

# Legal Profession Regulation 2005

[2005-455]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**
  - Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)
  - Legal Profession Further Amendment (Fixed Costs) Regulation 2008 (601)* (GG No 158 of 19.12.2008, p 12340) (not commenced — to commence on 1.1.2009)

### Authorisation

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# Legal Profession Regulation 2005



New South Wales

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# Legal Profession Regulation 2005



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Legal Profession Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 October 2005.

### 3 Definitions

(1) In this Regulation:

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

**DX box** means an exchange box in a document exchange of Australian Document Exchange Pty Limited.

**entity** means a person or body.

**excluded offence**—see clause 4.

**named month** means one of the 12 named months of the year, starting with January.

**Sydney Metropolitan Area** means the area that includes the following:

- (a) the County of Cumberland,
- (b) the City of Blue Mountains,
- (c) such part of the City of Wollongong as comprises postcode areas 2508 and 2515,
- (d) such part of the City of Hawkesbury as comprises Main Road No 184 (Bells Line of Road) and the land lying between that road and the City of Blue Mountains.

**the Act** or **the new Act** means the *Legal Profession Act 2004*.

**the old Act** means the *Legal Profession Act 1987*.

(2) A reference in this Regulation to a form followed by a number is a reference to the form of that number in Schedule 5.

(3) Notes included in this Regulation do not form part of the Regulation.

#### 4 Meaning of “excluded offence”

(1) In this Regulation:

**excluded offence** means any of the following offences:

- (a) any offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999*) other than the following:
- (i) any offence under section 42 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle negligently on a road or road related area if the person concerned is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200,
  - (ii) any offence under section 42 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle on a road or road related area furiously, recklessly or at a speed or in a manner dangerous to the public,
  - (iii) any offence under section 19 (2) of the *Road Transport (General) Act 1999* (which relates to refusing to comply with a requirement to produce a driver licence, or to state name and home address, or stating a false name and home address),
  - (iv) any offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to driving etc while under the influence of alcohol or any other drug),
  - (v) any offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* (which relates to driving while unlicensed and other relevant matters),
  - (vi) any offence under section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to failing to stop and give assistance after an accident),
  - (vii) any offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to presence of prescribed concentration of alcohol in a person’s breath or blood),
  - (viii) any offence under section 43 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to menacing driving),

- (ix) any other offence under the road transport legislation if the court orders the disqualification of the person concerned from holding a driver licence,
  - (b) any offence relating to the parking of motor vehicles.
- (2) For the purposes of the definition of **excluded offence** in subclause (1):
- (a) a reference to an offence under the road transport legislation includes a reference to an offence under the *Traffic Act 1909*, or the regulations under that Act, as previously in force, and
  - (b) a reference to an offence under a provision of an Act specified in paragraph (a) of that definition includes a reference to an offence under a corresponding provision of the *Traffic Act 1909*, or the regulations under that Act, as previously in force.

## **Part 2 Interpretation—Part 1.2 of the Act**

### **5 Definition of “corresponding law”—section 4 of the Act**

The following laws are prescribed for the purposes of the definition of **corresponding law** in section 4 (1) of the Act:

- (a) the *Queensland Law Society Act 1952*, the *Trust Accounts Act 1973* and the *Legal Profession Act 2004* of Queensland,
- (b) the *Legal Practitioners Act 1981* of South Australia,
- (c) the *Legal Profession Act 1993* of Tasmania,
- (d) the *Legal Practice Act 1996* and the *Legal Profession Act 2004* of Victoria,
- (e) the *Legal Practice Act 2003* of Western Australia,
- (f) the *Legal Practitioners Act 1970* of the Australian Capital Territory,
- (g) the *Legal Practitioners Act* of the Northern Territory.

### **6 (Repealed)**

### **7 Default determination of associate’s home jurisdiction—section 8 of the Act**

- (1) This clause applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, where:
  - (a) section 8 (4) (b) of the Act is applicable to the associate, and
  - (b) the home jurisdiction for the associate can be determined under neither subparagraph (i) nor subparagraph (ii) of that paragraph.
- (2) For the purposes of section 8 (4) (b) (iii) of the Act, the home jurisdiction for the

associate is to be determined in accordance with the following criteria:

- (a) the jurisdiction of the associate's place of residence in Australia,
- (b) if the associate does not have a place of residence in Australia, the jurisdiction of the associate's last place of residence in Australia.

### **Part 3 Reservation of legal work and legal titles—Part 2.2 of the Act**

#### **8 Presumptions about taking or using name, title or description—section 16 of the Act**

- (1) For the purposes of section 16 (2) of the Act, the kinds of persons specified in the third column of the table to this subclause are persons who are entitled, in the circumstances specified opposite in the fourth column, to take or use a name, title or description specified opposite in the second column.

**Table**

<b>First column</b>	<b>Second column</b>	<b>Third column</b>	<b>Fourth column</b>
<b>Item No</b>	<b>Name, title or description</b>	<b>Kinds of persons who are entitled to take or use name, title or description</b>	<b>Circumstances in which the persons are entitled to take or use name, title or description</b>
1	legal practitioner	Australian legal practitioner	all circumstances (no restriction)
2	legal practitioner	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
3	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor

4	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
5	barrister	Australian legal practitioner	when the local legal practitioner holds a local practising certificate that restricts the practitioner to legal practice in the manner of a barrister
6	barrister	interstate legal practitioner	when the interstate legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a barrister
7	barrister	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
8	counsel	Australian legal practitioner	all circumstances (no restriction)
9	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate

10	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, provides legal services to his or her employer, or to a related entity, in the ordinary course of his or her employment and for no fee, gain or reward other than his or her ordinary remuneration as an employee
11	Senior Counsel or SC	Australian lawyer	when the Australian lawyer currently holds the status of Senior Counsel, as recognised by the High Court or a Supreme Court of any jurisdiction
12	Queen's Counsel or QC, or King's Counsel or KC, or Her Majesty's Counsel, or His Majesty's Counsel	Australian lawyer	when the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction
13	attorney	Australian-registered foreign lawyer	when entitled to use the name, title or description under section 191 of the Act
14	attorney	patent attorney	when using the expression "patent attorney"
15	attorney	donee of a power of attorney	when indicating that the donee holds or is acting under a power of attorney
16	attorney	Attorney-General of any jurisdiction, the Commonwealth or a foreign country	all circumstances (no restriction)
17	solicitor	Solicitor-General of any jurisdiction, the Commonwealth or a foreign country	all circumstances (no restriction)
18	lawyer	Australian lawyer	all circumstances (no restriction)
19	lawyer	Australian-registered foreign lawyer	all circumstances (no restriction)

(2) In this clause:



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

**employee** of an entity means a person who is employed or engaged under a contract of service or contract for services in or by the entity whether or not:

- (a) the person works full-time, part-time, or on a temporary or casual basis, or
- (b) the person is a law clerk or articulated clerk.

**government agency** means:

- (a) a government department of the Commonwealth or of a State or Territory, or
- (b) a body that is established by or under the law of the Commonwealth or of a State or Territory for a public purpose or to exercise governmental functions,

and includes a body or organisation (or a class of bodies or organisations) prescribed by the regulations as being within the definition of **government agency** in section 114 of the Act.

#### **8A Prohibition on engaging in legal practice when not entitled—section 14 of the Act**

For the purposes of section 14 (2) (h) of the Act, legal practice engaged in by an industrial organisation registered under the *Industrial Relations Act 1996*, or an organisation registered under Schedule 1 to the *Workplace Relations Act 1996* of the Commonwealth, is prescribed as a kind of legal practice to which section 14 (1) of the Act does not apply, but only to the extent that:

- (a) the legal services concerned are provided to members of the organisation, and
- (b) the legal services are not provided for fee, gain or reward to the organisation (other than standard membership fees), and
- (c) the legal services are provided by Australian legal practitioners, and
- (d) if any of the legal services are provided by an Australian legal practitioner who does not hold an unrestricted practising certificate—those legal services are provided under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate.

### **Part 4 Admission of local lawyers—Part 2.3 of the Act**

#### **9 Agreed admission standards—section 24 of the Act**

For the purposes of section 24 of the Act, the agreed standards referred to in section 24 (5) of the Act are the standards established from time to time by the Law Admissions Consultative Committee, being a committee constituted under the auspices of the Council of Chief Justices.

## **10 Roll of local lawyers—section 32 of the Act**

For the purposes of section 32 of the Act, the following information is to be included in the local roll in relation to each person who is admitted as a lawyer under the Act:

- (a) the lawyer's name,
- (b) the lawyer's date of birth,
- (c) the lawyer's signature,
- (d) the lawyer's date of admission,
- (e) a unique identifying number for the lawyer,
- (f) such other information as the Supreme Court considers appropriate to include in the roll in relation to the lawyer.

## **Part 5 Legal practice by Australian legal practitioners—Part 2.4 of the Act**

### **Division 1 General matters**

#### **10A Application for grant of local practising certificate by prescribed classes of lawyers—section 45 of the Act**

- (1) For the purposes of section 45 (10) of the Act, Australian lawyers of the following classes or descriptions are prescribed as being eligible to apply for the grant or renewal of local practising certificates:
  - (a) Members of the Parliament of the State,
  - (b) Members of the Parliament of the Commonwealth who reasonably expect to reside in New South Wales during the currency of the local practising certificate or renewal applied for.
- (2) A Council has a discretion as to whether or not to grant or renew a local practising certificate to a person in his or her capacity as an Australian lawyer of a class or description referred to in subclause (1).

#### **11 Manner of application for local practising certificate—section 46 of the Act**

- (1) An application for the grant or renewal of a local practising certificate must be in a form that is approved by the appropriate Council, and signed by the applicant, and (subject to any determination under subclause (4A)) must provide or be accompanied by the following:
  - (a) the name of the applicant, together with the applicant's residential address and personal telephone number,

- (b) the name of any law practice of which the applicant is an associate,
- (c) particulars of any incorporated legal practice of which the applicant is an officer or employee, including its Australian Company Number (ACN) and the names of the directors of the incorporated legal practice,
- (d) the address of the office or offices at which the applicant practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,
- (e) in the case of an applicant who is a member of, or employed by, a partnership or is an officer or employee of an incorporated legal practice—the address of the office or offices at which the partnership or incorporated legal practice practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,
- (f) in the case of an applicant who is employed otherwise than by a partnership or incorporated legal practice—the name of the employer and the address of the principal office of the employer,
- (g) the telephone number, facsimile number (if any) and email address (if any) of the applicant at the office or offices at which the applicant practises or provides legal services,
- (h) the number of the DX box (if any) that is used by the applicant,
- (i) if the applicant does not have a DX box in New South Wales, the name of the applicant's Sydney agent (if any),
- (j) if the applicant has been convicted of any offence (other than an excluded offence)—the nature of the offence,
- (k) if a show cause event has happened in relation to the applicant—details of the event,
- (l) if a pre-admission event has happened in relation to the applicant—details of the event,
- (m) if:
  - (i) the applicant is a legal practitioner director of an incorporated legal practice, and
  - (ii) a financial report and director's report is required to be prepared in respect of the incorporated legal practice under section 292 of the *Corporations Act 2001* of the Commonwealth,a copy of those reports (being the reports most recently lodged with the Australian

Securities and Investments Commission),

(n) the date of the applicant's admission as an Australian lawyer and the jurisdiction in which the applicant was admitted.

(2) Subclause (1) (j):

(a) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and

(b) applies to a conviction even if other persons are prohibited from disclosing the identity of the offender, and

(c) extends to an indictable offence committed before 1 October 2005 (and so extends whether the conviction occurred before, on or after that date), and

(d) extends to an offence (other than an indictable offence) committed after 8 March 1991, and

(e) does not apply to a conviction previously disclosed to the appropriate Council:

(i) under section 55 (Statutory condition regarding notification of offence) of the Act, or

(ii) under Division 7 (Special powers in relation to local practising certificates—show cause events) of Part 2.4 of the Act, or

(iii) in an application for a practising certificate under the new Act or the old Act, or

(iv) under clause 133 (Duty to report offences) of the former *Legal Profession Regulation 2002*.

(3) Neither paragraph (k) or (l) of subclause (1) requires the disclosure of any information previously disclosed to the appropriate Council:

(a) under Division 7 (Special powers in relation to local practising certificates—show cause events) of Part 2.4 of the Act, or

(b) in an application for a practising certificate under the new Act or the old Act, or

(c) under clause 134 (Duty to report bankruptcy) of the former *Legal Profession Regulation 2002*.

(4) Both paragraphs (k) and (l) of subclause (1) apply to events whether occurring before or after the commencement of this clause.

(4A) A Council may determine that applications made to it for the grant or renewal of a

local practising certificate by specified applicants or by applicants of a specified class need not provide, or be accompanied by, particulars of a specified kind that would otherwise be required by subclause (1), if:

- (a) the Council reasonably believes that special circumstances warrant the particulars not being disclosed to it (for example, on privacy, safety or security grounds), and
- (b) the Council considers that the public interest and administrative convenience in having the particulars disclosed to it are outweighed by any individual interest in the particulars not being disclosed.

(4B) If a Council determines under subclause (4A) that particulars of an applicant's residential address need not be disclosed, the application must include or be accompanied by a statement:

- (a) indicating whether or not the applicant resides in Australia, and
- (b) specifying the jurisdiction in which the applicant resides if the applicant indicates that he or she resides in Australia.

(5) In this clause, **offence** includes a tax offence.

## **12 Timing of application for renewal of local practising certificate—section 47 of the Act**

(1) For the purposes of section 47 (1) of the Act:

- (a) the period prescribed as the standard renewal period for making an application for renewal of a local practising certificate for a barrister is the period commencing on 1 April and ending on 7 June before the current local practising certificate expires, and
- (b) the period prescribed as the late fee period for making such an application is the period commencing on 8 June and ending on 30 June before the current local practising certificate expires.

(2) For the purposes of section 47 (1) of the Act:

- (a) the period prescribed as the standard renewal period for making an application for renewal of a local practising certificate for a solicitor is the period commencing on 1 April and ending on 15 May before the current local practising certificate expires, and
- (b) the period prescribed as the late fee period for making such an application is the period commencing on 16 May and ending on 30 June before the current local practising certificate expires.

## **13 Completion of periods of supervised legal practice—sections 53 and 102 of the Act**

(1) For the purposes of sections 53 and 102 of the Act, completion by a person of a period

or periods of supervised legal practice equivalent to the required period of 18 months or 2 years is to be worked out by satisfying the requirements of this clause.

- (2) The person satisfies the requirements of this clause if the person completes:
  - (a) one period of supervised legal practice, worked on a full-time basis, that is equal to the required period worked out on a full-time basis, or
  - (b) one period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period worked out on a full-time basis, or
  - (c) two or more periods of supervised legal practice, worked on either or both of those bases, that together are equal or equivalent to the required period.
- (3) For the purposes of this clause:
  - (a) public holidays during a relevant period are to be included as days of supervised legal practice, whether or not the person engaged in legal practice on those days, and
  - (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.

#### **14 Surrender of local practising certificate—section 79 of the Act**

- (1) The appropriate Council may accept from the holder of a current local practising certificate the surrender of the certificate and an application for a new certificate and, in that event, must issue a new practising certificate for the rest of the term of the surrendered certificate.
- (2) The appropriate Council may also accept from the holder of a current local practising certificate the surrender of the certificate if:
  - (a) the Council is satisfied that there is good reason for the surrender of the certificate (for example, that the holder is retiring from practice as a barrister or solicitor in this jurisdiction), and
  - (b) the Council is not aware of any circumstances that would give rise to the conducting of an investigation, or the taking of disciplinary action, under the Act.
- (3) The appropriate Council may, by notice in writing served on the holder of a practising certificate, require the certificate to be surrendered to the Council within a period specified in the notice.
- (4) A person must not fail to comply with a requirement made under subclause (3).  
Maximum penalty: 10 penalty units.
- (5) The appropriate Council may require a certificate to be surrendered under subclause

(3) only if satisfied that the holder of the certificate is not entitled to continue practising as a barrister or solicitor.

(6) The Council may refund the whole or a part of the fee paid in respect of a certificate surrendered under this clause if the Council considers that the refund should be made.

#### **15 Fee for practising certificate for barristers—section 91 of the Act**

(1) For the purposes of section 91 of the Act, the following costs of the Bar Association (including any ancillary costs and costs of an administrative nature) may be recovered by the charging of practising certificate fees (in addition to the costs of or associated with the regulatory functions of the Bar Council or Bar Association):

- (a) the costs associated with the maintenance and operation of the library of the Bar Association, but only if the library service is available to all barristers,
- (b) the costs associated with providing or assisting in providing any scheme under which legal services (including referral services) are provided to the public pro bono or at reduced rates, or are provided to a court or tribunal, but only if the scheme does not provide any greater benefit to barristers who are members of the Bar Association than it does to other barristers and the costs are not otherwise recoverable by the Bar Association,
- (c) the costs associated with providing or assisting in providing any information, scheme or program relating to the law, legal practice or conflict resolution that is provided for the information or education of the public, but only if the information, scheme or program does not provide any greater benefit to barristers who are members of the Bar Association than it does to other barristers and the costs are not otherwise recoverable by the Bar Association,
- (d) the costs associated with assisting the State or Commonwealth Government or a Parliamentary Committee of the State or Commonwealth with law reform initiatives, activities and programs, but only if the Attorney General is satisfied that the assistance is provided for the public benefit.

(2) In this clause, **barrister** means a local legal practitioner who holds a current local practising certificate to practise as a barrister.

#### **16 Fee for practising certificate for solicitors—section 91 of the Act**

(1) For the purposes of section 91 of the Act, the following costs of the Law Society (including any ancillary costs and costs of an administrative nature) may be recovered by the charging of practising certificate fees (in addition to the costs of or associated with the regulatory functions of the Law Society Council or Law Society):

- (a) the costs associated with the maintenance and operation of the library of the Law Society, but only if the library service is available to all solicitors,

- (b) the costs associated with providing or assisting in providing any scheme under which legal services (including referral services) are provided to the public pro bono or at reduced rates, but only if the scheme does not provide any greater benefit to solicitors who are members of the Law Society than it does to other solicitors and the costs are not otherwise recoverable by the Law Society,
  - (c) the costs associated with providing or assisting in providing any information, scheme or program relating to the law, legal practice or conflict resolution that is provided for the information or education of the public, but only if the information, scheme or program does not provide any greater benefit to solicitors who are members of the Law Society than it does to other solicitors and the costs are not otherwise recoverable by the Law Society,
  - (d) the costs associated with assisting the State or Commonwealth Government or a Parliamentary Committee of the State or Commonwealth with law reform initiatives, activities and programs, but only if the Attorney General is satisfied that the assistance is provided for the public benefit.
- (2) In this clause, **solicitor** means a local legal practitioner who holds a current local practising certificate to practise as a solicitor and barrister.

#### **17 Late fee—sections 92 and 92A of the Act**

- (1) For the purposes of section 92 of the Act, the late fee is an amount determined by the appropriate Council.
- (2) The appropriate Council may determine a scale of late fees in respect of applications, so that the greater the time that has elapsed since the end of the prescribed period the higher the late fee.
- (3) For the purposes of section 92A of the Act, the fee that may be required as a condition of acceptance of an application for the grant of a local practising certificate, where the applicant was the holder of a local practising certificate in respect of the previous financial year, is an amount determined by the appropriate Council.

