

Legal Profession Uniform General Rules 2015

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New South Wales

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Contents

Chapter 1 Preliminary	9
Part 1.1 Introduction	9
1 Citation	9
2 Commencement	9
3 Objective	9
4 Authorising provision	9
Part 1.2 Interpretation	9
5 Definitions	9
6 Professional associations excluded from being incorporated legal practices.....	10
7 Supervised legal practice	10
Chapter 2 Threshold requirements for legal practice	11
Part 2.1 Unqualified legal practice	11
8 Authorising provision	11
9 Entitlement to certain titles	11
10 Exemption from prohibition on engaging in legal practice	12
Part 2.2 Vacant	14
Note.....	14
Chapter 3 Legal practice	14
Parts 3.1, 3.2 Vacant	14

Part 3.3 Australian legal practitioners	14
11 Authorising provision	14
12 Application for grant or renewal of Australian practising certificate	14
13 Consideration of application for grant or renewal of Australian practising certificate	14
14 Statutory condition—to engage in supervised legal practice	17
15 Statutory condition—notification of certain offences	18
16 Discretionary conditions on Australian practising certificate	19
17 Duration of Australian practising certificate	20
18 Applicant for grant or renewal of Australian practising certificate intending to practise outside Australia	20
Part 3.4 Foreign lawyers	21
19 Authorising provision	21
20 Application for Australian registration certificate	21
21 Grounds for refusing to grant or renew Australian registration certificate	22
22 Discretionary conditions on Australian registration certificate	23
23 Duration of Australian registration certificate	24
Part 3.5 Variation, suspension and cancellation of, or refusal to renew, certificates	24
24 Authorising provision	24
25 Notice by holder of certificate of automatic show cause event	24
26 Notice by holder of certificate of designated show cause event	24
Part 3.6 Vacant	25
Part 3.7 Incorporated and unincorporated legal practices	25
27 Authorising provision	25
28 Notice of intention to engage in legal practice	25
29 Notice of cessation of legal practice	25
30 Provisions relating to notices	25
31 Disclosure obligations	25
32 Directors of incorporated legal practice and pro bono services	25

Parts 3.8, 3.9 Vacant	26
Chapter 4 Business practice and professional conduct	26
Part 4.1 Vacant	26
Part 4.2 Trust money and trust accounts	26
Division 1 Preliminary	26
33 Authorising provision.....	26
34 Definitions.....	26
Division 2 Trust money and trust accounts	26
35 Maintenance of general trust account.....	26
36 Receipting of trust money.....	27
37 Deposit records for trust money.....	27
38 Computerised accounting systems—copies of trust records.....	28
39 Computerised accounting systems—chronological record of information to be made.....	29
40 Computerised accounting systems—requirements regarding systems.....	29
41 Computerised accounting systems—back-ups.....	30
42 Withdrawal of trust money for payment of legal costs.....	30
43 Method of payment.....	32
44 Trust account receipts cash books.....	33
45 Trust account payments cash book.....	34
46 Journal transfers.....	35
47 Recording transactions in trust ledger accounts.....	36
48 Reconciliation of trust records.....	37
49 Trust ledger account in name of law practice or legal practitioner associate.....	37
50 Notification requirements regarding general trust accounts.....	38
51 Law practice closing down, closing office or ceasing to receive or hold trust money.....	38
52 Trust account statements.....	39
53 Trust account statements for commercial or government clients.....	40
54 Statements regarding receipt or holding of trust money.....	40
55 Trust money subject to specific powers.....	41
56 Authority to receive trust money.....	41

57 Disclosure of accounts used to hold money	42
58 When, how and where money is received	42
59 Register of investments.....	42
60 Register of powers and estates in relation to trust money	43
Division 3 Controlled money	44
61 Maintenance of controlled money account.....	44
62 Receipt of controlled money	44
63 Withdrawal of controlled money from controlled money account.....	45
64 Register of controlled money.....	46
Division 4 External examinations	47
65 Designation of persons eligible to be appointed as external examiners.....	47
66 Appointment of external examiner by law practice	48
67 Standard form reports by external examiners	49
68 Final external examination	49
69 External examiner’s report	49
Part 4.3 Legal costs	50
70 Authorising provision	50
71 Commercial or government clients.....	50
72 Alternative disclosure for legal costs below higher threshold.....	50
72A Non-compliance with disclosure obligations—disapplication of section 178 (1) and (2) of the Uniform Law	
.....	50
73 Giving bills.....	51
74 Itemised bill higher than lump sum bill	52
75 Interest on unpaid legal costs.....	52
76 Costs assessment—party not participating in assessment.....	52
Part 4.4 Professional indemnity insurance	53
77 Authorising provision	53
78 Minimum standards for professional indemnity insurance—law practices except barristers.....	53
79 Minimum standards for professional indemnity insurance—barristers	54
80 Notice to be given where certain legal services not covered by insurance	55
81 Regulatory authority may inspect policies.....	55

82 Exemptions.....	55
Part 4.5 Fidelity cover	56
83 Authorising provision.....	56
84 Time of default.....	56
85 Defaults to which Uniform Law does not apply.....	56
86 Making a claim.....	57
87 Investigation of claims.....	57
88 Change in status of law practice or associate does not affect claim.....	58
89 Advertisements.....	58
90 Notification of delay in making decision.....	58
91 Recommendations by the fidelity authority to other fidelity authorities.....	59
Part 4.6 Business management and control	59
Division 1 Prohibited businesses and services	59
91A Related entities for purposes of section 258.....	59
91B Managed investment schemes.....	60
91C Mortgages.....	61
91D Financial institutions.....	61
Division 2 Registers	62
92 Authorising provision.....	62
93 Register of files opened.....	62
94 Register of safe custody documents.....	62
95 Register of financial interests.....	63
Chapter 5 Vacant	63
Chapter 6 External intervention	63
Part 6.1 Introduction	63
96 Authorising provision.....	63
Part 6.2 Vacant	63
Part 6.3 Supervisors of trust money	63

97 Appointment of supervisor of trust money	63
98 Notice of appointment	64
Part 6.4 Managers	65
99 Appointment of manager	65
100 Notice of appointment	65
Part 6.5 Receivers	66
101 Appointment of receiver	66
102 Notice of appointment	67
Part 6.6 General	67
103 Fees, legal costs and expenses	67
104 Reports by external intervener	68
105 Report to designated local regulatory authority on disciplinary matters	68
Chapter 7 Vacant	68
Chapter 8 Regulatory authorities	68
Part 8.1 Vacant	68
Part 8.2 Legal Services Council	68
106 Authorising provision	68
107 Delegation of Legal Services Council's functions	69
Parts 8.3-8.6 Vacant	69
Chapter 9 Miscellaneous	69
Part 9.1 Vacant	69
Part 9.2 Vacant	69
Note	69
Part 9.3 Legal Profession Registers	69
108 Authorising provision	69
109 Australian Legal Profession Register	69

Parts 9.4-9.8 Vacant	70
Part 9.9 General	70
110 Authorising provision.....	70
111 General provisions about appeal or review—constructive decision.....	70
Chapter 10 Other provisions	70
Note.....	70
Part 1 Provisions relating to Schedule 3 to the Uniform Law	70
112 Authorising provision.....	70
113 Non-participant legal practitioner expecting to practise solely or principally in a participating jurisdiction—when exemption ceases	70
114 Non-participant registered foreign lawyer expecting to practise solely or principally in a participating jurisdiction—when exemption ceases	70
Schedule 1 Forms	71

Legal Profession Uniform General Rules 2015



New South Wales

Chapter 1 Preliminary

Part 1.1 Introduction

1 Citation

These Rules may be cited as the *Legal Profession Uniform General Rules 2015*.

2 Commencement

These Rules come into operation on 1 July 2015.

3 Objective

The objective of these Rules is to set out provisions contemplated by the Uniform Law (other than provisions that are or may be included in the Admission Rules, the Legal Practice Rules, the Legal Profession Conduct Rules or the Continuing Professional Development Rules).

4 Authorising provision

These Rules are made by the Legal Services Council under Part 9.2 of the Uniform Law.

Part 1.2 Interpretation

5 Definitions

(1) In these Rules:

Australian law relating to the legal profession means:

- (a) the Uniform Law, these Rules or the Legal Profession Uniform Law Act of a participating jurisdiction, or
- (b) a corresponding law of a non-participating jurisdiction, or
- (c) a previous corresponding law of any jurisdiction.

commencement day for a participating jurisdiction means the day on which the

relevant provision or provisions of the Uniform Law come into operation in that jurisdiction.

corresponding disciplinary body, in relation to a designated tribunal, has the same meaning as it has in section 461 of the Uniform Law.

itemised bill means a bill that specifies in detail how the legal costs are made up in a way so as to allow costs to be assessed.

lump sum bill means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs.

Uniform Law means the Legal Profession Uniform Law as applied in a participating jurisdiction.

- (2) A reference in these Rules to the **designated local regulatory authority**, when used expressly or impliedly in relation to a provision of the Uniform Law, is a reference to the relevant designated local regulatory authority specified or described under jurisdictional legislation for that provision.
- (3) A reference in these Rules to the **designated tribunal**, when used expressly or impliedly in relation to a provision of the Uniform Law, is a reference to:
 - (a) the relevant designated tribunal specified or described under jurisdictional legislation for that provision, or
 - (b) a member or officer so specified or described of such a court or tribunal.

6 Professional associations excluded from being incorporated legal practices

For the purposes of the definition of **incorporated legal practice** in section 6 (1) of the Uniform Law, a professional association is excluded from being an incorporated legal practice.

7 Supervised legal practice

- (1) For the purposes of paragraph (d) of the definition of **supervised legal practice** in section 6 (1) of the Uniform Law, supervised legal practice in the case of an Australian legal practitioner who is an employee of a law practice (or who, though not an employee of the law practice, is working under supervision in a law practice) includes supervision by an employee of the law practice who holds an Australian practising certificate authorising the holder to supervise legal practice by others.
- (2) For the purposes of paragraph (d) of the definition of **supervised legal practice** in section 6 (1) of the Uniform Law, supervised legal practice in the case of an Australian legal practitioner who is an employee of a law practice, and who is engaged in legal work for a client of the law practice, or in legal work for a community legal service, otherwise than under the supervision of an authorised principal of the law practice,

includes supervision by an Australian lawyer (the **supervising lawyer**), where:

(a) the supervising lawyer:

- (i) holds an Australian practising certificate authorising the holder to supervise legal practice by others, or
- (ii) is exempt from holding or otherwise not required to hold such an Australian practising certificate by or under the Uniform Law, jurisdictional legislation or legislation of the Commonwealth, and

(b) the supervision is adequate in the circumstances and not less than the supervision that the employee would have received from an authorised principal of the law practice.

(3) Subrule (2) applies in relation to legal work engaged in by an employee of a legal practice during the whole or any part of the period starting on 1 July 2015 and ending immediately before the date of commencement of that subrule, as well as to legal work engaged in on or after that date.

Chapter 2 Threshold requirements for legal practice

Part 2.1 Unqualified legal practice

8 Authorising provision

The rules in this Part are made under Part 2.1 of the Uniform Law.

