

# Legal Profession Uniform Law Application Act 2014 No 16

[2014-16]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#), Sch 4.60 [1]–[4] (not commenced)
- **Editorial note**  
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Authorisation

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File last modified 22 November 2019

# Legal Profession Uniform Law Application Act 2014 No 16



New South Wales

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# Legal Profession Uniform Law Application Act 2014 No 16



New South Wales

An Act to apply the Legal Profession Uniform Law as a law of New South Wales; to provide for certain local matters to complement that Law; to repeal the *Legal Profession Act 2004*; to make transitional arrangements; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Legal Profession Uniform Law Application Act 2014*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria.

### 3 Definitions

- (1) In this Act—

**appropriate Council** means—

- (a) subject to paragraph (b), the Law Society Council, or
- (b) in relation to matters relating to barristers or former barristers (including an application for a practising certificate to practise as a barrister)—the Bar Council.

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

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

**Commissioner for Uniform Legal Services Regulation** means the person appointed to or acting in the office of the Commissioner for Uniform Legal Services Regulation established by Part 8.3 of the Legal Profession Uniform Law as applied in

the participating jurisdictions.

**committee** includes a subcommittee of a committee.

**costs assessment rules** means rules under Division 7 of Part 7.

**Council** means (except in relation to the Legal Services Council) the Bar Council or the Law Society Council.

**Fidelity Fund** means the Legal Practitioners Fidelity Fund maintained under section 115.

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

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

**Legal Profession Uniform Law (NSW)** means the provisions applying in this jurisdiction because of section 4.

**Legal Services Council** means the Legal Services Council established by Part 8.2 of the Legal Profession Uniform Law as applied in the participating jurisdictions.

**local legal practitioner** means an Australian legal practitioner whose home jurisdiction is New South Wales.

**local practising certificate** means an Australian practising certificate issued under the [Legal Profession Uniform Law \(NSW\)](#) to an Australian legal practitioner whose home jurisdiction under that Law is New South Wales.

**local registration certificate** means an Australian registration certificate issued under the [Legal Profession Uniform Law \(NSW\)](#) to a person whose home jurisdiction under that Law is New South Wales.

**local regulations** means the regulations under section 166.

**Manager, Costs Assessment** means the person appointed as Manager, Costs Assessment under section 93B, and includes a delegate of that person and a person acting as or exercising the functions of the Manager, Costs Assessment.

**NCAT** means the Civil and Administrative Tribunal of New South Wales.

**NSW Admission Board** means the Legal Profession Admission Board constituted under Division 1 of Part 3.

**NSW Commissioner** means the person holding office or acting as Legal Services Commissioner under Division 2 of Part 3.

**Public Purpose Fund** means the fund maintained under section 48.

**Register of Disciplinary Action**—see section 152.

**Secretary** means the Secretary of the Department of Justice.

**this jurisdiction** means the State of New South Wales.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Terms used in this Act and also in the *Legal Profession Uniform Law (NSW)* have the same meanings in this Act as they have in that Law.

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

**3A General definitions for other legislation**

In any Act or instrument made under an Act—

**admission to the Australian legal profession** has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

**Australian practising certificate** has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

**Australian registration certificate** has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

**legal costs legislation** means—

- (a) Parts 6 and 7 of this Act, and
- (b) Schedules 1, 2 and 6 to this Act, and
- (c) Part 4.3 of the *Legal Profession Uniform Law (NSW)*, and
- (d) regulations or rules made under or for the purposes of the provisions referred to in paragraphs (a)–(c).

**legal profession legislation** means—

- (a) this Act and the local regulations, and
- (b) the *Legal Profession Uniform Law (NSW)*, and
- (c) the Uniform Regulations and the Uniform Rules as they apply in this jurisdiction.

## Part 2 Application of Uniform Law

### Division 1 General application provisions

#### 4 Application of Legal Profession Uniform Law

The Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria—

- (a) applies as a law of this jurisdiction, and
- (b) as so applying may be referred to as the *Legal Profession Uniform Law (NSW)*, and
- (c) so applies as if it were an Act.

#### 5 Exclusion of legislation of this jurisdiction

(1) The following Acts of this jurisdiction do not apply to the *Legal Profession Uniform Law (NSW)* or to instruments made under that Law—

- (a) the *Interpretation Act 1987* (except as provided by section 416 (6) of the *Legal Profession Uniform Law (NSW)* and section 8 of this Act),
- (b) the *Subordinate Legislation Act 1989*.

(2) To avoid doubt, this section does not limit the application of—

- (a) the *Interpretation Act 1987* to a provision of this Act, or
- (b) the *Subordinate Legislation Act 1989* to local regulations.

#### 6 Application of privacy and other legislation

(1) In this section—

**government sector agency** means—

- (a) a Public Service agency or other government sector agency within the meaning of the *Government Sector Employment Act 2013*, or
- (b) a NSW Government agency (see section 13A of the *Interpretation Act 1987*), or
- (c) an entity constituted by or under an Act or exercising public functions (such as a State owned corporation), being an entity that is prescribed by the local regulations for the purposes of this definition.

**government sector employee** means a person employed on any basis, or on secondment, in a government sector agency.

**relevant Acts** means the following Acts of New South Wales as in force from time to time—

- (a) the *Privacy and Personal Information Protection Act 1998*,
  - (b) the *Government Information (Public Access) Act 2009*,
  - (c) the *State Records Act 1998*,
  - (d) the *Ombudsman Act 1974*.
- (2) The relevant Acts apply to the Legal Services Council and the Commissioner for Uniform Legal Services Regulation in the manner provided by section 416 of the *Legal Profession Uniform Law (NSW)* and do not apply by their own force.
- (3) However, the relevant Acts apply to a government sector agency or government sector employee exercising a function under the *Legal Profession Uniform Law (NSW)*.

### **7 Application of Public Finance and Audit Act 1983**

- (1) The *Public Finance and Audit Act 1983* applies to the Legal Services Council and the Commissioner for Uniform Legal Services Regulation as if they were each an authority within the meaning of that Act.
- (2) The local regulations may modify the *Public Finance and Audit Act 1983* for the purposes of this section.
- (3) Without limiting subsection (2), the provisions of section 416 (5) of the *Legal Profession Uniform Law (NSW)* apply to the local regulations under this section in the same way as they apply to the Uniform Regulations.

### **8 Scrutiny and disallowance of Uniform Regulations**

- (1) Sections 40 and 41 of the *Interpretation Act 1987* and the provisions of the *Legislation Review Act 1987* apply to a Uniform Regulation in the same way as they apply to a statutory rule.
- (2) However, if a Uniform Regulation is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority of the participating jurisdictions (and, in such a case, the regulation ceases to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).
- (3) In this section—

**Uniform Regulation** includes a provision of a Uniform Regulation.

**Note—**

If there are only 2 participating jurisdictions, a majority would in that case consist of both jurisdictions.

## 9 No double jeopardy

If—

- (a) an act or omission is an offence against the *Legal Profession Uniform Law (NSW)* and is also an offence against a law of another participating jurisdiction, and
  - (b) the offender has been punished for the offence under the law of the other jurisdiction,
- the offender is not liable to be punished for the offence against the *Legal Profession Uniform Law (NSW)*.

## Division 2 Further application provisions

### 10 Meaning of term used in *Legal Profession Uniform Law (NSW)*

In the *Legal Profession Uniform Law (NSW)*—

**this jurisdiction** means the State of New South Wales.

### 11 Designation of local authorities and tribunals

- (1) A person or body specified in Column 2 of Table 1 is the designated local regulatory authority for the purposes of a provision of the *Legal Profession Uniform Law (NSW)* specified in Column 1 of that Table opposite that person or body.

**Note—**

See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated local regulatory authority**.

#### Table 1 Designated local regulatory authorities

Column 1	Column 2
Provision of <i>Legal Profession Uniform Law (NSW)</i>	Designated local regulatory authority
Chapter 2, section 14	Bar Council Law Society Council
Chapter 2, Part 2.2 (except section 23)	NSW Admission Board
Chapter 2, section 23	Bar Council Law Society Council
Chapter 3 (except sections 49, 50, 119, 120 and 121 and Part 3.4)	Appropriate Council
Chapter 3, section 49	Law Society Council
Chapter 3, section 50	Bar Council

Chapter 3, Part 3.4	Bar Council Law Society Council
Chapter 3, sections 119 and 120 (1)	Bar Council Law Society Council
Chapter 3, section 120 (4)	NSW Commissioner Bar Council Law Society Council
Chapter 3, section 121 (except in the case of a person convicted of a serious offence)	Appropriate Council
Chapter 3, section 121 (in the case of a person convicted of a serious offence)	NCAT
Chapter 4 (except sections 174, 178, 194, 197, 202, 205, 215, 256, 257 and 258)	Law Society Council
Chapter 4, sections 174, 178, 194, 197, 202 and 205	NSW Commissioner
Chapter 4, section 215	Appropriate Council
Chapter 4, sections 256 and 257	NSW Commissioner Appropriate Council
Chapter 4, section 258	Appropriate Council  NSW Commissioner
	<b>Note—</b>
Chapter 5	Section 405 (2) of the <i>Legal Profession Uniform Law (NSW)</i> contemplates that the local regulatory authority (the NSW Commissioner) may delegate Chapter 5 functions to a professional association (the Bar Association or Law Society). See also sections 29 (c) and 31 (1) (c) of this Act.
Chapter 6	Appropriate Council
Chapter 7 (except to the extent that it applies to complaint investigations)	NSW Commissioner Appropriate Council  NSW Commissioner
	<b>Note—</b>
Chapter 7 to the extent that it applies to complaint investigations	These functions of the NSW Commissioner under Chapter 7 are “Chapter 5 functions” and therefore may be exercised by the Bar Association or Law Society by delegation. See the note in relation to Chapter 5 above.
Chapter 9, section 421 (2) (f)	NSW Admission Board



Chapter 9, section 436 (1)	NSW Admission Board (in relation to admissions) NSW Commissioner (in relation to Chapter 5 functions) Appropriate Council
Chapter 9, section 436 (2)	NSW Admission Board
Chapter 9, sections 437, 446, 447, 448, 449 and 453	NSW Admission Board NSW Commissioner Bar Council Law Society Council
Chapter 9, section 466 (7)	Appropriate Council
Schedule 3 (except clause 14)	Appropriate Council
Schedule 3, clause 14	NSW Commissioner

(2) The Prothonotary of the Supreme Court is the designated local roll authority for the purposes of sections 23, 24 and 462 of the *Legal Profession Uniform Law (NSW)*.