#### **18 (Repealed)**

#### **19 Protocols—section 104 of the Act**

For the purposes of section 104 (4) of the Act, a document is identified as a protocol if the document describes itself as a protocol and is executed by or on behalf of either or both of the Councils and by or on behalf of one or more regulatory authorities of other jurisdictions.

#### **20 Register of local practising certificates—section 106 of the Act**

- (1) For the purposes of section 106 (2) (b) of the Act, the particulars referred to in subclauses (2) and (3) are prescribed as information to be included in the register kept



under section 106 of the Act in relation to a local legal practitioner, except where the appropriate Council is required by subclause (6) not to include them in the register.

- (2) The particulars to be included in the register are as follows:
  - (a) the name of the local legal practitioner,
  - (b) the type of local practising certificate held by the practitioner,
  - (c) the contact details of the office of the practitioner in this jurisdiction,
  - (d) any other particulars about the practitioner that the appropriate Council considers should be included.
- (3) In the case of a local legal practitioner who is a solicitor, the register must also contain the following particulars:
  - (a) the name of the law practice of which the solicitor is an associate or, if the solicitor is not an associate of a law practice, the name of the entity of which the solicitor is a director, officer or employee or with which the solicitor is otherwise engaged in legal practice,
  - (b) by way of a separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity:
    - (i) in this jurisdiction, and
    - (ii) in any other jurisdictions in which it has an office, except where the appropriate Council considers those particulars need not be included in respect of an entity that is not a law practice,
  - (c) any other particulars about the law practice or other entity that the appropriate Council considers should be included.
- (4) Contact details of an office are the following:
  - (a) its street address (the address where the office is physically located),
  - (b) its postal address (a post office box number and the location and postcode of the post office), if any,
  - (c) its DX address (the number of its DX box), if any.
- (5) A local legal practitioner may, by notice in writing to the appropriate Council, request the Council not to include any or any specified particulars about the practitioner, law practice or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).

- (6) If the appropriate Council is satisfied that those special circumstances exist, the Council is required not to include the particulars concerned in the register unless the Council considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

## **21 Notification of change in particulars**

- (1) A local legal practitioner must notify the appropriate Council, in writing, of any change in the particulars relating to the practitioner (as disclosed in the practitioner's last application for a local practising certificate) within 7 days after the change occurs.
- (2) A local legal practitioner must also notify the appropriate Council, in accordance with any request from that Council, of the following particulars:
- (a) particulars relating to any change to or dissolution of a partnership, formation of a new partnership, or acquisition of the practice of an Australian legal practitioner, by the practitioner,
  - (b) particulars relating to the formation of an incorporated legal practice, or the commencement of the provision of legal services by an incorporated legal practice, or any change to or winding up of an incorporated legal practice, including any change in the directors of the incorporated legal practice.
- (3) The request must be in the form of a notice served on the local legal practitioner and must specify which particulars are requested.

## **22 Application for practising certificate by Crown Solicitor requires report by Auditor-General**

- (1) An application by the Crown Solicitor for a practising certificate must be accompanied by a report of the Auditor-General stating:
- (a) that the Auditor-General has inspected the records kept under clause 106 during the year that ended on the last preceding 31 March, and
  - (b) whether the Auditor-General is of the opinion that the records have been kept as directed under clause 106.
- (2) A report under this clause may be provided by the Deputy Auditor-General or an Assistant Auditor-General if the Auditor-General so approves.

## **22A Australian Government Solicitor—section 114 of the Act**

The Australian Government Solicitor is prescribed as being within the definition of **government agency** in section 114 (4) of the Act.

## Division 2 Promotion of personal injury legal services

### Subdivision 1 Preliminary

#### 23 Definitions

In this Division:

**advertisement** means any communication of information (whether by means of writing, or any still or moving visual image or message or audible message, or any combination of them) that advertises or otherwise promotes a product or service, whether or not that is its purpose or only purpose and whether or not that is its effect or only effect.

**personal injury** includes pre-natal injury, impairment of a person's physical or mental condition, and disease.

**publish** means:

- (a) publish in a newspaper, magazine, journal, periodical, directory or other printed publication, or
- (b) disseminate by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
- (c) broadcast by radio or television, or
- (d) display on an internet website or otherwise publicly disseminate by means of the internet, or
- (e) publicly exhibit in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or
- (f) display on any document (including a business card or letterhead) gratuitously sent or gratuitously delivered to any person or thrown or left on any premises or on any vehicle, or
- (g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

**solicitor** includes the following:

- (a) a partnership of which a solicitor is a member (but only if the business of the partnership includes business of a kind ordinarily conducted by a solicitor),
- (b) a solicitor corporation,
- (c) an incorporated legal practice.

## Subdivision 2 Advertising by barristers and solicitors

### 24 Restriction on advertising personal injury services

- (1) A barrister or solicitor must not publish or cause or permit to be published an advertisement that promotes the availability or use of a barrister or solicitor to provide legal services if the advertisement includes any reference to or depiction of any of the following:
- (a) personal injury,
  - (b) any circumstance in which personal injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of personal injury, or any connection to or association with personal injury or a cause of personal injury,
  - (c) a **personal injury legal service** (that is, any legal service that relates to recovery of money, or any entitlement to recover money, in respect of personal injury).

Maximum penalty: 200 penalty units.

- (2) A contravention of this clause by a barrister or solicitor is declared to be professional misconduct.

**Note—**

A contravention of clause 75 of the [Workers Compensation Regulation 2003](#) can also be a contravention of this clause.

- (3) Evidence that a barrister or solicitor has been convicted of an offence under this clause or under clause 75 of the [Workers Compensation Regulation 2003](#) is sufficient evidence of a contravention of this clause by the barrister or solicitor for the purposes of any proceedings under Chapter 4 (Complaints and discipline) of the Act.

### 25 Exception for certain advertisements by community legal centres

This Subdivision does not apply to the publication by or on behalf of a complying community legal centre of an advertisement that would constitute a contravention of clause 24 by reason only that it advertises or promotes services provided by the community legal centre in connection with:

- (a) domestic violence, or
- (b) discrimination, or
- (c) sexual assault, or
- (d) victims of crime.

## 26 Exception for advertising specialty

- (1) This Subdivision does not prevent the publication of an advertisement that advertises a barrister or solicitor as being a specialist or offering specialist services, but only if the advertisement is published by means of:
  - (a) an entry in a practitioner directory that states only the name and contact details of the barrister or solicitor and any area of practice or accredited specialty of the barrister or solicitor, or
  - (b) a sign displayed at a place of business of the barrister or solicitor that states only the name and contact details of the barrister or solicitor and any accredited specialty of the barrister or solicitor, or
  - (c) an advertisement on an internet website operated by the barrister or solicitor the publication of which would be prevented under this Subdivision solely because it refers to personal injury or personal injury legal services in a statement of accredited specialty of the barrister or solicitor.
- (2) In this clause:

**accredited specialty** of a barrister or solicitor means a specialty in which the barrister or solicitor is accredited under an accreditation scheme conducted or approved by the appropriate Council.

**practitioner directory** means a printed publication, directory or database that is published by a person in the ordinary course of the person's business (and not by the barrister or solicitor concerned or a partner, employee or member of the practice of the barrister or solicitor).

## 27 Other exceptions

This Subdivision does not prevent the publication of an advertisement:

- (a) to any person who is already a client of the barrister or solicitor (and to no other person), or
- (b) to any person on the premises of a place of business of the barrister or solicitor, but only if the advertisement cannot be seen from outside those premises, or
- (c) in accordance with any order by a court, or
- (d) pursuant to a disclosure made by a law practice under Division 3 (Costs disclosure) of Part 3.2 of the Act, or
- (e) to the extent to which it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or
- (f) to the extent to which it relates only to legal education and is published to members of

the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or

(g) in accordance with any requirement imposed by or under a written law of the State.

## **28 Responsibility for employees and others**

For the purposes of this Subdivision, evidence that a person who is an employee of a barrister or solicitor, or a person otherwise exercising functions in the barrister's or solicitor's practice, published or caused to be published an advertisement is evidence (in the absence of evidence to the contrary) that the barrister or solicitor caused or permitted the publication of the advertisement.

## **29 Responsibility for advertisements published by others**

- (1) For the purposes of this Subdivision, an advertisement is taken to have been published or caused to be published by a barrister or solicitor if:
  - (a) the advertisement advertises or otherwise promotes the availability or use of the barrister or solicitor (either by name or by reference to a business name under which the barrister or solicitor practises) for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or
  - (b) the barrister or solicitor is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the referral of persons to the barrister or solicitor for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or
  - (c) the barrister or solicitor is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the person to advertise on behalf of the barrister or solicitor.
- (2) This clause does not apply to an advertisement if the barrister or solicitor proves that the barrister or solicitor took all reasonable steps to prevent the advertisement being published.

## **30 Double jeopardy**

A person who has been convicted of an offence under Part 18 of the *Workers Compensation Regulation 2003* is not, if that offence would constitute an offence under this Subdivision in respect of the publication of an advertisement, liable to be convicted of an offence under this Subdivision in respect of that publication.

### **31 Transitional provisions**

- (1) Anything that, immediately before 1 October 2005, had effect under Division 2 of Part 14 of the *Legal Profession Regulation 2002* has effect for the purposes of this Subdivision.
- (2) In particular, this Subdivision does not prevent the publication of an advertisement in a printed publication the contents of which were finalised (by the publisher of that publication) before 9 May 2003.

### **Subdivision 3 Advertising by persons other than barristers and solicitors**

#### **32 Application of Subdivision**

This Subdivision does not apply to conduct of a barrister or solicitor.

#### **33 Definition of “personal injury advertisement”**

In this Subdivision, **personal injury advertisement** means an advertisement that includes any reference to or depiction of:

- (a) personal injury, or
- (b) any circumstance in which personal injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of personal injury, or any connection to or association with personal injury or a cause of personal injury.

#### **34 Restrictions on personal injury advertisements**

- (1) A person must not publish or cause or permit to be published a personal injury advertisement if the advertisement:
  - (a) advertises or otherwise promotes the availability or use of a barrister or solicitor (whether or not a particular barrister or solicitor) to provide legal services, whether or not that is its purpose or only purpose and whether or not that is its effect or only effect, or
  - (b) includes any reference to or depiction of the recovery of money or a claim for money, or any entitlement to recover money or claim money, in respect of personal injury.

Maximum penalty: 200 penalty units.

- (2) A person must not publish or cause or permit to be published a personal injury advertisement if the person is engaged in a practice involving, or is a party to an agreement, understanding or other arrangement that provides for, the referral of persons to one or more barristers or solicitors for the provision of legal services in

connection with the recovery of money, or an entitlement to recover money, in respect of personal injury.

Maximum penalty: 200 penalty units.

- (3) A person who is a member of a partnership or a director or officer of a body corporate must not expressly, tacitly or impliedly authorise or permit a contravention of subclause (1) or (2) by the partnership or body corporate or by an employee or agent of the partnership or body corporate on behalf of the partnership or body corporate.

Maximum penalty: 200 penalty units.

**Editorial note—**

On 20 June 2008, the Supreme Court of New South Wales in *The Council of the Law Society of New South Wales v Australian Injury Helpline Limited & Ors* declared that “Regulation 34 of the [Legal Profession Regulation 2005](#) is not authorised by the [Legal Profession Act 2004](#) and is invalid”.

**35 Exception for advertisements about domestic violence and discrimination—community legal centres**

This Subdivision does not apply to the publication by or on behalf of a community legal centre of a personal injury advertisement by reason only that it advertises or promotes services provided by the community legal centre in connection with domestic violence or discrimination.

**36 Exception for advertising specialty**

- (1) This Subdivision does not prevent the publication of an advertisement that advertises a barrister or solicitor as being a specialist or offering specialist services, but only if the advertisement is published by means of:
- (a) an entry in a practitioner directory that states only the name and contact details of the barrister or solicitor and any area of practice or accredited specialty of the barrister or solicitor, or
  - (b) a sign displayed at a place of business of the barrister or solicitor that states only the name and contact details of the barrister or solicitor and any accredited specialty of the barrister or solicitor, or
  - (c) an advertisement on an internet website operated on behalf of the barrister or solicitor the publication of which would be prevented under this Subdivision solely because it refers to personal injury or legal services in a statement of accredited specialty of the barrister or solicitor.

- (2) In this clause:

**accredited specialty** of a barrister or solicitor means a specialty in which the barrister or solicitor is accredited under an accreditation scheme conducted or



approved by the appropriate Council.

**practitioner directory** means a printed publication, directory or database that is published by a person in the ordinary course of the person's business (and not by the barrister or solicitor concerned or a partner, employee or member of the practice of the barrister or solicitor).

### 37 Other exceptions

This Subdivision does not apply to the publication of an advertisement:

- (a) in accordance with any order by a court, or
- (b) to the extent to which it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or
- (c) to the extent to which it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or
- (d) by an industrial organisation (within the meaning of the [Industrial Relations Act 1996](#)) if the advertisement (or so much of it as would otherwise contravene clause 34) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or
- (e) by a person in the ordinary course of the person's business as an insurer or insurance agent or broker, to the extent only that it includes a reference to or depiction of the recovery of money under a policy of insurance, or
- (f) in accordance with any requirement imposed by or under a written law of the State.

### 38 Protection of publishers

A contravention of clause 34 by a person who publishes an advertisement in the ordinary course of the person's business as a publisher does not constitute an offence under this Subdivision (but is still a contravention of that clause for the purposes of section 85 of the Act).

**Note—**

Section 85 provides for the giving of directions to persons to prevent contraventions of this Subdivision. A publisher who contravenes a direction not to publish a particular advertisement will commit an offence.

### 39 Double jeopardy

A person who has been convicted of an offence under Part 18 of the [Workers Compensation Regulation 2003](#) is not, if that offence would constitute an offence under this Subdivision in respect of the publication of an advertisement, liable to be convicted of an offence under this Subdivision in respect of that publication.

#### **40 Transitional provisions**

- (1) Anything that, immediately before 1 October 2005, had effect under Division 3 of Part 14 of the *Legal Profession Regulation 2002* has effect for the purposes of this Subdivision.
- (2) In particular, this Subdivision does not prevent the publication of an advertisement in a printed publication if the contents of the publication were finalised (by the publisher of that publication) before 15 June 2005.

### **Part 6 Incorporated legal practices and multi-disciplinary partnerships—Part 2.6 of the Act**

#### **41 Exempt corporations—section 134 of the Act**

- (1) For the purposes of section 134 (2) (d) of the Act, the following corporations are not incorporated legal practices:
  - (a) the Law Society,
  - (b) the Bar Association.
- (2) For the purposes of section 134 (2) (d) of the Act, an organisation referred to in clause 8A is not an incorporated legal practice, but only to the extent that paragraphs (a)–(d) of that clause are satisfied.

**Note—**

Complying community legal centres are exempt by virtue of section 134 (2) (c) of the Act.

#### **41A Prohibition on conduct of managed investment scheme by incorporated legal practice—section 135 (2) of the Act**

Section 135 (2) of the Act is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the Corporations legislation.

#### **42 Notice of termination of provision of legal services—section 139 of the Act**

- (1) For the purposes of section 139 of the Act, the prescribed period within which a corporation must give a notice under that section is 14 days after it ceases to engage in legal practice in this jurisdiction.
- (2) (Repealed)

#### **43 Disqualifications and prohibitions—sections 153, 154 and 179 of the Act**

- (1) This clause applies to:
  - (a) an order made under section 153 of the Act disqualifying a corporation from

providing legal services in this jurisdiction, or

- (b) an order made under section 154 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice, or
- (c) an order made under section 179 of the Act prohibiting an Australian legal practitioner from being a partner of a specified person,

being an order made on the application of the Law Society Council or the Regulator.

- (2) The Law Society Council or the Regulator or both of them may publicise an order in any manner the Council or Regulator thinks fit.
- (3) The applicant for an order:
  - (a) must, as soon as practicable after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction, and
  - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- (4) The notice under subclause (3) for an order made under section 153 of the Act:
  - (a) must state:
    - (i) the corporation's name, and
    - (ii) the Australian Company Number (ACN) of the corporation, and
    - (iii) the office or business address of the corporation, as last known to the applicant for the order, and
    - (iv) the date of the order, and
  - (b) may contain other relevant information, and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subclause (3) for an order made under section 154 or 179 of the Act:
  - (a) must state:
    - (i) the person's name, and
    - (ii) the person's address, as last known to the applicant for the order, and
    - (iii) the date of the order, and
  - (b) may contain other relevant information, and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.

- (6) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of this clause.
- (7) In this clause, **protected person** means:
- (a) the State, or
  - (b) the Law Society Council, or
  - (c) the Regulator, or
  - (d) a person responsible for keeping the whole or any part of a register or any similar record in or by which an order is publicised, or
  - (e) an internet service provider or internet content host, or
  - (f) a person acting at the direction of the State or of any person or body referred to in this definition.

## **Part 7 Legal practice by foreign lawyers—Part 2.7 of the Act**

### **44 Scope of practice—section 188 of the Act**

- (1) For the purposes of section 188 (1) (b) of the Act, the following kinds of arbitration proceedings are prescribed as kinds of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances):
- (a) arbitration proceedings in which:
    - (i) the arbitrator is not required to apply the rules of evidence, and
    - (ii) knowledge of Australian law is not essential, and
  - (b) proceedings for the arbitration of industrial disputes in accordance with Chapter 3 of the *Industrial Relations Act 1996*.
- (2) For the purposes of section 188 (1) (d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which:
- (a) the provisions of other legislation applying to dispute resolution, or
  - (b) the requirements of a body responsible for dispute resolution, or
  - (c) the provisions of a contract that provides for dispute resolution,
- restrict participation in dispute resolution to persons of a specified class that does not include Australian-registered foreign lawyers.

- (3) In this clause, **dispute resolution** means conciliation, mediation and other forms of consensual dispute resolution, and includes:
- (a) the conciliation of industrial disputes undertaken in accordance with Chapter 3 of the *Industrial Relations Act 1996*, and
  - (b) mediation undertaken in accordance with Part 4 of the *Civil Procedure Act 2005*.

**45 Trust money and trust accounts—section 195 of the Act**

- (1) For the purposes of section 195 of the Act:
- (a) the provisions of Part 3.1 (Trust money and trust accounts) of the Act, and
  - (b) any other provisions of the Act (other than Part 3.4 (Fidelity cover) of the Act) relating to trust money and trust accounts,
- apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.
- (2) The provisions of Part 8 of this Regulation accordingly apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.

**46 Professional indemnity insurance—section 196 of the Act**

- (1) For the purposes of section 196 of the Act, an Australian-registered foreign lawyer who engages in legal practice in this jurisdiction:
- (a) must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable to local legal practitioners or interstate legal practitioners, or
  - (b) must have some other professional indemnity insurance in respect of the practice of foreign law in this jurisdiction.
- (2) An Australian-registered foreign lawyer may not engage in legal practice in this jurisdiction in reliance on subclause (1) (a) unless he or she has satisfied the Law Society Council that he or she has the professional indemnity insurance referred to in that paragraph.
- (3) An Australian-registered foreign lawyer may not engage in legal practice in this jurisdiction on behalf of a client in reliance on subclause (1) (b) unless he or she has provided the client with a disclosure statement in respect of the professional indemnity insurance referred to in that paragraph.
- (4) A disclosure statement under subclause (3) is not valid unless:

- (a) it is in writing, and
- (b) it is in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding, and
- (c) it states that the lawyer is covered by professional indemnity insurance, but that the insurance does not conform with the requirements for professional indemnity insurance applicable to local legal practitioners or interstate legal practitioners, and
- (d) if the insurance covers the lawyer for less than \$1,500,000 (inclusive of any legal costs arising from claims under the insurance), it specifies the limit or limits of the insurance cover, and
- (e) it specifies the insurer by whom the insurance cover is provided, and
- (f) it indicates whether or not the insurance is provided in conformity with the requirements of a corresponding foreign law or the requirements of a foreign registration authority.