9 Entitlement to certain titles

For the purposes of section 12 of the Uniform Law, a person listed in column 3 of an item in the Table below is entitled to take or use the title specified in column 2 of that item in the circumstances specified in column 4 of that item.

Column 1	Column 2	Column 3	Column 4
Item	Title	Person	Circumstances
1	Legal practitioner	Australian legal practitioner	All circumstances
2	Barrister and solicitor, solicitor and barrister, solicitor, attorney, proctor	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate, other than an Australian practising certificate authorising the practitioner to engage in legal practice as or in the manner of a barrister only

3	Barrister	Australian legal practitioner	When the Australian legal practitioner holds an Australian practising certificate granted in a fused jurisdiction, or an Australian practising certificate granted in a non-fused jurisdiction that authorises the practitioner to engage in legal practice as or in the manner of a barrister only
4	Counsel	Australian legal practitioner	All circumstances
5	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
6	Queen's Counsel or QC, King's Counsel or KC, Her Majesty's Counsel, 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
7	Attorney	Australian-registered foreign lawyer	When entitled to use the name, title or description by or under a law
8	Attorney	Patent attorney	When using the expression "patent attorney"
9	Attorney	Donee of power of attorney	When indicating that the donee holds or is acting under a power of attorney
10	Attorney	Attorney-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
11	Solicitor	Solicitor-General of any jurisdiction, the Commonwealth or a foreign country	All circumstances
12	Lawyer	Australian lawyer	All circumstances
13	Lawyer	Australian-registered foreign lawyer	All circumstances

10 Exemption from prohibition on engaging in legal practice

(1) The following persons are declared to be exempt from the operation of section 10 (1)

of the Uniform Law:

- (a) a person carrying out conveyancing work in accordance with a licence in force under relevant jurisdictional legislation,
- (b) a land agent performing work in respect of instruments the person is entitled to draw, fill up or prepare and to charge for, under a law of a jurisdiction or of the Commonwealth,
- (c) an officer or employee of a government authority drawing instruments in the course of the person's duty, otherwise than as parliamentary counsel, legislative counsel or legislative drafter (however described),
- (d) an officer or employee of a government authority undertaking appearance work in courts or tribunals under the authority of a law of a jurisdiction or of the Commonwealth,
- (e) any of the following:
 - (i) a public trustee (however named) of a jurisdiction,
 - (ii) a company that performs the functions of a public trustee of a jurisdiction,
 - (iii) a company performing trustee work on behalf of the government of a jurisdiction or the Commonwealth,
 - (iv) an officer, employee or member of staff of an entity referred to in subparagraph (i)-(iii),

to the extent that the person is performing work in the course of preparing a will or providing a related service or in the course of carrying out any other work involving or in connection with the administration of trusts, the estates of living or deceased persons or the affairs of living persons,

- (f) an industrial organisation providing legal services, but only to the extent that:
 - (i) the legal services concerned are provided to members of the organisation, and
 - (ii) the legal services are not provided for fee, gain or reward to the organisation (other than standard membership fees), and
 - (iii) the legal services are provided by Australian legal practitioners, and
 - (iv) if any of the legal services are provided by an Australian legal practitioner whose Australian practising certificate is subject to a condition requiring the holder to engage in supervised legal practice only—those legal services are provided under the supervision of an Australian legal practitioner who is authorised to supervise legal practice by others.

- (2) In subrule (1) (f), **industrial organisation** means an organisation (however described) that is registered or otherwise recognised under a law of the Commonwealth, a State or a Territory.

Part 2.2 Vacant

Note—

See the [Legal Profession Uniform Admission Rules 2015](#).

Chapter 3 Legal practice

Parts 3.1, 3.2 Vacant

Part 3.3 Australian legal practitioners

11 Authorising provision

The rules in this Part are made under Part 3.3 of the Uniform Law.

12 Application for grant or renewal of Australian practising certificate

- (1) An application by an Australian lawyer for the grant or renewal of an Australian practising certificate:
- (a) must state the participating jurisdiction that the applicant reasonably intends will be the applicant's principal place of legal practice in Australia, and
 - (b) if an automatic show cause event has occurred at any time in relation to the applicant and section 87 of the Uniform Law requires a statement as part of the application—must include such a statement, and
 - (c) must address each of the matters referred to in rule 13 (1), and
 - (d) must address any other matter the designated local regulatory authority considers appropriate.
- (2) An application under subrule (1) must be accompanied by the fee applicable to the application.
- (3) Before determining the application, the designated local regulatory authority may seek further relevant information from the applicant.

13 Consideration of application for grant or renewal of Australian practising certificate

- (1) For the purposes of section 45 of the Uniform Law, in considering whether an applicant is or is not a fit and proper person to hold an Australian practising certificate, the designated local regulatory authority may have regard to any of the following matters:

- (a) whether the applicant is currently of good fame and character,
- (b) whether the applicant is, or has been:
 - (i) an insolvent under administration, or
 - (ii) a director or principal of an incorporated legal practice while the legal practice is or was insolvent, or
 - (iii) a director of a company while the company is or was insolvent,
- (c) whether the applicant has been convicted or found guilty of an offence in Australia or a foreign country, and if so:
 - (i) the nature of the offence, and
 - (ii) how long ago the offence was committed, and
 - (iii) the applicant's age when the offence was committed,
- (d) whether the applicant has engaged in legal practice in Australia:
 - (i) when not permitted to do so under a law or previous law of a State or Territory, or
 - (ii) if admitted, in contravention of a condition to which the admission was subject, or
 - (iii) if holding an Australian practising certificate, in contravention of a condition to which the certificate was subject or while the certificate was suspended,
- (e) whether the applicant has engaged in legal practice in a foreign country:
 - (i) when not permitted to do so by or under a law of that country, or
 - (ii) if permitted to do so, in contravention of a condition to which the permission was subject,
- (f) whether the applicant:
 - (i) is currently subject to an unresolved complaint, investigation, charge or order under an Australian law relating to the legal profession or under a corresponding foreign law, or
 - (ii) has been the subject of disciplinary action, however expressed, under an Australian law relating to the legal profession, or under a corresponding foreign law, that involved a finding adverse to the applicant,
- (g) whether the applicant:
 - (i) is the subject of current disciplinary action, however expressed, in another

- profession or occupation in Australia or a foreign country, or
- (ii) has been the subject of disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country that involved a finding adverse to the applicant,
- (h) whether the applicant's name has been removed from:
- (i) a roll of Australian lawyers, however described or expressed, in any jurisdiction, or
 - (ii) a foreign roll of practitioners,
- (i) whether the applicant's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country,
- (j) whether the applicant has contravened, in Australia or a foreign country, a law about trust money or trust accounts,
- (k) whether, under an Australian law relating to the legal profession or a law of the Commonwealth, a supervisor, manager or receiver, however described, is, or has been, appointed in relation to any legal practice engaged in by the applicant,
- (l) whether the applicant is, or has been, subject to an order under an Australian law relating to the legal profession or a law of the Commonwealth, disqualifying the applicant from:
- (i) being employed by, or a partner of, an Australian legal practitioner, or
 - (ii) managing a corporation,
- (m) whether the applicant is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner,
- (n) whether the applicant has provided incorrect or misleading information in relation to any application for an Australian practising certificate under an Australian law relating to the legal profession,
- (o) whether the applicant has contravened a condition of a previous Australian practising certificate under an Australian law relating to the legal profession,
- (p) whether the applicant has contravened an Australian law relating to the legal profession,
- (q) whether the applicant has contravened:
- (i) an order of a court or tribunal made in any proceedings, or
 - (ii) (without limitation) an order of a designated local regulatory authority or other

person or body under legislation of any jurisdiction so far as the legislation relates to the control or discipline of any Australian lawyers or to the practice of law,

- (r) whether the applicant has failed at any time to pay a required contribution or levy to the fidelity fund of a jurisdiction,
 - (s) whether the applicant has failed to comply with a requirement under an Australian law relating to the legal profession in relation to professional indemnity insurance,
 - (t) whether the applicant has failed to pay any costs or expenses for which the applicant was liable under an Australian law relating to the legal profession,
 - (u) any other matter that is related to a matter referred to in another provision of this rule.
- (2) In determining whether an applicant has or will have professional indemnity insurance as required by the Uniform Law, the designated local regulatory authority may have regard to:
- (a) evidence in the form of written advice from an insurer or other provider or from an insurance broker to the effect that an insurer or other provider has agreed to issue a policy of professional indemnity insurance, or
 - (b) evidence that the premium for a policy of professional indemnity insurance has been received and accepted by the insurer or other provider for the purposes of the issue of the policy.
- (3) Without limiting any other power of the designated local regulatory authority to refuse to grant an Australian practising certificate, the designated local regulatory authority may refuse to grant an Australian practising certificate for a barrister if the applicant has not successfully completed any examination required by the designated local regulatory authority to be passed as a prerequisite to undertaking a reading program referred to in section 50 of the Uniform Law.

14 Statutory condition—to engage in supervised legal practice

- (1) For the purposes of section 49 (2) of the Uniform Law, 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 rule.
- (2) The person satisfies the requirements of this rule 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 rule:

(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.

15 Statutory condition—notification of certain offences

(1) This rule specifies offences for the purposes of section 51 of the Uniform Law, as referred to in section 51 (1) (a) of that Law. Convictions for these offences are required to be notified to the designated local regulatory authority within 7 days.

(2) Summary offences are prescribed for those purposes, but only in relation to the requirement to notify a conviction.

(3) However, subrule (2) does not apply to the following summary offences arising under transport or traffic legislation:

(a) offences relating to the parking of vehicles, or

(b) offences relating to the driving or operation of vehicles, unless the offence concerned is a notifiable summary offence under subrule (4).

(4) A **notifiable summary offence** is any of the following summary offences under transport or traffic legislation for which the offender is convicted:

(a) an offence where the court has sentenced the offender to a term of imprisonment,

(b) an offence that has a maximum penalty of imprisonment of 6 months or more,

(c) an offence where the court has ordered licence disqualification on conviction,

(d) an offence, involving driving or operating a vehicle under the influence of alcohol or any other drug, under:

(i) the *Road Transport Act 2013* of New South Wales, or

(ii) the *Road Safety Act 1986* of Victoria (excluding section 49 (1) (c), (ca), (d) and (e)).

(5) In this rule, **summary offence** means an offence against a law of the Commonwealth, a State or a Territory, other than a serious offence or a tax offence.

Note 1—

The terms “serious offence” and “tax offence” are respectively defined in section 6 of the Uniform Law. Charges and convictions for those offences are separately required to be notified under section 51 (1) (a) of that Law.

Note 2—

Subrule (4) (d) excludes an offence under section 49 (1) (c), (ca), (d) or (e) of the *Road Safety Act 1986* of Victoria. Such an offence may nevertheless be a notifiable summary offence if it is covered by subrule (4) (a), (b) or (c).