**Note—**

See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated local roll authority**.

(3) A body specified in Column 2 of Table 2 is the designated tribunal for the purposes of a provision of the *Legal Profession Uniform Law (NSW)* specified in Column 1 of that Table opposite that body.

**Note—**

See section 6 of the *Legal Profession Uniform Law (NSW)* for the definition of **designated tribunal**.

**Table 2 Designated tribunals**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of <i>Legal Profession Uniform Law (NSW)</i></b>	<b>Designated tribunal</b>
Chapter 2, section 23	NCAT
Chapter 3, sections 100 and 101 (except in relation to decisions under section 89 or 92)	Supreme Court
Chapter 3, sections 100 and 101 (in relation to decisions under section 89 or 92)	NCAT
Chapter 3, section 119	NCAT

Chapter 3, section 120	Supreme Court
Chapter 4, section 198 (4)	Manager, Costs Assessment
Chapter 4, sections 247 and 248	Supreme Court
Chapter 5, Part 5.4, Division 3	NCAT
Chapter 5, Part 5.5	NCAT
Chapter 5, section 314	NCAT
Chapter 6, Parts 6.5 and 6.6	Supreme Court
Chapter 9, sections 453, 456 and 457	A court that would have jurisdiction to order payment of the pecuniary penalty if it were a debt
Chapter 9, section 474 (2)	Any designated tribunal referred to in this table

## **12 Nomination of nominated fund and nominated trust authority**

For the purposes of section 149 (6) of the *Legal Profession Uniform Law (NSW)*—

- (a) the Public Purpose Fund is the nominated fund, and
- (b) the Trustees of the Public Purpose Fund are the nominated trust authority.

## **13 Specification of fund**

The Public Purpose Fund is specified for the purposes of section 365 of the *Legal Profession Uniform Law (NSW)*.

## **14 Unclaimed money**

- (1) This section provides for how unclaimed money in a trust account is to be dealt with, as contemplated by section 167 of the *Legal Profession Uniform Law (NSW)*.
- (2) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may—
  - (a) pay the money to the Treasurer for credit to the Consolidated Fund, and
  - (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the practice.
- (3) If a law practice pays money to the Treasurer under subsection (2), the practice is relieved from any further liability in relation to the money.
- (4) The Treasurer must pay money deposited under this section to a person who satisfies the Treasurer as to his or her entitlement to the money.

- (5) Payment of money to a person under subsection (4)—
- (a) discharges the Crown and the Treasurer from any liability in relation to the money, and
  - (b) does not discharge the person from any liability to another person who establishes a right to the money.
- (6) The Treasurer may require any person to provide information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this section and attempts made to locate the person.
- (7) A person of whom a requirement is made under subsection (6)—
- (a) must comply with the requirement, and
  - (b) must not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

Maximum penalty (subsection (7)): 20 penalty units.

## 15 Fidelity fund

The Legal Practitioners Fidelity Fund maintained under Division 1 of Part 9 is nominated as the fidelity fund of this jurisdiction for the purposes of Part 4.5 of the *Legal Profession Uniform Law (NSW)*.

### Note—

See section 222 of the *Legal Profession Uniform Law (NSW)*.

## 16 Fidelity authority

The Law Society Council is specified as the fidelity authority for the purposes of the definition of **fidelity authority** in section 6 of the *Legal Profession Uniform Law (NSW)*.

## 17 Issuing authority for search warrants

- (1) Any person holding or acting in the office of Magistrate is the issuing authority for the purposes of section 377 of the *Legal Profession Uniform Law (NSW)*.
- (2) Except as provided by the *Legal Profession Uniform Law (NSW)* or this Act, Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to search warrants under section 377 of the *Legal Profession Uniform Law (NSW)*.

## 18 Pecuniary penalties to be paid into Public Purpose Fund

For the purposes of section 456 (a) of the *Legal Profession Uniform Law (NSW)*, a penalty referred to in that paragraph is to be paid into the Public Purpose Fund.

### **18A Part 3 of Schedule 4 applies**

Part 3 of Schedule 4 to the *Legal Profession Uniform Law (NSW)* applies in New South Wales.

### **18B Non-compellability of certain witnesses**

Section 468 (1) of the *Legal Profession Uniform Law (NSW)* does not apply to proceedings (including proceedings for an offence), hearings or inquiries under—

- (a) the *Royal Commissions Act 1923*, or
- (b) the *Special Commissions of Inquiry Act 1983*, or
- (c) the *Independent Commission Against Corruption Act 1988*, or
- (d) the *Law Enforcement Conduct Commission Act 2016*, or
- (e) the *Ombudsman Act 1974*.

**Note—**

See section 468 (2) of that Law, which contemplates exceptions provided under jurisdictional legislation.

## **Part 3 Local regulatory authorities**

### **Division 1 Legal Profession Admission Board**

#### **19 Constitution of NSW Admission Board**

- (1) There is constituted by this Act a corporation with the corporate name of the Legal Profession Admission Board.

**Note—**

The Legal Profession Admission Board is referred to in this Act as the **NSW Admission Board**. See the definition of that term in section 3.

- (2) The NSW Admission Board is not and does not represent the Crown.
- (3) The NSW Admission Board is a continuation of and the same legal entity as the Legal Profession Admission Board constituted under the *Legal Profession Act 2004*.
- (4) Schedule 3 contains provisions relating to the membership and procedure of the NSW Admission Board.

#### **20 Functions of NSW Admission Board**

- (1) The NSW Admission Board has the functions conferred on it by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.

- (2) The NSW Admission Board has all the powers necessary to perform its functions, including the powers conferred on it by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.

## **20A Delegation of functions of NSW Admission Board**

The NSW Admission Board may delegate any of its functions under this Act (other than this power of delegation and the power to make rules under this Division) or the *Legal Profession Uniform Law (NSW)* to any of its committees or to an officer of the Board.

## **21 Entitlement to be represented, heard and make representations**

- (1) The Bar Council, the Law Society Council and the applicant concerned are entitled—
- (a) to make representations in writing to the NSW Admission Board in relation to any matter under consideration by the Board under Part 2.2 of the *Legal Profession Uniform Law (NSW)*, and
  - (b) to be represented and heard at any inquiry or appeal under that Part.
- (2) The NSW Admission Board must notify each Council in accordance with the admission rules of—
- (a) any application for admission, and
  - (b) any application for a declaration under section 21 (Declaration of early assessment of suitability for a compliance certificate) of the *Legal Profession Uniform Law (NSW)*, and
  - (c) any declaration made under that section.
- (3) (Repealed)
- (4) The NSW Admission Board is entitled to be represented and heard at any appeal referred to in section 28 of the *Legal Profession Uniform Law (NSW)*.

## **21A NSW Admission Board Rules**

- (1) The NSW Admission Board may make rules for or with respect to—
- (a) any administrative matters relating to the functions of the Board, and
  - (b) registration and deregistration as, and the discipline of, students-at-law and the qualifications for registration, and
  - (c) the examination and assessment in academic subjects of candidates for registration and students-at-law, and
  - (d) fees and costs payable for registration and students-at-law (other than fees for admission to the Australian legal profession) and the refund or remission of fees.

- (2) Without limiting subsection (1) or the power of the NSW Admission Board to delegate functions under section 20A, the rules may—
  - (a) provide for the establishment, dissolution and procedures of committees of the Board, and
  - (b) confer or provide for conferring functions on a committee, including any functions of the Board, and
  - (c) provide that a committee exercises any of its functions in an advisory capacity or as delegate of the Board.
- (3) A rule may do any of the following—
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind,
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (4) A rule made under this section must not be inconsistent with—
  - (a) this Act, or
  - (b) the *Legal Profession Uniform Law (NSW)*, or
  - (c) the Admission Rules made by the Legal Services Council under Part 9.2 of that Law.
- (5) The rules must be published on the NSW legislation website.
- (6) Sections 40 and 41 of the *Interpretation Act 1987* apply to the rules in the same way as they apply to a statutory rule.

## Division 2 Legal Services Commissioner

### 22 Appointment of NSW Commissioner

- (1) The Governor may, on the recommendation of the Attorney General, appoint a person to be the NSW Legal Services Commissioner.

**Note—**

The Legal Services Commissioner is referred to in this Act as the **NSW Commissioner**. See the definition of that term in section 3.

- (2) The person so appointed is to be a person who, in the opinion of the Attorney General—
  - (a) is familiar with the nature of the legal system and legal practice (but need not be

an Australian legal practitioner), and

(b) possesses sufficient qualities of independence, fairness and integrity.

(3) Schedule 4 contains provisions relating to the NSW Commissioner.

### **23 Acting NSW Commissioner**

(1) The Attorney General may, from time to time, appoint a person to act in the office of the NSW Commissioner during the illness or absence of the NSW Commissioner (or during a vacancy in the office of NSW Commissioner) and a person, while so acting, has all the functions of the NSW Commissioner.

(2) The Attorney General may, at any time, remove a person from the office of acting NSW Commissioner.

(3) The acting NSW Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine.

### **24 Functions of NSW Commissioner**

(1) The NSW Commissioner has the functions conferred on him or her by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.

(2) The NSW Commissioner has all the powers necessary to perform his or her functions, including the powers conferred by or under the *Legal Profession Uniform Law (NSW)*, this Act or any other Act, including by or under the Uniform Rules.

(3) Without limitation, the functions of the NSW Commissioner include the following functions—

(a) to assist and advise complainants and potential complainants in making and pursuing complaints (including assisting complainants to clarify their complaints and to put their complaints in writing),

(b) to conduct regular surveys of, and report on, the views and levels of satisfaction of complainants and respondent Australian lawyers with the complaints handling and disciplinary system,

(c) to assist the Bar Council and Law Society Council to promote community education about the regulation and discipline of the legal profession,

(d) to assist the Bar Council and Law Society Council in the enhancement of professional ethics and standards, for example, through liaison with legal educators or directly through research, publications or educational seminars,

(e) to report on the NSW Commissioner's activities under the *Legal Profession*

*Uniform Law (NSW)* or this Act.

