy of, and may have regard to, a costs agreement.
- (2) However, a costs assessor must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or tribunal.

**208I Court or tribunal may specify amount etc**

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

**Subdivision 4 Enforcement of assessment**

**208J Certificate as to determination**

- (1) On making a determination, a costs assessor is to issue to each party a certificate that sets out the determination.
- (1A) A costs assessor may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.
- (2) In the case of an amount of costs that has been paid, the amount (if any) by which the

amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent jurisdiction.

- (3) In the case of an amount of costs that has not been paid, the certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs, and the rate of any interest payable in respect of that amount of costs is the rate of interest in the court in which the certificate is filed.
- (4) For this purpose, the amount of unpaid costs does not include the costs incurred by a costs assessor in the course of a costs assessment.
- (4A) To avoid any doubt, this section applies to or in respect of both the assessment of costs referred to in Subdivision 2 of this Division (practitioner/client costs) and the assessment of costs referred to in Subdivision 3 of this Division (party/party costs).
- (5) If the costs of the costs assessor are payable by a party to the assessment (as referred to in section 208JA), the costs assessor may refuse to issue a certificate relating to his or her determination under this section until the costs of the costs assessor have been paid.
- (6) Subsection (5) does not apply:
  - (a) in respect of a certificate issued before the completion of the assessment process under subsection (2), or
  - (b) in such circumstances as may be prescribed by the regulations.

#### **208JAA Reasons for determination**

- (1) A costs assessor must ensure that a certificate issued under section 208J that sets out his or her determination is accompanied by:
  - (a) a statement of the reasons for the costs assessor's determination, and
  - (b) such supplementary information as may be required by the regulations.
- (2) The statement of reasons must be given in accordance with the regulations.

#### **208JA Recovery of costs of costs assessment**

- (1) This section applies when the costs of a costs assessor or Manager, Costs Assessment are payable by a party to the assessment (under section 182 (3), 208A (4) or 208F (4)).
- (2) On making a determination, a costs assessor may issue to each party a certificate that sets out the costs incurred by the costs assessor or Manager, Costs Assessment in the course of the costs assessment.

- (3) If the application for costs assessment has been dealt with by more than one costs assessor, the certificate can set out the costs of any other costs assessor.
- (4) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs.
- (5) The Manager, Costs Assessment may take action to recover the costs of a costs assessor or Manager, Costs Assessment.

#### **208JB Correction of error in determination**

- (1) At any time after making a determination, a costs assessor may, for the purpose of correcting an inadvertent error in the determination:
  - (a) make a new determination in substitution for the previous determination, and
  - (b) issue a certificate under section 208J that sets out the new determination.
- (2) Such a certificate replaces any certificate setting out the previous determination of the costs assessor that has already been issued by the costs assessor, and, on the filing of the replacement certificate in the office or registry of a court having jurisdiction to order the payment of the amount of the new determination, any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly.

#### **208K Determination to be final**

A costs assessor's determination of an application is binding on all parties to the application and no appeal or other review lies in respect of the determination, except as provided by this Division.

### **Subdivision 4A Review of determination by panel**

#### **208KA Application for review of determination**

- (1) A party to an assessment who is dissatisfied with a determination of a costs assessor may, within 28 days after the issue of the certificate under section 208J that sets out the determination of the costs assessor or within such further time as the Manager, Costs Assessment may allow, apply to the Manager, Costs Assessment for a review of the determination.
- (1A) Further time is to be allowed as referred to in subsection (1) only if the Manager, Costs Assessment is satisfied that the determination of the costs assessor was received more than 7 days after the relevant certificate under section 208J was issued and that it would be impracticable for an application to be made under this section unless further time were allowed.

- (2) The application must:
  - (a) be made in accordance with the regulations, and
  - (b) be accompanied by the fee prescribed by the regulations.
- (3) The Manager, Costs Assessment may waive or postpone payment of the fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (4) The Manager, Costs Assessment may refund the fee paid under this section either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.
- (5) A party who applies for a review under this Subdivision must ensure that notice of the application is given to the other parties to the assessment not less than 7 days before the application is made or as prescribed by the regulations.

**208KB Referral of application to panel**

- (1) If an application for a review under this Subdivision is duly made, the Manager, Costs Assessment is to refer the application to a panel.
- (2) The panel is to be constituted by 2 costs assessors.

**208KC General functions of panel in relation to review application**

- (1) A panel constituted under this Subdivision may review the determination of the costs assessor and may:
  - (a) affirm the costs assessor's determination, or
  - (b) set aside the costs assessor's determination and substitute such determination in relation to the costs assessment as, in their opinion, should have been made by the costs assessor who made the determination that is the subject of the review.
- (2) For the purposes of subsection (1), the panel has, in relation to the application for review, all the functions of a costs assessor under this Part and is to determine the application, subject to this Subdivision and the regulations, in the manner that a costs assessor would be required to determine an application for costs assessment.
- (3) However, the review is to be conducted on the evidence that was received by the costs assessor who made the determination that is the subject of the review and, unless the panel determines otherwise, the panel is not:
  - (a) to receive submissions from the parties to the assessment, or
  - (b) to receive any fresh evidence or evidence in addition to or in substitution for the evidence received by the costs assessor.

- (4) If the costs assessors who constitute the panel are unable to agree on a determination in relation to an application, the panel is to affirm the determination of the costs assessor who made the determination that is the subject of the review.

**208KD Relevant documents to be produced to panel**

- (1) A panel constituted under this Subdivision may, by notice in writing, require a costs assessor, a barrister or solicitor or any other person (such as an applicant) to produce to the panel any document in his or her possession relating to an assessment of costs by a costs assessor.
- (2) If a person fails, without reasonable excuse, to comply with a notice under this section, the panel may decline to deal with an application for review or may continue to deal with it on the basis of the information provided.
- (3) A costs assessor is to retain in his or her possession any document relating to a costs assessment (other than a document that is returned to a party to the assessment) until:
  - (a) the period of 2 months has elapsed since the issue of a certificate under section 208J setting out the determination of the costs assessor, or
  - (b) the costs assessor receives a notice under subsection (1) in relation to the document,whichever happens first.
- (4) A barrister or solicitor is to retain in his or her possession any document relating to a costs assessment that is returned to the barrister or solicitor by the costs assessor until:
  - (a) the period of 2 months has elapsed since the issue of a certificate under section 208J setting out the determination of the costs assessor, or
  - (b) the barrister or solicitor receives a notice under subsection (1) in relation to the document,whichever happens first.
- (5) A barrister or solicitor who fails, without reasonable excuse, to comply with this section or a notice under this section is guilty of professional misconduct.

**208KE Effect of review on costs assessor's determination**

- (1) If the Manager, Costs Assessment refers a determination of a costs assessor to a panel for review under this Subdivision, the operation of that determination is suspended.
- (2) The panel may end such a suspension:

- (a) if it affirms the determination of the costs assessor, or
- (b) in such other circumstances as it considers appropriate.

**208KF Certificate as to determination of panel**

- (1) On making a determination in relation to an application for review of a costs assessment under this Subdivision, a panel is to issue to each party concerned a certificate that sets out the determination.
- (2) If the panel sets aside the determination of the costs assessor, the following provisions apply:
  - (a) if the amount of costs has already been paid, the amount (if any) by which the amount paid exceeds the amount specified in the determination of the panel may be recovered in a court of competent jurisdiction,
  - (b) if the amount of costs has not been paid, the certificate is, on filing of the certificate in the office or registry of a court having competent jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs,
  - (c) if the costs assessor issued a certificate in relation to his or her determination under section 208J:
    - (i) the certificate ceases to have effect, and
    - (ii) any judgment that is taken to have been effected in relation to that certificate also ceases to have effect, and
    - (iii) any enforcement action taken in respect of that judgment is to be reversed.
- (3) If the panel sets aside the costs assessor's determination, any amount substituted by the panel may include an allowance for any fee paid or payable for the application for review by the applicant or for any amount paid or payable for the costs of the costs assessor by a party to the assessment.
- (4) If the costs of the panel are payable by a person (as required by section 208KH), the panel may refuse to issue a certificate relating to its determination under this section until those costs have been paid.
- (5) Subsection (4) does not apply in such circumstances as may be prescribed by the regulations.

**208KG Reasons for determination**

- (1) The panel must ensure that a certificate issued under section 208KF that sets out the determination of the panel is accompanied by:

- (a) a statement of the reasons for the panel's determination, and
- (b) such supplementary information, in relation to the determination, as may be required by the regulations.

(2) The statement of reasons must be given in accordance with the regulations.

#### **208KH Recovery of costs of review**

- (1) A panel that conducts a review of a costs assessor's determination under this Subdivision is to determine the costs of the review and may, subject to this section, determine by whom and to what extent those costs are to be paid.
- (2) If the panel affirms the determination of the costs assessor, the panel is to require the party who applied for the review to pay the costs of the review.
- (3) If the panel sets aside the determination of the costs assessor, and makes a determination in favour of the party who applied for review, the panel is to require the party who applied for the review to pay the costs of the review if the determination of the panel increases or decreases the total costs payable (as assessed by the costs assessor) by an amount that is less than 15 per cent (or such other percentage as may be prescribed by the regulations) of the total costs payable as assessed by the costs assessor.
- (4) Subject to subsections (2) and (3), the panel may require any party to the assessment that is reviewed to pay the costs of the review or may determine that the costs of the review are to be shared between the parties in any manner that the panel considers appropriate.
- (5) The panel may issue to each party a certificate that sets out the panel's determination under this section.
- (6) The certificate is, on filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs of the review.
- (7) The costs of the review are to be paid to the Manager, Costs Assessment.
- (8) The Manager, Costs Assessment may take action to recover the costs of a review.
- (9) Regulations may be made with respect to determinations of a panel under this section.
- (10) In this section:

**costs of a review** means the costs incurred by the panel or the Manager, Costs Assessment in the course of a review under this Subdivision, and includes the costs related to the remuneration of the costs assessors who constitute the panel.