16 Discretionary conditions on Australian practising certificate

For the purposes of section 53 of the Uniform Law, the discretionary conditions that the designated local regulatory authority may impose on an Australian practising certificate are any one or more of the following:

- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage, or
 - (ii) as to the type of legal practice in which the holder must not engage,
- (b) a condition that the holder undertake and complete one or more of the following:
 - (i) continuing legal education,
 - (ii) specific legal education or training,
 - (iii) a specified period of supervised legal practice,
- (c) a condition restricting the holder to particular arrangements concerning employment or supervision,
- (d) a condition that the holder must not supervise legal practice by others,
- (e) a condition requiring the holder to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder,
- (f) a condition requiring the holder to use the services of an accountant or other financial specialist in connection with the holder’s legal practice,
- (g) a condition requiring the holder to provide the designated local regulatory authority or a specified body with evidence as to:
 - (i) any outstanding tax obligations of the holder, and
 - (ii) provision made by the holder to satisfy any such outstanding obligations,
- (h) in relation to a holder who is authorised to engage in legal practice only as a barrister, a condition requiring the holder:
 - (i) not to engage in legal practice otherwise than as a sole practitioner, or

- (ii) not to engage in legal practice in partnership with another person, or
 - (iii) not to engage in legal practice as an employee of another person, or
 - (iv) not to hold office as a principal or director of an incorporated legal practice or an unincorporated legal practice,
- (i) a condition agreed by the holder,
 - (j) a condition that is related to a matter referred to in another provision of this rule.

17 Duration of Australian practising certificate

- (1) An Australian practising certificate is in force:
 - (a) if granted, from the commencement date specified in it until the following 30 June, or
 - (b) if renewed, from the date of its renewal until the following 30 June,unless the certificate is earlier suspended, cancelled or surrendered.
- (2) However, if an application for the renewal of an Australian practising certificate has been properly made to the designated local regulatory authority before its expiry but the authority has not determined the application by the following 1 July, the certificate is taken to continue in force on and from that 1 July until whichever of the following first occurs:
 - (a) the authority renews or refuses to renew the certificate,
 - (b) the holder withdraws the application for renewal,unless the certificate is earlier suspended, cancelled or surrendered.

Note 1—

If the certificate is renewed on or after 1 July, the renewal takes effect on the date of its renewal: see subrule (1) (b).

Note 2—

Section 211 of the Uniform Law provides that an Australian legal practitioner must not engage in legal practice in a jurisdiction unless the practitioner holds or is covered by an approved insurance policy for that jurisdiction and the policy covers that legal practice.

18 Applicant for grant or renewal of Australian practising certificate intending to practise outside Australia

- (1) This rule applies in relation to an application for the grant or renewal of an Australian practising certificate in a participating jurisdiction if the applicant does not reasonably intend to engage in legal practice in Australia during the currency of the certificate or

renewal applied for.

- (2) For the purposes of section 44 (5) of the Uniform Law, the application may be made in any participating jurisdiction.

Note—

This rule applies to a person who intends to practise exclusively outside Australia during the currency of the certificate or renewal applied for.

In the case of a person who practises both within and outside Australia, the application is to be made by reference to the person's practice in Australia: section 44 (4) of the Uniform Law. For this purpose of determining the place where the application is to be made, the person's overseas practice is to be disregarded (even if it forms the principal portion of the person's overall practice), so that eligibility is determined by reference to the person's practice in Australia.

Part 3.4 Foreign lawyers

19 Authorising provision

The rules in this Part are made under Part 3.4 of the Uniform Law.

20 Application for Australian registration certificate

- (1) An application by a foreign lawyer for the grant or renewal of an Australian registration certificate under Part 3.4 of the Uniform Law:
 - (a) must state the jurisdiction that the applicant reasonably intends will be the applicant's principal place of legal practice in Australia, and
 - (b) if an automatic show cause event has occurred at any time in relation to the applicant and section 87 of the Uniform Law requires a statement as part of the application—must include such a statement, and
 - (c) must address each of the matters set out in section 62 (3) of the Uniform Law, and
 - (d) must address any other matter the designated local regulatory authority considers appropriate.
- (2) A fee for an application for the grant or renewal of an Australian registration certificate in a participating jurisdiction must not exceed the maximum fee payable by an Australian lawyer for an Australian practising certificate in the participating jurisdiction.
- (3) The designated local regulatory authority may require an applicant for the grant or renewal of an Australian registration certificate to provide evidence that verifies the accuracy of the information set out in the application.
- (4) The designated local regulatory authority may require an applicant for the grant or renewal of an Australian registration certificate to pay the reasonable costs and

expenses incurred by the regulatory authority in making enquiries relating to the applicant's application.

21 Grounds for refusing to grant or renew Australian registration certificate

- (1) For the purposes of section 62 of the Uniform Law, the designated local regulatory authority for a jurisdiction may refuse to grant or renew an Australian registration certificate on any of the following grounds:
 - (a) that the application is not accompanied by, or does not contain, information sufficient to allow the regulatory authority to be satisfied as to the matters referred to in section 62 (3) of the Uniform Law,
 - (b) that the applicant has contravened an Australian law relating to the legal profession,
 - (c) that the applicant has contravened an order of the designated tribunal or a corresponding disciplinary body, including but not limited to an order to pay any fine or costs,
 - (d) that the applicant has contravened an order of a local regulatory authority or corresponding authority of any jurisdiction, including but not limited to an order to pay any fine or costs,
 - (e) that the applicant has failed to comply with a requirement under an Australian law relating to the legal profession to pay a contribution to, or levy for, a fidelity fund,
 - (f) that the applicant has contravened a requirement of or made under an Australian law relating to the legal profession in relation to professional indemnity insurance,
 - (g) that the applicant has failed to pay any expenses of receivership payable under an Australian law relating to the legal profession,
 - (h) that the applicant's foreign legal practice is in receivership (however described),
 - (i) that an authority of another jurisdiction has under a corresponding law:
 - (i) refused to grant or renew registration for the applicant, or
 - (ii) suspended or cancelled the applicant's registration.
- (2) For the purposes of section 62 of the Uniform Law (and without limiting any other subrule), the designated local regulatory authority may refuse to grant an Australian registration certificate on the ground that the regulatory authority is satisfied that the applicant is not a fit and proper person to be registered after considering:
 - (a) the nature of any offence of which the applicant has been found guilty in Australia or a foreign country, whether before or after the commencement of this rule, and

- (b) how long ago the offence was committed, and
 - (c) the person's age when the offence was committed.
- (3) For the purposes of section 62 of the Uniform Law (and without limiting any other subrule), the designated local regulatory authority may refuse to renew an Australian registration certificate on the ground that the regulatory authority is satisfied that the applicant is not a fit and proper person to continue to be registered after considering:
- (a) the nature of any offence of which the applicant has been found guilty in Australia or a foreign country, whether before or after the commencement of this rule, other than an offence disclosed in a previous application to the designated local regulatory authority, and
 - (b) how long ago the offence was committed, and
 - (c) the person's age when the offence was committed.
- (4) For the purposes of section 62 of the Uniform Law (and without limiting any other subrule), the designated local regulatory authority may refuse to renew an Australian registration certificate on any ground on which an Australian registration certificate could be suspended or cancelled.

Note—

Section 101 of the Uniform Law provides a right of appeal or review of a decision refusing to grant or renew an Australian registration certificate, and section 464 of the Uniform Law contains (among other matters) provisions requiring notice of the decision to be given.

22 Discretionary conditions on Australian registration certificate

- (1) For the purposes of section 67 of the Uniform Law, the discretionary conditions that the designated local regulatory authority may impose on an Australian registration certificate are any one or more of the following:
- (a) a condition:
 - (i) as to the type of legal practice in which the holder may engage, or
 - (ii) as to the type of legal practice in which the holder must not engage,
 - (b) any other condition that may be imposed on an Australian practising certificate under the Uniform Law,
 - (c) a condition agreed by the holder.
- (2) Unless the foreign lawyer agrees, the designated local regulatory authority must not impose a condition that is more onerous than a condition that would be imposed on an Australian practising certificate in the same or similar circumstances.

23 Duration of Australian registration certificate

- (1) An Australian registration certificate is in force:
 - (a) if granted, from the commencement date specified in it until the following 30 June, or
 - (b) if renewed, from 1 July in the year for which it is renewed until the following 30 June,unless earlier suspended, cancelled or surrendered.
- (2) If the holder of an Australian registration certificate makes an application to the designated local regulatory authority for a new Australian registration certificate before the expiry of the holder's current Australian registration certificate granted or renewed in a participating jurisdiction, the current certificate continues in force, subject to the Uniform Law, until the earlier of:
 - (a) the designated local regulatory authority grants, or refuses to grant, a new Australian registration certificate, or
 - (b) the applicant withdraws the application.

Part 3.5 Variation, suspension and cancellation of, or refusal to renew, certificates

24 Authorising provision

The rules in this Part are made under Part 3.5 of the Uniform Law.

25 Notice by holder of certificate of automatic show cause event

For the purposes of section 88 of the Uniform Law, the maximum period is 42 days.

Note—

The maximum period of 42 days is made up of the period of 28 days (specified in section 88 (3)) after the automatic show cause event occurred, together with a further period of 14 days by which the designated local regulatory authority may extend the period of 28 days.

26 Notice by holder of certificate of designated show cause event

For the purposes of section 91 of the Uniform Law, the maximum period is 42 days.

Note—

The maximum period of 42 days is made up of the period of 28 days (specified in section 91 (2) of the Uniform Law) after the designated show cause event occurred, together with a further period of 14 days by which the designated local regulatory authority may extend the period of 28 days.

Part 3.6 Vacant

Part 3.7 Incorporated and unincorporated legal practices

27 Authorising provision

The rules in this Part are made under Part 3.7 of the Uniform Law.

28 Notice of intention to engage in legal practice

For the purposes of section 104 (1) of the Uniform Law, the notice of intention to engage in legal practice must be given to the designated local regulatory authority at least 14 days before starting to engage in legal practice.

29 Notice of cessation of legal practice

For the purposes of section 104 (3) of the Uniform Law, the notice of cessation of legal practice must be given to the designated local regulatory authority within 14 days after the cessation of legal practice.

30 Provisions relating to notices

For the purposes of section 104 (5) of the Uniform Law, a notice under section 104 of that Law:

- (a) must comply with the requirements of rule 28 or 29, as the case requires, and
- (b) may be given on behalf of a law practice by a principal of the law practice or by a person authorised to do so by a principal of the law practice.

31 Disclosure obligations

For the purposes of section 107 of the Uniform Law, the disclosure must be made by giving the person notice in writing:

- (a) setting out the legal services to be provided, and
- (b) stating whether or not all of the services are to be provided by an Australian legal practitioner, and
- (c) if some or all of the services are not to be provided by an Australian legal practitioner, identifying those services and indicating the status or qualifications of the person or persons who are to provide the services, and
- (d) stating that the Uniform Law and these Rules apply to the provision of legal services but do not apply to the provision of non-legal services.

32 Directors of incorporated legal practice and pro bono services

- (1) The directors of an incorporated legal practice do not breach their duties as directors

merely because legal services are provided on a pro bono basis by an Australian legal practitioner employed by the incorporated legal practice.