- (4) The NSW Commissioner may appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under the *Legal Profession Uniform Law (NSW)*, this Act or otherwise in relation to Australian lawyers.

## **25 NSW Commissioner may require Councils to provide information**

- (1) The NSW Commissioner may, for the purpose of exercising the NSW Commissioner's functions, do any of the following—
- (a) require the Bar Council or Law Society Council to provide information received by the Council that gives the Council reason to believe that an Australian legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct,
  - (b) require the Bar Council or Law Society Council to provide information relating to an application for an Australian practising certificate,
  - (c) require the Bar Council or Law Society Council to provide information relating to a notification made by an Australian lawyer or an Australian-registered foreign lawyer for the purpose of complying with the *Legal Profession Uniform Law (NSW)*, the Uniform Rules, this Act or the regulations,
  - (d) require the Bar Council or Law Society Council to notify the NSW Commissioner of the Council's intention to grant, refuse to grant, cancel or suspend an Australian practising certificate.
- (2) A requirement by the NSW Commissioner under this section may relate to a specific case or may be made in general terms so as to relate to all cases or to a class of cases.
- (3) The Bar Council or Law Society Council must take into account any representations made by the NSW Commissioner on a matter under the *Legal Profession Uniform Law (NSW)*, the Uniform Rules or this section.

## **26 Annual report of NSW Commissioner**

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



- (a) information on the operation of the complaints process during the year and any recommendations for legislative or other improvements to the complaints process,
  - (b) information about the financial affairs and accounts of the Office of the NSW Legal Services Commissioner (including costs incurred by the NSW Commissioner) during the year,
  - (c) a copy of a certificate of an auditor as to the outcome of any audit carried out under subsection (4) in relation to the year or any previous year if a copy of the certificate has not been included in an earlier annual report under this section,
  - (d) other information or matters that the NSW Commissioner considers appropriate to be included or that the Attorney General directs to be included.
- (4) Information referred to in subsection (3) (b) is to be audited at least every 2 years. The NSW Commissioner and the Secretary are to enter into arrangements for the audit of the information.
- (5) Matters included in an annual report must not identify individual clients, Australian lawyers or Australian-registered foreign lawyers unless their names have already lawfully been made public under another provision of this Act or under the *Legal Profession Uniform Law (NSW)*.
- (6) The annual report need not include information forwarded to the Commissioner for Uniform Legal Services Regulation and included or intended to be included in the Commissioner's annual report under Part 4 of Schedule 2 to the *Legal Profession Uniform Law (NSW)*.

**Note—**

Section 440 of that Law deals with the provision of information by local regulatory authorities.

## **27 Staff of NSW Commissioner**

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the NSW Commissioner to exercise his or her functions.

**Note—**

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the NSW Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the NSW Commissioner. Section 47A of the *Constitution Act 1902* precludes the NSW Commissioner from employing staff.

- (2) The NSW Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency or other public authority.
- (3) The NSW Commissioner may, with the approval of the Attorney General, engage consultants or other persons for the purpose of getting assistance.

## 28 Delegation of functions of NSW Commissioner

- (1) The NSW Commissioner may delegate any of his or her functions under this Act (other than this power of delegation) or the *Legal Profession Uniform Law (NSW)* to any member of the staff of the NSW Commissioner or to a person of a class prescribed by the regulations.
- (2) The NSW Commissioner may delegate any of his or her Chapter 5 functions to the Bar Council or the Law Society Council.

### Note—

Under the *Legal Profession Uniform Law (NSW)*, **Chapter 5 functions** means—

- (a) functions under Chapter 5, or
- (b) functions under another provision of that Law relating to Chapter 5, or
- (c) functions under the Uniform Rules relating to Chapter 5.

### Note—

Section 406 of the *Legal Profession Uniform Law (NSW)* provides that a local regulatory authority may delegate its functions under that Law to an entity prescribed by jurisdictional legislation. The local regulations may also prescribe delegates or classes of delegates of local regulatory authorities (see section 166).

## Division 3 Bar Council

### 29 Functions of Bar Council

In addition to its other functions, the Bar Council may exercise functions conferred or imposed on it or the Bar Association—

- (a) by the *Legal Profession Uniform Law (NSW)*, or
- (b) by this Act, or
- (c) as delegate of the NSW Commissioner.

### 30 Delegation of functions of Bar Council

- (1) The Bar Council may delegate any of its functions under this Act (other than this power of delegation) or the *Legal Profession Uniform Law (NSW)* to any of its committees, to an officer of the Bar Association or to an employee of the Bar Association.
- (2) For the purposes of this section, the functions of the Bar Council under the *Legal Profession Uniform Law (NSW)* include any functions delegated to the Bar Council under that Law.

### Note—

Section 406 of the *Legal Profession Uniform Law (NSW)* provides that a local regulatory authority may delegate

its functions under that Law to an entity prescribed by jurisdictional legislation. The local regulations may also prescribe delegates or classes of delegates of local regulatory authorities (see section 166).

## **Division 4 Law Society Council**

### **31 Functions of Law Society Council**

- (1) In addition to its other functions, the Law Society Council may exercise functions conferred or imposed on it or the Law Society—
  - (a) by the *Legal Profession Uniform Law (NSW)*, or
  - (b) by this Act, or
  - (c) as delegate of the NSW Commissioner.
- (2) The Law Society Council also has the function of disseminating information to increase public awareness of the requirements of this Act, the *Legal Profession Uniform Law (NSW)* and the *Corporations Act 2001* of the Commonwealth relating to solicitors who—
  - (a) are involved in managed investment schemes, or
  - (b) negotiate the making of or act in respect of regulated mortgages.

### **32 Delegation of functions of Law Society Council**

- (1) The Law Society Council may delegate any of its functions under this Act (other than this power of delegation and the functions referred to in section 119 (Management Committee)) or the *Legal Profession Uniform Law (NSW)* to any of its committees, to an officer of the Law Society or to an employee of the Law Society.
- (2) For the purposes of this section, the functions of the Law Society Council under the *Legal Profession Uniform Law (NSW)* include any functions delegated to the Law Society Council under that Law.

#### **Note—**

Section 406 of the *Legal Profession Uniform Law (NSW)* provides that a local regulatory authority may delegate its functions under that Law to an entity prescribed by jurisdictional legislation. The local regulations may also prescribe delegates or classes of delegates of local regulatory authorities (see section 166).

## **Division 5 Miscellaneous**

### **33 Lay representation on committees**

- (1) The Attorney General may do either or both of the following—
  - (a) after consultation with the Bar Council, direct, by written order, that any specified committees or kinds of committees of the Bar Association or Bar Council must include in their membership a specified or determinable number of lay members,

- (b) after consultation with the Law Society Council, direct, by written order, that any specified committees or kinds of committees of the Law Society or Law Society Council must include in their membership a specified or determinable number of lay members.
- (2) Except as provided by subsection (3), a direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay members.
- (3) The membership of any professional conduct committee must include at least 3 lay members.
- (4) A lay member has the voting and other rights and the obligations that are provided in the constitution of the committee or as are provided by the local regulations. Those regulations prevail to the extent of any inconsistency with the constitution of the committee.
- (5) For the purposes of this section, a lay member is a person who is not an Australian lawyer.

#### **34 Councils to submit annual report**

- (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Bar Council and the Law Society Council are each required to prepare and forward to the Attorney General a report of their work and activities under this Act for the 12 months ending on 30 June in that year.
- (2) The Attorney General is to lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A Council is to include the following information in its annual report—
  - (a) information about the costs incurred by the Council during the reporting year in relation to its regulatory functions, as certified by an auditor,
  - (b) in the case of the Law Society Council—the total amount paid from the Public Purpose Fund and the Fidelity Fund during the year,
  - (c) such other information as may be prescribed by the regulations or as the Attorney General directs to be included.
- (4) Matters included in a report must not identify individual Australian lawyers unless their names have already lawfully been made public under Part 12.
- (5) This section does not affect any other provision of this Act requiring a report to be made to the Attorney General.

### **35 Court appearances**

A local regulatory authority for this jurisdiction may appear by barrister or solicitor before, and be heard by, any court in any matter affecting the local regulatory authority (or, without limitation, its members in the case of the Bar Association or Law Society Council) in which the local regulatory authority is concerned or interested.

## **Part 4 Practising certificates and registration certificates**

### **Division 1 Australian practising certificates**

#### **36 Australian practising certificate fees and fidelity fund contributions**

An application for the grant or renewal of an Australian practising certificate in which the applicant states that New South Wales is the jurisdiction that he or she reasonably intends will be his or her principal place of practice in Australia must be accompanied by—

- (a) the appropriate fee for the certificate, and
- (b) the required contribution to the fidelity fund (if any).

**Note—**

Applications are made under section 44 of the [Legal Profession Uniform Law \(NSW\)](#). See sections 38 and 39 of this Act for fees for practising certificates, and section 225 of the [Legal Profession Uniform Law \(NSW\)](#) for fidelity fund contributions.

#### **37 Timing of application for renewal of local practising certificate**

- (1) An application for the renewal of a local practising certificate must be made within—
  - (a) the period prescribed by the regulations as the standard renewal period, or
  - (b) a later period prescribed by the regulations as the late fee period.
- (2) Those periods must be within the currency of the local practising certificate being renewed.
- (3) The appropriate Council may reject an application for renewal made during the late fee period, and must reject an application for renewal made outside those periods.

**Note—**

Section 39 authorises the charging of a late fee for applications received during the late fee period. If an application is rejected under subsection (3), the applicant will have to apply for the grant of a new practising certificate.

#### **38 Fee for practising certificate**

- (1) A fee is payable for the grant or renewal of a local practising certificate of such amount as is determined by the appropriate Council and approved by the Attorney General.