### **208KHA Correction of error in determination**

- (1) At any time after making a determination, a panel that conducts a review may, for the purpose of correcting an inadvertent error in the determination:
  - (a) make a new determination in substitution for the previous determination, and
  - (b) issue a certificate under section 208KF that sets out the new determination of the panel.
- (2) Such a certificate replaces any certificate setting out the previous determination of the panel that has already been issued by the panel, and, on the filing of the replacement certificate in the office or registry of a court having jurisdiction to order the payment of the amount of the new determination, any judgment that is taken to have been effected by the filing of that previously issued certificate is varied accordingly.

### **208KI Appeal against determination**

- (1) Subdivision 4B applies in relation to a decision or determination of a panel under this Subdivision as if references in Subdivision 4B to a costs assessor were references to the panel.
- (2) Subject to subsection (1), the panel's determination of an application for review of a costs assessor's determination is binding on all parties to the assessment that is the subject of a review and no appeal or other review lies in respect of the determination.

### **208KJ Regulations**

The Regulations may make provision for or with respect to reviews under this Subdivision, including the constitution and membership of a panel and the procedure for conducting reviews.

### **208KL Miscellaneous**

For avoidance of doubt, sections 208SA and 208T extend to a costs assessor in respect of the exercise of his or her functions as a member of a panel constituted under this Subdivision.

## **Subdivision 4B Appeals**

### **208L Appeal against decision of costs assessor as to matter of law**

- (1) A party to an application who is dissatisfied with a decision of a costs assessor as to a matter of law arising in the proceedings to determine the application may, in accordance with the rules of the Supreme Court, appeal to the Court against the decision.
- (2) After deciding the question the subject of the appeal, the Supreme Court may, unless

it affirms the costs assessor's decision:

- (a) make such determination in relation to the application as, in its opinion, should have been made by the costs assessor, or
  - (b) remit its decision on the question to the costs assessor and order the costs assessor to re-determine the application.
- (3) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

**208M Appeal against decision of costs assessor by leave**

- (1) A party to an application relating to a bill of costs may, in accordance with the rules of the Supreme Court, seek leave of the Court to appeal to the Court against the determination of the application made by a costs assessor.
- (2) A party to an application relating to costs payable as a result of an order made by a court or a tribunal may, in accordance with the rules of the court or tribunal, seek leave of the court or tribunal to appeal to the court or tribunal against the determination of the application made by a costs assessor.
- (3) The Supreme Court or court or tribunal may, in accordance with its rules, grant leave to appeal and may hear and determine the appeal.
- (4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.
- (5) After deciding the questions the subject of the appeal, the Supreme Court or court or tribunal may, unless it affirms the costs assessor's decision, make such determination in relation to the application as, in its opinion, should have been made by the costs assessor.

**208N Effect of appeal on application**

- (1) If a party to an application has appealed against a determination or decision of a costs assessor, either the costs assessor or the court or tribunal to which the appeal is made may suspend, until the appeal is determined, the operation of the determination or decision.
- (2) The costs assessor or the court or tribunal may end a suspension made by the costs assessor. The court or tribunal may end a suspension made by the court or tribunal.

**208NA Assessor can be a party to appeal**

A costs assessor can be made a party to any appeal against a determination or decision of the costs assessor only by the Supreme Court.

### **208NB Notices of appeal**

A copy of every notice of appeal against a determination or decision of a costs assessor must be served on the Manager, Costs Assessment by the party making the appeal.

### **208NC Court may refer unreviewed determination to review panel**

- (1) If an appeal is made under section 208M against a determination of a costs assessor and the determination to which the appeal relates has not been reviewed by a panel in accordance with Subdivision 4A, the court or tribunal to which the appeal is made may refer the appeal to the Manager, Costs Assessment for a review by a panel under that Subdivision.
- (2) For the purposes of Subdivision 4A, the referral of an appeal by a court or tribunal under subsection (1) to the Manager, Costs Assessment is taken to be a duly made application for a review under that Subdivision.

## **Subdivision 5 Miscellaneous**

### **208O Costs fixed by regulations**

- (1) An assessment of costs fixed by a regulation under section 196 (1) (a), (a2), (b), (b1) or (b2) or 197 is to be made in accordance with that regulation.
- (1A) An assessment of costs fixed by a regulation under section 149 of the *Motor Accidents Compensation Act 1999* is to be made in accordance with that regulation (despite anything to the contrary in a regulation under section 196).
- (2) An assessment of costs fixed by a regulation under section 196 (1) (c) is to be made having regard to that regulation.

### **208P Liability of barrister or solicitor for costs**

- (1) A costs assessor may act as set out in subsection (2) if it appears to the costs assessor that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.
- (2) The costs assessor may in the determination:
  - (a) disallow the costs as between the barrister or solicitor and the barrister's or solicitor's client, and
  - (b) direct the barrister or solicitor to repay to the client costs which the client has been ordered by a court or a tribunal to pay to any other party, and
  - (c) direct the barrister or solicitor to indemnify any party other than the client against costs payable by the party indemnified.
- (3) Before taking action under this section, the costs assessor must give notice of the

proposed action to the barrister or solicitor and the client and give them a reasonable opportunity to make written submissions in relation to the proposed action.

- (4) The costs assessor must give due consideration to any submissions so made.

#### **208Q Referral of misconduct to Commissioner**

- (1) If a costs assessor considers that any conduct of a barrister or solicitor involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the costs assessor must refer the matter to the Commissioner.
- (2) For the purposes of this Act, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.
- (2A) A costs assessor may refer any failure by a legal practitioner to comply with a notice issued under section 207, or with any other provision of this Part, to the Commissioner.
- (3) Nothing in this section limits the matters which a costs assessor may refer to the Commissioner.

#### **208R Rules of procedure for applications**

- (1) There is to be a costs assessors' rules committee consisting of those costs assessors appointed to the committee by the Chief Justice of New South Wales.
- (2) The committee is to regulate its own proceedings for the calling of meetings and the conduct of its business.
- (3) The committee may make rules, not inconsistent with this Part, governing the practice and procedure of the assessment of costs, including matters relating to the appointment of costs assessors to particular matters and the interests of costs assessors in particular matters.
- (4) The committee has any other functions conferred on the committee by or under this or any other Act.
- (4A) Any amount payable from the Public Purpose Fund for the purpose of meeting the costs of the committee is to be paid, in accordance with section 69G, to the Treasurer for credit of the Consolidated Fund.
- (5) Part 6 of the *Interpretation Act 1987* applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

#### **Note—**

Part 6 of the *Interpretation Act 1987* contains provisions relating to the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal

of statutory rules.

### **208S Costs assessors**

- (1) The Chief Justice of New South Wales may appoint persons to be costs assessors under this Act.
- (2) A costs assessor has the functions that are conferred on the costs assessor by or under this or any other Act.
- (3) Schedule 7 has effect with respect to costs assessors.
- (4) A costs assessor is not an officer of the Court when acting as a costs assessor.
- (5) Proceedings relating to anything done or omitted to be done by the Chief Justice of New South Wales in respect of the appointment or removal of a costs assessor (including terms of appointment and any other incidental matters) may not be instituted against the Chief Justice of New South Wales but may be instituted against "The Manager, Costs Assessment" as nominal defendant.

### **208SA Protection from liability**

A matter or thing done or omitted to be done by the Chief Justice of New South Wales, the Manager, Costs Assessment or a costs assessor does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Part, subject the Chief Justice of New South Wales, the Manager, Costs Assessment or any costs assessor personally to any action, liability, claim or demand.

### **208T Confidentiality**

A costs assessor must not disclose any information obtained in connection with the exercise of the costs assessor's functions unless the disclosure is made:

- (a) in connection with the exercise of those functions or the administration or execution of this Act, or
- (b) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (c) in the case of information relating to a barrister or solicitor or other person—with the consent of the barrister or solicitor or person, or
- (d) with other lawful excuse.

Maximum penalty: 20 penalty units.

### **208U Costs of administering Part**

- (1) All costs related to the administration of this Part (other than the costs referred to in section 208R (4A)) are to be paid out of money to be provided from a working account

established for the Attorney General's Department by the Treasurer under section 13A of the *Public Finance and Audit Act 1983* for the purposes of this Part.

- (2) The following amounts received by the Manager, Costs Assessment are to be paid to the credit of that working account:
- (a) an application fee for an assessment,
  - (b) an application fee for a review of an assessment under Subdivision 4A,
  - (c) a payment for the costs of a costs assessor,
  - (d) a payment for the costs of a review under Subdivision 4A.

#### **208V Application of Division**

This Division does not apply to an amount of interest ordered on a judgment debt (being an order for the payment of costs) under section 85 (4) of the *District Court Act 1973* or section 95 (4) of the *Supreme Court Act 1970*.