- (2) Subrule (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

Note—

Section 5G of the Corporations Act provides that, if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Parts 3.8, 3.9 Vacant

Chapter 4 Business practice and professional conduct

Part 4.1 Vacant

Part 4.2 Trust money and trust accounts

Division 1 Preliminary

33 Authorising provision

The rules in this Part are made under Part 4.2 of the Uniform Law.

34 Definitions

In this Part:

reconciliation statements means statements prepared under rule 48.

written direction money means trust money that is received or held by a law practice, in respect of which the law practice has a written direction to deal with the money otherwise than by depositing it in a general trust account, and that is not controlled money.

Division 2 Trust money and trust accounts

35 Maintenance of general trust account

- (1) A general trust account established in a jurisdiction:
- (a) must be established with an authorised ADI, and
 - (b) must include in its name the name of the law practice or the business name under which the law practice engages in legal practice, and the expression “law practice trust account” or “law practice trust a/c”.
- (2) This rule does not apply to a general trust account established in a participating

jurisdiction before the commencement day for that jurisdiction, so long as the account name did not breach any requirement of the legislation of that jurisdiction before that day.

36 Receipting of trust money

- (1) A law practice must make out a receipt as soon as practicable:
 - (a) after trust money is received, or
 - (b) in the case of trust money received by direct deposit, after the law practice receives or accesses notice or confirmation of the deposit from the ADI concerned.
- (2) The receipt must contain the following particulars:
 - (a) the date the receipt is made out and, if different, the date of receipt of the money,
 - (b) the number of the receipt,
 - (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 reason for which the money was received,
 - (h) 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",
 - (i) the name of the person who made out the receipt.
- (3) The receipt must be made out in duplicate unless, when the receipt is made out the particulars referred to in subrule (2) are recorded by a computerised accounting system in the trust account receipts cash book.
- (4) The receipt must be given, on request, to the person from whom the trust money was received.
- (5) Receipts must be consecutively numbered and issued in consecutive sequence.
- (6) If a receipt is cancelled, the original receipt must be kept.
- (7) This rule does not apply to controlled money.

37 Deposit records for trust money

- (1) 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, a deposit record must be produced to the ADI at the time the deposit is made.

- (2) 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 or cash (and the amount of each),
 - (d) for each cheque:
 - (i) the name of the drawer of the cheque, and
 - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn, and
 - (iii) the amount of the cheque.
- (3) The deposit record must be made out in duplicate.
- (4) 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.

38 Computerised accounting systems—copies of trust records

- (1) This rule applies if a law practice maintains trust records by means of a computerised accounting system.
- (2) A law practice must maintain and keep, in printed form or in readable and printable form, the following copies of trust records:
 - (a) a copy of trust account receipts and payments cash books as at the end of each named month,
 - (b) a copy of reconciliation statements as at the end of each named month,
 - (c) a copy of lists of trust account ledgers and their balances as at the end of each named month,
 - (d) a copy of lists of controlled money accounts and their balances as at the end of each named month.
- (3) A law practice must:
 - (a) print a paper copy of trust ledger accounts, the register of controlled money and the trust account transfer journal before they are deleted from the system, and

(b) on request by an investigator appointed under Chapter 7 of the Uniform Law, provide to the investigator a printed copy of trust ledger account and controlled money account details.

- (4) The copies of trust records as at the end of a named month under subrule (2) must be prepared within 15 working days after the named month.
- (5) Except as provided by rule 40, the law practice must ensure that copies of trust records prepared under subrule (2) cannot be modified afterwards.

39 Computerised accounting systems—chronological record of information to be made

- (1) This rule applies if a law practice maintains trust records by means of a computerised accounting system.
- (2) A law practice must maintain and keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to each of the following:
- (a) client name,
 - (b) client address,
 - (c) matter reference,
 - (d) matter description,
 - (e) ledger account number or other descriptor.

40 Computerised accounting systems—requirements regarding systems

- (1) This rule applies if a law practice maintains trust records by means of a computerised accounting system.
- (2) A law practice must ensure that:
- (a) 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, and
 - (b) the system is not capable of deleting a trust ledger unless:
 - (i) the balance of the account is zero and all outstanding cheques have been presented, and
 - (ii) when the account is deleted, a copy of the account is kept in a permanent form, and

- (c) any entry in a record produced in a permanent form appears in chronological sequence, and
- (d) each page of each printed or printable record is numbered sequentially or is printed or printable in such a way that no page can be extracted, and
- (e) 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, and
- (f) its computerised accounting system requires input in every field of a data entry screen intended to receive information required by these Rules to be included in trust records.

41 Computerised accounting systems—back-ups

- (1) This rule applies if a law practice maintains trust records by means of a computerised accounting system.
- (2) For the purposes of section 147 of the Uniform Law, a law practice must ensure that:
 - (a) a back-up copy of all records required under the Uniform Law and these Rules is made at least 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.

42 Withdrawal of trust money for payment of legal costs

- (1) This rule prescribes, for the purposes of Division 2 of Part 4.2 of the Uniform Law (see section 144 (2) (b) of that Law), 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 law 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 any applicable subrule of this rule.
- (3) The law practice may withdraw the trust money if the law practice has given the person a bill relating to the money and referring to the proposed withdrawal, and:
 - (a) if the person does not, at the end of the period of 7 business days after the person was given the bill, object to the amount specified in the bill, or
 - (b) if the person objects to the amount specified in the bill within the period of 7 business days after being given the bill but has not referred the matter to the designated local regulatory authority or for costs assessment, and the period of 30

days after the later of the following dates has expired:

- (i) the date on which the person was given the bill,
 - (ii) the date on which the person received an itemised bill following a request made in accordance with section 187 of the Uniform Law, or
- (c) if the money otherwise becomes legally payable.
- (4) The law practice may withdraw the trust money (whether or not the law practice has given the person a bill relating to the money):
- (a) if the money is withdrawn in accordance with instructions that have been received by the law practice and that authorise the withdrawal, and
 - (b) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - (i) a request for payment, referring to the proposed withdrawal, or
 - (ii) a written notice of withdrawal.

Note—

See also subrule (7), which relates to subrule (4).

- (5) The law practice may withdraw the trust money:
- (a) if the money is owed to the law practice by way of reimbursement of money already paid by the law practice on behalf of the person, and
 - (b) if, before effecting the withdrawal, the law practice gives or sends to the person:
 - (i) a request for payment, referring to the proposed withdrawal, or
 - (ii) a written notice of withdrawal.

Note—

See also subrule (8), which relates to subrule (5).

- (6) If the law practice has given the person who is a commercial or government client a bill specifying the amount payable by the person for legal costs, the law practice may withdraw the money so long as:
- (a) the money is withdrawn in accordance with a costs agreement between the law practice and the person, and
 - (b) the costs agreement complies with the legislation under which it is made and authorises the withdrawal, and
 - (c) before effecting the withdrawal, the law practice gives or sends to the person a request for payment, referring to the proposed withdrawal.

(7) In relation to subrule (4):

(a) if the authorisation referred to in subrule (4) (a) authorises withdrawal of part only of the money:

(i) the law practice may withdraw the money to that extent only, and

(ii) if the law practice has given the person a bill relating to the money as referred to in subrule (3) (a)—subrule (3) (b) (i) and (ii) are taken to apply to the remaining part of the amount specified in the bill, and

(b) instructions referred to in subrule (4):

(i) if given in writing, must be kept as a permanent record, or

(ii) 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.

(8) For the purposes of subrule (5), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited.

Note—

Rule 73 provides for the giving of bills.

43 Method of payment

(1) If a withdrawal of trust money from a general trust account of a law practice is made by cheque, the cheque:

(a) must be made payable to or to the order of a specified person or persons and must not be made payable to bearer or to 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”.

(2) A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:

(a) an authorised principal of the law practice, or

(b) if such a principal is not available:

- (i) an authorised legal practitioner associate, or
 - (ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money, or
 - (iii) two or more authorised associates jointly.
- (3) A written record of the required particulars:
- (a) must be kept of each payment made by cheque or electronic funds transfer, unless those particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued or the transfer is effected, and
 - (b) must be kept in a way that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (4) For the purposes of subrule (3), the **required particulars** are as follows:
- (a) the date and number of the cheque or electronic funds transfer,
 - (b) the amount ordered to be paid by the cheque or electronic funds transfer,
 - (c) in the case of a cheque, the name of the person to whom the payment is to be made or, if the cheque is 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) in the case of an electronic funds transfer, the name and number of the account to which the amount was transferred and relevant BSB number,
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, 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,
 - (f) details clearly identifying the ledger account to be debited,
 - (g) particulars sufficient to identify the reason for the payment.
- (5) Written records relating to payments by cheque or electronic funds transfer (including cheque or transfer requisitions) must be kept in the order in which the cheques or transfers were issued or effected.

44 Trust account receipts cash books

- (1) A law practice that maintains a general trust account must keep a trust account receipts cash book in which the following particulars must be recorded 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 reason 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 and must be recorded within 5 working days of the receipt being made out.

45 Trust account payments cash book

- (1) A law practice that maintains a general trust account must keep a trust account payments cash book in which the following particulars are recorded in respect of each payment of trust money:
- (a) the date and number of the cheque or electronic funds transfer,
 - (b) the amount ordered to be paid by the cheque or the amount transferred,
 - (c) in the case of a cheque, the name of the person to whom the payment is to be made or, if the cheque is 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) in the case of an electronic funds transfer:
 - (i) the name and number of the account to which the amount was transferred and the relevant BSB number, and
 - (ii) 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, the matter description and the appropriate ledger reference,

(f) particulars sufficient to identify the reason for payment.

(2) The particulars in respect of payments must be recorded:

(a) in the order in which the payments are made, and

(b) within 5 working days of the day the payment was made.

46 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 the law practice is entitled to withdraw the money and pay it to the other trust ledger account and:

(a) the transfer is authorised in writing by an authorised principal of the law practice or if such a principal is not available:

(i) an authorised legal practitioner associate of the law practice, or

(ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money, or

(iii) two or more authorised associates jointly, or

(b) the transfer is authorised in writing by an external intervener for the law practice.

(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 the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description),

(c) the trust ledger account to which the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description),

(d) the amount transferred,

(e) particulars sufficient to identify the reason for the transfer.

(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.

47 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 person in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded, and kept up to date, 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) The following particulars must be recorded for each transaction in the trust ledger account:
 - (a) the date of the transaction,
 - (b) the appropriate reference number and transaction type,
 - (c) particulars sufficient to identify the reason for the transaction,
 - (d) the amount of money in the transaction,
 - (e) if the transaction type is:
 - (i) a receipt—the provider of the amount and the date the amount was received if that date is different from the date of receipt,
 - (ii) a payment by cheque—the payee 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,
 - (iii) a payment by electronic funds transfer—the account name and number and the relevant BSB number of the ADI and the name of the person receiving the benefit of the payment,
 - (iv) a journal entry—the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description.
- (4) Transactions relating to trust money must be recorded in the trust ledger account:
 - (a) in the order in which the transactions occur, and

(b) within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

(5) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

48 Reconciliation of trust records

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to 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.