- (2) A Council may determine different practising certificate fees according to different factors that are specified in the determination and approved by the Attorney General.
- (3) A Council may waive or postpone payment of the practising certificate fee or any part of the fee.
- (4) Subject to the local regulations (if any), a Council is to determine the practising certificate fee on a cost recovery basis, with the fee being such amount as is required from time to time for the purpose of recovering the costs of or associated with the regulatory functions of the Council or of the Bar Association or Law Society, as the case requires.
- (5) The regulatory functions of a Council, the Bar Association or the Law Society are its functions under this Act, and any other functions it exercises that are associated with the regulation of legal practice or maintaining professional standards of legal practice.
- (6) The practising certificate fee is not to include any charge for membership of the Bar Association or Law Society and is not to include any amount that is required for the purpose of recovering any costs of or associated with providing services or benefits to which local legal practitioners become entitled as members of the Bar Association or Law Society.
- (7) In addition, in determining the practising certificate fee, a Council must exclude costs that are otherwise recoverable under this Act (for example, costs payable from the Public Purpose Fund under this Act).
- (8) The local regulations may make provision for or with respect to the determination of practising certificate fees, including by specifying the costs that may or may not be recovered by the charging of practising certificate fees.
- (9) In this section—  
**costs** includes expenses.

### **39 Late fee**

- (1) This section applies if an application for a local practising certificate is made during the late fee period.
- (2) Payment of a late fee prescribed by or determined under the regulations may, if the Council thinks fit, be required as a condition of acceptance of the application.

### **40 Late fee for certain applications for new practising certificates**

- (1) This section applies if an application for the grant of a local practising certificate to have effect during a financial year is made to a Council by a person who was the holder of a local practising certificate granted by the Council in respect of the previous financial year.

- (2) Payment of an additional fee prescribed by or determined under the regulations may, if the Council thinks fit, be required as a condition of acceptance of the application.

#### **41 Audit of Council activities**

- (1) The Attorney General may appoint an appropriately qualified person to conduct an audit of all or any particular activities of a Council for the purpose of determining the following—
  - (a) whether any activities the costs of which are recoverable, or are proposed to be recovered, by the charging of a practising certificate fee are being carried out economically and efficiently and in accordance with the relevant laws,
  - (b) whether practising certificate fees are being expended for the purpose of defraying the costs in respect of which the fees are charged.
- (2) A Council is to provide all reasonable assistance to the person appointed to conduct the audit.
- (3) The person appointed to conduct the audit is to report to the Attorney General on the result of the audit.
- (4) An audit may be conducted under this section whenever the Attorney General considers it appropriate.
- (5) In this section—

**audit** includes an examination and inspection.

**costs** includes expenses.

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

## **Division 2 Australian registration certificates**

### **42 Australian registration certificate fees, fidelity fund contributions, and costs and expenses**

- (1) An application to a Council for the grant or renewal of an Australian registration certificate must be accompanied by—
  - (a) the appropriate fee for the certificate, and
  - (b) the required contribution to the fidelity fund (if any).

**Note—**

Applications are made under section 62 of the [Legal Profession Uniform Law \(NSW\)](#). See section 225 of the [Legal Profession Uniform Law \(NSW\)](#) for fidelity fund contributions.

- (2) Different fees may be set according to different factors determined by the relevant

Council.

- (3) The fees are not to be greater than the maximum fees for a local practising certificate.
- (4) A Council may waive or postpone payment of a fee or any part of a fee.
- (5) A Council may also require the applicant to pay any reasonable costs and expenses incurred by the relevant Council in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.
- (6) The fees, costs and expenses must not include any component for compulsory membership of any professional association.

## **Division 3 General**

### **43 Attorney General**

The Attorney General, while admitted to the legal profession in this or any other jurisdiction, is entitled to an unconditional practising certificate. The Attorney General may elect to hold a practising certificate as a barrister or as a solicitor.

### **44 Crown Solicitor**

- (1) The Crown Solicitor may, in his or her official capacity, act as solicitor for—
  - (a) the State of New South Wales, or
  - (b) a person suing or being sued on behalf of the State of New South Wales, or
  - (c) a Minister of the Crown in his or her official capacity as such a Minister, or
  - (d) a body established by an Act or other law of New South Wales, or
  - (e) an officer or employee of the Public Service or any other service of the State of New South Wales or of a body established by an Act or other law of New South Wales, or
  - (f) a person holding office under an Act or other law of New South Wales or because of the person's appointment to that office by the Governor or a Minister of the Crown, or
  - (g) any other person or body, or any other class of persons or bodies, approved by the Attorney General.
- (2) The Crown Solicitor may act under subsection (1)—
  - (a) with or without charge, or



- (b) for a party in a matter that is not the subject of litigation, even if also acting under that subsection for another party in the matter.
- (3) The Crown Solicitor may, in his or her official capacity, act as agent for—
  - (a) another State or a Territory, or
  - (b) at the request of another State or a Territory—an instrumentality of, or a person in the service of, that State or Territory.
- (4) If, under subsection (1) (g), the Crown Solicitor is given approval to act as solicitor for a Minister of the Crown (otherwise than in his or her official capacity as such a Minister), the following must be included in the annual report under the *Annual Reports (Departments) Act 1985* of the Crown Solicitor's activities—
  - (a) the name of the Minister,
  - (b) the matter in which the Crown Solicitor acted (but without disclosure of any confidential client information),
  - (c) the costs incurred by the Crown Solicitor in acting for the Minister and the amount charged to the Minister for so acting.
- (5) In this section, a reference to a State or a Territory includes a reference to the Crown in right of the State or Territory and to the Government of the State or Territory.

#### **45 Government lawyers**

- (1) The local regulations may make provision for or with respect to—
  - (a) exempting persons or classes of persons from the requirement to hold Australian practising certificates, either generally or for specified periods, in respect of their official functions as government lawyers, and
  - (b) without limitation, excluding or modifying the operation of specified provisions of, or made under, the *Legal Profession Uniform Law (NSW)* (including provisions of Parts 2.2 and 3.3 of that Law) to the extent that any of those provisions would otherwise be applicable to any persons, or classes of persons, as government lawyers.

**Note—**

See section 56 of the *Legal Profession Uniform Law (NSW)*.

- (2) Government lawyers (including Crown prosecutors, public defenders, parliamentary counsel or other statutory Crown law officers) may be granted an Australian practising certificate with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

## 45A Corporate lawyers

- (1) The local regulations may make provision for or with respect to—
  - (a) exempting persons or classes of persons from the requirement to hold Australian practising certificates, either generally or for specified periods, in respect of their functions as corporate lawyers, and
  - (b) without limitation, excluding or modifying the operation of specified provisions of, or made under, the *Legal Profession Uniform Law (NSW)* (including provisions of Parts 2.2 and 3.3 of that Law) to the extent that any of those provisions would otherwise be applicable to any persons, or classes of persons, as corporate lawyers.
- (2) In this section, **corporate lawyer** means a person who engages in legal practice only—
  - (a) as an employee who provides legal services in the capacity of an in-house lawyer for his or her employer or a related entity, and
  - (b) if he or she—
    - (i) so acts in the ordinary course of his or her employment, and
    - (ii) receives no fee, gain or reward for so acting other than his or her ordinary remuneration as an employee,

but does not include a government lawyer.

## Part 5 Trust accounts and Public Purpose Fund

### Division 1 Trust accounts—statutory deposits

#### 46 Statutory deposits

- (1) The local regulations may require a law practice to pay amounts out of a general trust account of the law practice into an ADI account maintained by the Law Society.
- (2) Without limiting subsection (1), the local regulations may provide for the following—
  - (a) the type of account to be maintained by the Law Society,
  - (b) the amount of the payments to be made.
- (3) All interest on the money in a general trust account is payable to the Law Society on account of the Public Purpose Fund.
- (4) This section applies despite any other provision of this Part or Part 4.2 of the *Legal Profession Uniform Law (NSW)*.

#### **47 Status and repayment of deposited money**

- (1) Money paid under section 46 into an ADI account maintained by the Law Society—
  - (a) is held by the Law Society in trust for the law practice depositing the money, and
  - (b) is repayable on demand.
- (2) Subsection (1) does not excuse a failure to comply with section 46.
- (3) Until repaid, money deposited under section 46 may be invested by the Law Society—
  - (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
  - (b) on deposit with the Treasurer, or
  - (c) in an account with any ADI.
- (4) All interest on investments made under this section is payable to the Law Society on account of the Public Purpose Fund.

### **Division 2 Public Purpose Fund**

#### **48 Public Purpose Fund**

- (1) There is to be established a fund called the Public Purpose Fund.
- (2) The following amounts are to be paid to the credit of the Fund—
  - (a) interest payable to the Law Society on account of the Public Purpose Fund under sections 46, 47 and 50,
  - (b) such other amounts as are payable to the Fund by or under this Act.

#### **49 Trustees of the Public Purpose Fund**

- (1) There are to be Trustees of the Public Purpose Fund (in this Part, ***the Trustees***).
- (2) The Trustees consist of—
  - (a) 4 persons appointed by the Attorney General, of whom—
    - (i) 2 are to be members of the Law Society Council nominated by the President of the Law Society, and
    - (ii) 1 is to be a person whom the Attorney General considers to have the financial and investment expertise to act as a trustee, and
    - (iii) 1 is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and

(b) the Secretary.

(3) Schedule 5 contains provisions relating to the Trustees.

#### **50 Management and control of Fund**

(1) The Trustees are to manage and control the Public Purpose Fund.

(2) The Trustees may invest any amount standing to the credit of the Fund in accordance with Division 2 of Part 2 of the [Trustee Act 1925](#) as if the money were trust funds.

(3) The Trustees may enter into any agreement or arrangement with a person or body under which—

(a) the person or body provides the Trustees with advice concerning the investment of any amount standing to the credit of the Fund, or

(b) the person or body agrees to invest any such amount on behalf of the Trustees.

(4) The Law Society is to administer the Fund on behalf of, and in accordance with the directions of, the Trustees.

#### **50A Community legal services account**

(1) The Trustees are to establish a separate account (the **community legal services account**) in the Public Purpose Fund for money paid to the Fund—

(a) from the assets of the Solicitors Mutual Indemnity Fund under clause 12 of Schedule 9, and

(b) under clause 18 of Schedule 9.

(2) Payments are not to be made from the capital of the community legal services account other than for the purposes of the investment of amounts in accordance with section 50.

(3) The income from investment of the community legal services account is to be allocated to that account.

#### **51 Arrangements with ADIs**

The Trustees are, without limitation, authorised to enter into arrangements with an ADI that are of the kind referred to in section 149 (1) (b) of the [Legal Profession Uniform Law \(NSW\)](#).