#### **209 (Repealed)**

### **Part 12 Miscellaneous**

#### **209A Qualifications of auditors**

A person is not qualified to be appointed, or to act, as auditor of any accounts required by or under this Act to be audited unless the person is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

#### **209B (Repealed)**

#### **209C Supreme Court may order delivery up of documents etc**

- (1) On the application of a barrister's or solicitor's client, the Supreme Court may order the barrister or solicitor:
- (a) to give to the client a bill of costs in respect of any legal services provided by the barrister or solicitor, and
  - (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the barrister or solicitor in relation to those services.
- (2) Subsection (1) does not affect the provisions of Division 6 of Part 11 with respect to the assessment of costs.
- (3) This section does not apply to the client of a barrister or solicitor retained on the client's behalf by another barrister or solicitor.

- (4) In this section, a reference to a barrister or solicitor includes a reference to a former barrister or solicitor.
- (5) In this section, **legal services** has the same meaning as in Part 11.
- (6) In this section, a reference to a solicitor includes a reference to an incorporated legal practice in connection with legal services provided by the practice.

## **210 Contempt of the Supreme Court**

The imposition of a penalty for a contravention of a provision of this Act does not affect the power of the Supreme Court to punish a contempt of the Court.

## **211 Protection from liability**

No liability is incurred by:

- (a) the Bar Association or the Bar Council, or their committees,
- (b) the Law Society or the Law Society Council, or their committees, including a Management Committee to which a function is delegated under section 74,
- (c) an investigator, or an investigator's assistant, appointed under section 55, or
- (d) the company referred to in Division 2 of Part 3 or its directors,

or an employee or agent of any of them for anything done, suffered or omitted to be done in good faith in the exercise, or purported exercise, of a function under this Act.

## **211A Delegation of functions of Chief Justice**

The Chief Justice of New South Wales may delegate any of his or her functions under this Act (other than this power of delegation) to:

- (a) a Judge of the Supreme Court, or
- (b) a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

## **212 Offences**

- (1) Proceedings for an offence under this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

## **213 Proof of certain matters not required**

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of:

- (a) the constitution of any body, incorporated or unincorporated, on which functions are conferred or imposed by or under this Act,
- (b) any resolution of such a body,
- (c) the appointment of, or the holding of office by, a member of such a body, or
- (d) the presence or nature of a quorum at a meeting of such a body.

**213A Evidentiary certificates**

- (1) A certificate that is issued by the Bar Council and that states that, on a date or during a period specified in the certificate:
  - (a) a specified person was or was not the holder of a barristers' practising certificate, or
  - (b) a specified barrister's practising certificate was or was not subject to a specified condition,is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (2) A certificate that is issued by the Law Society Council and that states that, on a date or during a period specified in the certificate:
  - (a) a specified person was or was not the holder of a solicitor's practising certificate, or
  - (b) a specified solicitor's practising certificate was or was not subject to a specified condition,is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (3) A certificate issued by a regulatory authority of another State or a Territory and that states that, on a date or during a period specified in the certificate:
  - (a) a specified person was or was not the holder of an interstate practising certificate, or
  - (b) that a specified interstate legal practitioner's practising certificate was or was not subject to a specified condition,is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (4) A certificate that is issued by the Bar Council or Law Society Council and that states that, on a date or during a period specified in the certificate:
  - (a) a specified person was or was not registered as a locally registered foreign lawyer, or



- (b) a specified locally registered foreign lawyer was or was not subject to a specified condition,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

#### **214 Repeals**

Each Act specified in Schedule 1 is, to the extent indicated in the Schedule, repealed.

#### **215 Savings and transitional provisions**

Schedule 8 has effect.

#### **216 Regulations**

- (1) The Governor may, on the recommendation of the Attorney General, make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before recommending the making of a regulation, the Attorney General shall, unless the circumstances are exceptional, give the Bar Council, the Law Society Council and the Advisory Council an opportunity to express, within a time specified by the Attorney General, their views on the proposed regulation.
- (3) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to:
  - (a) practising certificates, including the provision of information by an applicant for a practising certificate and the refund of the whole or a part of fees paid for practising certificates,
  - (b) matters for or with respect to which barristers rules, solicitors rules or joint rules have been or may be made,
  - (c) (Repealed)
  - (d) the practice, conduct and discipline of legal practitioners and interstate legal practitioners,
  - (d1) disclosures as to costs, costs agreements, bills of costs and assessment of costs under Part 11,
  - (e) matters of which the Bar Council is to be notified by a barrister or of which the Law Society Council is to be notified by a solicitor,
  - (f) the accounts to be kept by a solicitor in the course of practising as a solicitor, the operation of a trust account kept under Part 6 and the authorisation of a person to operate on such a trust account,

- (g) the deposit with the Law Society of money in a trust account,
  - (h) information to be provided to a Council by a barrister or solicitor (or former barrister or solicitor) about indemnity insurance,
  - (i) (Repealed)
  - (j) the functions and fees of a trust account inspector or an investigator appointed under section 55 and the duties of the solicitor whose accounts are being inspected or whose affairs are being investigated,
  - (k) the practice, conduct and discipline of locally registered foreign lawyers,
  - (l) the accounts (if any) to be kept by a locally registered foreign lawyer in the course of practising as a locally registered foreign lawyer, the operation of any trust account required to be kept by the locally registered foreign lawyer and the authorisation of a person to operate such a trust account.
- (4) A regulation for or with respect to any matter may make provision for or with respect to the matter by the application, adoption or incorporation, with or without modification, of a publication of the Bar Council or the Law Society Council.
- (5) A regulation may impose a penalty not exceeding 10 penalty units for a breach of the regulation.
- (6) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

## Schedule 1 Repeals

(Section 214)

[Legal Practitioners Act 1898 No 22](#)—the whole Act

[Decimal Currency Act 1965 No 33](#)—so much of the Second Schedule as relates to Act No 22, 1898

[Supreme Court Act 1970 No 52](#)—so much of the Second Schedule as amends Act No 22, 1898

[Supreme Court \(Amendment\) Act 1972 No 41](#)—so much of the Second Schedule as relates to Act No 22, 1898

[Legal Practitioners \(Amendment\) Act 1980 No 12](#)—the whole Act

[Legal Practitioners \(Further Amendment\) Act 1980 No 86](#)—the whole Act

[Legal Practitioners \(Solicitors' Remuneration\) Amendment Act 1984 No 52](#)—the whole Act

[Legal Practitioners \(Commercial Arbitration\) Amendment Act 1984 No 164](#)—the whole Act

*Legal Practitioners (Amendment) Act 1987*—the whole Act

## **Schedule 2 The Legal Practitioners Admission Board**

(Section 9)

### **1 General procedure**

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

### **2 Quorum**

The quorum for a meeting of the Admission Board is 5 members including the member presiding at the meeting.

### **3 Presiding and deputy presiding member of Admission Board**

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

### **4 Presiding member**

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

(2) Otherwise:

(a) the presiding member, or

(b) in the absence of the presiding member—the deputy presiding member, or

(c) in the absence of both—a member elected by and from the members present and voting,

is to preside at the meeting.

(3) The member presiding at a meeting of the Admission Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **5 Voting**

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

### **6 Minutes**

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

## **7 Reserve members**

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

## **8 Liability of members**

- (1) Subject to subclause (2), no matter or thing done by the Admission Board or any member of the Board is, if the matter or thing was done in good faith for the purpose of executing Part 2, to subject any such member personally to any action, liability, claim or demand.
- (2) A judicial member of the Admission Board is, in the exercise of his or her functions under Part 2, to have the same protection and immunity as a Judge of the Supreme Court.

## **9 Seal**

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

## **Schedule 2A (Repealed)**

## **Schedule 3 The Legal Profession Advisory Council**

(Section 58)

### **Part 1**

#### **1 (Repealed)**

## **Part 2 Members of the Advisory Council**

### **2 (Repealed)**

### **3 Chairperson of the Advisory Council**

The Chairperson of the Advisory Council may be referred to as the Chairman or Chairwoman, as the case requires.

### **4 Reserve members**

- (1) The Attorney General may, for each appointed member of the Advisory Council, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, shall have and may exercise all the functions of the appointed member and shall be deemed to be a member of the Advisory Council.
- (2) A person, in order to be appointed as a reserve member of the Advisory Council, must be qualified for appointment in the same way as the appointed member for whom he or she is a reserve member.
- (3) The Attorney General may remove any person from any office to which the person was appointed under this clause.
- (4) A person while acting in the office of a member of the Advisory Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member of the Advisory Council shall be deemed to be an absence from office of the member.

### **5 Terms of office**

Subject to this Schedule, a member of the Advisory Council shall hold office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

### **6 Remuneration**

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

### **7 Filling of vacancy in office of a member**

If the office of any member of the Advisory Council becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

## 8 Casual vacancies

- (1) A member of the Advisory Council shall be deemed to have vacated office if the member:
  - (a) dies,
  - (b) absents himself or herself from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Attorney General (which leave the Attorney General is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Attorney General for being absent from those meetings,
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
  - (d) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*,
  - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
  - (f) resigns the office by instrument in writing addressed to the Attorney General, or
  - (g) (Repealed)
  - (h) is removed from office by the Attorney General under subclause (2).
- (2) The Attorney General may remove a member of the Advisory Council from office for incapacity, incompetence or misbehaviour.
- (3) (Repealed)

## 9 Effect of certain other Acts

- (1) The *Public Service Act 1979* does not apply to or in respect of the appointment of a member of the Advisory Council and a member of the Advisory Council is not, as a member, subject to that Act.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Advisory Council or from accepting and retaining any remuneration payable to the person under this Act as a member of the Advisory Council.