49 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 rule.
- (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 subrule (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 subrule (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.

50 Notification requirements regarding general trust accounts

- (1) Within 14 days after establishing a general trust account, a law practice must give the designated local regulatory authority written notice of that fact.
- (2) During July in each year, a law practice must give the designated local regulatory authority written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July in that year:
 - (a) to sign cheques drawn on a general trust account of the practice, or
 - (b) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice,

except to the extent that this information has already been provided (or that the law practice reasonably expects to be included) in an external examiner's report under section 159 of the Uniform Law.

- (3) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the designated local regulatory authority written notice of that fact.
- (4) A notice under this rule given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this rule, **law practice** includes a former law practice and the persons who were principals of a law practice immediately before the practice ceased to exist as a law practice or to engage in legal practice.

51 Law practice closing down, closing office or ceasing to receive or hold trust money

- (1) A law practice that ceases to hold trust money because it ceases to exist as a law practice, to engage in legal practice or to practise in such a way as to receive trust money must, within 14 days of so ceasing to hold trust money, give the designated local regulatory authority:
 - (a) written notice of such of those facts as are applicable and the dates of their occurrence, and

(b) particulars sufficient to identify the law practice's general trust accounts.

(2) In this rule, **law practice** includes a former law practice and the persons who were principals of the law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice.

52 Trust account statements

- (1) A law practice must give a trust account statement to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice.
- (2) Where relevant, the law practice must give the person a separate statement for:
 - (a) each trust ledger account, and
 - (b) each record of controlled money movements, and
 - (c) each record of dealings with the money that is the subject of a power to which the law practice or an associate of the law practice is a party.
- (3) A trust account statement is to contain particulars of:
 - (a) all the information required to be kept under the Uniform Law or these Rules in relation to the trust money included in the relevant ledger account or record, and
 - (b) the remaining balance (if any) of the money.
- (4) A trust account statement is to be given:
 - (a) as soon as practicable after completion of the matter to which the ledger account or record relates, and
 - (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, and
 - (c) except as provided by subrule (5) or (6), as soon as practicable after 30 June in each year.
- (5) The law practice is not required to give a trust account statement under subrule (4) (c) in respect of a ledger account or record if at 30 June the balance of the ledger account or record is zero and:
 - (a) no transaction affecting the ledger account or record has taken place within the previous 12 months, or
 - (b) a trust account statement has been furnished within the previous 12 months and no transaction affecting the ledger account or record has taken place since the

last statement was furnished.

- (6) Without limiting subrule (5), the law practice is not required to give a trust account statement under subrule (4) (c) in respect of a ledger account or record kept in a jurisdiction if at 30 June immediately before the commencement day for that jurisdiction:
- (a) the ledger account or record has been open for less than 6 months, or
 - (b) 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,
- but this subrule expires immediately before the first anniversary of that commencement day.
- (7) The law practice must keep a copy of a trust account statement given under this rule.

53 Trust account statements for commercial or government clients

- (1) Rule 52 does not apply to a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that rule.
- (2) If the commercial or government client directs the law practice to provide trust account statements on a basis different from that prescribed by rule 52, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must keep a copy of a trust account statement given under this rule.

54 Statements regarding receipt or holding of trust money

- (1) The designated local regulatory authority may, by written notice, require a law practice to give the regulatory authority a statement within a specified period:
- (a) specifying whether or not the practice has, during a period specified by the regulatory authority, 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,
 - (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.

55 Trust money subject to specific powers

- (1) This rule has effect for the purposes of section 141 of the Uniform Law.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the law practice must keep:
 - (a) a record of all dealings with the money to which the law 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.

56 Authority to receive trust money

- (1) This rule applies to an incorporated legal practice that does not, during a particular period (referred to in this rule as **that period**), have any principals who hold an Australian practising certificate authorising the receipt of trust money.
- (2) For the purposes of section 150 (b) of the Uniform Law, the incorporated legal practice is authorised to receive trust money during that period:
 - (a) if a person:
 - (i) holds an appointment under section 106 (5) of the Uniform Law that is operative during that period in relation to the practice, and
 - (ii) holds an Australian practising certificate authorising the receipt of trust money, or
 - (b) if:
 - (i) an Australian legal practitioner employed by the practice during that period holds an Australian practising certificate authorising the receipt of trust money, and
 - (ii) the practice is not, during that period, in default of requirements under section 106 of that Law regarding authorised principals,so long as there was, immediately before the start of that period, at least one principal of the practice who held an Australian practising certificate authorising the receipt of trust money.

57 Disclosure of accounts used to hold money

For the purposes of section 151 of the Uniform Law, a law practice must notify the designated local regulatory authority of the following details of each account that is maintained at an ADI in which the law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate:

- (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,
 - (ii) the reason for which the money is entrusted,
 - (iii) the date on which the money is deposited in the account, together with the manner in which it is deposited,
 - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn,
- (e) the date on which the account was opened.

58 When, how and where money is received

- (1) For the purposes of section 153 of the Uniform Law, the Legal Services Council may enter into arrangements (**protocols**) with local regulatory authorities and corresponding authorities about either or both of the following:
 - (a) determining the jurisdiction where a law practice receives trust money,
 - (b) sharing information about whether, and (if so) how, trust money is being dealt with under the Uniform Law or a corresponding law.
- (2) For the purposes of these Rules, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money must be determined in accordance with the protocols.
- (3) The Legal Services Council may enter into arrangements that amend, revoke or replace a protocol.

59 Register of investments

- (1) If a law practice invests trust money for or on behalf of a client, the law practice must maintain a register of investments of trust money that records 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,
- (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.

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

60 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) Subrule (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 law practice.
- (3) The register of powers and estates must record the following:
 - (a) particulars sufficient to identify each power in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and address of the donor and date of each power,
 - (b) particulars sufficient to identify each estate in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including 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.

Division 3 Controlled money

61 Maintenance of controlled money account

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) particulars that are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.

62 Receipt of controlled money

- (1) If a law practice receives controlled money, it must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (2) A law practice must make out a receipt as soon as possible after receiving controlled money or, in relation to a direct deposit, after receiving notice or confirmation of the deposit from the relevant ADI.
- (3) On request from the person from whom controlled money is received, the law practice must give that person a copy of the receipt.
- (4) The receipt must be made out in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money, and must contain the following particulars:
 - (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 reason 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.
- (5) 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).
- (6) Receipts must be consecutively numbered and issued in consecutive sequence.
- (7) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (8) 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.

63 Withdrawal of controlled money from controlled money account

- (1) Despite any directions to the contrary, a law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) 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 such a principal is not available:
 - (i) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose, or
 - (ii) an Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money and who is authorised by the law practice to effect, direct or give authority for this purpose, or
 - (iii) two or more associates of the law practice jointly.
- (3) A written record of the required particulars must be kept of each withdrawal.
- (4) If, at the time the withdrawal is made, the required particulars are recorded by a computerised accounting system, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.
- (5) For the purposes of this rule, the **required particulars** are as follows:
- (a) the date and number of the transaction,

- (b) the amount withdrawn,
 - (c) in the case of a withdrawal by cheque, the name of the person to whom payment is to be made or, if the cheque is 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) in the case of a withdrawal by electronic funds transfer, the name and number of the account to which the amount was transferred and the relevant BSB number,
 - (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 reason for which the payment was made,
 - (g) the person or persons effecting, directing or authorising the withdrawal.
- (6) The particulars are to be recorded in the order in which the withdrawals are made and are to be recorded separately for each controlled money account.

64 Register of controlled money

- (1) If a law practice receives controlled money, it must maintain a register of controlled money for the records of controlled money movements for all its controlled money accounts.
- (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 these Rules.
- (5) Subject to subrule (6), 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 keep 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 in permanent form 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.
- (9) The statement required to be prepared each month under subrule (8) must be reviewed by a principal of the law practice who is authorised to receive trust money and that review must be evidenced on the statement.

Division 4 External examinations

65 Designation of persons eligible to be appointed as external examiners

- (1) This rule designates the classes of persons who may be appointed as external examiners under Part 4.2 of the Uniform Law.
- (2) The following classes of persons are designated for the purposes of section 156 of the Uniform Law:
- (a) members of CPA Australia holding a current Public Practice Certificate issued by that body,

- (b) members of Chartered Accountants Australia and New Zealand holding a current Certificate of Public Practice issued by that body,
- (c) members of the Institute of Public Accountants holding a current Professional Practice Certificate issued by that body,
- (d) persons registered as auditors under Part 9.2 of the Corporations Act,
- (e) employees or agents of the designated local regulatory authority,

being in each case persons who have also successfully completed a course of education approved by the Legal Services Council from time to time after consultation with the relevant designated local regulatory authority.

(3) A reference in subrule (2) (a)–(c) to:

- (a) a particular body includes a reference to the body with a changed name or to a successor body, and
- (b) a particular certificate includes a reference to a certificate (however described) that is issued by the body concerned and certifies the professional competency of the holder.

(4)–(7) (Repealed)

66 Appointment of external examiner by law practice

- (1) For the purposes of section 155 (1) of the Uniform Law, a law practice must, in writing, appoint a suitably qualified person (who is within a class designated under rule 65) as an external examiner.
- (2) The law practice must give to the designated local regulatory authority:
 - (a) within 30 days after first receiving trust money (other than transit money) in the jurisdiction concerned—written notice of the external examiner appointed by the law practice as its external examiner, and
 - (b) within 7 days after an external examiner ceases to be the external examiner of the law practice—written notice of that fact, and
 - (c) within 30 days after an external examiner ceases to be the external examiner appointed by the law practice—written notice of the successor external examiner appointed by the law practice as its external examiner.
- (3) The law practice may terminate the appointment of an external examiner with the prior approval of the designated local regulatory authority.
- (4) The designated local regulatory authority may give approval under subrule (3) if satisfied that it is reasonable in the circumstances for the practice to terminate the

appointment.

- (5) The designated local regulatory authority may require the law practice to supply any evidence the designated local regulatory authority requires in order to be satisfied under subrule (4).

67 Standard form reports by external examiners

- (1) If the designated local regulatory authority publishes a standard form for an external examiner's report, each external examiner must report in accordance with that form.
- (2) The designated local regulatory authority may, in writing given to an external examiner, exempt the examiner from the requirement to report in accordance with the standard form.

68 Final external examination

- (1) This rule applies if a law practice:
 - (a) ceases to be authorised to receive trust money or ceases to engage in legal practice, and
 - (b) has held a trust account.
- (2) The law practice must appoint an external examiner to conduct the examination referred to in this rule if an external examiner is not holding an appointment as such and available to conduct the examination.
- (3) The law practice must arrange for the external examiner to examine and report on the trust records of the law practice:
 - (a) in respect of the period since an external examination was last conducted, and
 - (b) in respect of each period of 12 months after that period, and
 - (c) in respect of any remaining period thereafter,during which, or any part of which, the law practice held trust money.
- (4) The law practice must give the designated local regulatory authority a copy of each report undertaken by its external examiner in accordance with this rule within 60 days after the end of the period to which the report relates.