#### **52 Payments from Fund**

(1) The Trustees are to pay from the Public Purpose Fund the following—

(a) any amounts payable from the Fund for a purpose referred to in section 53

(Payment of certain costs from Fund), in accordance with the approval of the Secretary under that section,

- (b) any amounts that the Trustees, with the concurrence of the Attorney General, determine should be paid from the Fund for a purpose referred to in section 55 (Discretionary payments from Fund for other purposes),
  - (c) any amounts required to be paid from the Fund in accordance with an order of NCAT under clause 23 (3) of Schedule 5 to the *Civil and Administrative Tribunal Act 2013*,
  - (d) any costs or expenses incurred in collecting the interest payable to the Fund and in the management or administration of the Fund.
- (2) Payments from the Public Purpose Fund may be made from the capital or income of the Fund, at the discretion of the Trustees.
- (3) The fact that money is paid out of the Public Purpose Fund under this section does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Public Purpose Fund.

### **53 Payment of certain costs from Fund**

- (1) Payments are to be made from the Public Purpose Fund, in accordance with this section and subject to section 55, for the purpose of meeting the following costs and expenses—
- (a) the costs of a Council in making representations, or being represented or heard, under section 21,
  - (b) the costs of a Council in exercising functions under Part 3.3 of the *Legal Profession Uniform Law (NSW)*, including in responding to any appeal or review arising in relation to functions under that Part,
  - (c) the costs of a Council in exercising functions under Parts 3.4, 3.5 and 3.6 of the *Legal Profession Uniform Law (NSW)*, including in responding to any appeal or review arising in relation to functions under those Parts,
  - (d) the costs of the NSW Commissioner or a Council in taking action under Part 9.6 of the *Legal Profession Uniform Law (NSW)*,
  - (e) the costs of the NSW Commissioner or a Council relating to compliance with a condition to which an Australian registration certificate is subject under Division 4 of Part 3.4 of the *Legal Profession Uniform Law (NSW)*,
  - (f) the costs of a Council in exercising functions under—

- (i) section 80 and Parts 3.7, 3.9 and 4.5 of the *Legal Profession Uniform Law (NSW)*, and
- (ii) Part 9 of this Act,
- (g) the costs of the Law Society Council (including its members, employees or agents) in respect of an external examination or external investigation under Part 4.2 of the *Legal Profession Uniform Law (NSW)*, to the extent that those costs are not recoverable under section 160 or 166 of that Law,
- (h) the costs of the NSW Admission Board in connection with an appeal under Division 3 of Part 2.2 of the *Legal Profession Uniform Law (NSW)*,
- (i) the costs of a Council in connection with an external intervention in relation to a law practice (including costs in connection with an application under section 341 of the *Legal Profession Uniform Law (NSW)* or an appeal or review under section 358 of that Law) and any fees, costs and expenses payable from the Fund under section 365 of that Law,
- (j) the costs of the NSW Commissioner or NCAT in relation to the administration of Chapter 5 of the *Legal Profession Uniform Law (NSW)*,
- (k) the costs of the NSW Commissioner or Council in exercising functions for the purposes of Chapter 5 of the *Legal Profession Uniform Law (NSW)*,
- (l) the costs of the NSW Commissioner or a Council in relation to any proceedings in or on appeal from the Supreme Court with respect to the discipline of an Australian legal practitioner or an Australian-registered foreign lawyer, including in relation to proceedings concerning the inherent jurisdiction and powers of the Supreme Court as referred to in section 264 of the *Legal Profession Uniform Law (NSW)*,
- (m) the costs of the NSW Commissioner or a Council in connection with the provision of mediators for the mediation of consumer disputes under Chapter 5 of the *Legal Profession Uniform Law (NSW)*, including costs disputes,
- (n) the costs of the Costs Assessment Rules Committee in exercising functions for the purposes of this Act,
- (o) the costs of a Council or the NSW Commissioner in connection with a compliance audit of a law practice under section 256 of the *Legal Profession Uniform Law (NSW)*,
- (p) without limiting any other paragraph of this subsection, the costs of a Council or the NSW Commissioner in exercising functions in relation to restrictions on advertising and other marketing of services under the *Legal Profession Uniform Law (NSW)* or the Uniform Rules.

- (2) Those payments are to be made by the Trustees in accordance with the approval of the Secretary.
- (3) The Secretary is to approve the payment from the Fund of such amounts as the Secretary considers necessary for the purpose of meeting any reasonable costs and expenses referred to in subsection (1), having regard to any budget submitted under section 54.
- (4) If a local regulatory authority requests payment of any of their costs in commencing or maintaining proceedings taken in relation to the exercise of any functions referred to in subsection (1), the Secretary may, before approval is given or payment is made, request—
  - (a) information from the authority about whether attempts have been made to recover any or all of those costs from another party to the proceedings and, if no attempt was made, the reasons for not making an attempt, and
  - (b) further information from the authority if the Secretary is of the opinion that additional information is required in response to a previous request under this subsection.
- (5) If the amount of costs or expenses actually expended or incurred by a beneficiary in or in respect of a relevant period—
  - (a) exceeds the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Secretary is to approve payment from the Fund of such additional amount as the Secretary considers necessary and reasonable for the purpose of meeting or contributing to any underpayment, or
  - (b) is less than the amount approved for payment under subsection (3) in respect of costs or expenses of that kind—the Secretary is to require the beneficiary to repay to the Fund such amount already paid to the beneficiary as the Secretary specifies for the purpose of recouping the whole or a part of any overpayment.
- (6) Instead of dealing with an underpayment or overpayment in accordance with subsection (5), the Secretary may deal with all or part of the underpayment or overpayment by way of adjustment of amounts approved under that subsection for payment to the beneficiary in or in respect of a future period.
- (7) An approval is subject to such conditions as the Secretary specifies in the approval.
- (8) Payments under this section may be made in advance of or by way of reimbursement of the relevant cost or expense.

#### **54 Submission of budgets and supplementary budgets to Secretary**

- (1) For the purpose of determining the amount to be paid from the Public Purpose Fund for a purpose referred to in section 53, the Secretary may require the beneficiary of

the payment to prepare and submit a budget or supplementary budget to the Secretary, in respect of such period as the Secretary directs, relating to the costs or expenses of the beneficiary (including projected costs and expenses).

- (2) Without limiting subsection (1), a budget or supplementary budget may relate wholly or partly to a past period if the Secretary so directs or approves, whether or not any cost or expense has already been incurred or met by the beneficiary.
- (3) The budget or supplementary budget is to include such information as the Secretary directs. In particular, the Secretary may require the provision of information about the administration of the beneficiary.
- (4) The Secretary may refuse to approve a payment under section 53 if the beneficiary has failed to submit a budget or supplementary budget as required under this section.
- (5) In this section—

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

#### **55 Discretionary payments from Fund for other purposes**

- (1) The Trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from the Public Purpose Fund for any of the following purposes—
  - (a) the supplementation of any of the following funds—
    - (i) the Legal Aid Fund,
    - (ii) the Fidelity Fund,
    - (iii) the Law and Justice Foundation Fund,
  - (b) the promotion and furtherance of legal education in New South Wales,
  - (c) the advancement, improvement and extension of the legal education of members of the community,
  - (d) the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
  - (e) the furtherance of law reform,
  - (f) the establishment and improvement of law libraries and the expansion of the community's access to legal information,
  - (g) the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal



services,

(h) the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,

(i) the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services.

(1A) The Trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from income earned from the investment of the community legal services account established in the Public Purpose Fund for the purposes of the community legal services program managed by the Legal Aid Commission.

(1B) Subsection (1A) does not limit the payment of any other money from the Public Purpose Fund under any other provision of this section.

(2) The Trustees are to invite applications for payments from the Fund for the purposes referred to in this section at such intervals as the Secretary directs.

(3) Before making a payment from the Fund for a purpose other than the supplementation of the Legal Aid Fund or a purpose specified in subsection (1A), the Trustees are to consider whether adequate provision has been made from the Fund for the purpose of supplementation of the Legal Aid Fund.

(4) The Trustees may approve the making of a payment in advance under this section, but the period with respect to which the payment is made must not exceed 3 years.

(5) A determination of the Trustees under this section may be made only by a unanimous decision of the Trustees. A unanimous decision is a decision supported unanimously at a meeting of the Trustees at which all the Trustees for the time being are present and vote.

(6) This section does not require the Trustees to distribute all of the income or any of the capital of the Public Purpose Fund.

(7) In this section—

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

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

## 56 Payments from Fund for costs of uniform authorities

The Trustees may, at the request of the Attorney General, pay from the Public Purpose Fund amounts for such part of the costs of the Legal Services Council and the

Commissioner for Uniform Legal Services Regulation as the Attorney General is satisfied cannot be reasonably recovered through admission fees.

### **57 Performance audits**

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

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

- (1) As soon as practicable after 30 June in each year, the Trustees are to provide the Law Society Council with a report about the income and expenditure of the Public Purpose Fund for the period of 12 months ending on 30 June in that year.
- (2) The Law Society Council is to include a copy of the report of the Trustees in its annual report for the same period under section 34.

## **Part 6 Legal costs—particular kinds of costs**

### **59 Local regulations to provide for fixed costs**

- (1) The local regulations may make provision for or with respect to the following—
  - (a) fixing fair and reasonable costs for legal services provided in any workers compensation matter,
  - (b) fixing the costs payable for legal services provided in connection with any claim for personal injury damages (within the meaning of the *Civil Liability Act 2002*),
  - (c) fixing the costs payable for legal services provided in connection with small claims applications (within the meaning of section 379 of the *Industrial Relations Act 1996*),
  - (d) fixing the costs payable for the enforcement of a lump sum debt or liquidated sum for damages,

- (e) fixing the costs payable for the enforcement of a judgment by a judgment creditor,
  - (f) fixing the costs payable for legal services provided in respect of probate or the administration of estates,
  - (g) fixing an amount of costs for a matter that is not a legal service but is related to proceedings (for example, expenses for witnesses).
- (2) A law practice is not entitled to be paid or recover for a legal service an amount that exceeds the fair and reasonable cost fixed for the service by the regulations under this section.

**Note—**

Section 172 (3) of the [Legal Profession Uniform Law \(NSW\)](#) provides as follows—

- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the Uniform Rules and any fixed costs legislative provisions.