#### **10 Liability of members etc**

No matter or thing done by the Advisory Council, and no matter or thing done by any member of the Advisory Council or by any person acting under the direction of the Advisory Council, shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of the Advisory Council or a person so acting personally to any action, liability, claim or demand.

### **Part 3 Procedure of the Advisory Council**

#### **11 General procedure**

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Advisory Council.

#### **12 Quorum**

The quorum for a meeting of the Advisory Council is 6 members including the member presiding at the meeting.

#### **13 Presiding member**

- (1) The Chairperson of the Advisory Council or, in the absence of the Chairperson, another member of the Advisory Council elected by the members present shall preside at a meeting of the Advisory Council.
- (2) The person presiding at a meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present shall be the decision of the Advisory Council.

#### **15 Minutes**

The Advisory Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Advisory Council.

## 16 First meeting

The Attorney General shall call the first meeting of the Advisory Council in such manner as the Attorney General thinks fit.

## Schedule 3A Trustees of Public Purpose Fund

(Section 69C)

### Part 1 General

#### 1 Definitions

In this Schedule:

**appointed trustee** means a person appointed under section 69C (2) (a).

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

### Part 2 Constitution

#### 2 Terms of office of trustees

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

#### 3 Remuneration

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

#### 4 Deputies

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



absence of the trustee.

## **5 Vacancy in office of trustee**

- (1) The office of an appointed trustee becomes vacant if the trustee:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Attorney General, or
  - (d) is removed from office by the Attorney General under this clause, or
  - (e) is absent from 4 consecutive meetings of the trustees of which reasonable notice has been given to the trustee personally or by post, except on leave granted by the Attorney General or unless the member is excused by the Attorney General for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) in the case of a trustee nominated as provided for by section 69C (2) (a) (i), ceases to be a member of the Law Society Council.
- (2) The Attorney General may at any time remove an appointed trustee from office.

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

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

## **7 Chairperson**

- (1) The chairperson of the trustees is the person elected to the office of chairperson from time to time by the trustees from among their number.
- (2) The office of chairperson:
  - (a) commences on the day the person elected to the office is declared to be so elected, and

- (b) becomes vacant when the person's successor is declared to be elected to the office or when the person so elected ceases to hold office as a trustee (whichever happens first).

## **8 Disclosure of pecuniary interests**

(1) If:

- (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the trustees, and
- (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the trustees.

(2) A trustee is not to be regarded as having a direct or indirect pecuniary interest in a matter merely because he or she is a legal practitioner or a member of the Law Society, the Bar Association or a Council.

(3) A disclosure by a trustee at a meeting of the trustees that the trustee:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(4) Particulars of any disclosure made under this clause must be recorded by the trustees in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the trustees.

(5) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Attorney General or the trustees otherwise determine, take part in any decision of the trustees with respect to the matter.

(6) For the purposes of the making of a determination by the trustees under subclause (5), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not take part in the making by the trustees of the determination.

(7) If a trustee is prevented from taking part in a decision by virtue of this clause and the determination relates to a matter that requires a unanimous decision of the trustees

under section 69I, the decision is unanimous for the purposes of that section if it is supported by all of the trustees who are entitled to take part in the determination.

(8) A contravention of this clause does not invalidate any decision of the trustees.

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

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a trustee.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

## **Part 3 Procedure**

### **10 General procedure**

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

### **11 Quorum**

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

### **12 Presiding member**

(1) The chairperson or, in the absence of the chairperson, a trustee elected by the trustees present at the meeting, is to preside at a meeting of the trustees.

(2) The person presiding at a meeting of the trustees has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

(3) Subclause (2) does not affect the requirement under section 69I that certain decisions of the trustees be unanimous.

### **13 Voting**

(1) A decision supported by a majority of the votes cast at a meeting of the trustees at which a quorum is present is the decision of the trustees.

- (2) This clause does not apply in respect of a decision that is required to be unanimous by section 69I.

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

- (1) The trustees may, if they think fit, transact any of their business by the circulation of papers among all the trustees for the time being and a resolution in writing has effect as a decision of the trustees if it is approved in writing by a majority of those trustees and, for the purposes of section 69I, has effect as a unanimous decision of the trustees if it is approved in writing by all the trustees for the time being.
- (2) The trustees may, if they think fit, transact any of their business at a meeting at which the trustees (or some trustees) participate by telephone, closed-circuit television or other means, but only if any trustee who speaks on a matter before the meeting can be heard by the other trustees.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the chairperson and each trustee have the same voting rights as they have at an ordinary meeting of the trustees.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the trustees.
- (5) Papers may be circulated among the trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **15 First meeting**

The Attorney General may call the first meeting of the trustees in such manner as the Attorney General thinks fit.

### **Schedules 4-6 (Repealed)**

### **Schedule 7 Costs assessors**

(Section 2085)

#### **1 Eligibility for appointment**

A person is not eligible to be appointed as a costs assessor unless the person is a barrister or solicitor of at least 5 years' standing.

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

- (1) Subject to this Schedule, a costs assessor holds office for such period (not exceeding

3 years) as may be specified in the instrument of appointment of the costs assessor, but is eligible (if otherwise qualified) for re-appointment.

- (2) A costs assessor may, with the consent of the Chief Justice of New South Wales, continue in office after the expiry of his or her term of office for the purpose of making a determination in respect of, or otherwise completing, any application for costs assessment that was referred to the costs assessor before the expiry of his or her term of office.

### **3 Remuneration**

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

### **4 Casual vacancies**

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

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

- (1) If by or under any other Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a costs assessor or from accepting and retaining any remuneration payable to the person under this Act as a costs assessor.

(2) Part 2 of the *Public Sector Management Act 1988* does not apply to a costs assessor.

## **Schedule 8 Savings, transitional and other provisions**

(Section 215)

### **Part 1 Preliminary**

#### **1A Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Miscellaneous Acts (Legal Profession) Amendment Act 1987*

*Legal Profession (Amendment) Act 1987*

*Legal Profession (Amendment) Act 1989*

*Legal Profession Reform Act 1993*

*Legal Profession Amendment Act 1996*

*Legal Profession Amendment (National Practising Certificates) Act 1996*

*Legal Profession Amendment Act 1998*

*Legal Profession Amendment (Costs Assessment) Act 1998*

*Legal Profession Amendment (Mortgage Practices) Act 2000*

*Legal Profession Amendment (Complaints and Discipline) Act 2000*

*Legal Profession Amendment (Incorporated Legal Practices) Act 2000*

*Legal Profession Amendment (Disciplinary Provisions) Act 2001*

*Legal Profession Amendment (Professional Indemnity Insurance) Act 2001*

*Civil Liability Act 2002* (to the extent that it amends this Act)

*Legal Profession Amendment (National Competition Policy Review) Act 2002*

*Courts Legislation Miscellaneous Amendments Act 2002*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (2A) A provision referred to in subclause (1) may, where the Act concerned is the *Civil Liability Act 2002* and if the regulations so provide, take effect from 20 March 2002 or a later date. Subclause (3) does not apply to such a provision.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

**1B Review of *Legal Profession Reform Act 1993***

- (1) The Attorney General is to review the *Legal Profession Reform Act 1993* to determine whether the policy objectives of the Act remain valid and whether the Act remains appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the Act.
- (3) The Attorney General is to include the functions of the Legal Services Commissioner, the Advisory Council, the Attorney General's Department and costs assessors in the review.
- (4) Any person may make a written submission to the Attorney General in connection with the review.
- (5) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years referred to in subclause (2).

**Part 2 Provisions consequent on the enactment of the *Legal Profession Act 1987***

**1 Definitions**

In this Part:

***appointed day*** means the day appointed and notified under section 2 (2).

**repealed Act** means the *Legal Practitioners Act 1898*, as in force immediately before the appointed day.

## **2 Definition of “legal practitioner”**

Notwithstanding the definition of **legal practitioner** in section 3 (1), a reference in this Act to a legal practitioner shall, until the date notified under section 25, be read as including a person enrolled in the Supreme Court as a barrister.

## **3 Students-at-law**

- (1) A person who, immediately before the appointed day, was a student-at-law under the repealed Act becomes on that day a student-at-law registered under this Act.
- (2) If, immediately before the appointed day, an application duly made under the repealed Act for admission as a student-at-law had not been finally dealt with, it shall be dealt with as an application duly made under this Act for registration as a student-at-law.
- (3) A person who, immediately before the appointed day, was a student clerk under the repealed Act becomes on that day a student-at-law registered under this Act.
- (4) If, immediately before the appointed day, an application duly made under the repealed Act for admission as a student clerk had not been finally dealt with, it shall be dealt with as an application duly made under this Act for registration as a student-at-law.

## **4-6 (Repealed)**

## **7 Continuation of determination made by Legal Fees and Costs Board**

- (1) A determination made, or deemed to have been made, by the Legal Fees and Costs Board under section 20J (1) or (2) of the repealed Act and in force immediately before the appointed day has effect on and from that day as if it had been made under section 179 or 180 of this Act, as the case requires.
- (2) If, immediately before the appointed day, the report of a determination under section 20J of the repealed Act had not been:
  - (a) made under section 20O of that Act, or
  - (b) published in the Gazette, or laid before each House of Parliament, under section 20P of that Act,the report may be made, published or laid in accordance with the corresponding provision of this Act.
- (3) Anything done under the repealed Act in respect of a report has effect as if it had been done under this Act.