69 External examiner's report

For the purposes of section 159 (1) (b) of the Uniform Law, an external examiner must give a written report of the examination to the designated local regulatory authority at a time or within a period determined by the Legal Services Council and published on the Council's website.

Part 4.3 Legal costs

70 Authorising provision

The rules in this Part are made under Part 4.3 of the Uniform Law.

71 Commercial or government clients

For the purposes of section 170 (2) (h) of the Uniform Law, and to the extent they are not commercial or government clients apart from this rule, the following classes of persons are specified:

- (a) State owned enterprises within the meaning of the *State Owned Enterprises Act 1992* of Victoria,
- (b) State owned corporations within the meaning of the *State Owned Corporations Act 1989* of New South Wales.

72 Alternative disclosure for legal costs below higher threshold

For the purposes of section 174 (5) of the Uniform Law, the prescribed form of the uniform standard disclosure form:

- (a) for solicitors and other law practices (except barristers)—is Form 1 in Schedule 1, and
- (b) for barristers—is Form 2 in Schedule 1.

Note—

Section 174 of the Uniform Law contemplates Uniform Rules prescribing the amounts of the lower threshold and the higher threshold. Clause 18 of Schedule 4 to the Uniform Law provides that, until relevant Uniform Rules take effect, the lower threshold is \$750 and the higher threshold is \$3000. Both thresholds are exclusive of GST and disbursements.

72A Non-compliance with disclosure obligations—disapplication of section 178 (1) and (2) of the Uniform Law

- (1) This rule applies where a law practice has contravened the disclosure obligations of Part 4.3 of the Uniform Law in relation to a particular matter.
- (2) Section 178 (1) and (2) of the Uniform Law do not apply in relation to the law practice (so far as they would otherwise apply to the matter concerned) in circumstances where the relevant authority, a costs assessor, a court or a tribunal is satisfied that:
 - (a) the law practice took reasonable steps to comply with the disclosure obligations of Part 4.3 of the Uniform Law before becoming aware of the contravention, and
 - (b) the law practice, no later than 14 days after the date on which it became aware of the contravention, rectified the contravention, as far as practicable, by providing the client with the necessary information required to be disclosed under Division 3

of Part 4.3 of the Uniform Law (including, where relevant, an estimate or revised estimate of the costs), and

(c) the contravention was not substantial and it would not be reasonable to expect that the client would have made a different decision in any relevant respect.

(3) Subrule (2) (b) applies even though the information or estimate is not provided at the times required by the disclosure obligations of Part 4.3 of the Uniform Law.

(4) In this rule:

client includes (where relevant) an associated third party payer.

relevant authority means the designated local regulatory authority for section 178 of the Uniform Law.

73 Giving bills

(1) For the purposes of section 189 of the Uniform Law, a bill given by a law practice to a client is to be given:

(a) by personal delivery to the client or an agent of the client, or

(b) by sending it by post to the client or an agent of the client:

(i) at the usual or last known business or residential address of the client or an agent of the client, or

(ii) at the address nominated to the law practice for that purpose by the client or an agent of the client, or

(c) by leaving a copy of the bill, addressed to the client:

(i) at the usual or last known business or residential address of the client or an agent of the client, or

(ii) at the address nominated to the law practice for that purpose by the client or an agent of the client, or

(d) in the case of a client whose address includes a DX address in Australia—by leaving a copy of the bill, addressed to the client, in the DX box at that address or in another DX box for transmission to that DX box, or

(e) in the case of a client who has consented to receiving bills by means of a fax sent to a fax number specified by the client—by faxing a copy of the bill, addressed to the client, to that fax number, or

(f) in the case of a client who has consented to receiving bills sent electronically to the client or an agent of the client by means of:

- (i) the client's usual email address or mobile phone number (or another email address or mobile phone number specified by the client)—by transmitting the bill electronically, addressed to the client, to that address or number, or
- (ii) different arrangements agreed to by the client or an agent of the client—by transmitting the bill electronically in accordance with those arrangements, or
- (g) in the case of service on a corporation—by serving a copy of the bill on the corporation in any manner in which service of a notice or document may, by law, be served on the corporation.

- (2) In this rule, **agent**, in relation to a person, includes a law practice that, or an Australian legal practitioner who, has authority to accept service of legal process on behalf of the person.

74 Itemised bill higher than lump sum bill

- (1) If the total amount of the legal costs specified in an itemised bill given by a law practice exceeds the amount previously specified by the law practice in a lump sum bill for the same matter, the additional costs may be recovered by the law practice only if:
 - (a) when the lump sum bill was given, the law practice made an appropriately worded disclosure in writing to the client indicating that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
 - (b) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.
- (2) This rule does not affect the operation of any costs agreement in relation to a matter.

75 Interest on unpaid legal costs

- (1) For the purposes of section 195 of the Uniform Law, the rate of interest is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.
- (2) In this rule:

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.

76 Costs assessment—party not participating in assessment

For the purposes of section 199 of the Uniform Law, if, after receiving notice under section 198 (8) of that Law, a party to the assessment does not participate in a costs assessment,

assessment may proceed, and be determined, in the absence of that party.

Part 4.4 Professional indemnity insurance

77 Authorising provision

The rules in this Part are made under Part 4.4 of the Uniform Law.

78 Minimum standards for professional indemnity insurance—law practices except barristers

- (1) This rule sets out, for the purposes of section 210 (1) (b) (i) of the Uniform Law, the minimum standards for professional indemnity insurance in relation to a law practice except that of a barrister.
- (2) Professional indemnity insurance must cover any civil liability, including professional negligence, incurred in connection with the legal services provided by the law practice.
- (3) Professional indemnity insurance must operate on a “claims made” basis and cover claims made or notified during the period of insurance and claims made after the period of insurance arising from circumstances notified during the period of insurance.
- (4) Professional indemnity insurance must provide minimum coverage of \$2 million for each and every claim under the insurance, inclusive of the claimant’s costs and defence costs.
- (5) Professional indemnity insurance must cover all current and former principals or employees engaged in the legal practice of the law practice.
- (6) Professional indemnity insurance must provide indemnity for run-off liabilities for a minimum of 7 years from:
 - (a) the date (during the period of insurance) that the law practice ceases to practise, or
 - (b) the date of expiry of the period of insurance,if the law practice is not covered from the relevant date by a further policy that complies with these minimum standards, including the requirement for run-off cover under this subrule.

Note—

Professional indemnity insurance may be provided for by a scheme such as a run-off scheme.

- (7) In the case of a claim arising from dishonesty or fraud, professional indemnity insurance must not exclude indemnity for the liability of a principal of, or employee engaged in the legal practice of, the law practice who was not knowingly connected with any dishonesty or fraud related to the claim.

- (8) Professional indemnity insurance may exclude cover to the extent that the subject matter of a claim entitles a claimant to claim and receive compensation from a fidelity fund, guarantee fund or similar cover provided under jurisdictional legislation.
- (9) Professional indemnity insurance must not provide the insurer with a right to avoid, cancel or reduce cover because of:
- (a) any innocent or non-fraudulent non-disclosure or misrepresentation by the law practice, or
 - (b) any late notification of a matter or claim,
- but may provide for reimbursement of the insurer for prejudice caused by late notification of a matter or claim.
- (10) Professional indemnity insurance must provide retroactive cover.

Note—

See also:

- section 95 of the *Legal Profession Uniform Law Application Act 2014* of New South Wales, which provides for the approval of types of insurance policies, their level of insurance and their terms and conditions
- sections 13 and 120 of the *Legal Profession Uniform Law Application Act 2014* of Victoria, which provide for the issue or provision of insurance policies and the determination of arrangements for insurance policies including their terms.

79 Minimum standards for professional indemnity insurance—barristers

- (1) This rule sets out, for the purposes of section 210 (1) (b) (i) of the Uniform Law, the minimum standards for professional indemnity insurance in relation to a barrister.
- (2) Professional indemnity insurance must indemnify the barrister against civil liability incurred while engaging in legal practice as a barrister within Australia.
- (3) Professional indemnity insurance must provide indemnity for claims actually made and notified during the period of insurance.
- (4) Professional indemnity insurance must provide minimum coverage of \$1.5 million for each and every claim, or each and every loss, inclusive of the claimant's costs and defence costs, up to a minimum aggregate limit of \$4.5 million.
- (5) Professional indemnity insurance must provide indemnity for a minimum of 7 years for run-off liabilities in the event that the insured dies or ceases to engage in legal practice as a barrister for any reason, other than having the insured's Australian practising certificate cancelled as a result of disciplinary action.
- (6) In the case of a claim arising from dishonesty or fraud, professional indemnity insurance must not exclude indemnity of a barrister who was not knowingly involved

in or party to the dishonesty or fraud.

- (7) Professional indemnity insurance need not but may provide indemnity to the extent that the subject matter of the claim entitles a claimant to claim and receive compensation from a fidelity fund, guarantee fund or similar cover provided under jurisdictional legislation.
- (8) Professional indemnity insurance must provide retroactive cover, except for claims arising out of fraud or dishonesty. However, it is permissible for the insurance to impose a retroactive limitation on cover:
 - (a) if the retroactive date is the date the barrister commenced to engage in legal practice as a barrister, or
 - (b) if:
 - (i) the barrister has previously ceased to engage in legal practice as a barrister and is covered for run-off liabilities arising from that prior practice under another insurance policy, and
 - (ii) the retroactive date is the date the barrister resumed legal practice as a barrister.

80 Notice to be given where certain legal services not covered by insurance

- (1) A law practice which, or an Australian legal practitioner who, provides legal services outside Australia to a client based in Australia when those services are not covered by professional indemnity insurance in accordance with the Uniform Law and these Rules must give written notice to the client of that fact.
- (2) A notice under subrule (1) must be given before the legal services are provided.

81 Regulatory authority may inspect policies

- (1) The designated local regulatory authority may require a law practice or an Australian legal practitioner to submit a professional indemnity insurance policy to the regulatory authority for assessment as to whether the policy complies with these Rules and any relevant jurisdictional legislation.
- (2) The law practice or Australian legal practitioner must comply with the requirement within the period stated in the requirement or, if no period is stated in the requirement, as soon as practicable after being notified of the requirement.

82 Exemptions

- (1) For the purposes of section 215 (8) of the Uniform Law, the following are exempt from the requirement to hold or be covered by an approved insurance policy:
 - (a) a corporate legal practitioner or government legal practitioner,

- (b) a holder of a statutory office of the Commonwealth or of a jurisdiction,
- (c) a person holding an office or position, or acting as, parliamentary counsel, legislative counsel or legislative drafter (however described) under a contract of service, or contract for services, with the Crown,
- (d) a community legal service (or class of community legal services) determined by the designated local regulatory authority, on any grounds that the regulatory authority considers sufficient, as warranting exemption.