**47 Fidelity cover (contributions)—section 197 of the Act**

- (1) This clause applies to a locally registered foreign lawyer practising foreign law in this jurisdiction as an associate of a law practice.
- (2) A foreign lawyer to whom this clause applies must, when his or her application for the grant or renewal of registration as a foreign lawyer under the Act is granted by the domestic registration authority (being the Law Society Council) 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 registration is to be in force.
- (3) The amount of a contribution to the Fidelity Fund is the amount determined by the Law Society Council and approved by the Attorney General in accordance with section 430 (3) of the Act in respect of solicitors (other than solicitors who are interstate legal practitioners).
- (4) The Law Society Council may permit a contribution to be paid by instalments under an arrangement approved by the Council.
- (5) If the foreign lawyer is registered 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.
- (6) If a foreign lawyer to whom this clause applies has paid a contribution for a year ending on 30 June and ceases to practise as a locally registered foreign lawyer 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.

**48 Fidelity Fund (levies)—section 197 of the Act**

Section 431 of the Act applies to a locally registered foreign lawyer practising in this jurisdiction as an associate of a law practice in the same way as it applies to a local legal practitioner.

**49 Fidelity Fund (failure to pay contribution or levy)—section 197 of the Act**

- (1) Section 432 of the Act applies to a locally registered foreign lawyer practising foreign law in this jurisdiction as an associate of a law practice in the same way as it applies to a local legal practitioner, with the modification made by subclause (2).
- (2) Section 432 of the Act applies under this clause as if a reference in that section to a contribution required under section 430 of the Act were a reference to a contribution required under clause 47 of this Regulation.

**50 Locally registered foreign lawyers not covered by Fidelity Fund**

- (1) This clause applies to a locally registered foreign lawyer practising foreign law in this jurisdiction otherwise than as an associate of a law practice.
- (2) A foreign lawyer to whom this clause applies may not practise foreign law in this jurisdiction on behalf of a client unless he or she has provided the client with a disclosure statement in respect of his or her lack of cover by the Fidelity Fund.
- (3) A disclosure statement under subclause (2) is not valid unless:
  - (a) it is in writing, and
  - (b) it is in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding, and
  - (c) it states that the foreign lawyer is not covered by the Fidelity Fund with respect to the practice of foreign law in this jurisdiction, and
  - (d) it states that Australian legal practitioners generally are covered by the Fidelity Fund.

**51 (Repealed)**

**52 Register of locally registered foreign lawyers—section 232 of the Act**

- (1) For the purposes of section 232 (2) (b) of the Act, the particulars referred to in subclauses (2) and (3) are prescribed as particulars to be included in the register kept under section 232 of the Act in relation to a locally registered foreign lawyer, except where the domestic registration authority is required by subclause (6) not to include

them in the register.

(2) The particulars to be included in the register are as follows:

(a) the name of the foreign lawyer,

(b) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice,

(c) the contact details of the office of the partnership or other entity in this jurisdiction,

(d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity:

(i) in this jurisdiction, and

(ii) in any other jurisdictions in which it has an office, except where the domestic registration authority considers those particulars need not be included in respect of an entity that is not a law practice,

(e) details of the foreign registration authority or authorities by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries,

(f) any other particulars about the lawyer, partnership or other entity that the authority considers should be included.

(3) (Repealed)

(4) Contact details of an office are the following:

(a) its street address (the address where the office is physically located),

(b) its postal address (a post office box number and the location and postcode of the post office), if any,

(c) its DX address (the number of its DX box), if any.

(5) A locally registered foreign lawyer may, by notice in writing to the domestic registration authority, request the authority not to include any or any specified particulars about the lawyer, partnership or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).

(6) If the domestic registration authority is satisfied that those special circumstances exist, the authority is required not to include the particulars concerned in the register



unless the authority considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

## **Part 8 Trust money and trust accounts—Part 3.1 of the Act**

### **Division 1 Preliminary**

#### **53 Operation of this Part**

- (1) This Part has effect for the purposes of Part 3.1 of the Act, and accordingly applies to a law practice in respect of:
- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction, and
  - (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction, and
  - (c) trust money received by the practice in another jurisdiction, if the practice has an office in:
    - (i) this jurisdiction, and
    - (ii) one or more other jurisdictions, but not in the jurisdiction in which the money was received,

unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

- (2) This Part (apart from clause 106) does not apply to the Crown Solicitor.

#### **54 Definitions**

In this Part:

**BSB number** (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI.

**matter description** means a brief phrase or expression assigned by a law practice to describe a matter.

**matter reference** means a number or other reference assigned by a law practice to identify a matter.

**trust money** means trust money in respect of which this Part for the time being applies, as mentioned in clause 53 (1).

## **Division 2 Computerised accounting systems**

### **55 Application of Division**

This Division applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

### **56 Copies of trust records to be printed**

- (1) The law practice must print a paper copy of trust records as follows:
  - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand,
  - (b) reconciliation statements prepared under clause 72 (Reconciliation of trust records) are to be printed as at the end of each named month,
  - (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each named month,
  - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month,
  - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system,
  - (f) trust ledger account and controlled money account details are to be printed on request by and provided to an investigator as defined in section 658 of the Act.
- (2) The trust records printed monthly as at the end of a named month under subclause (1) (a)–(d) must be printed within 15 working days after the named month.
- (3) The paper copies printed under subclause (1) are to be kept by the law practice, except where they are printed on request under that subclause.
- (4) The electronic copy of the trust account cash books under subclause (1) (a) is to be kept by the law practice.

### **57 Chronological record of information to be made**

- (1) The law practice must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following:
  - (a) client name,
  - (b) client address,

- (c) matter reference,
- (d) matter description,
- (e) ledger account number or other descriptor.

(2) The record is to be kept by the law practice.

### **58 Requirements regarding computer accounting systems**

- (1) The law practice must ensure that its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless:
  - (a) the balance of the account is zero and all outstanding cheques have been presented, and
  - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure that any entry in a record produced in a permanent form appears in chronological sequence.
- (4) The law practice must ensure that each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice must ensure that its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure that its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

### **59 Back-ups**

The law practice must ensure that:

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month, and
- (b) each back-up copy is kept by the law practice, and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

## **Division 3 General trust accounts**

### **60 Establishment of general trust account**

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this clause, but must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.
- (2) A general trust account satisfies the requirements of this clause if:
  - (a) the account is established in this jurisdiction, before, on or after 1 October 2005, with an approved ADI, and
  - (b) the account is and is to be maintained in this jurisdiction, and
  - (c) the name of the account includes:
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice, and
    - (ii) the expression “law practice trust account” or “law practice trust a/c”, and
  - (d) the account is of a kind that is for the time being approved by the Law Society Council.
- (3) Subclause (2) (c) does not apply to an account established in this jurisdiction before 1 October 2005.
- (4) Subclause (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.

### **61 Receipting of trust money**

- (1) This clause applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable:
  - (a) after the trust money is received, except as provided by paragraph (b), or
  - (b) in the case of trust money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt

is made out those particulars are recorded by computer program in the trust account receipts cash book.

- (5) For the purposes of subclause (4), the **required particulars** are as follows:
- (a) the date the receipt is made out and, if different, the date of receipt of the money,
  - (b) the amount of money received,
  - (c) the form in which the money was received,
  - (d) the name of the person from whom the money was received,
  - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference,
  - (f) particulars sufficient to identify the purpose for which the money was received,
  - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression "trust account" or "trust a/c",
  - (h) the name of the person who made out the receipt,
  - (i) the number of the receipt.
- (6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

## **62 Deposit records for trust money**

- (1) This clause applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record:
- (a) the date of the deposit,
  - (b) the amount of the deposit,
  - (c) whether the deposit consists of cheques, notes or coins (and the amount of each),
  - (d) for each cheque:

- (i) the name of the drawer of the cheque,
  - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn,
  - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

### **63 Direction for non-deposit of trust money in general trust account**

For the purposes of section 254 (3) of the Act, the prescribed period for which a written direction referred to in section 254 (1) (a) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

### **64 (Repealed)**

### **65 Payment by cheque**

- (1) This clause applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) A cheque:
- (a) must be made payable to or to the order of a specified person or persons and not to bearer or cash, and
  - (b) must be crossed “not negotiable”, and
  - (c) must include:
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice, and
    - (ii) the expression “law practice trust account” or “law practice trust a/c”.
- (3) A cheque must be signed:
- (a) by an authorised principal of the law practice, or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) by an authorised legal practitioner associate, or
    - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money, or

(iii) by two or more authorised associates jointly.

- (4) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (5) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For the purposes of subclauses (4) and (5), the **required particulars** are as follows:
- (a) the date and number of the cheque,
  - (b) the amount ordered to be paid by the cheque,
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment,
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference,
  - (e) details clearly identifying the ledger account to be debited,
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (7A) Subclause (2) (c) does not apply to an account established in this jurisdiction before 1 October 2005.
- (8) Subclause (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.
- (9) In this clause:

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice to sign cheques drawn on the general trust account.

## **66 Payment by electronic funds transfer**

- (1) This clause applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.

- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of:
  - (a) an authorised principal of the law practice, or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate, or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money, or
    - (iii) two or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (4) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (5) For the purposes of subclauses (3) and (4), the **required particulars** are as follows:
  - (a) the date and number of the transaction,
  - (b) the amount transferred,
  - (c) the name and number of the account to which the amount was transferred and relevant BSB number,
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference,
  - (f) details clearly identifying the ledger account to be debited,
  - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.
- (7) In this clause:

**associate** means an associate of the law practice.



**authorised** means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

#### **67 Recording transactions in trust account cash books**

A law practice that maintains a general trust account must keep the following trust account cash books:

- (a) a trust account receipts cash book in accordance with clause 68,
- (b) a trust account payments cash book in accordance with clause 69.

#### **68 Trust account receipts cash book**

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in respect of each receipt of trust money:
  - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money,
  - (b) the receipt number,
  - (c) the amount of money received,
  - (d) the form in which the money was received,
  - (e) the name of the person from whom the money was received,
  - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference,
  - (g) particulars sufficient to identify the purpose for which the money was received,
  - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in respect of a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

#### **69 Trust account payments cash book**

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in respect of each payment of trust money by cheque:
  - (a) the date and number of the cheque,

- (b) the amount ordered to be paid by the cheque,
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference,
  - (e) details clearly identifying the ledger account to be debited,
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer:
- (a) the date and number of the transaction,
  - (b) the amount transferred,
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number,
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference,
  - (f) details clearly identifying the ledger account to be debited,
  - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.
- (4) The particulars in respect of a payment must be recorded within 5 working days counting from and including the day the payment was made.

#### **70 Recording transactions in trust ledger accounts**

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account:
  - (a) the name of the person for or on behalf of whom the trust money was paid,

- (b) the person's address,
  - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter:
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money,
  - (b) the receipt number,
  - (c) the amount of money received,
  - (d) the name of the person from whom the money was received,
  - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque:
- (a) the date and number of the cheque,
  - (b) the amount ordered to be paid by the cheque,
  - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer:
- (a) the date and number of the transaction,
  - (b) the amount transferred,
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number,
  - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (e) particulars sufficient to identify the purpose for which the payment was made.

- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry:
  - (a) the date of the transfer,
  - (b) the amount transferred,
  - (c) the journal reference number,
  - (d) the name of the other trust ledger account from which or to which the money was transferred,
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

## **71 Journal transfers**

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if:
  - (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account, and
  - (b) subclause (1A) is complied with.
- (1A) The transfer must be authorised in writing:
  - (a) by an authorised principal of the law practice, or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) by an authorised legal practitioner associate, or
    - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money, or
    - (iii) by two or more authorised associates jointly, or
  - (c) by an external intervener for the practice.

(1B) For the purposes of subclause (1A):

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice or an external intervener for the practice to effect, direct or give authority for the transfer of trust money by journal entry from one trust ledger account in the practice's trust ledger to another trust ledger account in the trust ledger.

**external intervener** has the same meaning as in section 611 of the Act.

- (2) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry:
  - (a) the date of the transfer,
  - (b) the trust ledger account from which the money is transferred (including its identifying reference),
  - (c) the trust ledger account to which the money is transferred (including its identifying reference),
  - (d) the amount transferred,
  - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (4) Journal pages or entries must be consecutively numbered.
- (5) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

## **72 Reconciliation of trust records**

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to the only or each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing:
  - (a) a statement:
    - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books, and
    - (ii) showing the date the statement was prepared, and

(b) a statement:

- (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books, and
- (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates, and
- (iii) showing the date the statement was prepared.

(3) The statements must be prepared within 15 working days after the end of the month concerned.

(4) The statements must be kept by the law practice.

### **73 Trust ledger account in name of law practice or legal practitioner associate**

(1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this clause.

(2) A law practice may maintain in its trust ledger:

- (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs, and
- (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.

(3) In a case to which subclause (2) (a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.

(4) In a case to which subclause (2) (b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

### **74 Notification requirements regarding general trust accounts**

(1) Within 14 days after establishing a general trust account, a law practice must give the Law Society Council written notice of that fact.

(2) Subclause (1) does not apply to a general trust account established before 1 October 2005.

(3) A law practice:

- (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner:
  - (i) to sign cheques drawn on a general trust account of the practice, or
  - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice,

must give the Law Society Council written notice of that fact (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice), and

- (b) during July of each year, must give the Law Society Council written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July of that year:
  - (i) to sign cheques drawn on a general trust account of the practice, or
  - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.

- (4) Subclause (3) (a) does not apply to an authority that was given or terminated before 1 October 2005.
- (5) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the Law Society Council written notice of that fact.
- (6) Subclause (5) does not apply to a general trust account that was closed before 1 October 2005.
- (7) A notice under this clause given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (8) In this clause, **law practice** includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

**Note—**

Clause 103 contains provisions for the notification of the appropriate authority when a law practice involved with trust money closes down, closes its office or ceases to receive or hold trust money.

## **Division 4 Controlled money**

### **75 Maintenance of controlled money accounts—section 256 (4) of the Act**

- (1) For the purposes of section 256 (4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars:
  - (a) the name of the law practice concerned,

- (b) the expression “controlled money account” or the abbreviation “CMA” or “CMA/c”,
  - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This clause does not apply to an account established in this jurisdiction before 1 October 2005.

## **76 Receipt of controlled money**

- (1) This clause applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable:
  - (a) after the controlled money is received, except as provided by paragraph (b), or
  - (b) in the case of controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For the purposes of subclause (5), the **required particulars** are as follows:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money,
  - (b) the amount of money received,
  - (c) the form in which the money was received,
  - (d) the name of the person from whom the money was received,
  - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference,
  - (f) particulars sufficient to identify the purpose for which the money was received,
  - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out,
  - (h) the name of the law practice, or the business name under which the law practice



engages in legal practice, and the expression “controlled money receipt”,

- (i) the name of the person who made out the receipt,
  - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

#### **77 Deposit of controlled money—section 256 (5) of the Act**

For the purposes of section 256 (5) of the Act, the prescribed period for which a written direction referred to in section 256 (1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

#### **78 Withdrawal of controlled money must be authorised**

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of:
- (a) an authorised principal of the law practice, or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate, or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money, or
    - (iii) two or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.

- (4) For the purposes of subclauses (2) and (3), the **required particulars** are as follows:
- (a) the date and number of the transaction,
  - (b) the amount withdrawn,
  - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number,
  - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment,
  - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference,
  - (f) particulars sufficient to identify the purpose for which the payment was made,
  - (g) the person or persons effecting, directing or authorising the withdrawal.
- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.

- (6) In this clause:

**associate** means an associate of the law practice.

**authorised** means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

## **79 (Repealed)**

## **80 Register of controlled money**

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
  - (a) the name of the person on whose behalf the controlled money is held,
  - (b) the person's address,
  - (c) particulars sufficient to identify the matter,

- (d) any changes to the information referred to in paragraphs (a)–(c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
- (a) the date the controlled money was received,
  - (b) the number of the receipt,
  - (c) the date the money was deposited in the controlled money account,
  - (d) the name of and other details clearly identifying the controlled money account,
  - (e) the amount of controlled money deposited,
  - (f) details of the deposit sufficient to identify the deposit,
  - (g) interest received,
  - (h) details of any payments from the controlled money account, including the particulars required to be recorded under clause 78 (2).
- (5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must retain as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month:
- (a) containing a list of the practice’s controlled money accounts showing:
    - (i) the name, number and balance of each account in the register, and
    - (ii) the name of the person on whose behalf the controlled money in each account was held, and
    - (iii) a short description of the matter to which each account relates, and
  - (b) showing the date the statement was prepared.

## **Division 5 Transit money**

### **81 Information to be recorded about transit money—section 257 of the Act**

- (1) This clause has effect for the purposes of section 257 of the Act.
- (2) A law practice must, in respect of transit money received by the practice, record and retain brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

## **Division 6 Trust money generally**

### **82 Trust account statements**

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- (3) In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
- (5) A trust account statement is to contain particulars of:
  - (a) all of the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record, and
  - (b) the remaining balance (if any) of the money.
- (6) A trust account statement is to be furnished:
  - (a) as soon as practicable after completion of the matter to which the ledger account or record relates, or
  - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter, or
  - (c) except as provided by subclause (7), as soon as practicable after 30 June in each year.

- (7) The law practice is not required to furnish a trust account statement under subclause (6) (c) in respect of a ledger account or record if at 30 June:
  - (a) the ledger account or record has been open for less than 6 months, or
  - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months, or
  - (c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must retain a copy of a trust account statement furnished under this clause.

### **83 Trust account statements for sophisticated clients**

- (1) In this clause:

***sophisticated client*** has the same meaning as in section 302 of the Act.

- (2) Clause 82 (Trust account statements) does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that clause.
- (3) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that prescribed by clause 82, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (4) The law practice must keep a copy of a trust account statement provided under this clause.

### **84 Register of investments**

- (1) This clause applies if trust money referred to in section 244 (3) of the Act is invested by a law practice for or on behalf of a client, but this clause does not itself confer power to make investments.
- (2) The law practice must maintain a register of investments of trust money.
- (3) The register must record the following information in relation to each investment:
  - (a) the name in which the investment is held,
  - (b) the name of the person on whose behalf the investment is made,
  - (c) the person's address,
  - (d) particulars sufficient to identify the investment,

- (e) the amount invested,
- (f) the date the investment was made,
- (g) particulars sufficient to identify the source of the investment, including, for example:
  - (i) a reference to the relevant trust ledger, and
  - (ii) a reference to the written authority to make the investment, and
  - (iii) the number of the cheque for the amount to be invested,
- (h) details of any documents evidencing the investment,
- (i) details of any interest received from the investment or credited directly to the investment,
- (j) details of the repayment of the investment and any interest, on maturity or otherwise.

(4) This clause does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another clause.