- (4) On and from the appointed day, a reference (however expressed) in any other Act, in any instrument made under any other Act or in any other document to:
- (a) a general order made under Part 24 of the *Conveyancing Act 1919*, or
  - (b) a determination under section 20J of the repealed Act,
- shall be read as a reference to a determination made under Division 3 of Part 11 of this Act.

## **8 (Repealed)**

## **9 Charging orders**

A charging order made under section 39A of the repealed Act and in force immediately before the appointed day has the same effect on and after that day as it would have had if the repealed Act had continued in force.

## **10 Control of employment of certain persons**

- (1) If, immediately before the appointed day, an order made under section 40K of the repealed Act prohibiting employment of a named person without permission is in force, it continues to have effect on and after the appointed day as if it were an order made under section 120 of this Act with respect to the clerk.
- (2) If permission or leave given under section 40G, 40J or 40K of the repealed Act to employ or remunerate a named person is in force immediately before the appointed day, it continues to have effect on and after that day as if it were leave given under section 121 of this Act to employ or pay the person.
- (3) Permission or leave continued by subclause (2) that was limited as to time expires at the same time as it would have expired if the repealed Act had continued in force.

## **11 Inspectors and investigators**

- (1) If, immediately before the appointed day:
  - (a) an inspector appointed under section 42 of the repealed Act to carry out an examination of accounts under that section, or
  - (b) a person appointed under section 82A of the repealed Act to carry out an investigation under that section,had not submitted a report on the examination or investigation, the section under which the appointment was made continues to apply to the inspector or investigator, the examination or investigation, and the respective reports.
- (2) For the purposes of subclause (1), a reference in section 42 or 82A of the repealed Act to the Statutory Committee shall be read as a reference to the Professional Conduct

Review Panel, the Professional Standards Board and the Disciplinary Tribunal, whichever is appropriate.

- (3) Section 83A of the repealed Act applies to any matter or thing done or suffered for the purposes of giving effect to this clause.

## **12 Committee of Management**

- (1) The members of the Committee of Management holding office under section 51 of the repealed Act immediately before the appointed day take office on that day as the members of a Management Committee holding office under section 74 of this Act.
- (2) A delegation of power to the Committee of Management under section 51 of the repealed Act that is still effective immediately before the appointed day has effect on and from that day as if it were a delegation to a Management Committee under section 74 of this Act.

## **13 Prescribed corporations**

Until corporations are prescribed by regulation for the purposes of paragraph (a) of the definition of **solicitor** in section 76 (5), the corporations prescribed for those purposes are those that, immediately before the appointed day, were prescribed for the purposes of section 52 of the repealed Act.

## **14 Money and trust accounts**

- (1) Money and trust accounts to which, immediately before the appointed day, Part 7 of the repealed Act applied are, on and from the appointed day, money and trust accounts to which Part 6 of this Act applies.
- (2) Without affecting the generality of subsection (1):
  - (a) money deposited with the Law Society under section 42A of the repealed Act is money deposited with the Law Society under section 64 of this Act,
  - (b) money invested by the Law Society under section 42B of the repealed Act is money invested by the Law Society under section 65 of this Act, and
  - (c) the Statutory Interest Account to be maintained under section 67 of this Act is a continuation of, and the same account as, the Statutory Interest Account being maintained immediately before the appointed day under section 44A of the repealed Act.
- (3) The reference in section 56 of this Act to a report includes a reference to a report referred to in section 43A of the repealed Act, whether made before the appointed day or on or after that day in accordance with clause 11 of this Schedule.
- (4) Section 68 of this Act has effect in relation to money held by the Treasurer

immediately before the appointed day under section 43B of the repealed Act as if the money so held had been paid to the Treasurer under section 68 of this Act.

## **15 Levies**

Section 78 of this Act has effect in relation to a levy that:

- (a) was made under section 53 of the repealed Act, and
- (b) was unpaid immediately before the appointed day,

as if it had been made under section 77 of this Act.

## **16 Claims against the Fidelity Fund**

- (1) A claim under Division 1 of Part 8 of the repealed Act that, immediately before the appointed day, had not been determined under that Part has effect, and shall be dealt with, as a claim against the Fidelity Fund.
- (2) Subclause (1) does not operate to revive a claim under Division 1 of Part 8 of the repealed Act that was determined or barred before the appointed day.
- (3) Notwithstanding subclause (2), a claim that was barred before the appointed day may be dealt with as a claim against the Fidelity Fund if the Law Society Council is of the opinion that it is appropriate for it to be so dealt with.

## **17 Receivers**

- (1) If, immediately before the appointed day, a receivership under Division 2 of Part 8 of the repealed Act had not concluded, that Division continues, until the conclusion of the receivership, to apply to and in relation to the receiver and the receivership as it would have done if the repealed Act had continued in force.
- (2) An application under section 92 for appointment of a receiver may be based:
  - (a) on an opinion of the Law Society Council referred to in section 92 (1) (a) that is formed on grounds that arose before the appointed day, or
  - (b) on an action of the Law Society Council referred to in section 92 (1) (b) that was taken before the appointed day or is taken on or after the appointed day on grounds that arose before the appointed day.

## **18 Statutory Committee**

On and after the appointed day:

- (a) The Solicitors' Statutory Committee as constituted under Part 10 of the repealed Act immediately before the appointed day continues in existence, and
- (b) Part 10 of the repealed Act continues in force,

in relation to, and for the purpose only of completing, business of the Statutory Committee that had been commenced, but not completed, before that day.

## **19 General saving**

- (1) This clause does not have effect to the extent that other provision is made by this Schedule.
- (2) If anything of a kind required or permitted to be done under this Act was done under the repealed Act and still had effect immediately before the appointed day, it continues in effect on and after that day as if:
  - (a) this Act had been in force when it was done, and
  - (b) it had been done under this Act.
- (3) If subclause (2) applies in relation to the execution, lodgment, issue or publication of a written instrument, any reference in the instrument to a provision of the repealed Act shall, for the purposes of that subclause, be read as a reference to the corresponding provision of this Act.

## **19A Rules**

- (1) To remove any doubt:
  - (a) the *Solicitors Admission Rules* published in the Gazette on 14 July 1952 at p 2604, and
  - (b) the *Barristers Admission Rules* published in the Gazette on 14 July 1952 at p 2513, and
  - (c) the *Barristers and Solicitors New Examination Rules* published in the Gazette on 27 August 1965 at p 2749, and
  - (d) the *Barristers and Solicitors Joint Examinations Board Rules* published in the Gazette on 5 April 1957 at p 1132,and any amendments to those Rules, are to be taken to have had the same effect on and from the day they were made, or purportedly made, as they would have had if they had been validly made.
- (2) The Rules referred to in subclause (1) are to be taken to have had effect at all times despite *Supreme Court Rules (Amendment No 109) 1980* published in the Gazette on 29 August 1980 at p 4585.
- (3) Without limiting the generality of clause 19, the Rules referred to in subclause (1) are to be taken for the purposes of this Act to have been made under the repealed Act.

### **19B Certain determinations of the Solicitors' Statutory Committee**

- (1) A determination or order under the repealed Act of the Solicitors' Statutory Committee is not invalid, and is taken never to have been invalid, only because the constitution of the Committee at the time of the pronouncement of the determination or order was different from the constitution of the Committee at the time of the making of the determination or order.
- (2) This clause does not apply to a determination or order the subject of the decision of the Court of Appeal in *Knaggs v The Solicitors' Statutory Committee & Anor (No 2)*.

### **20 Savings effected by [Interpretation Act 1897](#)**

Except to the extent of any inconsistency, this Schedule does not affect the operation of section 8 of the [Interpretation Act 1897](#).

### **21 (Repealed)**

## **Part 3 Provisions consequent on the enactment of the [Legal Profession \(Amendment\) Act 1989](#)**

### **22 Definition**

In this Part:

**the amending Act** means the [Legal Profession \(Amendment\) Act 1989](#).

### **23 Regulations**

Any regulation in force under clause 21 immediately before the date of assent to the amending Act is to be taken to have been made under clause 1A.

### **24 Applications for practising certificates**

A barrister who has applied for a practising certificate before the date of assent to the amending Act for the year commencing on 1 July 1988 or the year commencing on 1 July 1989, or both, has no entitlement, and is to be taken never to have had an entitlement, to a practising certificate for any such year other than that conferred by this Act, as amended by the amending Act.

### **25 Practising certificates not invalidated**

The amendments made by the amending Act do not invalidate the issue of a practising certificate or a practising certificate issued by the Bar Council before the date of assent to the amending Act.

### **26-28 (Repealed)**

## **Part 4 Provisions consequent on the enactment of the [Legal](#)**

## Profession (Amendment) Act 1992

### 29 Validation of certain determinations and orders

A determination or order of the Legal Profession Standards Board or the Legal Profession Disciplinary Tribunal that would have been valid if this Act, as amended by the *Legal Profession (Amendment) Act 1992*, had been in force at the time the determination or order was made is validated.

## Part 5 Provisions consequent on enactment of Schedule 1 to the Legal Profession Reform Act 1993

### 30 Barristers

- (1) A person enrolled as a barrister at the commencement of Schedule 1 (2) to the *Legal Profession Reform Act 1993* is taken to have been admitted as a legal practitioner on the day on which the person was admitted as a barrister.
- (2) However, if the person has been on the roll of barristers or solicitors since the date of the person's first admission as either a barrister or solicitor, the person is taken to have been admitted as a legal practitioner on the first date on which the person was admitted as either a barrister or solicitor.
- (3) A person holding a practising certificate as a barrister at that commencement is taken to have been issued with a practising certificate as a barrister under this Act as amended by the *Legal Profession Reform Act 1993*. The certificate continues in force accordingly.