(2) Subrule (1) does not affect the requirements for:

- (a) an Australian legal practitioner (including a corporate legal practitioner or government legal practitioner):
 - (i) to hold an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice, and
 - (ii) to hold or be covered by an approved insurance policy,in connection with engaging in legal practice on the practitioner's own account, or
- (b) an Australian legal practitioner:
 - (i) to hold an Australian practising certificate, and
 - (ii) to hold or be covered by an approved insurance policy,in connection with engaging in legal practice as a volunteer at a community legal service or otherwise on a pro bono basis.

Part 4.5 Fidelity cover

83 Authorising provision

The rules in this Part are made under Part 4.5 of the Uniform Law.

84 Time of default

- (1) A default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (2) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed.

85 Defaults to which Uniform Law does not apply

For the purposes of section 221 (4) of the Uniform Law, Part 4.5 of that Law does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the law practice for or in connection

with:

- (a) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate is required to hold an Australian financial services licence covering the provision of the financial service, or
- (b) a financial service provided by the law practice or an associate of the law practice in circumstances where the law practice or associate provides the service as an authorised representative of another person who carries on a financial services business, or
- (c) investment purposes, whether on its own account or as an agent, unless:
 - (i) the money or property was entrusted to or held by the law practice in the ordinary course of legal practice and primarily in connection with the provision of legal services to or at the direction of the client, and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client, or
- (d) a managed investment scheme, or mortgage financing, undertaken by the law practice.

86 Making a claim

- (1) For the purposes of section 234 of the Uniform Law, a claim against a fidelity fund is to be given to a fidelity authority in a form approved by the fidelity authority.
- (2) Where necessary, a fidelity authority must give a claim received by it to the fidelity authority of the relevant jurisdiction.
- (3) A claim against a fidelity fund may be withdrawn, in writing, by the claimant at any time.

87 Investigation of claims

- (1) The fidelity authority may require a claimant to do either or both of the following:
 - (a) give further information about the claim or any dispute to which the claim relates,
 - (b) verify the claim or any further information by statutory declaration.
- (2) Without limiting subrule (1), the fidelity authority may at any time require a claimant to produce or deliver any security, document or statement of evidence necessary or available:

- (a) to support a claim, or
 - (b) to enable the fidelity authority to exercise its rights against any law practice, associate or other person concerned, or
 - (c) to enable proceedings to be commenced against a person who committed a default.
- (3) The fidelity authority may disallow a claim if a requirement under subrule (2) is not complied with.

88 Change in status of law practice or associate does not affect claim

- (1) In this rule, ***change in status*** includes:
- (a) in relation to a law practice:
 - (i) a change in the directorship, membership or staffing of the law practice, or
 - (ii) the dissolution or winding up of the law practice, or
 - (b) in relation to an associate who is or was an Australian legal practitioner, the fact that the associate has ceased to practise or to hold an Australian practising certificate or has died.
- (2) A claim about a default of a law practice may be made despite a change in status of the law practice or the associate concerned after the occurrence of the default.
- (3) A claim about a default of a law practice is not affected by a change in status of the law practice or the associate concerned.

89 Advertisements

- (1) A notice under section 235 of the Uniform Law must be published:
- (a) in a newspaper circulating generally throughout Australia, and
 - (b) in a newspaper circulating generally in each jurisdiction in which the law practice has, or at any relevant time had, an office, and
 - (c) if the fidelity authority has a website, on that website.
- (2) Apart from extending the period during which claims can be made, publication of a notice under this rule does not confer any entitlement in relation to a claim or the default to which it relates or provide any grounds affecting the determination of a claim.

90 Notification of delay in making decision

If the fidelity authority considers that a claim is not likely to be determined within 12

months after the claim was made, the fidelity authority must notify the claimant in writing to that effect and provide a brief statement of the reasons for the delay.

91 Recommendations by the fidelity authority to other fidelity authorities

If a fidelity authority is acting as agent of another fidelity authority in relation to a claim:

- (a) the fidelity authority acting as agent may make recommendations about the decision that the other authority might make about the claim, and
- (b) the fidelity authority acting as agent cannot make a decision about the claim, and
- (c) the other fidelity authority:
 - (i) may make a decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry, or
 - (ii) may disregard the recommendations.

Note—

Section 252 of the Uniform Law provides that the fidelity authority of a participating jurisdiction may act as agent of another fidelity authority.

Part 4.6 Business management and control

Division 1 Prohibited businesses and services

91A Related entities for purposes of section 258

- (1) This rule specifies, for the purposes of section 258 of the Uniform Law, who is to be a **related entity** in relation to a law practice to which this rule applies.

Note—

In section 6 (1) of the Uniform Law, paragraph (b) of the definition of **related entity** provides that these Rules may specify who is to be a related entity in relation to certain persons.

- (2) This rule applies to a law practice that is:
 - (a) a sole practitioner, or
 - (b) a law firm, or
 - (c) a community legal service that is not a company, or
 - (d) an incorporated legal practice that is not a company, or
 - (e) an unincorporated legal practice.
- (3) If the law practice is a body corporate, another body corporate is a **related entity** if the two are related bodies corporate.

- (4) If the law practice is not a body corporate, a body corporate is a **related entity** to the law practice if any of the following paragraphs describes the relationship between the law practice and either the body corporate or a holding company of the body corporate:
- (a) the law practice controls the composition of the board of the body corporate or holding company, or
 - (b) the law practice is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate or holding company, or
 - (c) the law practice holds more than one-half of the issued share capital of the body corporate or holding company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), or
 - (d) if there is a committee of, or other body having management of, the law practice, the body corporate or holding company controls the composition of that committee or other body, or
 - (e) if the law practice has meetings at which persons constituting the law practice vote on matters concerning the management of the law practice, the body corporate or holding company is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at such a meeting.

- (5) In this rule:

holding company has the same meaning as it has in the Corporations Act.

related body corporate has the same meaning as it has in the Corporations Act.

91B Managed investment schemes

- (1) For the purposes of section 258 (3) of the Uniform Law, a law practice is permitted to provide legal services in relation to a managed investment scheme, despite an associate of the law practice having an interest in the scheme or the responsible entity for the scheme, if:
- (a) those legal services are provided to the operator of the scheme, or
 - (b) no associate of the law practice has a substantial interest (within the meaning of subrule (2)) in the scheme or the responsible entity for the scheme, or
 - (c) one or more associates of the law practice has a substantial interest (within the meaning of subrule (2)) in the scheme or the responsible entity for the scheme, but no principal of the law practice either:

- (i) knows of any of those interests, or
 - (ii) ought reasonably to know of any of those interests.
- (2) For the purposes of subrule (1), an associate has a **substantial** interest in a managed investment scheme or responsible entity if the associate:
- (a) is entitled, at law or in equity, to an interest in the assets of the managed investment scheme or responsible entity which is significant or of relatively substantial value, or
 - (b) exercises any material control over the conduct and operation of the managed investment scheme or responsible entity, or
 - (c) has an entitlement to a share of the income of the managed investment scheme or responsible entity which is substantial, having regard to the total income which is derived from it.

91C Mortgages

- (1) For the purposes of section 258 (4) (c), a mortgage is exempt from the prohibition in section 258 (4) if:
- (a) the lender is not a financial institution, and
 - (b) neither the law practice, nor any associate, agent or appointee of the law practice, introduced the borrower to the lender.
- (2) For the purposes of section 258 (4) (c), a mortgage is exempt from the prohibition in section 258 (4) if:
- (a) the lender is not a financial institution, and
 - (b) the borrower was introduced to the lender by:
 - (i) the law practice, or
 - (ii) an associate, agent or appointee of the law practice, and
 - (c) that introduction occurred other than as part of mortgage financing engaged in by the practice or person who made the introduction.

91D Financial institutions

For the purposes of paragraph (b) of the definition of **financial institution** in section 258 (5) of the Uniform Law, the following classes of body are specified:

- (a) a body that is a professional investor within the meaning of the Corporations Act,
- (b) a body that holds an Australian credit licence within the meaning of the *National*

Consumer Credit Protection Act 2009 of the Commonwealth,

- (c) a body:
 - (i) whose ordinary business includes the lending of money, and
 - (ii) whose consolidated gross assets have a value of more than \$10 million,
- (d) a related body corporate, within the meaning of section 50 of the Corporations Act, to a body of a class specified in any other paragraph of this rule.

Division 2 Registers

92 Authorising provision

The rules in this Division are made under Part 4.6 of the Uniform Law.

93 Register of files opened

- (1) A law practice must maintain a register of files opened.
- (2) The register of files opened must, in respect of each matter for which the law practice receives instructions to provide legal services to a person, record the following:
 - (a) the full name and address of the person,
 - (b) the date of receipt of the instructions,
 - (c) a short description of the services which the law practice has agreed to provide,
 - (d) an identifier.
- (3) Subrules (1) and (2) do not apply to a barrister.

94 Register of safe custody documents

- (1) A law practice must maintain a register of safe custody documents.
- (2) The register of safe custody documents must, in respect of each will, deed, document or other valuable property for which the law practice receives instructions to hold the item in safe custody, record the following:
 - (a) the full name and address of the person who gave the instructions,
 - (b) a short description of the item,
 - (c) the date of receipt of the item by the law practice,
 - (d) the identifier of the safe custody packet, in which the item is held by the law practice.

- (3) Subrules (1) and (2) do not apply to a barrister except to the extent the barrister holds items in safe custody in the course of the work of a barrister.

95 Register of financial interests

- (1) A law practice must maintain a register of financial interests.
- (2) The register of financial interests must, in respect of each legal practitioner associate of the law practice, record the following:
- (a) the full name and address of the associate,
 - (b) the name and other identifying particulars of any company, partnership, or other entity, in which the associate has a financial interest and which engages in any dealing with trust money received by the associate or the law practice, other than:
 - (i) companies listed on the Australian Stock Exchange, and
 - (ii) shelf companies (companies that have already been registered but have not traded) maintained for sale.
- (3) A legal practitioner associate of the law practice must cause the details referred to in subrule (2) (b) to be disclosed in the register of financial interests as soon as practicable.
- (4) Subrules (1)–(3) do not apply to a barrister except to the extent a financial interest is relevant to the legal services provided by the barrister or a dealing with trust money occurs in the course of the work of a barrister.

Chapter 5 Vacant

Chapter 6 External intervention

Part 6.1 Introduction

96 Authorising provision

The rules in this Chapter are made under Chapter 6 of the Uniform Law.

Part 6.2 Vacant

Part 6.3 Supervisors of trust money

97 Appointment of supervisor of trust money

- (1) The instrument of appointment under section 329 of the Uniform Law of a supervisor of trust money of a law practice must:
- (a) identify the law practice and the supervisor of trust money of the law practice,

and

- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice, and
- (c) specify the term of the appointment, and
- (d) specify any conditions imposed by the designated local regulatory authority when the appointment is made, and
- (e) specify any fees payable by way of remuneration to the supervisor of trust money of the law practice specifically for carrying out the supervisor's duties in relation to the external intervention, and

Note—

Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the designated local regulatory authority.

- (f) provide for the legal costs and the expenses that may be incurred by the supervisor of trust money of the law practice in relation to the external intervention.

- (2) The instrument of appointment may specify any reporting requirements to be observed by the supervisor of trust money of a law practice.