The term **fixed costs legislative provision** is defined in section 6 of that Law.

## **60 Provisions relating to local regulations on fixed costs**

- (1) The local regulations may fix a cost under section 59 for a particular legal service, for a class of legal services or for any part of a legal service.
- (2) The local regulations may fix a cost under section 59—
  - (a) as a gross amount for legal services, or
  - (b) as an amount for specified elements in the legal services provided (for example, documents prepared), or
  - (c) in any other manner.

## **61 Maximum costs in personal injury damages matters**

Schedule 1 contains provisions relating to maximum costs in personal injury damages matters.

## **62 Costs in civil claims—no reasonable prospects of success**

Schedule 2 contains provisions relating to costs in civil claims where there are no reasonable prospects of success.

## **Part 7 Legal costs—costs assessment**

## Division 1 Preliminary

### 63 Definitions

In this Part—

**costs assessor** means a person appointed to be a costs assessor under section 93C.

**ordered costs** means costs payable under an order or rule of a court or tribunal.

**review panel** means a review panel referred to in section 82.

**Uniform Law costs** means legal costs referred to in Division 7 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#) and (without limitation) legal costs referred to in section 65 of this Act.

### 64 Application of this Part

(1) This Part applies to Uniform Law costs and ordered costs.

**Note—**

This Part also applies to costs of an arbitration, as provided in sections 33B and 33C of the [Commercial Arbitration Act 2010](#).

(2) This Part has effect subject to—

- (a) any other legislation, or
- (b) any order or direction of the court or tribunal concerned (except as regards section 74 (3)).

### 65 Costs of barrister briefed directly by client

The [Legal Profession Uniform Law \(NSW\)](#) applies as if Division 7 of Part 4.3 of that Law also applied to legal costs of a barrister briefed directly by a client.

## Division 2 Costs assessment generally

### 66 Provision for costs assessment

Costs to which this Part applies may be the subject of assessment if the costs assessment rules, the relevant court or tribunal, the rules of the relevant court or tribunal or other legislation so provides.

**Note—**

Section 166 (4) provides that the local regulations may make provision for any matters for which costs assessment rules may be made.

### 67 Conduct of costs assessments

Subject to this Act and the [Legal Profession Uniform Law \(NSW\)](#), assessments of legal

costs are to be conducted in accordance with the costs assessment rules.

### **68 Applications for costs assessment**

- (1) Subject to this section, applications for an assessment of the whole or any part of legal costs are to be made in accordance with the costs assessment rules.
- (2) An application for costs assessment must—
  - (a) be filed with the Manager, Costs Assessment, and
  - (b) be accompanied by the fee prescribed by the local regulations, and
  - (c) be served on the other parties to the costs assessment in accordance with the costs assessment rules.
- (3) The Manager, Costs Assessment may waive or postpone payment of the application fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (4) The Manager, Costs Assessment may refund the application fee either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

### **69 Consideration of applications**

- (1) A costs assessor must give an applicant, and any law practice or client or other person concerned, a reasonable opportunity to make submissions to the costs assessor in relation to the application, and give due consideration to any submissions so made.
- (1A) A costs assessor may hold an oral hearing for the purposes of an application in accordance with the costs assessment rules.
- (2) In considering an application, a costs assessor is not bound by the rules of evidence and may inform himself or herself on any matter in the manner he or she thinks fit.

### **70 Certificate as to determination of costs to parties**

- (1) On making a determination of costs, a costs assessor is to issue a certificate that sets out the determination and includes—
  - (a) the amount of costs determined (including any GST component the costs assessor determines is payable), and
  - (b) the amount of any costs of the costs assessment determined under section 78 of this Act or section 204 of the *Legal Profession Uniform Law (NSW)*, and
  - (c) any interest on those amounts—

- (i) determined under section 81 of this Act, or
  - (ii) payable under section 101 of the *Civil Procedure Act 2005*.
- (2) A costs assessor may issue one or more certificates in relation to an application for costs assessment. Certificates may be issued at the same time or at different stages of the assessment process.
- (3) A costs assessor may issue one certificate in relation to a single application for an assessment of costs that are payable under multiple orders, rules or awards made between the same parties in one or related proceedings, as long as the certificate specifies the amount determined for each order, rule or award separately.
- (4) In the case of an amount of money specified in a certificate that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in the certificate may be recovered as a debt in a court of competent jurisdiction.
- (5) In the case of an amount of money specified in a certificate that has not been paid, the certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid money. The rate of any interest payable in respect of that amount of money is the rate of interest in the court in which the certificate is filed.
- (5A) The regulations may make provision for or with respect to the forwarding of a certificate issued under this section (or a copy of the certificate)—
- (a) by the costs assessor to the parties to the costs assessment or the Manager, Costs Assessment or both, and
  - (b) by the Manager, Costs Assessment to the parties to the costs assessment.
- (6) This section does not apply to costs referred to in section 71 (1) (a) and (b).

**71 Certificate as to determination of costs of costs assessor and Manager, Costs Assessment**

- (1) On making a determination of costs, a costs assessor is to separately determine—
- (a) the amount of the costs incurred by the costs assessor and the Manager, Costs Assessment, and
  - (b) the costs related to the remuneration of the costs assessor, and
  - (c) by whom those costs are payable and the extent to which they are so payable.
- (2) On making a determination under this section, a costs assessor is to issue a certificate that sets out the determined costs.

- (3) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court against the party to the assessment by whom the costs are payable in favour of—
  - (a) a party to the assessment that has paid some or all of the amount to the Manager, Costs Assessment—for that amount, and
  - (b) the Manager, Costs Assessment—for any amount of unpaid money.

## **72 Determination of costs when agreed**

A costs assessor or review panel may determine that the amount of fair and reasonable costs is the amount agreed to by the parties if, during the course of the assessment or proceedings before the review panel, the parties notify the assessor or panel (as the case may be) that they have agreed on the amount of those costs.

## **73 Costs determination to be final**

A costs determination is binding on all parties and no appeal or other assessment lies in respect of the determination, except as provided by this Part.

## **Division 3 Assessment of ordered costs—additional provisions**

### **74 Applications for costs assessment of ordered costs**

- (1) An application for assessment of the whole or any part of ordered costs may be made by—
  - (a) a person who has paid or is liable to pay those costs, or
  - (b) a person who has received or is entitled to receive those costs.
- (2) A court or tribunal may refer for assessment costs payable under an order made by the court or tribunal. Such a reference is taken to be an application duly made for assessment of the costs.
- (3) This section does not confer jurisdiction or power to refer costs for assessment except under an order or award that the court or tribunal can otherwise make.
- (4) A single application or reference may be made in respect of costs payable under multiple orders, rules or awards made between the same parties in one or related proceedings.

### **75 Conduct of costs assessments of ordered costs**

- (1) An assessment of ordered costs must be made in accordance with—
  - (a) the terms of the order, rule or award under which the costs are payable, and

- (b) the rules of the relevant court or tribunal that made the order for costs, and
- (c) any relevant regulations, and
- (d) any order made for interest on costs under section 101 of the *Civil Procedure Act 2005*.

- (2) If a court or tribunal has ordered that costs are to be assessed on an indemnity basis, the costs assessor must assess the costs on that basis, having regard to any relevant rules of the court or tribunal and any relevant regulations.

#### **76 Criteria for costs assessments of ordered costs**

- (1) In conducting an assessment of ordered costs, the costs assessor must determine what is a fair and reasonable amount of costs for the work concerned.
- (2) In considering what is a fair and reasonable amount of costs for the work concerned, the costs assessor may have regard to the factors in section 172 (1) and (2) of the *Legal Profession Uniform Law (NSW)* (as if that section also applies to ordered costs and so applies with any necessary modifications).

#### **77 Use of costs agreements in connection with ordered costs**

- (1) A costs assessor may, when conducting an assessment of ordered costs, obtain a copy of, and may have regard to, a costs agreement.
- (2) However, for the purposes of the assessment, a costs agreement is not conclusive as to what is the fair and reasonable amount of costs for the work concerned.

#### **78 Costs of costs assessment of ordered costs**

- (1) Subject to any order or rules of the court or tribunal concerned, a costs assessor is to determine the costs of an assessment of ordered costs and by whom they are payable.
- (2) This section does not apply to costs referred to in section 71 (1) (a) and (b).

#### **79 Court or tribunal may determine matters**

This Part does not limit any power of a court or a tribunal to determine in any particular case—

- (a) the amount of costs payable, or
- (b) that the amount of the costs is to be determined on an indemnity basis.

#### **80 Application of provisions of *Legal Profession Uniform Law (NSW)***

The following provisions of the *Legal Profession Uniform Law (NSW)* apply in relation to ordered costs in the same way as they apply in relation to Uniform Law costs—



- (a) section 201 (Reasons to be given),
- (b) section 202 (Referral for disciplinary action),
- (c) section 203 (Admissibility determinations in disciplinary proceedings).

## **Division 4 Assessment of Uniform Law costs—additional provisions**

### **81 Interest on costs**

- (1) A costs assessor may, in respect of the amount of Uniform Law costs or a specified part of that amount, determine that—
  - (a) interest is payable at a rate determined by the assessor that does not exceed the rate referred to in section 195 (4) of the *Legal Profession Uniform Law (NSW)*, or
  - (b) no interest is payable.
- (2) This section applies despite any costs agreement or anything else in section 195 of the *Legal Profession Uniform Law (NSW)*.
- (3) This section does not authorise the giving of interest on interest.

## **Division 5 Reviews**

### **82 Review panels**

Review panels are established under the costs assessment rules and are each constituted by 2 costs assessors appointed under those rules. A review panel may be established for one or more costs reviews.

### **83 Application by party for review**

- (1) A party to a costs assessment may, within 30 days after the certificate of determination by the costs assessor has been forwarded to the parties in accordance with the regulations or the costs assessment rules, apply for a review of the determination.
  - (1A) The Manager, Costs Assessment may extend the period for lodging an application.
- (2) Subject to this section, an application for a review is to be made in accordance with the costs assessment rules.
- (3) An application for a review must—
  - (a) be filed with the Manager, Costs Assessment, and
  - (b) be accompanied by the fee (if any) prescribed by the local regulations, and
  - (c) be served on the other parties to the costs assessment concerned in accordance

with the costs assessment rules.