### 31 Solicitors

- (1) A person enrolled as a solicitor at the commencement of Schedule 1 (2) to the *Legal Profession Reform Act 1993* is taken to have been admitted as a legal practitioner on the day on which the person was admitted as a solicitor.
- (2) However, if the person has been on the roll of barristers or solicitors since the date of the person's first admission as either a barrister or solicitor, the person is taken to have been admitted as a legal practitioner on the first date on which the person was admitted as either a barrister or solicitor.
- (3) A person holding a practising certificate as a solicitor at that commencement is taken to have been issued with a practising certificate as a solicitor under this Act as amended by the *Legal Profession Reform Act 1993*. The certificate continues in force accordingly.

### 32 Admission Boards

- (1) The Barristers Admission Board and Solicitors Admission Board are abolished.

- (2) Anything done by, to or in relation to either of those Boards is taken to have been done by, to or in relation to the Legal Practitioners Admission Board, except as may be provided by the regulations.
- (3) The Attorney General may call the first meeting of the Legal Practitioners Admission Board in such way as the Attorney General thinks fit.

### **33 Students-at-law**

- (1) An application to be registered as a student-at-law pending at the commencement of Schedule 1 (2) to the *Legal Profession Reform Act 1993* is taken to be an application to be registered as a student-at-law by the Admission Board.
- (2) A person registered as a student-at-law at that commencement is taken to be registered as a student-at-law by the Admission Board.

### **34 Declarations as to character**

- (1) An application for a declaration under section 20 pending at the commencement of Schedule 1 (2) to the *Legal Profession Reform Act 1993* is taken to be an application for a declaration by the Admission Board.
- (2) A declaration made by the Barristers Admission Board or the Solicitors Admission Board before that commencement and in force at that commencement is taken to be a declaration made by the Legal Practitioners Admission Board under section 12 of this Act as amended by the *Legal Profession Reform Act 1993*.

### **35 Legal Profession Advisory Council**

- (1) A person who held office as a member of the Advisory Council immediately before the commencement of Schedule 1 (8) to the *Legal Profession Reform Act 1993* ceases to hold office on that commencement and is not entitled to any remuneration or compensation for the loss of that office.
- (2) However, any such person is eligible (if otherwise qualified) to be appointed as a member of the Advisory Council after the commencement of Schedule 1 (8) to the *Legal Profession Reform Act 1993*.

### **35A Unqualified practitioners**

- (1) An order under section 120 that was in force immediately before the repeal of that section by the *Legal Profession Reform Act 1993* is taken to be an order under section 48I, as inserted by that Act.
- (2) An order may be made under section 48I or 48J in connection with conduct occurring before the commencement of that section.
- (3) Leave given under section 121 that was in force immediately before the repeal of that

section by the *Legal Profession Reform Act 1993* is taken to be an approval under section 48K, as inserted by that Act.

### **36 Regulations**

Without limiting clause 1A, regulations may be made under that clause for or with respect to the following:

- (a) rules of the Admission Board of a transitional or savings nature,
- (b) pending applications for admission as a barrister or solicitor,
- (c) practising certificates and conditions of practising certificates,
- (d) pending applications for practising certificates,
- (e) orders, pending applications and appeals and other proceedings under Part 9 before the repeal of that Part, and the enactment of Part 3A, by the *Legal Profession Reform Act 1993*.

## **Part 6 Provisions consequent on enactment of Schedule 2 to the *Legal Profession Reform Act 1993***

### **37 Previous conduct**

- (1) Part 10, as substituted by the *Legal Profession Reform Act 1993*, applies to conduct occurring before or after the substitution of that Part (including professional misconduct occurring before the commencement of the *Legal Profession Act 1987*, but not including unsatisfactory professional conduct occurring before that commencement).
- (1A) For the removal of doubt, Part 10 as substituted by the *Legal Profession Reform Act 1993* applies to the conduct of a barrister that occurred before the commencement of the *Legal Profession Act 1987* on 1 January 1988 and applies to any complaint made by any person, or initiated by the Bar Association, in respect of such conduct (whether the complaint was made or initiated before or after that commencement).
- (2) This clause is subject to clause 38.

#### **Note—**

This clause carries forward the policy in the transitional regulations under the Act that complaints may be made and disciplinary proceedings taken in respect of conduct before the commencement of the Act on 1 January 1988 if it constitutes professional misconduct. Unsatisfactory professional conduct was a new category introduced by the Act, and accordingly only such conduct since the commencement of the Act may be the subject of complaints and disciplinary proceedings.

### **38 Continuation of pending proceedings**

Without limiting clause 1A, the regulations under that clause may make provision for or



with respect to complaints and disciplinary proceedings pending on the commencement of this clause and to orders made in those proceedings or in any such proceedings completed before that commencement.

### **39 Superseded bodies**

- (1) The Legal Profession Disciplinary Tribunal, the Legal Profession Standards Board and the Legal Profession Conduct Review Panel are abolished.
- (2) A person who held office as a member of the Legal Profession Disciplinary Tribunal, the Legal Profession Standards Board or the Legal Profession Conduct Review Panel immediately before its abolition ceases to hold office and is not entitled to any remuneration or compensation for the loss of that office.
- (3) However, any such person is eligible (if otherwise qualified) to be appointed as a member of the Legal Services Tribunal.

### **40 Construction of superseded references**

In any other Act or in any statutory instrument or in any other instrument:

- (a) a reference to the Disciplinary Tribunal or the Legal Profession Disciplinary Tribunal is to be read as a reference to the Legal Services Tribunal, or
- (b) a reference to the Professional Standards Board or the Legal Profession Standards Board is to be read as a reference to the Legal Services Tribunal, or
- (c) a reference to the Professional Conduct Review Panel or the Legal Profession Conduct Review Panel is to be read as a reference to the Legal Services Commissioner.

## **Part 7 Provisions consequent on the enactment of Schedule 3 to the Legal Profession Reform Act 1993**

### **41 Bills of costs and agreements**

- (1) Subject to this Part, Part 11 (as substituted by Schedule 3 to the *Legal Profession Reform Act 1993*) extends to bills of costs given before, or agreements as to costs made before, the commencement of that substituted Part if any such bill of costs or agreement has effect after that commencement.
- (2) Part 11 and any relevant determinations of the Legal Fees and Costs Board, as in force immediately before that commencement, continue to apply to a bill of costs given before that commencement.
- (3) Any bill of costs referred to in subclause (2) is, if required by the application of that Part, to be taxed in accordance with any relevant rules of the Supreme Court or any other applicable court, as in force immediately before that commencement.

#### **42 Barristers' costs**

Part 11, as substituted by Schedule 3 to the [Legal Profession Reform Act 1993](#), does not apply to barristers' costs for which a fee has been marked or a memorandum of fees has been rendered before the commencement of that substituted Part.

#### **43 Costs in proceedings**

Despite any provision of this Part, and without limiting clause 1A, regulations may be made under that clause for or with respect to the following matters:

- (a) the application of Part 11 and laws relating to the taxation of costs, as in force before the commencement of Schedules 3 and 6 to the [Legal Profession Reform Act 1993](#), to any order for the payment of costs made by a court or tribunal after that commencement,
- (b) the application of Part 11, as substituted by that Act, to any order for the payment of costs made by a court or tribunal after that commencement.

#### **44 Continuation of certain fees**

Despite any provision of this Part, and without limiting clause 1A, regulations may be made under that clause for or with respect to the continuation of fees determined by the Legal Fees and Costs Board, and in force before the commencement of Part 11, as substituted by Schedule 3 to the [Legal Profession Reform Act 1993](#), until such time as relevant regulations are made under Division 5 of the substituted Part.

#### **45 Superseded references to taxation of costs**

On and from the commencement of Part 11, as substituted by Schedule 3 to the [Legal Profession Reform Act 1993](#), a reference in any Act or other instrument (however expressed) to the taxation of costs is taken to be a reference to the assessment of costs under Division 6 of Part 11.

#### **46 Abolition of Legal Fees and Costs Board**

- (1) The Legal Fees and Costs Board is abolished.
- (2) A person who held office as a member of the Legal Fees and Costs Board immediately before its abolition ceases to hold that office on that abolition and is not entitled to any remuneration or compensation because of the loss of that office.

#### **47 Repeal of Court rules as to costs**

Rules as to costs made by a court under a provision of an Act repealed by the [Legal Profession Reform Act 1993](#) cease to have effect on repeal, except as provided by this Part.

### **Part 8 Provisions consequent on enactment of [Legal Profession](#)**

## Amendment Act 1996

### 48 Claims against Fidelity Fund

- (1) Section 80 (4), as substituted by Schedule 3 [2] to the *Legal Profession Amendment Act 1996*, does not apply to a claim made before the commencement of that amendment.
- (2) Section 80A does not apply to a claim made before the commencement of Schedule 3 [3] to the *Legal Profession Amendment Act 1996*.

### 49 Amendments relating to complaints

An amendment made to Part 10 by Schedule 1 to the *Legal Profession Amendment Act 1996* applies to complaints made before the commencement of that amendment in the same way as it applies to complaints made after that commencement.

### 50 Variation of information

Section 167A applies to an information laid before the commencement of Schedule 1 [14] to the *Legal Profession Amendment Act 1996* in the same way as it applies to an information laid after that commencement.