98 Notice of appointment

- (1) As soon as possible after an appointment under section 329 of the Uniform Law of a supervisor of trust money of a law practice is made, the designated local regulatory authority must serve a notice of the appointment on:
 - (a) the law practice, and
 - (b) any other person authorised to operate any trust account of the law practice, and
 - (c) any external examiner appointed to examine the law practice's trust records, and
 - (d) the ADI with which any trust account of the law practice is maintained, and
 - (e) any person whom the designated local regulatory authority reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the supervisor of trust money of the law practice, and
 - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice, and

- (c) specify the term of the appointment, and
- (d) specify any reporting requirements to be observed by the supervisor of trust money of the law practice, and
- (e) specify any conditions imposed by the designated local regulatory authority when the appointment is made, and
- (f) include a statement that the law practice may appeal against the appointment of the supervisor of trust money of the law practice under the Uniform Law.

Part 6.4 Managers

99 Appointment of manager

- (1) The instrument of appointment under section 334 of the Uniform Law of a manager for a law practice must:
 - (a) identify the law practice and the manager, and
 - (b) indicate that the external intervention is by way of appointment of a manager, and
 - (c) specify the term of the appointment, and
 - (d) specify any conditions imposed by the designated local regulatory authority when the appointment is made, and
 - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out the manager's duties in relation to the external intervention, and

Note—

Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the designated local regulatory authority.

- (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.
- (2) The instrument of appointment may specify any reporting requirements to be observed by the manager.

100 Notice of appointment

- (1) As soon as possible after an appointment under section 334 of the Uniform Law of a manager for a law practice is made, the designated local regulatory authority must serve a notice of the appointment on:
 - (a) the law practice, and
 - (b) any other person authorised to operate any trust account of the law practice, and

- (c) any external examiner appointed to examine the law practice's trust records, and
- (d) the ADI with which any trust account of the law practice is maintained, and
- (e) any person whom the designated local regulatory authority reasonably believes should be served with the notice.

(2) The notice must:

- (a) identify the law practice and the manager, and
- (b) indicate that the external intervention is by way of appointment of a manager, and
- (c) specify the term of the appointment, and
- (d) specify any reporting requirements to be observed by the manager, and
- (e) specify any conditions imposed by the designated local regulatory authority when the appointment is made, and
- (f) include a statement that the law practice may appeal against the appointment of the manager under the Uniform Law.

Part 6.5 Receivers

101 Appointment of receiver

- (1) The instrument of appointment under section 341 of the Uniform Law of a person as a receiver for a law practice must:
- (a) identify the law practice and the receiver, and
 - (b) indicate that the external intervention is by way of appointment of a receiver, and
 - (c) specify any conditions imposed by the designated tribunal when the appointment is made, and
 - (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out the receiver's duties in relation to the external intervention, and

Note—

Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee of the designated local regulatory authority.

- (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (2) The instrument of appointment may:
- (a) specify the term (if any) of the appointment, and

- (b) specify any reporting requirements to be observed by the receiver.

102 Notice of appointment

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the designated local regulatory authority must serve a notice of the appointment on:
 - (a) the law practice, and
 - (b) any other person authorised to operate any trust account of the law practice, and
 - (c) any external examiner appointed to examine the law practice's trust records, and
 - (d) the ADI with which any trust account of the practice is maintained, and
 - (e) any person whom the designated tribunal directs should be served with the notice, and
 - (f) any person whom the designated local regulatory authority reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the receiver, and
 - (b) indicate that the external intervention is by way of appointment of a receiver, and
 - (c) specify the term (if any) of the appointment, and
 - (d) indicate the extent to which the receiver has the powers of a manager for the law practice, and
 - (e) specify any reporting requirements to be observed by the receiver, and
 - (f) specify any conditions imposed by the designated tribunal when the appointment is made, and
 - (g) include a statement that the law practice may appeal against the appointment of the receiver under the Uniform Law.

Part 6.6 General

103 Fees, legal costs and expenses

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment:
 - (a) fees by way of remuneration, and
 - (b) the legal costs and the expenses incurred in relation to the external intervention.

- (2) An account of the external intervener for fees, costs and expenses may, on the application of the designated local regulatory authority, be taxed or assessed.

104 Reports by external intervener

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment.
- (2) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide:
 - (a) written reports as required from time to time by the designated local regulatory authority, and
 - (b) a written report to the designated local regulatory authority at the termination of the appointment.
- (3) An external intervener must also keep the designated local regulatory authority informed of the progress of the external intervention, including providing reports about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.
- (4) Nothing in this rule affects any other reporting obligations that may exist in respect of the law practice concerned.

105 Report to designated local regulatory authority on disciplinary matters

- (1) This rule applies if an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.
- (2) If this rule applies, the external intervener must (unless the matter is or has already been the subject of a complaint) refer the matter to the designated local regulatory authority to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

Chapter 7 Vacant

Chapter 8 Regulatory authorities

Part 8.1 Vacant

Part 8.2 Legal Services Council

106 Authorising provision

The rules in this Part are made under Part 8.2 of the Uniform Law.

107 Delegation of Legal Services Council's functions

- (1) For the purposes of section 397 of the Uniform Law, the Legal Services Council may delegate any of its functions to the Chair of the Council or the Commissioner for Uniform Legal Services Regulation or both.
- (2) Subrule (1) does not apply to the Council's functions under the following provisions of the Uniform Law:
 - (a) section 396 (Functions of Council in relation to Commissioner), and
 - (b) section 419 (Power to make Uniform Rules).

Parts 8.3-8.6 Vacant

Chapter 9 Miscellaneous

Part 9.1 Vacant

Part 9.2 Vacant

Note—

See also the rules designated as Admission Rules, Legal Practice Rules, Legal Profession Conduct Rules or Continuing Professional Development Rules.

Part 9.3 Legal Profession Registers

108 Authorising provision

The rules in this Part are made under Part 9.3 of the Uniform Law.

109 Australian Legal Profession Register

- (1) For the purposes of section 432 of the Uniform Law, local regulatory authorities are required to furnish the Legal Services Council with information that must or may be included in the Australian Legal Profession Register.
- (2) Information required under subrule (1) is to be provided in accordance with any guidelines issued by the Council.
- (3) Without limitation, the Council may request a local regulatory authority to furnish the Council with information of a specified kind.
- (4) Information requested under subrule (3) is to be information of a kind required under subrule (1) and is to be furnished within the time specified in the request.

Note—

Other registers are provided for under rules 59, 60, 64, 93, 94 and 95.

Parts 9.4-9.8 Vacant

Part 9.9 General

110 Authorising provision

The rules in this Part are made under Part 9.9 of the Uniform Law.

111 General provisions about appeal or review—constructive decision

For the purposes of section 464 of the Uniform Law, the specified period is 90 days.

Chapter 10 Other provisions

Note—

This Chapter of these Rules does not have a counterpart Chapter in the Uniform Law.

Part 1 Provisions relating to Schedule 3 to the Uniform Law

112 Authorising provision

The rules in this Part are made under Schedule 3 to the Uniform Law.

113 Non-participant legal practitioner expecting to practise solely or principally in a participating jurisdiction—when exemption ceases

- (1) This rule applies if an Australian practising certificate is granted or renewed for a non-participant legal practitioner on the basis of a temporary arrangement referred to in clause 5 (2) of Schedule 3 to the Uniform Law.
- (2) For the purposes of clause 5 (3) of Schedule 3 to the Uniform Law, the exemption provided by clause 5 (2) ceases to operate at the end of the period of 12 months after the grant or renewal of the Australian practising certificate.

Note—

The exemption is accordingly not available to the non-participant legal practitioner in relation to the further grant or renewal of an Australian practising certificate on the basis of the arrangement concerned.

114 Non-participant registered foreign lawyer expecting to practise solely or principally in a participating jurisdiction—when exemption ceases

- (1) This rule applies if an Australian registration certificate is granted or renewed for a non-participant registered foreign lawyer on the basis of a temporary arrangement referred to in clause 10 (2) of Schedule 3 to the Uniform Law.
- (2) For the purposes of clause 10 (3) of Schedule 3 to the Uniform Law, the exemption provided by clause 10 (2) ceases to operate at the end of the period of 12 months after the grant or renewal of the Australian registration certificate.

Note—

The exemption is accordingly not available to the non-participant registered foreign lawyer in relation to the further grant or renewal of an Australian registration certificate on the basis of the arrangement concerned.

Schedule 1 Forms

Form 1 Standard costs disclosure form for clients—solicitors and other law practices (except barristers)

The standard costs disclosure Form 1 can be used when your professional fee is not likely to be more than \$3000 (before adding GST and disbursements).

Date provided to client:

Law practice details					
Name:				Contact:	
Address:				Phone:	
				Mobile (Optional):	
State/Territory:		Postcode:		Email (Optional):	
Client details					
Name:				Phone:	
Address:				Mobile (Optional):	
State/Territory:		Postcode:		Email (Optional):	
What we will do for you					
How much we estimate you will need to pay					
Estimated total cost of our legal services (excl. GST):	\$	The basis for calculating costs			
Estimated amount for disbursements (excl. GST):	\$				
Estimated total cost of barrister or other law practice (excl. GST):	\$				
<i>[Attach information from the second law practice]</i>					
GST:	\$	Further Details:			
Estimated full amount you will need to pay (incl. GST):	\$				

This is an estimate only. We will inform you if anything happens that significantly changes this estimate. If our professional fee is likely to be more than \$3000 (before GST and disbursements are added) we will provide you

with a full disclosure of costs in writing.

Your rights include to:

- ▶ Ask for an explanation of this form ▶ Negotiate a costs agreement ▶ Negotiate the billing method (eg timing or task) ▶ Request a written progress report of costs incurred ▶ Receive a written bill for work done ▶ Request an itemised bill ▶ Contact your local regulatory authority.

Form 2 Standard costs disclosure form for clients—barristers being briefed directly by a client

The standard costs disclosure Form 2 can be used when your professional fee is not likely to be more than \$3000 (before adding GST and disbursements).

Date provided to client:

Barrister details				
Name:		Phone:		
Address:		Mobile (Optional):		
State/Territory:		Postcode:		Email (Optional):
Client details				
Name:		Phone:		
Address:		Mobile (Optional):		
State/Territory:		Postcode:		Email (Optional):
What I will do for you				
How much I estimate you will need to pay				
Estimated total cost of my legal services (excl. GST):	\$		The basis for calculating costs Further Details:	
Estimated amount for disbursements (excl. GST):	\$			
GST:	\$			
Estimated full amount you will need to pay (incl. GST):	\$			
You may also need to pay other costs such as court fees.				

This is an estimate only. I will inform you if anything happens that significantly changes this estimate. If my professional fee is likely to be more than \$3000 (before GST and disbursements are added) I will provide you with a full disclosure of costs in writing.

Your rights include to:

- ▶ Ask for an explanation of this form ▶ Negotiate a costs agreement ▶ Negotiate the billing method (eg timing or

task) ► Request a written progress report of costs incurred ► Receive a written bill for work done ► Request an itemised bill ► Contact your local regulatory authority.