- (4) The Manager, Costs Assessment may waive or postpone payment of the application fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (5) The Manager, Costs Assessment may refund the application fee either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

#### **84 Application by Manager, Costs Assessment for review**

- (1) The Manager, Costs Assessment may, within 30 days after the certificate of determination by the costs assessor has been forwarded to the parties in accordance with the regulations or the costs assessment rules, apply for a review of the determination.
- (2) An application for a review must—
  - (a) be made in accordance with the costs assessment rules, and
  - (b) be served on the parties to the proposed review in accordance with the costs assessment rules.

#### **85 Conduct of reviews**

- (1) A review panel may, on an application made under section 83 or 84, review the determination of a costs assessor and may—
  - (a) affirm the costs assessor's determination, or
  - (b) set aside the costs assessor's determination and substitute the determination that, in its opinion, should have been made by the costs assessor.
- (2) The review panel has, in relation to the application for review, all the functions of a costs assessor in relation to the assessment concerned and is to determine the application, subject to this Part and the costs assessment rules, in the manner that a costs assessor would be required to determine an application for costs assessment.
- (3) Without limiting subsection (2), the review panel is not bound by the rules of evidence and may inform itself on any matter in the manner it thinks fit.
- (4) If the costs assessors who constitute the review panel are unable to agree on a determination in relation to an application, the panel is to affirm the determination of the costs assessor.

#### **86 Effect of review on costs assessor's determination**

- (1) If an application is made to a review panel to review a costs assessor's determination

under section 83 or 84, the operation of the determination is suspended.

- (2) The review panel may end a suspension—
  - (a) if it affirms the determination of the costs assessor, or
  - (b) in such other circumstances as it considers appropriate.

### **87 Certificate as to review panel's substituted determination of costs to parties**

- (1) If, on review of a costs assessor's determination, a review panel sets aside and substitutes the determination, the panel is to issue a certificate that sets out its determination. The certificate is to include the amounts set out in section 70 (1) (a)-(c).
- (2) Section 70 (2)-(6) apply to a certificate issued by a review panel under this section in the same way as they apply to a certificate issued by a costs assessor under section 70.

### **88 Certificate as to determination of costs of review panel**

- (1) On a review of a costs assessor's determination, a review panel may separately determine—
  - (a) the amount of the costs incurred by the review panel or the Manager, Costs Assessment in the course of the review, and
  - (b) the costs related to the remuneration of the costs assessors who constitute the review panel, and
  - (c) by whom those costs are payable and the extent to which they are so payable.
- (2) If the review panel makes such a determination, the panel is to issue a certificate that sets out the determined costs.
- (3) Section 71 (3) applies to a certificate issued by a review panel under this section in the same way as it applies to a certificate issued by a costs assessor under section 71.

## **Division 6 Appeals**

### **89 Appeal on matters of law and fact**

- (1) A party to a costs assessment that has been the subject of a review under this Part may appeal against a decision of the review panel concerned to—
  - (a) the District Court, in accordance with the rules of the District Court, but only with the leave of the Court if the amount of costs in dispute is less than \$25,000, or
  - (b) the Supreme Court, in accordance with the rules of the Supreme Court, but only with the leave of the Court if the amount of costs in dispute is less than \$100,000.

- (2) The District Court or the Supreme Court (as the case requires) has all the functions of the review panel.
- (3) The Supreme Court may, on the hearing of an appeal or application for leave to appeal under this section, remit the matter to the District Court for determination by that Court in accordance with any decision of the Supreme Court and may make such other order in relation to the appeal as the Supreme Court thinks fit.
- (3A) The Supreme Court may, before the conclusion of any appeal or application for leave to appeal under this section in the District Court, order that the proceedings be removed into the Supreme Court.
- (4) An appeal is to be by way of a rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the review panel or costs assessor may, with the leave of the Court, be given on the appeal.

#### **90 Effect of appeal on review panel decision**

- (1) If an appeal against a decision of a review panel under section 89 or an application for leave under that section in relation to a determination by a costs assessor is pending in the District Court, either the review panel or the District Court may suspend the operation of the determination or the decision.
- (2) The review panel or the District Court may end a suspension made by the review panel. The District Court may end a suspension it made.
- (3) A suspension ends when (as the case may be)—
  - (a) the appeal is determined, or
  - (b) the application for leave is dismissed, discontinued or struck out or lapses.

#### **91 Notices of appeal**

The party initiating an appeal or an application for leave to appeal must serve a copy of the initiating process on the Manager, Costs Assessment and every other party to the review from which the appeal is brought or to which the application relates.

### **Division 7 Costs assessment rules**

#### **92 Costs Assessment Rules Committee**

- (1) There is to be a Costs Assessment Rules Committee consisting of the following persons appointed by the Chief Justice of New South Wales—
  - (a) a Judge of the Supreme Court,
  - (b) a Judge of the District Court nominated by the Chief Judge of the District Court,

- (c) a barrister nominated by the Bar Council,
  - (d) a solicitor nominated by the Law Society Council,
  - (e) a person nominated by the NSW Commissioner,
  - (f) costs assessors chosen by the Chief Justice.
- (2) The Committee has any of the functions conferred or imposed on the Committee by or under this or any other Act.
  - (3) The Committee is to regulate its own proceedings for the calling of meetings and the conduct of its business.
  - (4) The Manager, Costs Assessment is the Secretary of the Committee.
  - (5) Any amount payable from the Public Purpose Fund under section 53 for the purpose of meeting the costs of the Committee is to be paid to the Treasurer for credit of the Consolidated Fund.

### 93 Costs assessment rules

- (1) The Costs Assessment Rules Committee may make rules (**costs assessment rules**), not inconsistent with this Act or the *Legal Profession Uniform Law (NSW)*, for or with respect to costs assessments and reviews, including without limitation—
  - (a) the making, timing and processing of applications for costs assessments and reviews, and
  - (b) the conduct of costs assessments and reviews, including—
    - (i) the practice and procedure for costs assessments and reviews, and
    - (ia) conferring power on costs assessors to take evidence orally or in writing and to examine witnesses and administer oaths, and
    - (ii) the appointment of costs assessors to conduct costs assessments, and
    - (iii) the establishment of review panels and the appointment of costs assessors to review panels, and
    - (iv) matters relating to the interests of costs assessors in particular matters, and
    - (v) the determination and payment of the costs of costs assessments and reviews, and
    - (vi) the issue of certificates of determinations and the forwarding of such certificates (or copies of such certificates)—
      - (A) by the costs assessor to the parties to the costs assessment or the

Manager, Costs Assessment or both, and

- (B) by the Manager, Costs Assessment to the parties to the costs assessment, and
    - (vii) the giving of reasons for determinations and the provision of supplementary information to accompany the reasons, and
    - (viii) the suspension of a costs determination in the event of an application for a costs review, and
  - (c) requiring a person (including an applicant, the law practice concerned, any other law practice or client, or a costs assessor) to produce documents, to provide information (verified by statutory declaration if the requirement so states), or otherwise to assist in, or co-operate with, the determination or finalisation of an assessment or review, and
  - (d) requiring documents produced in response to a requirement referred to in paragraph (c) to be returned or otherwise disposed of within a period specified in or determined in accordance with the rules, and
  - (e) the correction of errors in a determination.
- (2) A rule may do any of the following—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind,
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (3) The rules must be published on the NSW legislation website.
- (4) Sections 40 and 41 of the *Interpretation Act 1987* apply to the rules in the same way as they apply to a statutory rule.
- (5) The local regulations prevail over the rules in the event of an inconsistency.

### **93A Compliance with requirements about documents and other matters**

- (1) This section applies to a requirement referred to in section 93 (1) (c) or (d).
- (2) A person who is subject to a requirement to which this section applies must comply with the requirement.

Maximum penalty—the penalty specified in the costs assessment rules in relation to a contravention of the requirement (not exceeding 50 penalty units).

- (3) If a person fails, without reasonable excuse, to comply with a requirement to which this section applies, the costs assessor or review panel may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (4) A failure by an Australian legal practitioner to comply with a requirement to which this section applies without reasonable excuse is capable of being unsatisfactory professional conduct or professional misconduct.

## **Division 8 Miscellaneous**

### **93B Manager, Costs Assessment**

- (1) The Chief Justice of New South Wales may appoint a registrar of the Supreme Court as Manager, Costs Assessment.
- (2) The Manager, Costs Assessment has the functions conferred on the Manager, Costs Assessment by or under this or any other Act.
- (3) The acts and decisions of the Manager, Costs Assessment are reviewable by the Supreme Court in the same manner as acts and decisions of other registrars are reviewable by the Court.
- (4) Service by the Manager, Costs Assessment of a copy of an application for a costs assessment on relevant parties in accordance with the costs assessment rules is taken to be notification by a costs assessor as required by section 198 (8) of the *Legal Profession Uniform Law (NSW)*.

### **93C Costs assessors**

- (1) The Chief Justice of New South Wales may appoint persons to be costs assessors.
- (2) A costs assessor has the functions that are conferred on the costs assessor by or under this or any other Act or the *Legal Profession Uniform Law (NSW)*.
- (3) For the purpose of determining an application for assessment or exercising any other function as a costs assessor, a costs assessor may determine any anterior or incidental question of fact or law, but not so as to establish an issue estoppel for that question for the purpose of any other proceedings.
- (4) A costs assessor is not an officer of the Supreme Court when acting as a costs assessor.
- (5) Proceedings relating to anything done or omitted to be done by the Chief Justice of New South Wales in respect of the appointment or removal of a costs assessor (including terms of appointment and any other incidental matters) may not be instituted against the Chief Justice of New South Wales but may be instituted against "The Manager, Costs Assessment" as nominal defendant.

(6) Schedule 6 contains provisions relating to costs assessors.

### **93D Confidentiality**

A costs assessor must not disclose any information obtained in connection with the exercise of the costs assessor's functions (including any functions as a member of a review panel) unless the disclosure is made—

- (a) in connection with the exercise of those functions or the administration or execution of this Act or the *Legal Profession Uniform Law (NSW)*, or
- (b) for the purposes of any legal proceedings arising out of this Act or the *Legal Profession Uniform Law (NSW)*, or of any report of any such proceedings, or
- (c) in the case of information relating to an Australian legal practitioner or other person—with the consent of the practitioner or other person, or
- (d) with other lawful excuse.