### 51 Protection from liability

The amendments made to section 171Q apply to confer protection from liability on a person or body in respect of any matter or thing done or omitted to be done before the commencement of Schedule 1 [15] to the *Legal Profession Amendment Act 1996* in the same way as they apply in respect of a matter or thing done or omitted to be done after that commencement.

### 52 Appeal against decision of costs assessor

Section 208M applies to an appeal against a decision made before the commencement of Schedule 2 [16] to the *Legal Profession Amendment Act 1996* in the same way as it applies to an appeal against a decision made after that commencement.

## Part 9 Provisions consequent on enactment of the *Legal Profession Amendment (National Practising Certificates) Act 1996*

### 53 Definition

In this Part:

**amending Act** means the *Legal Profession Amendment (National Practising Certificates) Act 1996*.

#### **54 Practising certificate of a solicitor**

A person holding a practising certificate as a solicitor at the commencement of Schedule 1 [6] to the amending Act is taken to have been issued with a practising certificate as a solicitor and barrister under this Act as amended by Schedule 1 [6]. The certificate continues in force accordingly.

#### **55 Provisions relating to interstate legal practitioners**

An interstate legal practitioner is entitled to practise law in this State in accordance with this Act as amended by the amending Act even if the interstate practising certificate conferring the entitlement was issued before or after the commencement of Part 3B.

#### **56 Costs assessments**

The amendments made to section 208JA by the amending Act extend to the payment of costs in respect of applications for costs assessments made before the commencement of the amendments.

### **Part 11 Provisions consequent on enactment of [Legal Profession Amendment \(Costs Assessment\) Act 1998](#)**

#### **61 Definition**

In this Part:

**amending Act** means the [Legal Profession Amendment \(Costs Assessment\) Act 1998](#).

#### **62 Power to postpone or refund fees extends to existing applications**

The amendments made to section 203 by the amending Act extend to applications made before the commencement of those amendments.

#### **63 Reasons for determinations**

Section 208JAA, as inserted by the amending Act, does not apply to any certificate issued (whether before or after the commencement of that section) in respect of an application for an assessment that is made before the commencement of that section.

#### **64 Recovery of costs of costs assessment**

Section 208J (5), as inserted by the amending Act, extends to any determination made before the commencement of that subsection in respect of which a certificate has not, before that commencement, been issued under section 208J.

#### **65 Availability of review procedure**

(1) Subdivision 4A of Division 6 of Part 11, as inserted by the amending Act, does not apply in respect of a determination of a costs assessor if the application for

assessment was made before the commencement of section 208KA.

- (2) Accordingly, a review is not available under that Subdivision in respect of such a determination.

## **66 Payment of fees and costs**

- (1) Schedule [16] to the amending Act does not affect any payment made or required to be made to the Law Society for the credit of the Statutory Interest Account under section 208U (2), as in force immediately before the commencement of Schedule [16], except as otherwise provided by this clause.
- (2) Section 208U (2), as inserted by Schedule 1 [16] to the amending Act, extends to any application fee for an assessment, or payment for the costs of a costs assessor, that was payable before the commencement of Schedule 1 [16] and which, at the commencement of Schedule 1 [16], has not been received by the proper officer of the Supreme Court. Accordingly, if such a fee or payment is received by the proper officer after the commencement of Schedule 1 [16] to the amending Act it is to be dealt with as required by section 208U (2), as inserted by Schedule 1 [16] to the amending Act.
- (3) The Director-General of the Attorney General's Department may direct that there is to be deducted from any amount received before the commencement of Schedule 1 [16] to the amending Act that is to be paid to the Law Society for the credit of the Statutory Interest Account under section 208U (2), as in force immediately before the commencement of Schedule 1 [16], such amount or proportion of that payment as the Director-General considers to be attributable to the costs of administration of Division 6 of Part 11, including the costs of enforcing determinations of costs assessors.
- (4) Any amount or proportion so deducted is to be paid to the working account provided for by section 208U (as amended by Schedule 1 [16] to the amending Act).

## **Part 12 Provisions consequent on enactment of [Legal Profession Amendment Act 1998](#)**

### **67 Definitions**

In this Part:

**Solicitors' Trust Account Fund** means the fund known as the "Solicitors' Trust Account Fund" or the "Law Society Solicitors' Trust Accounts Fund", established by the Law Society before the commencement of Division 2 of Part 6 (as inserted by the [Legal Profession Amendment Act 1998](#)).

**Statutory Interest Account** means the fund maintained by the Law Society under section 67 of the Act, as in force immediately before the repeal of that section by the [Legal Profession Amendment Act 1998](#).

### **68 Continuation of Statutory Interest Account**

The Public Purpose Fund is a continuation of the Statutory Interest Account and accordingly the following provisions have effect:

- (a) the assets and liabilities of the Statutory Interest Account are the assets and liabilities of the Public Purpose Fund,
- (b) a reference in any instrument (other than this Act) to the Statutory Interest Account is taken to be a reference to the Public Purpose Fund.

### **69 Continuation of Solicitors' Trust Account Fund**

The Public Purpose Fund is a continuation of the Solicitors' Trust Account Fund and accordingly the following provisions have effect:

- (a) the assets and liabilities of the Solicitors' Trust Account Fund are the assets and liabilities of the Public Purpose Fund,
- (b) a reference in any instrument (other than this Act) to the Solicitors' Trust Account Fund is taken to be a reference to the Public Purpose Fund.

### **70 Saving of existing arrangements with respect to general trust accounts**

- (1) Any agreement relating to the payment of interest on general trust accounts kept by solicitors for the purposes of section 61 that had effect immediately before the commencement of section 69E (as inserted by the [Legal Profession Amendment Act 1998](#)), and that is approved by the trustees of the Public Purpose Fund for the purposes of section 69E (whether before or after the commencement of that section), is taken to be an agreement for the purposes of section 69E.
- (2) Any bank, building society or credit union that is a party to such an agreement is taken to be an approved financial institution for the purposes of section 61.
- (3) A reference in Division 2 of Part 6, as inserted by the [Legal Profession Amendment Act 1998](#), to a general trust account kept by a solicitor for the purposes of section 61 (1) (a) extends to a general trust account kept by a solicitor for the purposes of section 61 (2) (a), as in force before the commencement of Schedule 4 [6] to the [Legal Profession Amendment Act 1996](#).

### **71 Proceedings relating to appointment or removal of costs assessors**

Section 208S (5), as inserted by the [Legal Profession Amendment Act 1998](#), does not affect any proceedings instituted before the commencement of that subsection.

### **72 Correction of errors in determinations**

- (1) Section 208JB, as inserted by the [Legal Profession Amendment Act 1998](#), does not apply to a determination made by a costs assessor before the commencement of that

section.

- (2) Section 208KHA, as inserted by the *Legal Profession Amendment Act 1998*, does not apply to a determination made by a panel before the commencement of that section.

## **Part 13 Provisions consequent on enactment of *Legal Profession Amendment (Mortgage Practices) Act 2000***

### **73 Definitions**

In this Part:

**amending Act** means the *Legal Profession Amendment (Mortgage Practices) Act 2000*.

**client** has the same meaning as in Part 9.

### **74 Application of section 61A**

Section 61A:

- (a) applies only to money received by a solicitor on or after the commencement of that section, and
- (b) applies even if the costs referred to in that section were awarded by the Compensation Court before the commencement of that section.

### **75 Requirement to notify insurance arrangements for State regulated mortgages**

- (1) Section 122 (2), as inserted by the amending Act, applies in respect of an advance of money made or proposed to be made on or after the relevant commencement date by a solicitor to a borrower for a State regulated mortgage even if:
- (a) the money was entrusted to the solicitor by the client before the relevant commencement date, or
- (b) an authority to advance the money was given to the solicitor by the client before the relevant commencement date, or
- (c) the regulated mortgage was entered into before the relevant commencement date.
- (2) An authority given by a client before the relevant commencement date in accordance with clause 55 of the *Legal Profession Regulation 1994* is taken to be an authority for the purpose of section 122 (2) (b) but not if it is a general lending authority given under clause 55 of the *Legal Profession Regulation 1994*.
- (3) In this clause, the **relevant commencement date** means the date of commencement of section 122, as inserted by the amending Act.

## **76 Managed investment scheme provisions**

Section 122B, as inserted by the amending Act, applies to money entrusted to a solicitor by a client after the commencement of that section, and section 122C applies accordingly.

## **Part 14 Provisions consequent on the enactment of the [Legal Profession Amendment \(Complaints and Discipline\) Act 2000](#)**

### **77 Definition**

In this Part:

**amending Act** means the [Legal Profession Amendment \(Complaints and Discipline\) Act 2000](#).

### **78 Validation**

- (1) Any investigation or decision of a Council, the Commissioner, the Administrative Decisions Tribunal, the former Legal Services Tribunal or any court with respect to a complaint made or initiated before 4 February 2000 is not invalid because the complaint was made or initiated more than 3 years after the conduct concerned was alleged to have occurred, whether or not the Commissioner accepted the complaint in accordance with section 138 (as in force before its amendment by the amending Act).
- (2) The variation of an information by the Administrative Decisions Tribunal or the former Legal Services Tribunal before 4 February 2000 to include an additional allegation is not invalid because the alleged conduct concerned occurred more than 3 years before the variation was made.
- (3) This clause does not operate to reverse the decision of a court in a particular case in which proceedings were finally determined before the commencement of this clause. However, this subclause does not preclude further complaints with respect to the same or any related conduct.