#### **85 Trust money subject to specific powers—section 258 of the Act**

- (1) This clause has effect for the purposes of section 258 of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money, the practice must keep:
  - (a) a record of all dealings with the money to which the practice or associate is a party, and
  - (b) all supporting information in relation to the dealings,in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

#### **86 Register of powers and estates in relation to trust money**

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money.
- (2) Subclause (1) does not apply where the law practice or associate is also required to act jointly with one or more persons who are not associates of the practice.

- (3) The register of powers and estates must record:
  - (a) the name and address of the donor and date of each power, and
  - (b) the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

**87 (Repealed)**

**88 Withdrawing trust money for legal costs—section 261 (1) (b) of the Act**

- (1) This clause prescribes, for the purposes of section 261 (1) (b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subclause (3) or (4).
- (3) The law practice may withdraw the trust money:
  - (a) if:
    - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal, or
    - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal, or
    - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person, and
  - (b) if, before effecting the withdrawal, the practice gives or sends to the person a request for payment, referring to the proposed withdrawal.
- (4) The law practice may withdraw the trust money:
  - (a) if the practice has given the person a bill relating to the money, and
  - (b) if:
    - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill, or
    - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill, or
    - (iii) the money otherwise becomes legally payable.

- (5) Instructions mentioned in subclause (3) (a) (ii):
  - (a) if given in writing, must be kept as a permanent record, or
  - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.
- (6) For the purposes of subclause (3) (a) (iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

#### **89 Keeping of trust records—section 264 of the Act**

- (1) This clause has effect for the purposes of section 264 of the Act for the keeping in a permanent form of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records are to be kept for a period of 7 years after:
  - (a) in the case of a trust record referred to in paragraphs (a)–(m) of the definition of **trust records** in section 243 (1) of the Act—the only or the last transaction entry in the record, or
  - (b) in the case of any other trust record—finalisation of the matter to which the record relates.
- (3) This clause does not apply to a written direction referred to in section 254 (1) (a) or 256 (1) of the Act.

#### **90 Keeping other records and information**

- (1) A record maintained under clause 57 (Chronological record of information to be made) is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this Part to be kept by a law practice is to be kept for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This clause does not apply to records to which clause 63 (Deposit of trust money), clause 77 (Deposit of controlled money) or clause 89 (Keeping of trust records) applies.

#### **91 Statements regarding receipt or holding of trust money**

- (1) The Law Society Council may, by notice given under this clause, require a law practice to give the Council a statement:



- (a) specifying whether or not the practice has, during a period specified by the Council, received or held trust money, and
  - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
    - (i) general trust money (being trust money other than that referred to in subparagraphs (ii)–(iv)),
    - (ii) controlled money,
    - (iii) transit money,
    - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may specify the time by which or the period during which the requirement is to be complied with.
- (4) A notice is given to:
- (a) a particular law practice by sending the notice by post to the practice, or
  - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice:
- (a) must comply with a requirement imposed on it under this clause and must do so by the time or during the period specified in the notice for compliance, and
  - (b) must not include in the statement any information that is false or misleading in a material particular.

## **Division 7 External examinations**

### **92 Requirement for external examinations**

If the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records in respect of that year are not required to be externally examined.

### **93 Appointment of designated persons—sections 274 and 275 of the Act**

A law practice must cause written notice to be given to the Law Society Council on each occasion that it appoints a designated person as an external examiner and on each occasion that it terminates any such appointment.

**94 Prescribed form for law practice ceasing to be authorised to receive trust money or engage in legal practice—section 275 (3) (b) of the Act**

For the purposes of section 275 (3) (b) of the Act, the prescribed form of a statutory declaration to be lodged by a law practice is Form 1.

**95 Report on external examiner’s examination—section 277 of the Act**

For the purposes of section 277 (3) (b) of the Act, the form and content of an external examiner’s report (but not the substance of the report) are to be as approved by the Law Society Council.

**Division 8 Statutory deposits and Public Purpose Fund**

**96 Deposit of trust funds with Law Society**

- (1) Out of the money that is paid to a general trust account kept by a law practice, the law practice must deposit with the Law Society, and keep deposited with the Society, an amount not less than the minimum amount calculated in accordance with clause 97.
- (2) Money is taken to have been deposited with the Law Society if it is deposited in the name of the Society with an ADI nominated by the Society.
- (3) Subclause (1) does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.
- (4) This clause does not affect any enforceable lien or claim that a law practice has over, or to, any money.
- (5) It is professional misconduct by each principal of a law practice if the law practice contravenes subclause (1) in relation to a general trust account kept by the law practice.

**97 Amount of deposit**

- (1) The minimum amount to be deposited and kept deposited with the Law Society in respect of an applicable period is an amount equal to the sum of:
  - (a) the lowest balance recorded in the trust account kept by the law practice during the previous applicable period, and
  - (b) the amount (if any) on deposit by the law practice with the Society on the day on which that lowest balance is recorded.
- (2) Despite subclause (1), if, in the case of a particular law practice, on any day during the period beginning with the end of the previous applicable period and ending with the 15th banking day after the end of that period, the sum of:

- (a) the lowest balance recorded in the trust account during that 15-day period, and
- (b) the amount (if any) on deposit with the Law Society on that day,

is less than the sum of the amounts referred to in subclause (1) (a) and (b), the minimum amount that the law practice is to deposit and keep deposited with the Society is an amount equal to 80% of the lesser sum.

- (3) Despite subclauses (1) and (2), if during an applicable period money is repaid to the law practice under section 284 of the Act, the minimum amount to be deposited and kept deposited with the Law Society in respect of that period becomes an amount equal to the sum of:
  - (a) the lower of the following:
    - (i) the lowest balance recorded in the trust account kept by the law practice during the period beginning with the start of that applicable period and ending with the 15th banking day after the repayment,
    - (ii) the lowest balance recorded in that trust account during the previous applicable period, and
  - (b) the amount (if any) on deposit by the law practice with the Society on the day on which the lower of those balances is recorded.
- (4) Despite this clause, if the sum referred to in subclause (1), (2) or (3) is less than \$10,000, the amount to be deposited and kept deposited with the Law Society in respect of an applicable period is nil.
- (5) If, during an applicable period, money is repaid to the law practice under section 284 of the Act on more than one occasion, subclause (3) operates in relation to each such repayment.
- (6) Despite this clause, if a particular law practice is unable to comply with the requirements of clause 98 (1) or (2), the law practice must request the Law Society, in a form approved by the Society, to determine the amount that the law practice is to deposit and keep deposited with the Society.
- (7) A reference in this clause to the lowest balance recorded in the trust account during a period is a reference to the lowest balance recorded during that period in a statement of account issued by an ADI in relation to the trust account.

## **98 Time for deposit**

- (1) The law practice must have the amount calculated under clause 97 (1) or (2) in respect of an applicable period on deposit with the Law Society not later than 20 banking days after the end of the previous applicable period.

- (2) The law practice must have the amount calculated under clause 97 (2) on deposit with the Law Society not later than 20 banking days after the day on which the money was repaid under section 284 of the Act.
- (3) The law practice must have the amount determined by the Law Society pursuant to a request under clause 97 (6) on deposit with the Society not later than 5 banking days after the Society notifies the law practice of its determination.

#### **99 Applicable period**

- (1) In clauses 97 and 98, **applicable period** means a period of 12 months ending on 31 March.
- (2) However, in relation to a law practice that commences to practise or to provide legal services after 1 April in any year, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending on 31 March next following.

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

The Law Society:

- (a) must keep accounts of money deposited with it under clause 96, and
- (b) must have the accounts audited annually by a firm of accountants appointed by the Society, and
- (c) must, without delay, provide the Attorney General with a copy of the auditor's report.

#### **101 Transitional provision: payment of Law Society liabilities under section 110 of the old Act**

Money may be paid out of the Public Purpose Fund to cover any liability incurred by the Law Society before 1 October 2005 under section 110 of the old Act.

### **Division 9 Miscellaneous**

#### **102 Protocols—section 247 of the Act**

For the purposes of section 247 (4) of the Act, a document is identified as a protocol if the document describes itself as a protocol and is executed by or on behalf of the Law Society Council and by or on behalf of one or more regulatory authorities of other jurisdictions.

#### **103 Law practice closing down, closing office or ceasing to receive or hold trust money**

- (1) A law practice that holds trust money must give the Law Society Council at least 14 days' written notice of its intention:
  - (a) to cease to exist as a law practice, or

- (b) to cease to engage in legal practice in this jurisdiction, or
  - (c) to cease to practise in such a way as to receive trust money.
- (2) Within 14 days after ceasing to hold trust money, a law practice that holds trust money must give the Law Society Council:
- (a) written notice of that fact, and
  - (b) if the practice has not given a notice under subclause (1) within the previous 28 days, a notice that complies with that subclause.
- (3) A notice under this clause must include particulars sufficient to identify:
- (a) a law practice's general trust accounts and controlled money accounts, and
  - (b) trust money controlled by the practice (or by an associate) pursuant to a power, and
  - (c) trust money invested by the practice.
- (4) In this clause, **law practice** includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

#### **104 Conditions on approval of ADIs—section 280 (2) of the Act**

For the purposes of section 280 (2) of the Act, the following kinds of conditions may be imposed on an approval of an ADI under section 280 of the Act:

- (a) a condition that requires the ADI to enter into an agreement of the kind referred to in section 288 (2) with the Trustees of the Public Purpose Fund,
- (b) a condition that provides for, or a condition that requires arrangements to be negotiated and entered into between the ADI and the Law Society Council to provide for, one or more of the following:
  - (i) the payment of interest to the Council on the whole or any part of deposits in trust accounts,
  - (ii) the manner in which the Council is informed of amounts held in trust accounts,
  - (iii) the auditing of balances in trust accounts,
  - (iv) the keeping of trust accounts or trust accounts of a particular class (for example, controlled money accounts),
  - (v) any matters relevant to subparagraphs (i)–(iv).

**105 Information to be provided to Law Society Council—section 299 of the Act**

- (1) For the purposes of section 299 of the Act, a law practice must notify the Law Society Council of the following details in respect of each account that is maintained at an ADI by the law practice (or by any legal practitioner associate of the practice) and in which is held money entrusted to the law practice (or by any legal practitioner associate of the practice):
  - (a) the name of the ADI, together with its BSB number,
  - (b) the name of the account, together with its account number,
  - (c) the name of each person who is authorised to operate on the account,
  - (d) for each amount of money so entrusted:
    - (i) the name of the person for whom the money is entrusted, and
    - (ii) the purpose for which the money is entrusted, and
    - (iii) the date on which money is deposited in the account, together with the manner in which it is deposited, and
    - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn.
- (2) The matters referred to in subclause (1) must be notified to the Law Society Council at such times, and in such manner, as the Council requires.

**106 Crown Solicitor's Trust Account**

- (1) A Crown Solicitor's Trust Account must be established in an ADI in New South Wales.
- (2) The Crown Solicitor:
  - (a) must keep in his or her office such records in relation to the Crown Solicitor's Trust Account, and
  - (b) must follow such procedures in relation to operations on the Crown Solicitor's Trust Account,as the Attorney General directs.
- (3) An account established under clause 127 of the *Legal Profession Regulation 2002* is taken to have been established under this clause.

**106A Receipt of trust money by barrister (section 252 of the Act)—exclusion under section 246 (3) of the Act**

Part 3.1 of the Act does not apply to trust money received and held by a barrister if the

money is received by the barrister on account of legal costs for legal services in advance of the provision by the barrister of the legal services, in the following circumstances:

- (a) the barrister is practising as a sole practitioner and the money is received in connection with instructions accepted by the barrister directly from a person who is not a solicitor,
- (b) the money is deposited, within a reasonable time, after the barrister receives the money, in an account maintained with an ADI in connection with the barrister's law practice,
- (c) the money remains deposited in that or another account maintained with an ADI in connection with the barrister's law practice until:
  - (i) a bill is given to the client, or
  - (ii) the money is refunded to the client, or
  - (iii) the money is paid to a solicitor who is later engaged by the client in the matter.

### **107 Exemptions**

The Law Society Council:

- (a) may exempt a law practice from complying with any of the provisions of this Part, subject to any conditions that may be imposed by the Council, and
- (b) may, at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

### **108 Transitional provision: former approved ADIs**

An ADI that, immediately before 1 October 2005, was an approved financial institution within the meaning of section 61 of the old Act is taken to be the subject of an approval in force under section 280 of the new Act and, accordingly, the approval may be revoked under section 280 (3) of the new Act.

## **Part 9 Costs disclosure and assessment—Part 3.2 of the Act**

### **Division 1 General**

#### **109 When does a matter have a substantial connection with this jurisdiction—section 307 of the Act**

For the purposes of Part 3.2 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances:

- (a) the client is a natural person and is resident in this jurisdiction,
- (b) the client is a body corporate and:

- (i) the client carries on its business activities principally in this jurisdiction, or
  - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction,
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction,
- (d) the legal services provided or to be provided relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with:
- (i) the conveyance or transfer of real property located in this jurisdiction, or
  - (ii) court proceedings in this jurisdiction.

**109A Disclosure of costs to clients (form)—section 309 (3) of the Act**

- (1) The form set out in Form 2 of Schedule 5 is prescribed for the purposes of section 309 (3) of the Act in connection with the details referred to in section 309 (1) (b) (i)-(iii), (g), (i), (j) and (l).
- (2) The Bar Council and Law Society Council are each required to produce and maintain the fact sheet referred to in the form and make it available on the internet, but may do so jointly.
- (3) The fact sheet is to be developed in consultation with and approved by the Commissioner.

**110 Exceptions to requirement for disclosure—section 312 (1) (f) of the Act**

For the purposes of section 312 (1) (f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 309 or 310 (1) of the Act is not required:

- (a) the client is an overseas-registered foreign lawyer or a foreign law practice (respectively within the meaning of Part 2.7 of the Act),
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory.

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

- (1) This clause is made for the purposes of section 321 (4) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 321 of the Act or under a costs agreement.
- (2) The rate for the period commencing with 1 October 2005 and ending immediately before the date of commencement of subclause (3) is 9%.



(3) The rate for the period commencing with the date of commencement of this subclause is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.

(4) In this clause:

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

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

**110B Costs agreement with associated third party payer—section 322 (6) of the Act**

Section 323 of the Act is a prescribed provision for the purposes of section 322 (6) of the Act.

**111 Giving of bill by email—section 332 (5) (f) of the Act**

For the purposes of section 332 (5) (f) of the Act, the giving of a bill by email is an authorised way of giving a bill to a person.

**111A Notification of client's rights—section 333 (4) of the Act**

- (1) The form set out in Form 3 of Schedule 5 is prescribed for the purposes of section 333 (4) of the Act.
- (2) The Bar Council and Law Society Council are each required to produce and maintain the fact sheet referred to in the form and make it available on the internet, but may do so jointly.
- (3) The fact sheet is to be developed in consultation with and approved by the Commissioner.

**111B Contents of itemised bill**

- (1) The following particulars are to be included in an itemised bill given by a law practice (other than by a barrister):
  - (a) short details of each item of work carried out on behalf of the client, including the method by which it was carried out (whether by letter, telephone, perusal, drafting, conference, teleconference or otherwise) if not otherwise apparent,
  - (b) the date on which each item of work was carried out,
  - (c) except so far as paragraph (d) applies—the amount charged for carrying out each item of work, and particulars:
    - (i) of the time (in minutes or other units of time) engaged for carrying out each item or work, and

- (ii) identifying the person who carried out each item of work,
  - (d) if applicable, the amount charged for carrying out each item of work on some other basis on which work has agreed to be charged, and particulars of that agreed basis.
- (2) The following particulars are to be included in an itemised bill given by a barrister:
- (a) short details of each item of work carried out on behalf of the client, including the method by which it was carried out (whether by letter, telephone, perusal, drafting, conference, teleconference or otherwise) if not otherwise apparent,
  - (b) the date on which each item of work was carried out,
  - (c) the amount charged for each item of work or for items of work carried out on a particular day, and particulars of the basis for calculating the amount charged.
- (3) The particulars referred to in subclauses (1) and (2) are to be set out in generally chronological order.

## **Division 2 Costs fixed by regulations—Division 6 of Part 3.2 of the Act**

### **112 Prescribed costs for recovery of certain debts and enforcement of certain judgments—sections 329 (1) (c) and (d) and 330 (1) of the Act**

- (1) The costs payable in respect of the following:
- (a) the enforcement of a lump sum debt or liquidated sum for damages,
  - (b) the enforcement of a judgment by a judgment creditor,
  - (c) the enforcement of a judgment for the possession of land,
- being costs of a legal service specified in Schedule 2, are fixed at the amount specified in that Schedule in respect of that service.
- (1A) This clause does not fix the costs of any other legal service in respect of a matter referred to in (1) (a), (b) or (c).
- (2) The costs specified in Schedule 2 are inclusive of all attendances, copying, letters, perusals, searches and telephone calls by or on behalf of the law practice (being the law practice retained by the plaintiff) in relation to the action concerned.
- (2A) The costs specified in Schedule 2 (other than those referred to in item 2 of Part 1 and item 2 of Part 2) are exclusive of filing fees and service costs that are otherwise recoverable.
- (3) This clause does not fix the costs payable for obtaining a judgment in contested matters and, in such a case, only the costs payable for the enforcement of the

judgment are fixed.

**113 Prescribed costs for services in workers compensation matters—section 329 (1) (a) and (f) of the Act**

(1) This clause applies to:

- (a) costs for legal services provided in any workers compensation matter, and
- (b) costs for a matter that is not a legal service but is related to proceedings in any workers compensation matter.

(2) The fair and reasonable costs fixed for a legal service specified in Part 1, 2 or 3 of Schedule 3 are the costs specified in relation to that service in that Part, calculated in accordance with that Part.

(3) However, after calculating the costs for legal services specified in Parts 1 and 2 of Schedule 3, the total of all such costs is to be reduced by 10%.

**Note—**

Section 362 (1) of the Act requires any assessment of costs for a legal service provided in any workers compensation matter to be made in accordance with the costs fixed by subclauses (2) and (3). Section 329 (2) of the Act provides that a law practice may not charge a client more than the fixed cost for such a legal service.

(4) The amount of costs fixed for a service specified in Part 4 of Schedule 3 is the amount specified in relation to that service in that Part, calculated in accordance with that Part.

**Note—**

Section 362 (2) of the Act requires an assessment of costs for a non-legal service to be made having regard to the costs fixed by this subclause. Section 329 (2) of the Act does not regulate the amount that a law practice may charge a client for such a non-legal service.

(5) This clause is subject to the [Workplace Injury Management and Workers Compensation Act 1998](#), which includes provisions in relation to costs and the assessment of costs in workers compensation matters.

**114 Prescribed costs for probate and administration matters—section 329 (1) (e) of the Act**

(1) This clause applies to costs for legal services provided in respect of the granting of probate or administration, or the resealing of probate or letters of administration, but not to costs for legal services provided in respect of any other aspect of the administration of estates.

(2) The amount of costs fixed for a service specified in Schedule 4 is the amount specified in relation to that service in that Schedule, calculated in accordance with that Schedule.