### **79 Amending Act—application to pending complaints and proceedings**

- (1) A complaint that was made or initiated under Division 3 of Part 10 and that was not determined before the substitution of that Division by the amending Act is taken to be a complaint made under that Division, as substituted by the amending Act.
- (2) Sections 147A (1A), 155A and 160 (1) (c3), as inserted by the amending Act, extend to a complaint made before the commencement of those provisions.
- (3) Sections 167A (3) and 167B, as inserted by the amending Act, extend to an information laid before the commencement of those provisions.

## **Part 15 Provisions consequent on the enactment of the [Legal](#)**



## Profession Amendment (Incorporated Legal Practices) Act 2000

### 80 Definitions

In this Part:

**amending Act** means the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.

### 81 Existing solicitor corporations

- (1) This clause applies to a solicitor corporation that was formed under Division 1 of Part 10A of this Act and that was in existence immediately before the repeal of that Part by the amending Act.
- (2) Any such solicitor corporation is not dissolved by the repeal of Part 10A of this Act, but that Part continues to apply to the solicitor corporation (despite its repeal) until the winding up of the corporation in accordance with that Part or with the regulations made under this Schedule. Any such regulations may apply provisions of the *Corporations Act 2001* of the Commonwealth or any other Act, with or without modification.
- (3) Until the dissolution of any such solicitor corporation, any other provision of this Act relating to solicitor corporations that is repealed by the amending Act continues to apply, subject to the regulations made under this Schedule, to the solicitor corporation (despite the repeal of the provision).
- (4) The transfer, in accordance with the *Corporations Act 2001* of the Commonwealth, of the incorporation of any such solicitor corporation to incorporation under the *Corporations Act 2001* of the Commonwealth is authorised.

## Part 16 Provisions consequent on the enactment of the Legal Profession Amendment (Disciplinary Provisions) Act 2001

### 82 Definition

In this Part, **amending Act** means the *Legal Profession Amendment (Disciplinary Provisions) Act 2001*.

### 83 Previous show cause statements and notifications

- (1) Any written statement that:
  - (a) was provided before the commencement of section 38FB, and
  - (b) is a statement as to why, despite the commission of an act of bankruptcy or a finding of guilt of the commission of an indictable offence or a tax offence, the person making the statement considers that he or she is a fit and proper person to

hold a practising certificate,

is taken to be a statement provided in accordance with section 38FB in relation to that act of bankruptcy or finding of guilt.

- (2) For the purposes of the definition of **relevant period** in section 38FA, a notification referred to in that section and given to a Council before the commencement of that section is taken to have been given to the Council on that commencement.

#### **84 Previous determination of matters**

A Council or the Commissioner is not required to make a determination under section 38FC in relation to a legal practitioner who has committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence if, before the commencement of that section:

- (a) the commission of the act of bankruptcy or the finding of guilt was considered by the Council, and
- (b) a determination was made by the Council as to whether, despite the act of bankruptcy or finding of guilt, the legal practitioner was a fit and proper person to hold a practising certificate.

#### **85 Legal Services Commissioner, staff and delegations**

- (1) The person holding office as Legal Services Commissioner immediately before the repeal of section 129 by the amending Act is taken to have been appointed to that office under section 59B and holds that office for the duration of the term for which the person was appointed under section 129.
- (2) A person holding office as acting Legal Services Commissioner immediately before the repeal of section 130 by the amending Act is taken to have been appointed to that office under section 59C and holds that office for the duration of the term for which the person was appointed under section 130.
- (3) A person employed as a member of staff of the Legal Services Commissioner under section 132 (2) immediately before the repeal of that subsection by the amending Act is taken to be employed as a member of staff under section 59H (2).
- (4) A delegation made by the Commissioner under section 133 and in force immediately before the repeal of that section by the amending Act is taken to have been made under section 59I.

#### **86 Appeals**

An appeal made under section 171F before the commencement of an amendment made to that section by the amending Act is to be dealt with as if the amendment had not been made to that section.

## **Part 17 Provisions consequent on enactment of [Legal Profession Amendment \(Professional Indemnity Insurance\) Act 2001](#)**

### **87 Amendments to section 36**

A reference in section 36 (5), as substituted by the [Legal Profession Amendment \(Professional Indemnity Insurance\) Act 2001](#), to a change in the relevant date includes a change in the relevant date that was made before the substitution of that subsection.

### **88 Indemnity arrangements for 2001-2002**

An indemnity agreement referred to in Schedule 2A may be entered into on or after the commencement of that Schedule and may have effect in relation to the whole of the extension period (within the meaning of that Schedule), even if entered into after the commencement of the extension period.

## **Part 18 Provisions consequent on enactment of [Courts Legislation Amendment Act 2001](#)**

### **89 Referral of unreviewed determinations to review panel: section 208NC**

Section 208NC, as inserted by the [Courts Legislation Amendment Act 2001](#), applies to an appeal under section 208M made before the commencement of that section.

## **Part 19 Provisions consequent on enactment of [Civil Liability Act 2002](#)**

### **90 Application of costs amendments**

- (1) Division 5B (Maximum costs in personal injury damages matters) of Part 11 does not apply in respect of legal services provided before 7 May 2002 but extends to legal services provided on or after that date even if the legal services are provided in connection with a claim that arose before that date (and whether or not proceedings on the claim were commenced before that date).
- (2) Division 5C (Costs in civil claims where no reasonable prospects of success) of Part 11 extends to legal services provided on or after 20 March 2002 even if the legal services are provided in connection with a claim that arose before that date (and whether or not proceedings on the claim were commenced before that date).
- (3) However, section 198L (2) and (3) do not apply in respect of proceedings commenced before the date of assent to the [Civil Liability Act 2002](#).
- (4) An order may not be made under section 198M (and an application for such an order may not be made) before the date of assent to the [Civil Liability Act 2002](#).

### **91 Apportionment of costs for legal services**

- (1) In the application of Division 5B of Part 11 to a claim for personal injury damages that

straddles 7 May 2002, the following provisions have effect in respect of the costs for legal services provided to a party in connection with the claim:

- (a) the costs for legal services provided on or after 7 May 2002 are to be determined as a proportion of the total costs for legal services provided to the party (that is, for legal services provided before, on or after 7 May 2002),
- (b) the proportion determined under paragraph (a) is to be applied to the maximum costs for legal services that would (apart from this clause) be applicable in respect of the claim under section 198D, so as to arrive at a **reduced maximum amount** for costs in respect of legal services provided on or after 7 May 2002,
- (c) that reduced maximum amount becomes, for the purposes of section 198D, the maximum costs for legal services provided to the party in connection with the claim on or after 7 May 2002.

**Note—**

Section 198D does not apply to costs for legal services provided before 7 May 2002.

- (2) After the date of assent to the *Civil Liability Act 2002*, a solicitor or barrister must not provide a legal service to a party in connection with a claim for personal injury damages that straddles 7 May 2002 unless the party has been notified in writing by the solicitor or barrister of the effect of Divisions 5B and 5C of Part 11.
- (3) A claim **straddles** 7 May 2002 if legal services are provided in connection with the claim both before and on or after 7 May 2002.

## **Part 20 Provisions consequent on enactment of *Legal Profession Amendment (National Competition Policy Review) Act 2002***

### **92 Practising certificate fees**

- (1) Section 29, as in force immediately before its repeal by the *Legal Profession Amendment (National Competition Policy Review) Act 2002*, continues to apply in respect of practising certificates issued by the Bar Council before the commencement of section 29A, as inserted by that Act.
- (2) Section 29, as in force immediately before its repeal by the *Legal Profession Amendment (National Competition Policy Review) Act 2002*, continues to apply in respect of practising certificates issued by the Law Society Council before the commencement of section 29B, as inserted by that Act.

### **93 Advertising**

Section 38J (3), as inserted by the *Legal Profession Amendment (National Competition Policy Review) Act 2002*, applies only in respect of contraventions of section 38J (2) that occur after the commencement of section 38J (3).

#### **94 Disclosure of information under section 1710A**

Section 1710A (4) and (5), as in force immediately before the repeal of section 1710A by the *Legal Profession Amendment (National Competition Policy Review) Act 2002*, continues to apply in respect of anything done before the repeal of section 1710A.

### **Part 21 Provisions consequent on the enactment of *Miscellaneous Acts Amendment (Relationships) Act 2002***

#### **95 Operation of amendments**

The amendment made to section 60 by the *Miscellaneous Acts Amendment (Relationships) Act 2002* does not apply in respect of money or other valuable property received by or paid or entrusted to a solicitor or an associate of a solicitor before the commencement of the amendment.

### **Part 22 Provisions consequent on enactment of *Courts Legislation Miscellaneous Amendments Act 2002***

#### **96 Definitions**

In this Part, **the 2002 amending Act** means the *Courts Legislation Miscellaneous Amendments Act 2002*.

#### **97 Applications under sections 203 and 208KA**

- (1) An application made in accordance with section 203 before the amendment of that section by the 2002 amending Act is taken to have been made in accordance with that section, as amended by that Act.
- (2) An application made in accordance with section 208KA before the amendment of that section by the 2002 amending Act is taken to have been made in accordance with that section, as amended by that Act.

#### **98 Notification of applications under section 204**

Section 204, as amended by the 2002 amending Act, extends to any application for assessment made before the commencement of that amendment.

#### **99 Correction of errors under sections 208JB and 208KHA**

The amendments to sections 208JB and 208KHA made by the 2002 amending Act do not affect any judgment that has been varied under either of those sections before the commencement of those amendments.