### **115 GST may be added to costs**

- (1) Despite the other provisions of this Division, a cost fixed by this Division may be increased by the amount of any GST payable in respect of the legal or other service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Division.
- (2) This clause does not permit a law practice to charge or recover, in respect of GST payable in respect of a legal or other service, an amount that is greater than:
  - (a) 10% of the maximum amount payable to the law practice in respect of the legal or other service apart from this clause, or
  - (b) the amount permitted under the New Tax System Price Exploitation law, whichever is the lesser.
- (3) In this clause:

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

**New Tax System Price Exploitation law** means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

## **Division 3 Costs in personal injury damages matters— Division 9 of Part 3.2 of the Act**

### **116 Disclosure requirements regarding costs agreements—section 339 of the Act**

- (1) This clause has effect for the purposes of section 339 of the Act, and applies to a costs agreement proposed to be entered into between a client or prospective client of a law practice in connection with a claim for personal injury damages referred to in Division 9 of Part 3.2 of the Act by the client or prospective client.
- (2) The law practice must disclose to the client or prospective client information in relation to the effect of the costs agreement in connection with the operation of Division 9 of Part 3.2 of the Act.
- (3) The information must include:
  - (a) a statement that Division 9 of Part 3.2 of the Act would (but for the costs agreement) limit the maximum costs for legal services provided to the client or prospective client in connection with the claim, and

- (b) particulars as to how those maximum costs are calculated, and
  - (c) a statement that the costs agreement would have the effect of excluding the operation of that Division, and
  - (d) particulars as to how the costs would be calculated under the costs agreement, and
  - (e) a statement that the costs agreement relates only to the costs payable as between the law practice and the client or prospective client, so that, in the event that costs are recoverable against the other party, the maximum costs so recoverable will be as provided by Division 9 of Part 3.2 of the Act.
- (4) Disclosure under this clause must be made in writing before, or as soon as practicable after, the law practice is retained in the matter, but before the costs agreement is entered into.
- (5) This clause does not require disclosure if the costs agreement in relation to the matter was entered into before the law practice could reasonably expect that the matter would involve a claim to which this clause applies.
- (6) A failure by a law practice to comply with the requirements of this clause disentitles the law practice to the benefit of section 339 of the Act.

**117 Disclosure requirements regarding offers of compromise—section 340 of the Act**

- (1) This clause has effect for the purposes of section 340 of the Act, and applies where a client of a law practice receives an offer of compromise on a claim for personal injury damages.
- (2) The law practice must disclose to the client information in relation to the operation of section 340 of the Act in respect of any refusal by the client to accept the offer of compromise.
- (3) The information must include:
- (a) a statement that the offer of compromise has been made and setting out its details or a summary of them, and
  - (b) a statement about the reasonableness of the offer, and
  - (c) a statement about the general effect of declining a reasonable offer of compromise, in that the court in which the proceedings are taken on the claim may award costs on an indemnity basis in respect of legal services provided after the offer is made, and
  - (d) a statement about the specific effect that declining the offer, if reasonable, will or may have on the interests of the parties.

- (4) Disclosure under this clause must be made in writing:
- (a) as soon as practicable after the offer of compromise is made, and
  - (b) before the law practice communicates to other parties or the court that the client accepts or declines the offer.

## **Division 4 Costs in civil claims where no reasonable prospects of success—Division 10 of Part 3.2 of the Act**

### **118 Court documentation—section 347 of the Act**

The following documents are prescribed for the purposes of paragraph (d) of the definition of ***court documentation*** in section 347 (4) of the Act:

- (a) a document initiating an appeal or cross-appeal,
- (b) an application for leave to appeal or cross-appeal,
- (c) a defence to an appeal or cross-appeal,
- (d) a document that amends a document of the kind referred to in paragraph (a), (b) or (c),
- (e) an amended document of the kind referred to in paragraph (a), (b) or (c).

## **Division 5 Costs assessment—Division 11 of Part 3.2 of the Act**

### **Subdivision 1 Assessments (other than party/party costs)**

#### **119 Application of Subdivision**

This Subdivision applies to the assessment of legal costs, under Division 11 of Part 3.2 of the Act, but does not apply to the assessment of costs payable as a result of an order made by a court or tribunal.

#### **120 Approved forms**

- (1) The Chief Justice of the Supreme Court may, on the recommendation of the costs assessors' rules committee established under section 394 of the Act, approve forms (and amendments to approved forms) for the purposes of this Division.
- (2) A reference in this Division to an approved form for a document is a reference to a form as approved (and amended) from time to time under this clause for the document.

#### **121 How to make an application for costs assessment—section 354 (1) of the Act**

- (1) For the purposes of section 354 (1) of the Act, an application for a costs assessment is

to be made in the approved form.

- (2) For the purposes of section 354 (1) of the Act, the prescribed fee that is to accompany an application for a costs assessment is the greatest of the following amounts:
  - (a) \$100,
  - (b) 1% of the amount remaining unpaid on the bill of costs at the time the application is made,
  - (c) 1% of the amount of costs in dispute at the time the application is made.
- (3) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.
- (4) The application is to be made to the Manager, Costs Assessment in triplicate.

#### **122 Procedure before application for assessment of bill referred to assessor**

- (1) On receipt of an application for assessment of a bill made under section 350 of the Act by a client or under section 351 of the Act by an instructing law practice, the Manager, Costs Assessment is to deal with the application as follows:
  - (a) A copy of the application that is required by section 356 of the Act to be given by the Manager, Costs Assessment to the law practice that gave the bill is to be accompanied by a notice advising the law practice that any response to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the law practice receives the notice.
  - (b) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant.
  - (c) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 357 of the Act as soon as practicable after any response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (a).
  - (d) Any relevant response, and any response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.
- (2) In subclause (1), ***instructing law practice*** means a law practice that retains another law practice to act on behalf of a client.
- (3) On receipt of an application for assessment of a bill of costs made under section 352 of the Act by the law practice giving the bill, the Manager, Costs Assessment is to deal

with the application as follows:

- (a) A copy of the application required by section 356 of the Act to be given by the Manager, Costs Assessment to the person who was given the bill of costs is to be accompanied by a notice advising the person that any objection to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the person receives the notice.
- (b) A copy of any objection duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant with a notice advising the applicant that any response to the objection must be lodged with the Manager, Costs Assessment in writing within 21 days after the applicant receives the notice.
- (c) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the person who lodged the objection.
- (d) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 357 of the Act:
  - (i) if no objection is duly lodged with the Manager, Costs Assessment—as soon as practicable after the period referred to in paragraph (a), or
  - (ii) if an objection is duly lodged—as soon as practicable after a response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (b).
- (e) Any relevant objection or response, and any objection or response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.

**Note—**

Section 356 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for practitioner/client costs) to be given to any law practice or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify. Section 358 of the Act enables a costs assessor to obtain further particulars about the application by notice served on a party.

## **Subdivision 2 Assessments (party/party costs)**

### **123 Application of Subdivision**

This Subdivision applies to the assessment of legal costs payable as a result of an order made by a court or tribunal.

### **124 How to make an application for assessment of party/party costs—section 354 (1) of the Act**

- (1) For the purposes of section 354 (1) (a) of the Act, an application for assessment of party/party costs under section 353 of the Act is to be made in the approved form.



- (2) For the purposes of section 354 (1) (b) of the Act, the prescribed fee that is to accompany such an application is the greatest of the following amounts:
  - (a) \$100,
  - (b) 1% of the amount of costs remaining unpaid at the time the application is made,
  - (c) 1% of the amount of costs in dispute at the time the application is made.
- (3) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.
- (4) The application is to be made to the Manager, Costs Assessment in triplicate.

### **125 Procedure before application for assessment of party/party costs**

- (1) The following procedure applies to an application for assessment of party/party costs made under section 353 (1) of the Act by the person to whom the costs are payable:
  - (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the form of application in the approved form and send a copy of the application to the person liable to pay the costs with a notice advising the person that any objection to the application must be lodged with the applicant in writing within 21 days after the person receives the notice.
  - (b) The applicant is to attach to the application any such objection received by the applicant before the application is lodged with the Manager, Costs Assessment. The applicant may attach to the application a response to any such objection.
  - (c) If no such objection is received, the applicant is to certify in the application that no objection was received by the applicant before the application was lodged with the Manager, Costs Assessment.
  - (d) The application may not be lodged with the Manager, Costs Assessment until after the applicant duly receives an objection or the period referred to in paragraph (a) expires (whichever first occurs).
  - (e) In accordance with section 356 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person who is liable to pay the costs.
  - (f) Any objection that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred (together with any response that the applicant wishes to make).
- (2) The following procedure applies to an application for assessment of party/party costs

made under section 353 (1) of the Act by the person liable to pay the costs:

- (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the relevant parts of the form of application in the approved form and send the application to the person to whom the costs are payable (the recipient) with a notice advising the recipient that the information required of the recipient in the form is to be provided by the recipient and the completed application form returned to the applicant within 21 days after the recipient receives the notice (or within such longer period as the applicant and the recipient agree).
  - (b) If the applicant wishes to object to the information provided, the applicant is to lodge the objection in writing with the person who provided the information, together with a notice advising the person that any response to the objection must be lodged with the applicant in writing within 21 days after the person receives the notice.
  - (c) The applicant is to attach to the application any such objection made by the applicant and any response received by the applicant before the application is lodged with the Manager, Costs Assessment.
  - (d) If no such response is received, the applicant is to certify in the application that no response to the objection made by the applicant was received by the applicant before the application was lodged with the Manager, Costs Assessment.
  - (e) The application may not be lodged with the Manager, Costs Assessment until after the applicant receives the information referred to in paragraph (a) and, if an objection is duly made by the applicant, until:
    - (i) if no response is duly lodged by the other person—after the period referred to in paragraph (b), or
    - (ii) if a response is duly lodged—after the response is lodged.
  - (f) However, if the information referred to in paragraph (a) is not provided within the period specified in that paragraph, the application may be lodged with the Manager, Costs Assessment at any time after that period has expired.
  - (g) In accordance with section 356 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person to whom the costs are payable.
  - (h) Any response that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred.
- (3) On receipt of a direction by a court or tribunal under section 353 (2) of the Act for assessment of party/party costs, the Manager, Costs Assessment is to deal with the

direction as if it were an application referred to in subclause (2) made by the person liable to pay the costs and as if the Manager, Costs Assessment were the applicant.

**Note—**

Section 356 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for party/party costs) to be given to any law practice or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify. Section 358 of the Act enables the costs assessor to whom an application is referred to obtain further particulars about the application by notice served on a party.

**126 Determination of costs of party/party costs assessment—section 369 (3) (b) of the Act**

In determining under section 369 (3) (b) of the Act by whom and to what extent the costs of the assessment of party/party costs are to be paid, the costs assessor may have regard to the following:

- (a) the extent to which the determination of the amount of fair and reasonable party/party costs differs from the amount of those costs claimed in the application for assessment,
- (b) whether or not, in the opinion of the costs assessor, either or both of the parties to the application made a genuine attempt to agree on the amount of the fair and reasonable costs concerned,
- (c) whether or not, in the opinion of the costs assessor, a party to the application unnecessarily delayed the determination of the application for assessment.

**Note—**

Section 369 (8) of the Act provides that the costs of the costs assessor are to be paid to the Manager, Costs Assessment. A certificate of such a determination may, under section 369 (7) of the Act, be filed in a court and operates as a judgment debt.

**Subdivision 3 Assessments (general)**

**127 Information relating to assessment of costs**

The costs assessors' rules committee established under section 394 of the Act may, for the purpose of assisting costs assessors in assessing costs, distribute to costs assessors any of the following:

- (a) information that has been published about market rates for legal costs,
- (b) information about comparative assessments of costs previously made by costs assessors,
- (c) relevant judgments of the Supreme Court on appeal from costs assessors' determinations,
- (d) information about relevant provisions of the Act and this Regulation relating to costs

assessment,

(e) any other relevant information.

**128 Certificate of determination of costs and statement of reasons—section 370 of the Act**

- (1) A statement of reasons for a costs assessor's determination that is required by section 370 of the Act to accompany a certificate issued under section 368 or 369 of the Act must be accompanied by the following information:
  - (a) the total amount of costs for providing legal services determined to be fair and reasonable,
  - (b) the total amount of disbursements determined to be fair and reasonable,
  - (c) each disbursement varied by the determination,
  - (d) in respect of any disputed costs, an explanation of:
    - (i) the basis on which the costs were assessed, and
    - (ii) how the submissions made by the parties were dealt with,
  - (e) if the costs assessor declines to assess a bill of costs—the basis for doing so,
  - (f) a statement of any determination under section 363A of the Act that interest is not payable on the amount of the costs assessed or, if payable, of the rate of interest payable.
- (2) A statement of reasons to which this clause applies may be accompanied by such further information as the costs assessor concerned considers is necessary to clarify the determination of the application for a costs assessment.

**Note—**

Section 328 (9A) requires a costs assessor to also give reasons for his or her decision to set aside a costs agreement under subsection (1) of that section.

**129 Circumstances in which assessor may not refuse to issue certificate—section 368 of the Act**

Section 368 (6) of the Act does not apply in respect of the issue of a certificate by a costs assessor under section 368 of the Act if the fee for the application for the costs assessment has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

**130 Reference of applications to assessors**

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for assessment to costs assessors, group costs assessors in panels

according to expertise, location and jurisdiction.

- (2) The Manager, Costs Assessment is to refer applications for assessment of costs to the most suitable costs assessor having regard to the following:
  - (a) the availability of costs assessors,
  - (b) the nature of the matter,
  - (c) in the case of an assessment of party/party costs—the jurisdiction of the court or tribunal in which the order for costs was made,
  - (d) the location of the parties and the Australian legal practitioners acting for the parties concerned,
  - (e) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment must inform the parties to an application for assessment of the name, address and other contact details of the costs assessor to whom the application has been referred.

## **Subdivision 4 Reviews**

### **131 Application for review of determination—section 373 (2) of the Act**

- (1) For the purposes of section 373 (2) (a) of the Act, an application for a review of a determination of a costs assessor is to be made in the approved form and is to be filed in triplicate.
- (2) For the purposes of section 373 (2) (b) of the Act, the prescribed fee that is to accompany such an application is \$275.

### **132 Delivery of application for review and related documents**

- (1) An application under section 373 of the Act for a review by a panel of a determination of a costs assessor is to be accompanied by (in addition to the prescribed fee required by that section):
  - (a) an affidavit that notice of the application has been given to the other parties, and
  - (b) a copy of all of the costs assessor's certificates of determination relating to the assessment that is the subject of the application, and
  - (c) a copy of the costs assessor's statement of the reasons for the determination.
- (2) The applicant must give a copy of the application to the other parties.
- (3) Any other document in relation to the application that is required or permitted to be given to the Manager, Costs Assessment or a panel may be given to the Manager,

Costs Assessment or to the panel in any of the following ways:

- (a) by filing it with the Manager, Costs Assessment,
- (b) by sending it by post to the Manager, Costs Assessment, or to a place nominated by the review panel,
- (c) by delivering it to the DX box of the Manager, Costs Assessment,
- (d) in any other way that a member of the panel on behalf of the panel directs.

**133 Copy of certificate of determination to be given to Manager, Costs Assessment**

The panel is to give to the Manager, Costs Assessment a copy of a certificate setting out the determination by the panel of an application for the review of a determination of a costs assessor.

**134 Statement of reasons—section 380 of the Act**

- (1) A statement of reasons for a panel's determination that is required by section 380 of the Act to accompany a certificate issued under section 378 of the Act must be accompanied by the following information:
  - (a) the total amount of costs for providing legal services determined to be fair and reasonable,
  - (b) the total amount of disbursements determined to be fair and reasonable,
  - (c) each disbursement varied by the determination,
  - (d) in respect of any disputed costs, an explanation of:
    - (i) the basis on which the costs were assessed, and
    - (ii) how the submissions made by the parties were dealt with,
  - (e) a statement of any determination as to the person by whom and the extent to which either the fee paid or payable for the application for review or the costs of the costs assessor, or both, are to be paid,
  - (f) if the determination relates to costs other than party/party costs and the panel declines to deal with an application for review of a bill of costs—the basis for doing so,
  - (g) if the determination deals with any matter of the kind referred to in section 328 (1) or (4) of the Act (relating to the setting aside of a costs agreement), a statement as to the panel's reasons for its decision on that matter.
- (2) A statement of reasons to which this clause applies may be accompanied by such further information as the panel concerned considers necessary to clarify the review of

a costs assessor's determination.

**135 Circumstances in which panel may not refuse to issue certificate in respect of determination of review—section 378 of the Act**

Section 378 (5) of the Act does not apply in respect of the issue of a certificate by a panel under section 378 of the Act if the fee for the application for a review by the panel has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

**136 Determination of costs of review—section 379 (1) of the Act**

In determining under section 379 (1) of the Act by whom and to what extent the costs of the review are to be paid, the panel may have regard to the following:

- (a) the extent to which the determination of the amount of fair and reasonable costs differs from the amount of those costs claimed in the application for review,
- (b) whether or not, in the opinion of the panel, either or both of the parties to the application made a genuine attempt to agree on the amount of the fair and reasonable costs concerned,
- (c) whether or not, in the opinion of the panel, a party to the application unnecessarily delayed the determination of the review.

**137 Qualifications for membership of panels**

- (1) A costs assessor is qualified to be a member of a panel only if the assessor's name appears on the list compiled under subclause (2).
- (2) The Chief Justice of New South Wales may compile a list of costs assessors considered by the Chief Justice to be suitably qualified to be members of panels.
- (3) The Chief Justice may amend or revoke any list compiled under this clause for any reason that the Chief Justice considers appropriate.
- (4) The Chief Justice may delegate any of his or her functions under this clause (other than this power of delegation) to:
  - (a) a Judge of the Supreme Court, or
  - (b) a committee comprised of one Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

**138 Reference of applications to costs review panels**

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for reviews of determinations by panels under section 374 of the Act, place costs assessors in groups according to factors including expertise, location and jurisdiction.

- (2) The Manager, Costs Assessment is to refer an application for a review by a panel to a panel of the most suitable costs assessors having regard to the following:
  - (a) the availability of costs assessors,
  - (b) the nature of the matter,
  - (c) the location of the parties and the Australian legal practitioners acting for the parties concerned,
  - (d) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment:
  - (a) is to issue a notice advising all parties directly affected by the review of the names of the costs assessors who constitute the panel, and
  - (b) is to direct that all correspondence to the panel be addressed care of the Manager, Costs Assessment unless a member of the panel on behalf of the panel directs otherwise.

## **Subdivision 5 Miscellaneous**

### **139 Applications by Commissioner or Council for assessment of costs during investigation of complaints**

- (1) The purpose of this clause is to make it clear that this Division applies to applications made by the Commissioner or a Council under section 533 of the Act for the assessment of legal costs.
- (2) This Division extends so as to apply in relation to applications under section 533 of the Act for the assessment of legal costs, being applications to which Division 11 of Part 3.2 of the Act applies by virtue of that section.

## **Part 10 Fidelity cover—Part 3.4 of the Act**

### **140 Solicitors exempt from contributions—section 430 of the Act**

Each corporation:

- (a) that is an authority established by or under an Act and is (or whose governing body is) constituted by persons appointed by the Governor or a Minister, or
  - (b) that is a statutory body that represents the Crown,
- is prescribed for the purposes of section 430 of the Act.

### **141 Notice of levy—section 432 of the Act**

The prescribed notice to be given to a solicitor for the purposes of section 432 of the Act



must contain the following information:

- (a) the date of the relevant resolution of the Law Society Council under section 431 (1) of the Act,
- (b) the amount of the levy payable by the solicitor pursuant to the resolution,
- (c) the date on or before which the levy is to be paid,

and must be given to the solicitor at least 4 weeks before the date referred to in paragraph (c).

**142 Protocols—section 462 of the Act**

- (1) The Law Society Council may enter into protocols with corresponding authorities for or with respect to any of the following matters:
  - (a) the forwarding of claims, or copies of claims, under section 463 of the Act and corresponding laws,
  - (b) the making and acceptance of requests to act as agent under Part 3.4 of the Act and corresponding laws,
  - (c) the processing or investigation of claims or aspects of claims as agent under Part 3.4 of the Act and corresponding laws.
- (2) A protocol may be amended, revoked or replaced by agreement of the parties to it.

**143 Interstate legal practitioner becoming authorised to withdraw from local trust account: notification—section 472 (1) (a) of the Act**

- (1) This clause has effect for the purposes of section 472 (1) (a) of the Act and applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account of a law practice.
- (2) The practitioner must notify the Law Society Council of the authorisation.
- (3) The notification must include the following particulars:
  - (a) the practitioner's name,
  - (b) the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted,
  - (c) the practitioner's principal business address,
  - (d) details of the local trust account, including the following:
    - (i) the name of the law practice operating the account,
    - (ii) the practice's principal business address,

- (iii) the name of the ADI with which the account is held,
- (iv) the names of any other signatories to the account,
- (e) the date on which the practitioner became authorised to withdraw money from the trust account.

- (4) The practitioner must notify the Law Society Council of any change to the particulars referred to in subclause (3).
- (5) A notification under this clause must be in writing and must be sent or delivered to the business address of the Law Society Council before the end of the period of 7 days starting on the day the practitioner becomes authorised to withdraw money from the local trust account or the change occurs, as the case requires.

**144 Interstate legal practitioner becoming authorised to withdraw from local trust account: contributions—section 472 (1) (b) of the Act**

- (1) This clause has effect for the purposes of section 472 (1) (b) of the Act and applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account of a law practice.
- (2) An interstate legal practitioner to whom this clause applies must 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 registration is to be in force.
- (3) The amount of a contribution to the Fidelity Fund is the amount determined by the Law Society Council, being an amount not greater than that approved by the Attorney General in accordance with section 430 (3) of the Act in respect of solicitors who are local legal practitioners.
- (4) The Law Society Council may permit a contribution to be paid by instalments under an arrangement approved by the Council.
- (5) If an interstate legal practitioner to whom this clause applies becomes authorised to withdraw money from a local trust account 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.
- (6) If an interstate legal practitioner to whom this clause applies has paid a contribution for a year ending on 30 June and ceases to be authorised to withdraw money from local trust accounts 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.

**Note—**

Section 430 (2) of the Act provides for the payment of contributions by interstate legal practitioners, as required by regulations under section 472. Section 430 (3) provides that the amount of a contribution is to be as

determined by the Law Society Council and approved by the Attorney General, subject to any regulations under section 472.

#### **145 Application of Part 3.4 of the Act to multidisciplinary partnerships—section 474 of the Act**

A claim may not be made under Part 3.4 of the Act in respect of a failure to account or a dishonest default by a person who is in a multi-disciplinary partnership, but who is not an Australian legal practitioner, unless the failure to account or dishonest default occurred in the course of the business of the partnership that is business of a barrister or solicitor.

#### **146 Transitional provision: liabilities under the former Fidelity Fund**

(1) Money may be paid from the Fidelity Fund to cover:

- (a) any liability of the Fidelity Fund, or of the Law Society or Law Society Council in relation to the Fidelity Fund, for which, before 1 October 2005, money could have been paid out of the Fidelity Fund under the old Act, or
- (b) without limiting paragraph (a), any other money payable under section 73 of the old Act before 1 October 2005,

to the extent that the money was unpaid immediately before that date.

(2) This clause does not apply to a liability referred to in clause 101.

### **Part 11 Mortgage practices and managed investment schemes—Part 3.5 of the Act**

#### **147 Definitions**

(1) In this Part:

**borrower** has the same meaning as it has in Part 3.5 of the Act.

**contributor** has the same meaning as it has in Part 3.5 of the Act.

**contributory mortgage** has the same meaning as it has in Part 3.5 of the Act.

**lender** has the same meaning as it has in Part 3.5 of the Act.

**mortgage** has the meaning given by section 4 of the Act.

**mortgagee** includes anyone who takes a mortgage or proposes to take a mortgage to secure money lent to a borrower.

**mortgagee solicitor** means a solicitor to whom this Part applies pursuant to clause 148.

**mortgagee solicitor's nominee company** means a corporation of which each

member and each director is a mortgagee solicitor, a partner of a mortgagee solicitor or a person approved by the Law Society Council.

**nominee** means a person who holds a mortgage, as mortgagee, as a trustee for or on behalf of one or more persons.

**registered valuer** has the same meaning as it has in the [Valuers Act 2003](#).

**regulated mortgage** has the same meaning as it has in Part 3.5 of the Act.

**responsible entity** has the same meaning as it has in Part 3.5 of the Act.

**run-out mortgage** has the same meaning as it has in Part 3.5 of the Act.

**State regulated mortgage** has the same meaning as it has in Part 3.5 of the Act.

**summary of mortgage** means the summary of mortgage required to be prepared and issued under clause 155.

**valuation** means a valuation of a kind required to be obtained under clause 158.

- (2) For the purposes of this Part, two or more persons who are lenders on a joint account are to be regarded as one person.

#### **148 Application of Part**

This Part applies to 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.

#### **149 Authority to secure by regulated mortgage**

- (1) The mortgagee solicitor must provide each lender or contributor lending, or proposing to lend, money secured by a regulated mortgage with a disclosure notice and a lending authority, each in a form approved by the Law Society Council.
- (2) The mortgagee solicitor must not, whether alone or by an associate or otherwise, cause or permit the application to a loan secured by a regulated mortgage of:
  - (a) any trust money, or
  - (b) any money that is advanced, or to be advanced, where the borrower is introduced to the lender or contributor:
    - (i) by the solicitor or an associate of the solicitor, or
    - (ii) by an agent of the solicitor, or
    - (iii) by a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors,

unless the solicitor has previously obtained a lending authority in respect of that money, in a form approved by the Law Society Council, from the lender or contributor for whom or on whose behalf the money is to be applied.

- (3) Subclause (2) does not apply if:
- (a) the money is applied pursuant to the written instructions of a lender or contributor who has nominated the borrower and specified the security, its priority and the terms of the loan independently of any advice given by the solicitor to the lender, and
  - (b) the lender or contributor has not been introduced to the borrower:
    - (i) by the mortgagee solicitor or an associate of the mortgagee solicitor, or
    - (ii) by an agent of the mortgagee solicitor, or
    - (iii) by a person engaged by the mortgagee solicitor for the purpose of introducing the borrower to the lender or contributors.
- (4) A mortgagee solicitor who is the attorney under power of a lender or contributor must not:
- (a) apply the funds of the lender or contributor to a loan not authorised in accordance with subclause (2), or
  - (b) execute, on the mortgagee or contributor's behalf, an authority referred to in subclause (2) unless subclause (5) is complied with.
- (5) This subclause is complied with only if:
- (a) the instrument granting the power was executed before 1 January 1987, or
  - (b) the instrument granting the power contains a specific power enabling the mortgagee solicitor to make the loan to which the authority relates, or
  - (c) at the time the instrument granting the power is executed:
    - (i) the signature of the donor is witnessed by a solicitor instructed independently of the donee, and
    - (ii) the solicitor certifies in writing on the instrument that he or she has explained to the donor the donee's power of investment and that the donee has had a discretion to choose the security and the terms for any investment.
- (6) A mortgagee solicitor who obtains the execution, by or on behalf of a lender or contributor, of a lending authority:
- (a) must not delete any of the contents of the form in which it is given (except if an alternative is provided in the form), and

(b) must ensure that any clauses in the form are not varied or contravened, whether directly or indirectly, by the mortgage documents or any associated documents.

(7) A lending authority that complies with this clause is taken to be an authority for the purposes of section 484 (2) (b) of the Act.

### **150 Loan applications**

(1) A mortgagee solicitor must advise the lender or contributor whose loan is proposed to be secured by a regulated mortgage as to the effect of any applicable provisions of the *Consumer Credit (New South Wales) Code* and the *Farm Debt Mediation Act 1994*.

(2) Before advancing the money for, or extending, a loan secured by a regulated mortgage, a mortgagee solicitor must do each of the following:

(a) verify the identity of the borrower, so as to ensure that the person executing the mortgage as the mortgagor is identical with, and the same person as, the registered proprietor of the property secured by the mortgage,

(b) satisfy himself or herself as to the borrower's ability to meet his or her obligations under the mortgage,

(c) check the credit record of the borrower through the Credit Reference Association of Australia (CRAA), and disclose any default record of the borrower to the lender or contributor in the disclosure statement given under clause 149 (Authority to secure by regulated mortgage),

(d) carry out appropriate enquiries in relation to any property to be secured by the mortgage, including a title search, land tax search, a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* and an identification survey report if the security comprises improved land (other than strata title).

(3) Before advancing the money for, or extending, a loan secured by a regulated mortgage, a mortgagee solicitor must obtain written approval to the advance or extension from:

(a) in the case of a firm of solicitors, each principal of the firm (if there are 3 or fewer principals) or 3 principals of the firm (if there are more than 3 principals), or

(b) in the case of an incorporated legal practice, each legal practitioner director of the practice (if there are 3 or fewer legal practitioner directors) or 3 legal practitioner directors of the practice (if there are more than 3 legal practitioner directors).

(4) A mortgagee solicitor's letter of offer relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.

(5) A mortgagee solicitor's loan approval letter relating to a loan to be secured by a

regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.

**151 Identity of borrower**

A mortgagee solicitor must ensure that, in relation to loans secured by a regulated mortgage:

- (a) there is a standard process for verifying the identity of borrowers, and
- (b) records are kept of the method of verification of identity for the duration of the mortgage.

**152 Independent advice**

(1) If:

- (a) a borrower does not have a solicitor acting for the borrower in relation to a loan secured by a regulated mortgage, or
- (b) the mortgagee solicitor is also acting for the borrower,

the mortgagee solicitor must obtain from the borrower a certificate by another solicitor to the effect that the other solicitor has explained the effect of the mortgage to the borrower.

- (2) A mortgagee solicitor must obtain from any guarantor of a loan secured by a regulated mortgage a certificate by another solicitor to the effect that the other solicitor has explained the effect of the guarantee to the guarantor.
- (3) A certificate obtained under this clause must be retained by the mortgagee solicitor.
- (4) A mortgagee solicitor must not act for both the borrower and the lender or contributor in respect of a regulated mortgage unless the solicitor has complied with subclause (1).

**153 Insurance of secured property**

- (1) A mortgagee solicitor must ensure that, in the case of mortgaged property under a regulated mortgage that is improved land (other than strata title property), an insurance policy is in force, in the name of the mortgagee and the mortgagor, for the full replacement value of the improvements.
- (2) At or before the time of settlement, the mortgagee solicitor must sight, and retain a copy of:
  - (a) a certificate of currency for the insurance policy referred to in subclause (1), and
  - (b) in the case of strata title property, a certificate of currency for the building insurance for the property.

#### **154 Registration of mortgages**

- (1) A mortgagee solicitor must ensure that the regulated mortgage, and any variation of the mortgage, is registered under the relevant provisions of the *Real Property Act 1900* or the *Conveyancing Act 1919*, as the case requires.
- (2) Subclause (1) applies to a variation of the term of the mortgage, an increase in the principal secured by the mortgage or a variation of the interest rate.

#### **155 Summary of mortgage**

- (1) A mortgagee solicitor must comply with this clause within 21 days after the date on which any of the following occurs:
  - (a) when money is first advanced under a regulated mortgage on behalf of a lender or contributor (including a contributor who becomes a contributor in addition to, or in substitution for, any other contributor to the loan),
  - (b) on the transfer of a regulated mortgage,
  - (c) on being authorised to collect the principal and interest due under a regulated mortgage except on any discharge or partial discharge of a mortgage,
  - (d) on any variation of a regulated mortgage.
- (2) A mortgagee solicitor:
  - (a) must prepare and issue to each lender and contributor whose money has been lent or will be lent under a regulated mortgage a summary of mortgage in respect of the money and its application that is in a form approved by the Law Society Council, and
  - (b) must include a copy of the summary of mortgage, in alphabetical order according to the name of the mortgagor, in the investments register kept by the solicitor.

#### **156 Investments register**

- (1) A mortgagee solicitor must keep and maintain an investments register.
- (2) The investments register must include the following:
  - (a) copies of all summaries of mortgage required to be prepared by the mortgagee solicitor for regulated mortgages, in alphabetical order according to the mortgagor's names, with separate sections for undischarged and discharged mortgages,
  - (b) a mortgage history register for each regulated mortgage,
  - (c) a record for each lender or contributor,



- (d) a list of undischarged regulated mortgages, capable of being produced on demand from the register, disclosing for each mortgage the mortgage reference number, the name of the mortgagor and the total amount of the mortgage,
  - (e) a list of the following:
    - (i) all regulated mortgages arranged, varied and discharged, including details of the mortgagor, mortgagee, principal contributed by each lender or contributor and the date of each mortgage, variation or discharge,
    - (ii) the names of all lenders or contributors who have invested in regulated mortgages, the mortgages in which they have invested, the date of investment and repayment and the amount of principal secured by each mortgage.
- (3) The mortgage history register for a regulated mortgage is to contain the following:
- (a) the mortgage reference number,
  - (b) the name and address of the mortgagor,
  - (c) the address of the property subject to the mortgage,
  - (d) the date the mortgage is repayable,
  - (e) the date of, and details of, any variations of the mortgage,
  - (f) the name and address of each lender or contributor and the principal amount contributed by each lender or contributor.
- (4) The record for each lender or contributor is to contain the following:
- (a) the mortgage reference number,
  - (b) the name and address of the lender or contributor,
  - (c) the amounts invested and the date of the mortgage or substitution,
  - (d) the amounts repaid and the date of discharge of the mortgage or substitution,
  - (e) a resulting balance after each entry.
- (5) On the discharge of a regulated mortgage, the mortgagee solicitor must ensure that the date of discharge is recorded on the summary of mortgage in the investments register and that the summary is relocated with the summaries applying to discharged mortgages.

### **157 Investment restrictions**

- (1) Money received by a mortgagee solicitor for investment in a regulated mortgage must

not be invested in the following regulated mortgages:

- (a) any mortgage where the total amount of money secured by all current regulated mortgages arranged by the solicitor and any associate of the solicitor exceeds \$7.5 million,
  - (b) any mortgage where the total amount of money secured by the mortgage exceeds \$1 million,
  - (c) any mortgage where the loan to valuation ratio exceeds 75% of a valuation based on the unencumbered present day value of the property,
  - (d) a mortgage that is subject to a prior mortgage,
  - (e) any mortgage securing a loan or advance under which the borrower is in default.
- (2) A mortgagee solicitor must not:
- (a) publicly advertise seeking money for investment in mortgages, or
  - (b) offer a loan to any person whose usual address is outside New South Wales, except for a local offer in a border area.

### **158 Valuation**

- (1) Before any money is advanced under a loan secured by a regulated mortgage, a mortgagee solicitor must obtain:
  - (a) for the lender or contributor, a current valuation of the mortgaged property by a registered valuer, and
  - (b) evidence that the valuer holds current professional indemnity insurance to a value that is not less than \$500,000 and that covers valuations made for the purposes of regulated mortgages.
- (2) The valuation must be expressed to be for the purpose of establishing the unencumbered present day value of the property, not taking into account any future proposed development, and must address the matters contained in the mortgagee solicitor's request for the valuation.
- (3) The mortgagee solicitor's request for a valuation must contain the form of words approved by the Law Society Council for the purposes of this clause.
- (4) A valuation prepared for the borrower may be assigned to a lender or contributor for the purposes of this clause, but only if the valuer and the valuation meet the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (5) If a mortgage is varied and the lender or contributor previously relied on a valuation

prepared for the borrower, the lender or contributor may continue to rely on that valuation if it meets the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.

- (6) A valuation obtained under this clause must be not more than 6 months old when money is first advanced under the loan and, in the case of a loan that is rolled-over, must be not more than 3 years old when the loan is rolled-over.

### **159 Appointment of accountant**

A mortgagee solicitor:

- (a) must appoint an accountant to audit the solicitor's mortgage practice, and
- (b) must appoint the accountant on terms that require the accountant to carry out annual compliance examinations in accordance with a work program approved by the Law Society Council, and
- (c) must ensure that the accountant lodges with the Law Society, within 21 days after completing the examination, a report on the examination in the form approved by the Law Society Council.

### **160 Notification of State regulated mortgages to Law Society Council—section 481 (1) of the Act**

- (1) For the purposes of section 481 (1) of the Act, a mortgagee solicitor must notify the Law Society Council in writing of the following matters on a quarterly basis or as requested by the Council:
- (a) a list of current State regulated mortgages in respect of which the solicitor has acted for the lender or contributor and the total amount secured by all those mortgages,
  - (b) the name of each mortgagor and mortgagee,
  - (c) the amount secured by each mortgage.
- (2) The notice is to be given within 28 days after the end of each quarter.

### **161 Mortgage held by nominee**

- (1) A mortgagee solicitor must not, whether alone or by an associate or otherwise, cause or permit an application to a loan secured by a regulated mortgage of any money referred to in clause 149 (2) (Authority to secure by regulated mortgage) if the loan is to be secured by a regulated mortgage to be held by a nominee, unless the nominee is one of the following:
- (a) the solicitor,

- (b) one or more of the solicitor's partners, with or without the solicitor,
  - (c) a mortgagee solicitor's nominee company maintained by the solicitor and the solicitor's partners (if any) in the manner prescribed by clause 162 (Mortgagee solicitor's nominee company).
- (2) Except in the case of a mortgage to be held by a mortgagee solicitor's nominee company or an incorporated legal practice, a mortgagee solicitor must not arrange or agree to arrange a regulated mortgage that is intended to be held in the name of a corporation (other than a public trustee company) of which that solicitor is a member or director if the mortgage is to be held by that corporation as a trustee for the beneficial owner.

### **162 Mortgagee solicitor's nominee company**

- (1) If a mortgagee solicitor's nominee company is a nominee, a solicitor who is a member or director of the company must not, while the company holds a regulated mortgage for another person:
- (a) cause or permit any person to become a member or director of the company unless the person is a partner of the solicitor or, in the case of a sole practitioner, a person who is approved by the Law Society Council, holds only one share in the company and holds the share in trust for the solicitor as beneficial owner, or
  - (b) cause or permit the company to act otherwise than as a nominee company holding regulated mortgages, or an interest in regulated mortgages, on trust for the beneficial owners, or
  - (c) receive, or cause or permit the company to receive, any financial benefit from its activities other than any professional costs or management fees properly chargeable by the solicitor in respect of a regulated mortgage held by the company, or
  - (d) cause or permit the constitution of the company, while any of its members or directors are persons other than the solicitor or his or her partner or partners, to contain a provision that:
    - (i) denies the solicitor a casting vote at a meeting of its directors, or
    - (ii) entitles a director to appoint an alternate director or attorney to act in the place of the director, or
    - (iii) entitles a shareholder to appoint a proxy other than the solicitor.
- (2) A mortgagee solicitor who has obtained from a lender or contributor an authority under clause 149 (Authority to secure by regulated mortgage) must not prepare a transfer of any regulated mortgage to a company of which the solicitor is a member or director unless:

- (a) the company is the mortgagee solicitor's nominee company, an incorporated legal practice, a public trustee company or a responsible entity, and
- (b) the mortgage is to be held by the company as trustee for the beneficial owner of the mortgage.

### **163 Dealing with money through trust account**

- (1) A mortgagee solicitor must apply money for a loan secured by a regulated mortgage, or paid as principal or interest in respect of any such loan, only in accordance with this clause.
- (2) The money to be advanced must first be credited to an account in the name of the lender or contributor established in the mortgagee solicitor's trust account ledger.
- (3) Before any money is advanced under the regulated mortgage, the mortgagee solicitor:
  - (a) must establish in his or her trust account ledger an account in respect of the mortgage in the mortgagor's name or, if the mortgage is held in the name of a nominee, in the name of the nominee and the mortgagor, and
  - (b) must transfer to that account from the accounts of the lender, or of the contributors in the case of a contributory mortgage, the money to be lent.
- (4) If the regulated mortgage is held by a nominee, then a separate account in the mortgagee solicitor's trust account ledger must be established in the name of the nominee in respect of each mortgage loan held or intended to be held in the name of the nominee.
- (5) All payments under the regulated mortgage in respect of interest and the repayment of principal:
  - (a) are to be received by the mortgagee solicitor, and
  - (b) must be paid to the credit of the account in the trust account ledger relating to the regulated mortgage.
- (6) An amount credited to the account in the trust account ledger relating to a regulated mortgage must be transferred, as soon as practicable:
  - (a) to the lender's account in the mortgagee solicitor's trust account ledger, or
  - (b) in the case of a contributory mortgage, to the account of the contributors in the mortgagee solicitor's trust account ledger in the proportions to which the contributors are entitled.

#### **164 Notice of variation of mortgage**

Within 21 days after the day on which a variation of a regulated mortgage is executed by a borrower, a mortgagee solicitor:

- (a) must give written notice of the particulars of the variation to each lender or contributor, and
- (b) must record the particulars of the variation in the solicitor's investments register.

#### **165 Additional or substituted contributions**

The requirements of this Part apply to a new contributor to a contributory mortgage and to money advanced by a new contributor in the same way as they apply to the original contributors to the contributory mortgage and to money advanced by the original contributors.

#### **166 Declaration of trust**

A mortgagee solicitor who is required to prepare and issue a summary of mortgage must, within 21 days after the obligation to do so arises in relation to a mortgage held by a nominee, prepare and have executed by the nominee an instrument in writing sufficient to manifest and declare the trust on which the mortgage is held by the nominee in accordance with section 23C (1) (b) of the *Conveyancing Act 1919*.

#### **167 Retention of documents**

- (1) A mortgagee solicitor must retain at his or her principal place of practice any regulated mortgage together with all other mortgage documents and instruments declaring trusts related to the mortgage until:
  - (a) the mortgage is discharged, or
  - (b) the solicitor is directed otherwise in writing by the lender or, in the case of a contributory mortgage, by all of the contributors.
- (2) The requirements of clause 89 (Keeping of trust records) as to the retention by a solicitor of trust records apply to an investments register maintained under this Part, except that the particulars of any mortgage recorded in the investments register must be retained in the register during the currency of the mortgage and for 6 years following its discharge.
- (3) For the purposes of subclause (1), mortgage documents include title documents, lending authorities, valuations, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given.
- (4) The mortgage and documents referred to in subclause (1) must be kept together in a deed packet filed in the name of the mortgagor and, if the mortgagor has more than one loan, the particular mortgage is to be identified on the deed packet by indicating

the address of the security property.

- (5) A mortgagee solicitor must maintain a current register of mortgage deed packets, containing particulars of each mortgage deed packet and the matter file to which each such packet relates.
- (6) A mortgage deed packet may be retained in normal safe custody, but both it and the matter file to which it relates must be cross-referenced to each other.

#### **168 Practicability of completion of summary of mortgage and investments register**

A mortgagee solicitor who is unable to comply with the requirements of this Part with respect to the preparation of a summary of mortgage or the recording of entries in an investment register within the time required for compliance:

- (a) must record the portion of the required particulars then available in the required summary of mortgage and in an entry in the investments register, and
- (b) as soon as practicable after the omitted particulars are available, must issue a duly completed summary of mortgage to any person who is entitled to receive it and complete the required entry in the investments register.

#### **169 Default procedures**

- (1) A mortgagee solicitor must maintain systems to enable the early detection of defaults in the payment of principal or interest secured by a regulated mortgage or under the terms of a regulated mortgage.
- (2) A mortgagee solicitor is to ensure that the following steps are taken if a default in the repayment of a loan secured by a regulated mortgage occurs:
  - (a) the borrower must be contacted within 7 days after the solicitor becomes aware of the default and the reason for the default ascertained,
  - (b) the borrower must be requested to pay the penalty rate of interest and any such interest is to be paid to the lender or contributor,
  - (c) the lender or contributor must be advised of the default and the action being taken with respect to the default,
  - (d) unless the lender or contributor instructs otherwise, action is to be commenced to recover outstanding principal, interest and costs if there is a default in payment of more than 2 months (in the case of interest) or 2 weeks (in the case of principal),
  - (e) if a default continues for more than 2 months, the solicitor must notify the Law Society Council in writing of the default and the action taken to rectify the default.

### **170 Run-out mortgages**

- (1) The provisions of Division 5 of Part 7A of the *Legal Profession Regulation 1994*, as in force immediately before 7 September 2001, continue to apply in respect of run-out mortgages.

**Note—**

Schedule 8 to the Act limits the actions that a solicitor may take in respect of run-out mortgages.

- (2) The provisions of this Part (other than this clause) do not apply to run-out mortgages.

### **171 Managed investment schemes**

A mortgagee solicitor must ensure that the office of a responsible entity for a managed investment scheme is not located on the same part of any premises on which the legal practice of the solicitor is conducted.

### **172 Certain mortgages not regulated mortgages**

The following mortgages are exempt from the definition of **regulated mortgage** in section 477 of the Act:

- (a) a mortgage of which a solicitor, or an associate of a solicitor, is the sole beneficial owner,
- (b) a mortgage held by a solicitor or an associate of a solicitor as the trustee of a will or settlement or a mortgage that, when executed or transferred, will be so held,
- (c) a mortgage to a mortgagee who is the subject of a notice given by the Law Society Council to a solicitor that exempts a mortgage to that mortgagee from the definition,
- (d) except as provided by clause 171 (Managed investment schemes), a mortgage that is part of a managed investment scheme that is operated by a responsible entity.

## **Part 12 Complaints and discipline—Chapter 4 of the Act**

### **173 Register of Disciplinary Action—section 577 (2) (e) of the Act**

For the purposes of section 577 (2) (e) of the Act, the following particulars are prescribed for inclusion in the Register of Disciplinary Action in relation to a person:

- (a) the person's professional capacity (for example, barrister or solicitor) in which the conduct complained occurred and, if different, the person's professional capacity in which the complaint was made against the person,
- (b) the regulatory authority that took the disciplinary action,
- (c) the date of the decision or determination of the regulatory authority to take the disciplinary action and, if different, the date the disciplinary action was taken,



- (d) a description or summary of the conduct that is the subject of the disciplinary action,
- (e) the date and jurisdiction of the person's first and each later admission to the legal profession.

**174 Pre-complaint powers where client is denied access to documents—section 595 (3) (b) of the Act**

For the purposes of section 595 (3) (b) of the Act:

- (a) the prescribed area is the area outside the Sydney Metropolitan Area, and
- (b) the prescribed distance is the distance between the practitioner's office and the nearest Local Court.

**Part 13 Miscellaneous provisions**

**175 Discriminatory conduct (including sexual harassment) prohibited**

Conduct, whether consisting of an act or omission, that constitutes unlawful discrimination (including unlawful sexual harassment) under the [Anti-Discrimination Act 1977](#) against any person must not be engaged in:

- (a) by a local legal practitioner, in connection with the practice of law in this or any other jurisdiction, or
- (b) by an interstate legal practitioner, in connection with the practice of law in this jurisdiction.

**176 Mandatory continuing legal education—special requirement**

- (1) If the holder of a local practising certificate is required to undertake continuing legal education, that continuing legal education must include a component relating to the management of the practice of law that deals predominantly with the following issues:
  - (a) the principles of equal employment opportunity,
  - (b) the law relating to discrimination and harassment,
  - (c) occupational health and safety law,
  - (d) employment law,
  - (e) the management of legal practice consistent with paragraphs (a)–(d).
- (2) That component is to be undertaken at least once in every compliance period, or such shorter period as may be determined by the appropriate Council, and is to comprise at least one unit in the units of continuing legal education that the holder of the practising certificate is required to undertake.

(3) In this clause:

**compliance period** means:

- (a) in relation to a person who was the holder of a local practising certificate at 2 April 2004:
  - (i) the period starting on 2 April 2004 and ending on 31 March 2007, and
  - (ii) each further period of 3 years ending on the third anniversary of the expiration of the previous period, or
- (b) in relation to a person who became or becomes the holder of a local practising certificate after 2 April 2004:
  - (i) the period starting on the date the person became or becomes the holder of a local practising certificate and ending on 31 March in the year that is 3 years after the start of the period, and
  - (ii) each further period of 3 years ending on the third anniversary of the expiration of the previous period.

**continuing legal education** means continuing legal education that the holder of a local practising certificate is required to undertake under the conditions attached to the certificate.

#### **177 Advice on and handling of documents**

- (1) An Australian legal practitioner must not give advice to a client to the effect that a document should be destroyed, or should be moved from the place at which it is kept or from the person who has possession or control of it, if the practitioner is aware that:
  - (a) it is likely that legal proceedings will be commenced in relation to which the document may be required, and
  - (b) following the advice will result in the document being unavailable or unusable for the purposes of those proceedings.
- (2) An Australian legal practitioner must not destroy a document or move it from the place at which it is kept or from the person who has possession or control of it, or aid or abet a person in the destruction of a document or in moving it from the place at which it is kept or from the person who has possession or control of it, if legal practitioner is aware that:
  - (a) it is likely that legal proceedings will be commenced in relation to which the document may be required, and
  - (b) the destruction or moving of the document will result in the document being unavailable or unusable for the purposes of those proceedings.

- (3) Subclauses (1) and (2) apply even if there has been no indication that a specific person intends to commence proceedings in relation to which the document concerned may be required.
- (4) A contravention of this clause is declared to be professional misconduct.
- (5) Despite the other provisions of this clause, it is not professional misconduct for an Australian legal practitioner merely to move a document in the possession or control of the practitioner to a person who is lawfully entitled to possession or control of the document if the person requests the practitioner to do so.
- (6) In this clause, **destroy** a document includes make the document illegible.

**178 (Repealed)**

**178A Disclosure of information by local regulatory authorities—section 721 of the Act**

- (1) A local regulatory authority may disclose information about any matter relating to or arising under the Act or a corresponding law to a court or tribunal (or any of its officers) of a State or Territory or of the Commonwealth.
- (2) In order to facilitate an investigation being undertaken under the Act, a corresponding law or a law of the Commonwealth, a local regulatory authority may disclose information about any matter relating to or arising under the Act or a corresponding law to the following Commonwealth authorities (or any of their officers):
  - (a) the Migration Agents Registration Authority,
  - (b) the Australian Securities and Investments Commission,
  - (c) the Australian Taxation Office,
  - (d) the Australian Prudential Regulatory Authority,
  - (e) the Australian Crime Commission,
  - (f) the Australian Competition and Consumer Commission,
  - (g) the Australian Transaction Reports and Analysis Centre.
- (3) A local regulatory authority may disclose information about any matter relating to or arising under the Act or a corresponding law to the extent that it relates to pending or possible criminal or disciplinary proceedings against an Australian lawyer to police authorities (or any of their officers) of a State or Territory or of the Commonwealth.
- (4) This clause has effect subject to section 602 of the Act.

**179, 180 (Repealed)**

## Schedule 1 (Repealed)

## Schedule 2 Costs for recovery of certain debts and enforcement of certain judgments

(Clause 112)

### Part 1 Supreme Court

No	Item	Amount
<b>1</b>	<b>Preparation of process</b>	
	Costs of taking instructions, preparing documents and filing statement of claim including drawing/typing/checking of originating process and cheque to pay account of process server:	
	(a) for recovery of lump sum debt	\$914
	(b) for recovery of possession of land	\$1,150
<b>2</b>	<b>Service of additional defendants etc</b>	
	Costs of service:	
	(a) for each additional defendant	\$53
	(b) in proceedings for the recovery of land where one or more occupiers must be served with notice of proceedings, for each different address at which a notice is served	\$90
<b>3</b>	<b>Substituted service</b>	
	Costs of substituted service including drawing/typing/checking of affidavit, notice of motion and cheque to pay account of process server	\$520
<b>4</b>	<b>Service interstate or overseas</b>	
	Costs of service in another jurisdiction:	
	(a) within Australia—including obtaining leave to proceed and drawing/typing/checking notice of motion	\$199
	(b) outside Australia in a country where English is the official language—including drawing/typing/checking of request for service and notice to defendant to be served	\$136
	(c) outside Australia in a country where English is not the official language—including drawing/typing/checking of request for special service and notice to defendant to be served	\$616

**5 Default judgment**

Costs on applying for default judgment including all matters listed in item 1 plus drawing/typing/checking of affidavit of service, notice of motion and affidavit in support:

- (a) for recovery of lump sum debt \$1,328
- (b) for recovery of possession of land \$1,750

**6 Foreign judgments**

Costs on obtaining certificate of judgment under section 15 of the *Foreign Judgments Act 1991* of the Commonwealth, including drawing/typing/checking of summons, minute of judgment, certificate under that section and affidavit of facts

- (a) if a solicitor is required to attend the court to settle judgment \$732
- (b) if a solicitor is not so required \$513

**7 Writ of execution**

Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff \$565

**Part 2 District Court**

<b>No</b>	<b>Item</b>	<b>Amount</b>
<b>1</b>	<b>Preparation of process</b>	
	Costs of taking instructions, preparing documents and filing statement of claim for recovery of lump sum debt including drawing/typing/checking of originating process and cheque to pay account of process server	\$684
<b>2</b>	<b>Service of additional defendants</b>	
	Costs of service—for each additional defendant	\$53
<b>3</b>	<b>Substituted service</b>	
	Costs of substituted service including drawing/typing/checking of notice of motion, affidavit and cheque to pay account of process server	\$492
<b>4</b>	<b>Default judgment—liquidated claim, claim for possession of land or claim for detention of goods</b>	

	Costs on applying for default judgment for recovery of lump sum debt, claim for possession of land or claim for detention of goods, including all matters listed in item 1 plus drawing/typing/checking affidavit of service, notice of motion and affidavit in support	\$1,019
<b>5</b>	<b>Default judgment—unliquidated claim</b>	
	Costs on obtaining judgment in undefended proceedings including all matters listed in items 1 and 4	\$1,423
<b>6</b>	<b>Order for examination</b>	
	Costs of issuing an examination notice and obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$539
<b>6A</b>	<b>Failed examination of judgment debtor</b>	
	Costs on attending examination of judgment debtor where the judgment debtor fails, without reasonable excuse:	
	(a) to attend the examination, or	\$231
	(b) to produce documents at the examination as required under the order for examination.	
<b>7</b>	<b>Arrest of judgment debtor</b>	
	Costs on issue of warrant for arrest of judgment debtor including drawing/typing/checking of notice of motion for issue of warrant	\$231
<b>8</b>	<b>Writ of execution</b>	
	Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff	\$414

### Part 3 Local Court

<b>No</b>	<b>Item</b>	<b>Amount</b>
<b>1</b>	<b>Preparation of process</b>	
	Costs of taking instructions, preparing documents and filing statement of claim for recovery of lump sum debt including drawing/typing/checking of originating process and cheque to pay account of process server	\$523
<b>2</b>	<b>Default judgment—liquidated claim or claim for detention of goods</b>	

	Costs on applying for default judgment for recovery of lump sum debt or claim for detention of goods, including all matters listed in item 1 plus drawing/typing/checking affidavit of service, notice of motion and affidavit in support	\$759
<b>3</b>	<b>Default judgment—unliquidated claim</b>	
	Costs on obtaining judgment in undefended proceedings including all matters listed in items 1 and 2	\$1,309
<b>4</b>	<b>Conditions applicable to items 1-3</b>	
	Items 1, 2 and 3 are alternatives, and only one of them is applicable in respect of any matter. If, in respect of any of those items, if the amount at issue in the proceedings:	
	(a) does not exceed \$1,000—the costs are 40% of the amount specified for that item, or	
	(b) exceeds \$1,000 but does not exceed \$5,000—the costs are 60% of the amount specified for that item, or	
	(c) exceeds \$5,000 but does not exceed \$20,000—the costs are 80% of the amount specified for that item, or	
	(d) exceeds \$20,000—the costs are the full amount specified for that item.	
<b>5</b>	<b>Order for examination</b>	
	Costs of issuing an examination notice and obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$312
<b>6</b>	<b>Examination of judgment debtor</b>	
	Costs on examination of judgment debtor by solicitor	\$227
<b>6A</b>	<b>Failed examination of judgment debtor</b>	
	Costs on attending examination of judgment debtor where the judgment debtor fails, without reasonable excuse:	
	(a) to attend the examination, or	\$165
	(b) to produce documents at the examination as required under the order for examination.	
<b>7</b>	<b>Arrest of judgment debtor</b>	
	Costs on issue of warrant for arrest of judgment debtor including drawing/typing/checking of notice of motion for issue of warrant	\$165

**8 Writ of execution**

Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff \$211

**Schedule 3 Costs for legal services in workers compensation matters**

(Clause 113)

**Part 1 Schedule of costs**

No	Item	Amount
<b>1</b>	<b>Preparing process</b>	
	Drawing/typing/checking originating process, notice of appeal to the court, notice of application for leave to make an appeal to the court, or third or subsequent party notice	\$56
<b>2</b>	<b>Preparing other documents</b>	
	Drawing/typing/checking any document, including any notice of subpoena or document necessarily or properly filed or delivered to another party or to counsel or the court, but excluding a certificate of readiness, per page	\$17
	Drawing/typing/checking certificate of readiness where required	\$39
	If the certificate of readiness is special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page	\$17
<b>3</b>	<b>Letters (including drafting, typing and checking)</b>	
	Short letter (up to one folio in length)	\$17
	Circular, being identical (save for address details) with any other letter	\$8
	Any other letter, per folio	\$17
<b>4</b>	<b>Telephone calls</b>	
	Not requiring skill	\$14
	Requiring skill or legal knowledge:	
	(a) not more than six minutes	\$20
	(b) more than six minutes—per six minute unit after the first	\$14
<b>5</b>	<b>Perusal of documents</b>	



Perusal of court documents (being any document filed in court), per page or part of a page	\$15
Perusal of other documents, including correspondence, per folio	\$5
Where it is not necessary to peruse but it is necessary to scan a document, per page	\$36

**6 Copying**

Being a photographic reproduction, carbon or other copy of a document including copies for use in court, copies of doctors' reports for use on hearing, sending or receiving facsimile transmission, including the time reasonably spent by an Australian legal practitioner or clerk in preparing, sorting and collating such documents for copying, per page \$1

**Note—**

In respect of facsimile transmissions, STD and IDD transmission fees may be claimed as disbursements.

**7 Attendance**

Time reasonably spent by a legal practitioner (not being time spent at a conciliation conference) including travelling, waiting time, other than work referred to in items 1-6 inclusive, per quarter hour or part of a quarter hour \$35

Time spent by an Australian legal practitioner at a conciliation conference, per hour or part of an hour \$250

Time reasonably spent by a clerk including travelling, waiting time on work other than work referred to in items 1-6 inclusive, per six minute unit \$4

**Note—**

- 1 Where the hearing of any proceedings is not reached, or is adjourned on payment of the costs of the day, there may be allowed in respect of any time lost in awaiting the commencement of the hearing an amount not exceeding the amount that would have been allowed under item 7 if that time had been spent in the hearing of the proceedings.
- 2 Where the Australian legal practitioner concerned is engaged in any other proceedings on the same day, the amount under item 7 will be such proportion only as the registrar thinks reasonable, having regard to all of the circumstances.
- 3 Where a party is not notified of any payment, withdrawal or discontinuance in time to prevent attendance at court, there may be allowed for that attendance an amount in the discretion of the registrar not exceeding the amount claimable under item 7 for one hour's attendance appropriate to the proceedings.

**8 Specific skill, care and responsibility**

Where any individual item merits any particular skill or attention an additional allowance is to be made in addition to any general allowance under item 9

## 9 Skill, care and responsibility

Such sum as may be reasonable, having regard to all of the circumstances of the case and in particular to the following:

- (a) the complexity of the matter,
- (b) the difficulty or novelty of the questions involved in the matter,
- (c) the skill, specialised knowledge and responsibility involved and the time and labour extended by the Australian legal practitioner, concerned,
- (d) the number and importance of the documents prepared and perused, however brief,
- (e) the general care and conduct of the Australian legal practitioner concerned having regard to his/her instructions and all relevant circumstances, including the preparation for hearings generally and for hearing of taxation/assessment of a bill of costs specifically

## 10 Disbursements

Any disbursement necessarily incurred is to be allowed except in so far as any such disbursement is of an unreasonable amount or has been unreasonably incurred and any doubts which the taxing officer/costs assessor may have as to whether any disbursement was reasonably incurred or was reasonable in amount are to be resolved in favour of the receiving party

## 11 Definitions

An allowance under items 1, 2 and 3 includes any file copy.

In this Part:

**folio** means 100 words.

**page** means a page typewritten or printed and which is a page of a nature or kind usual for the particular document and includes part of a page.

## Part 2 Advocates' fees

No	Item	Amount
1	<b>Briefs on hearing</b>	
	Brief fees are to be calculated on the nature of the relief obtained, in accordance with the following scale:	
	Scale A	\$620
	Scale B	\$850

Scale C \$980

The scale appropriate for the relief obtained is to be as follows:

- |                                                                                                                                                                |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| (a) Property damage                                                                                                                                            | A |
| (b) Medical, hospital etc                                                                                                                                      | A |
| (c) Commutations and redemptions                                                                                                                               | A |
| (d) Lump sum loss of faculties under <i>Workers' Compensation Act 1926</i>                                                                                     | A |
| (e) Lump sum for compensation under section 66 of <i>Workers Compensation Act 1987</i> , including any claim for pain and suffering                            | C |
| (f) Lump sum for pain and suffering                                                                                                                            | C |
| (g) Weekly payments (closed period)                                                                                                                            | B |
| (h) Weekly payments (continuing period)                                                                                                                        | C |
| (i) Death claims                                                                                                                                               | C |
| (j) Death claims where respondent admits liability subject only to formal proof of marriage, dependency or other similar issue, only if certified by the court | A |
| (k) Review of decisions of Commissioners (substantive matters)                                                                                                 | C |
| (l) Review of decisions of Registrars or of Commissioners (procedural matters)                                                                                 | A |
| (m) Appeals to the court                                                                                                                                       | C |

**2 Appearance**

To appear in respect of any motion, or at any conciliation conference, where the court certifies that the matter is appropriate for an advocate \$370

**3 Conference**

To attend any second or subsequent conference in respect of the applicant, if certified \$125-\$310

**4 Advice on evidence**

To advise on evidence \$125-\$310

**5 Preparation of documents**

For drawing, settling any necessary document, conferences, advice (not including advice on evidence), pleadings or for any work involving an advocate in his or her chambers or offices, views, including travelling time, taking a reserved judgment, appearing at call overs, mentions and adjournments, other than any work referred to in items 1-3 inclusive—per hour \$140

## **6 Senior counsel, additional advocates etc**

- (a) In respect of items 1 to 4 for senior counsel, an amount to be decided at the discretion of the taxing officer/costs assessor
- (b) Fees for senior counsel or more than one advocate will not be allowed without an order of the court
- (c) The court may in a special case order that fees additional to those provided in this Schedule be payable to an advocate

## **7 Refreshers**

- (a) Where the hearing is not concluded on the date on which it is begun, there will be allowed, unless the court otherwise orders, in respect of each further day on which the hearing continues—for more than 3 hours, a refresher of 75%, or for 3 hours or less, a refresher fee of 65% of the brief fee
- (b) In respect of hearings outside the Sydney Metropolitan Area:
  - (i) a full refresher of 75% will be allowed in respect of any subsequent day on which the hearing continues at a location other than that at which it commenced, and
  - (ii) unless the court otherwise orders no refresher fee will be allowed in respect of a hearing which continues at another location on the day on which it commenced, and
  - (iii) no loading will be taken into account in calculating any refresher
- (c) Where the hearing is adjourned on an order for payment of the costs of the day—the fee equal to a refresher of 65% of the brief fee
- (d) Where the matter is not reached on a day on which it is listed for hearing—a fee equal to a refresher of 75% of the brief fee (if certified by the court)

## **8 Loadings**

- (a) An advocate whose principal chambers or offices are in the Sydney Metropolitan Area is entitled, in respect of proceedings heard or partially heard in a location outside that area, to a loading in accordance with Part 3 of this Schedule for that location. If proceedings take place at two or more locations outside that area, the loading payable is that appropriate to the location that is the farther or farthest from those chambers or offices
- (b) An advocate whose principal chambers or offices are in a location outside the Sydney Metropolitan Area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan Area, to a loading in accordance with Part 3 of this Schedule for that location
- (c) An advocate whose principal chambers or offices are in a location outside the Sydney Metropolitan Area is entitled, in respect of proceedings heard or partially heard at another such location, to a loading in accordance with Part 3 of this Schedule for that other location. If proceedings take place at two or more locations outside that area, the loading payable is that appropriate to the location that is the farther or farthest from those chambers or offices
- (d) For the purposes of this item, if a location is not included in Part 3 of this Schedule, the loading for that location is to be the loading for the nearest location that is so included
- (e) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this item, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable
- (f) A solicitor providing an advocacy service is entitled to only 66% of the fee calculated under this Part when the service is provided to his or her own client or to a client of his or her employer

## **Part 3 Country loadings**

### **1 Loadings by location**

For the purposes of item 8 of Part 2 of this Schedule, the loading for attending a hearing at any of the following locations, for the first day is:

Albury	\$723
Armidale	\$663
Bateman's Bay	\$662
Bathurst	\$525
Bega	\$799

Bourke	\$1,141
Broken Hill	\$1,232
Campbelltown	\$63
Casino	\$745
Cessnock	\$411
Cobar	\$1,049
Coffs Harbour	\$584
Condobolin	\$889
Cooma	\$882
Coonamble	\$850
Cootamundra	\$603
Cowra	\$464
Deniliquin	\$777
Dubbo	\$615
Forbes	\$615
Glen Innes	\$584
Gosford	\$176
Goulburn	\$434
Grafton	\$715
Griffith	\$588
Gundagai	\$690
Gunnedah	\$680
Hay	\$761
Inverell	\$683
Katoomba	\$239
Kempsey	\$629
Lismore	\$658
Lithgow	\$273
Maitland (including East Maitland)	\$411
Moree	\$616
Moruya	\$516

Moss Vale	\$284
Mudgee	\$490
Murwillumbah	\$761
Muswellbrook	\$436
Narrabri	\$572
Narrandera	\$568
Newcastle	\$411
Nowra	\$411
Nyngan	\$977
Orange	\$468
Parkes	\$633
Penrith	\$63
Port Macquarie	\$530
Queanbeyan	\$526
Singleton	\$632
Tamworth	\$613
Taree	\$490
Tweed Heads	\$714
Wagga Wagga	\$544
Wentworth	\$1,154
Wollongong	\$260
Yass	\$463
Young	\$603

**2 Senior counsel**

If the advocate is a senior counsel—add \$75 per day to the relevant loading.

**3 Refreshers**

For each additional day attending a hearing at any of the locations listed above—add \$163.

**4 NRMA car rental discount**

Where the NRMA car rental discount is applicable, the amount of the loading is to be reduced by an amount that is calculated by subtracting the discount amount paid from the amount allowed in the loading of \$99.

## Part 4 Costs for other services in workers compensation matters

### 1 Allowances to professionals

Barristers, solicitors, accountants, medical practitioners, surveyors, architects, pharmacists and other professional persons attending to give evidence	\$160-\$300
or per hour	\$125-\$200

### 2 Preparation of reports

Whenever a barrister, solicitor, accountant, surveyor, architect, pharmacist, or other professional person (not being a medical practitioner) prepares a report, the fee for the preparation of the report is to be allowed at a rate per hour or part of an hour	\$125-\$200
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### 3 Expert evidence

Whenever the persons mentioned in item 1 are called to give expert evidence and not evidence of fact:

- (a) attending to give expert evidence, including travelling to court, where period from departure from home, hospital, place of practice, office, place of employment or other place to return to that place from attendance at court does not exceed one and a half hours \$250-\$400
- (b) for every full hour after the first hour and a half or a proportion of an hour if not for a full hour \$125-\$200
- (c) the maximum amount payable per day under item 1 and paragraphs (a) and (b) is the total of the number of hours that reasonably involved a witness at the rates applicable in item 1 and paragraphs (a) and (b)

### 4 Travelling and accommodation

Travelling and other allowances:

- (a) payment to be made at the rate of \$0.90 per kilometre one way after the first kilometre up to and including 80 kilometres, plus reasonable parking fees
- (b) exceeding 80 kilometres—the reasonable costs of travelling plus the costs of reasonable accommodation, meals and parking



## 5 Allowances to non-professionals

Other witnesses:

- (a) such allowance as is commensurate with the witnesses' remuneration or circumstances, but not exceeding the allowances provided under items 1 and 3
- (b) such additional amount as is reasonable for travelling expenses and sustenance and, in cases where accommodation is required, such further amount as having regard to all of the circumstances is reasonable and has been paid in respect of accommodation

## 6 Medical examinations and reports

The following fees may vary within the stated range, depending on the complexity of the matter, the number of documents to be studied and the amount of research needed to give the medical opinion:

- (a) Report made by an attending general practitioner:
  - (i) in respect of an initial consultation and examination of a patient \$120-\$160
  - (ii) in respect of any further consultation and examination after the first \$80-\$120
  - (iii) where a re-examination of the patient is not required \$60-\$80
- (b) Report made by an attending specialist:
  - (i) in respect of an initial consultation and examination of a patient \$200-\$300
  - (ii) in respect of any further consultation and examination after the first \$150-\$250
  - (iii) where a re-examination of the patient is not required \$100-\$175
- (c) Report made by a specialist who has not previously treated the patient:
  - (i) in respect of an initial consultation and examination of a patient \$220-\$500
  - (ii) in respect of any further consultation and examination after the first \$200-\$450
  - (iii) where a re-examination of the patient is not required \$100-\$215

**7 Joint examination**

Attending a joint examination (including travelling time where the distance does not exceed 8 kilometres):

- (a) as an examining practitioner (including provision of report) \$300-\$500
- (b) as a non-examining practitioner where the examination is conducted by another practitioner \$130-\$175
- (c) provision of report by non-examining practitioner (see paragraph (b)) \$100-\$175

**8 Special circumstances**

Where special circumstances are shown to exist, eg, as in the case of a psychiatrist or psychologist necessitating prolonged or repeated attendances in a particular case, fees may be charged in accordance with item 1

**9 Interpreters**

Allowances for interpreters:

- (a) amounts reasonably paid to an interpreter attending court in respect of hearing not exceeding per day \$250
- (b) in respect of attending any conference or medical examination:
  - (i) for the first two hours or part of two hours \$80
  - (ii) for every hour or part of an hour after the initial two hours \$30
- (c) in respect of a translation of any document—per folio of 100 words \$22
- (d) travelling—as per amounts allowed under item 5

**Schedule 4 Costs for legal services for probate and administration matters**

(Clause 114)

**Part 1 Obtaining first time grant or the resealing of probate**

<b>Disclosed value of assets</b>	<b>Costs payable</b>
Not exceeding \$30,000	\$500 Plus \$12 for each \$1,000 up to \$30,000

Exceeding \$30,000 but not exceeding \$150,000	\$860 Plus \$5.33 for each \$1,000 in excess of \$30,000
Exceeding \$150,000 but not exceeding \$1,000,000	\$1,500 Plus \$4.00 for each \$1,000 in excess of \$150,000
Exceeding \$1,000,000 but not exceeding \$3,000,000	\$4,900 Plus \$1.50 for each \$1,000 in excess of \$1,000,000
Exceeding \$3,000,000 but not exceeding \$5,000,000	\$7,900 Plus \$1.00 for each \$1,000 in excess of \$3,000,000
Exceeding \$5,000,000 but not exceeding \$10,000,000	\$9,900 Plus \$0.80 for each \$1,000 in excess of \$5,000,000
Exceeding \$10,000,000	\$13,900

## **Part 2 Obtaining of any grant or resealing of probate after the first, up to and including the uplifting of the probate so granted or resealed**

<b>Value of assets remaining at the time of application</b>	<b>Costs payable</b>
Not exceeding \$30,000	\$410 Plus \$9.84 for each \$1,000 up to \$30,000
Exceeding \$30,000 but not exceeding \$150,000	\$705 Plus \$4.37 for each \$1,000 in excess of \$30,000
Exceeding \$150,000 but not exceeding \$1,000,000	\$1,230 Plus \$3.28 for each \$1,000 in excess of \$150,000
Exceeding \$1,000,000 but not exceeding \$3,000,000	\$4,018 Plus \$1.23 for each \$1,000 in excess of \$1,000,000
Exceeding \$3,000,000 but not exceeding \$5,000,000	\$6,478 Plus \$0.82 for each \$1,000 in excess of \$3,000,000
Exceeding \$5,000,000 but not exceeding \$10,000,000	\$8,118 Plus \$0.65 for each \$1,000 in excess of \$5,000,000
Exceeding \$10,000,000	\$11,368

## **Part 3 Obtaining first time grant of administration or of the resealing letters of administration**

Such amount as is allowed under Part 1 for the first time grant of probate and, if a law practice is required to perform any work in addition to that for which Part 1 makes provision, such additional amount as is allowed under Table 1 in Schedule G to the [Supreme Court Rules 1970](#).

## Schedule 5 Forms

(Clause 3 (2))

### Form 1 Statutory declaration to be lodged by law practice that ceases to hold trust money

(Clause 94)

(*Legal Profession Act 2004*)

I, [*insert full name*], of [*insert address*]

DO SOLEMNLY AND SINCERELY DECLARE THAT:

- 1 I am or was a principal of a law practice that on [*insert date*] \*ceased to be authorised to receive trust money/\*ceased to be engaged in legal practice in this jurisdiction.
- 2 The law practice does not now hold any trust money, all such trust money having been applied in accordance with the *Legal Profession Act 2004*.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provision of the *Oaths Act 1900*.

DECLARED AT [*place*]

in the State of New South Wales

on [*date*]

Before:

[*Name and address in legible writing, type or stamp below signature*]

a person authorised to witness the signing of a statutory declaration.

*\*Delete as appropriate*

### Form 2 Form of disclosure of costs to clients

(Clause 109A)

(*Legal Profession Act 2004*)

#### Legal costs—your right to know

You have the right to:

- negotiate a costs agreement with us
- receive a bill of costs from us
- request an itemised bill of costs after you receive a lump sum bill from us
- request written reports about the progress of your matter and the costs incurred in your matter
- apply for costs to be assessed within 12 months if you are unhappy with our costs
- apply for the costs agreement to be set aside
- accept or reject any offer we make for an interstate costs law to apply to your matter
- notify us that you require an interstate costs law to apply to your matter

For more information about your rights, please read the fact sheet titled *Legal Costs—your right to know*. You can ask us for a copy, or obtain it from your local law society or law institute (or download it from their website).

### Form 3 Form of notification of client's rights

(*Legal Profession Act 2004*)

### Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill:

- requesting an itemised bill
- discussing your concerns with us
- having our costs assessed
- applying to set aside our costs agreement

There may be other avenues available in your State or Territory (such as mediation).

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, or obtain it from your local law society or law institute (or download it from their website).

## Schedule 6 Construction of references in conveyancers licensing legislation

(Clause 179)

### Part 1 Conveyancers Licensing Act 1995

Column 1	Column 2	Column 3
Provision	Old reference	New reference
Section 4 (4)	a person who is neither a solicitor nor a barrister	a person who is not an Australian legal practitioner (within the meaning of the new Act)
Section 4 (4)	Part 3A of the old Act	Part 2.2 of the new Act
Section 5 (1) (g)	section 48I of the old Act	Division 3 of Part 2.2 of the new Act
Section 5 (2)	the holder of a barrister's or a solicitor's practising certificate under the old Act	the holder of an Australian practising certificate (within the meaning of the new Act)
Section 6 (1)	Part 3A of the old Act	Part 2.2 of the new Act
Section 6 (2)	act as a solicitor	engage in legal practice (within the meaning of the new Act)
Section 9 (6)	Division 2 of Part 6 of the old Act	Division 7 of Part 3.1 of the new Act
Section 13 (1) (c)	Part 10 of the old Act	Chapter 4 of the new Act
Section 16	Part 11 of the old Act	Part 3.2 of the new Act
Section 18 (2) (c)	section 48F of the old Act	section 177 of the new Act
Section 19 (5) (a)	Part 3A of the old Act	Part 2.2 of the new Act
Section 19 (5) (b)	Part 3A of the old Act	Part 2.2 of the new Act

Section 19 (5) (c)	Part 3A of the old Act	Part 2.2 of the new Act
Section 22 (2)	barrister or solicitor	Australian legal practitioner (within the meaning of the new Act)
Section 35 (3)	solicitor	Australian legal practitioner (within the meaning of the new Act)
Section 35 (4) (b)	solicitor	Australian legal practitioner (within the meaning of the new Act)
Section 44	solicitor	Australian legal practitioner (within the meaning of the new Act)
Section 69 (2)	Part 11 of the old Act	Part 3.2 of the new Act
Section 70 (2)	solicitor or barrister	Australian legal practitioner (within the meaning of the new Act)
Section 82, heading	Application of Legal Profession Act 1987	Application of Legal Profession Act 2004
Section 82 (1)	Part 10 of the old Act	Chapter 4 of the new Act
Section 84	Part 10 of the old Act	Chapter 4 of the new Act
Section 85 (2)	Division 6 of Part 11 of the old Act	Division 11 of Part 3.2 of the new Act

## Part 2 Conveyancers Licensing Regulation 2001

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Old reference</b>	<b>New reference</b>
Clause 5 (a)	the holder of a practising certificate under the old Act or a current interstate practising certificate within the meaning of section 48N of the old Act	the holder of an Australian practising certificate (within the meaning of the new Act)
Clause 5 (b)	an approved insurance policy under section 41 of the old Act or appropriate indemnity insurance within the meaning of section 48U (4) of the old Act	an approved insurance policy under section 403 or 406 of the new Act or professional indemnity insurance that complies with section 98 of the new Act
Clause 6 (3)	the trustees of the Public Purpose Fund under the old Act	the Trustees of the Public Purpose Fund under the new Act