Maximum penalty—20 penalty units.

### **93E Referral of matters for costs assessment under Chapter 5 of the *Legal Profession Uniform Law (NSW)***

No fee is payable for an application for a costs assessment arranged by the designated local regulatory authority under section 284 of the *Legal Profession Uniform Law (NSW)*.

### **93F Protection from liability**

(1) No liability attaches to a relevant person for any act or omission done or omitted in good faith and in the administration of this Part or (without limitation) the exercise or purported exercise of functions under this Part.

(2) In this section—

**relevant person** means—

- (a) the Chief Justice of New South Wales, or
- (b) the Manager, Costs Assessment, or
- (c) a costs assessor (including a costs assessor acting as a member of a review panel constituted under this Part).

### **93G Costs of this Part**

(1) All costs related to the administration of this Part (other than the costs of the Costs Assessment Rules Committee as referred to in section 92) are to be paid out of money to be provided from a working account established or continued by the Department of Justice under section 4.17 of the *Government Sector Finance Act 2018* for the



purposes of this Part.

- (2) The following amounts received by the Manager, Costs Assessment are to be paid to the credit of that working account—
  - (a) an application fee for an assessment,
  - (b) an application fee for a review of an assessment,
  - (c) a payment for the costs of a costs assessor,
  - (d) a payment for the costs of the Manager, Costs Assessment,
  - (e) a payment for the costs of a review of an assessment.

## **Part 8 Professional indemnity insurance**

### **Division 1 Introduction**

#### **94 Purpose of this Part**

The purpose of this Part is to supplement Part 4.4 of the *Legal Profession Uniform Law (NSW)*.

#### **95 Approved insurance policy**

- (1) A policy of professional indemnity insurance that complies with this section is an approved insurance policy for this jurisdiction for the purposes of Part 4.4 of the *Legal Profession Uniform Law (NSW)* in relation to an entity that—
  - (a) is required to hold or be covered by an approved policy of professional indemnity insurance, and
  - (b) is of a class of entities to which an order under subsection (2) applies.
- (2) A policy of professional indemnity insurance complies with this section if—
  - (a) the Attorney General has, by order in writing (given to the Bar Council in the case of professional indemnity insurance for a barrister or to the Law Society Council in any other case), approved of—
    - (i) the type of policy, and
    - (ii) the level of insurance provided by the policy, and
    - (iii) the terms and conditions of the policy, and
  - (b) (Repealed)
  - (c) the policy is not to expire before the expiration of the term of the Australian practising certificate of the entity to whom the policy relates.

- (3) An order may apply to a class or classes of those entities. An order that does not expressly or impliedly apply to any particular class of entities is taken to apply to all classes of entities.
- (3A) If any terms or conditions imposed by an order are not complied with by the insurer or provider that issued the policy—
- (a) the order may be amended to prohibit or restrict the future issue of policies by the insurer or provider or in any other manner the Attorney General considers appropriate in the circumstances, and
- (b) the Attorney General may take into account any failure to comply by the insurer or provider when deciding whether to approve future policies issued by that insurer or provider.
- (3B) Nothing in subsection (3A) limits any other power of the Attorney General.
- (4) This section applies despite anything to the contrary in section 210 (1) of the *Legal Profession Uniform Law (NSW)*.

## **Divisions 2-5**

### **96-114 (Repealed)**

## **Part 9 Fidelity cover**

### **Note—**

- The Legal Practitioners Fidelity Fund maintained under Division 1 of this Part is nominated as the fidelity fund of this jurisdiction for the purposes of Part 4.5 of the *Legal Profession Uniform Law (NSW)*—see section 15 of this Act.
- The Law Society Council is specified as the fidelity authority for the purposes of the definition of **fidelity authority** in section 6 of the *Legal Profession Uniform Law (NSW)*—see section 16 of this Act.

## **Division 1 Legal Practitioners Fidelity Fund**

### **115 Establishment of Legal Practitioners Fidelity Fund**

- (1) The Law Society must maintain and manage a Legal Practitioners Fidelity Fund.
- (2) The Fidelity Fund consists of—
- (a) all money (including invested money) forming part of the Legal Practitioners Fidelity Fund under the *Legal Profession Act 2004* immediately before the commencement of this section, and
- (b) the money paid on account of the Fidelity Fund as annual contributions or as levies under Part 4.5 of the *Legal Profession Uniform Law (NSW)*, and
- (c) the interest or other income accruing from investment of the money in the Fidelity Fund, and

(d) money paid to the Fidelity Fund from the Public Purpose Fund, and

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

(3) The amount of an annual contribution or levy under Part 4.5 of the *Legal Profession Uniform Law (NSW)* requires the approval of the Attorney General despite that Part.

(4) The Fidelity Fund is the property of the Law Society and is to be applied in accordance with this Part.

#### **116 Establishment of separate Legal Practitioners Fidelity Fund Account**

(1) The Law Society must maintain with an ADI in New South Wales a separate account with the name “Legal Practitioners Fidelity Fund Account” and must pay to the credit of the account all money received on account of the Fidelity Fund.

(2) The account is to be operated in the manner determined by the Law Society Council.

#### **117 Investment of Fidelity Fund**

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

(a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or

(b) on deposit with the Treasurer.

#### **118 Payments from Fidelity Fund**

There is to be paid from the Fidelity Fund in such order as the Law Society Council decides—

(a) premiums for insurance of the Fidelity Fund, and

(b) legal expenses incurred in investigating or defending claims made against the Fidelity Fund, or against the Law Society in relation to the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund, and

(c) the amount of a claim (including interest and costs) allowed or established against the Law Society in respect of the Fidelity Fund, and

(d) the expenses of administering the Fidelity Fund, including allowances and travelling expenses for members of the Law Society Council and the Fidelity Fund Management Committee in connection with the exercise of their functions in relation to the Fidelity Fund, and

(e) the costs of the Law Society Council in exercising its function under section 31, and

(f) any other money payable from the Fidelity Fund under this Part or in respect of

amounts paid or payable for the purposes of Chapter 6 (External intervention) of the *Legal Profession Uniform Law (NSW)* or under rules or regulations made under this Act.

**Note—**

Section 240 (1) of the *Legal Profession Uniform Law (NSW)* provides that the fidelity authority (which is the Law Society Council) must ensure that claims against the Fidelity Fund are determined independently, at arm's length from the legal profession.

**119 Management Committee**

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

**120 Audit**

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

## 121 Insurance

- (1) The Law Society Council may arrange with an insurer for the insurance of the Fidelity Fund.
- (2) Without limiting subsection (1), the Law Society Council may arrange for the insurance of the Fidelity Fund against particular claims or particular classes of claims.
- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the Fidelity Fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.
- (4) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the Fidelity Fund.
- (5) In this section—  
**protected person** means—
  - (a) the Law Society or a member of the Law Society Council or the Fidelity Fund Management Committee, or
  - (b) a member of staff of or a person acting at the direction of the Law Society, Law Society Council or Fidelity Fund Management Committee.

## Division 2 Claims about defaults

### 122 Claims about defaults

- (1) A person who suffers pecuniary loss because of a default to which Part 4.5 of the [Legal Profession Uniform Law \(NSW\)](#) applies may make a claim against the Fidelity Fund to the Law Society about the default.
- (2) A claim is to be made in writing in a form approved by the Law Society Council.
- (3) The Law Society Council may require the person who makes a claim to do either or both of the following—
  - (a) to give further information about the claim or any dispute to which the claim relates,
  - (b) to verify the claim, or any further information, by statutory declaration.
- (4) The Law Society Council must investigate a claim made to it, including the default to which it relates, and may do so in any manner it considers appropriate.

### 123 Availability of property of Law Society

The Fidelity Fund is the only property of the Law Society available for the satisfaction of a

successful claim.

## **Division 3 General**

### **124 Application of provisions of Uniform Law**

Part 4.5 of the *Legal Profession Uniform Law (NSW)* does not apply to a default of a law practice consisting of a barrister.

## **Part 10 Rights of review**

### **125 Right of review by NCAT about Australian practising certificates and Australian registration certificates**

- (1) This section deals with a decision of a designated local regulatory authority about an Australian practising certificate or an Australian registration certificate where proceedings before NCAT as designated tribunal are contemplated by section 100 or 101 of the *Legal Profession Uniform Law (NSW)*.

**Note—**

NCAT is the designated tribunal for the purposes of sections 100 and 101 of the *Legal Profession Uniform Law (NSW)* in relation to decisions under section 89 or 92 of that Law. The Supreme Court is the designated tribunal for the purposes of sections 100 and 101 for other decisions. See the table to section 11 (3).

- (2) The applicant for or the holder of the Australian practising certificate or Australian registration certificate may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

### **126 Right of review by NCAT about certain determinations of local regulatory authority in consumer and disciplinary matters**

- (1) This section deals with proceedings contemplated by section 314 (1) and (2) of the *Legal Profession Uniform Law (NSW)* in relation to a determination of a local regulatory authority relating to—
  - (a) a compensation order for more than \$10,000 in a consumer matter, or
  - (b) a disciplinary matter.
- (2) A respondent lawyer or a legal practitioner associate of a respondent law practice may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997* of a determination of the designated local regulatory authority under—
  - (a) section 290 of the *Legal Profession Uniform Law (NSW)*, in relation to a compensation order for more than \$10,000, or
  - (b) section 299 of the *Legal Profession Uniform Law (NSW)*.

### **127 Local regulations may provide rights of review**

The local regulations may provide that an application may be made to NCAT for an administrative review under the *Administrative Decisions Review Act 1997* of a specified decision or class of decisions made by a specified person or body in the exercise of functions conferred or imposed by or under—

- (a) this Act or the local regulations, or
- (b) the *Legal Profession Uniform Law (NSW)*, or
- (c) the Uniform Rules as they apply in this jurisdiction.

### **128-134 (Repealed)**

## **Part 11 Procedures of NCAT as designated tribunal for disciplinary matters**

### **135 Purpose of this Part and definitions**

(1) The purpose of this Part is to provide for the procedures of the designated tribunal as contemplated by section 301 of the *Legal Profession Uniform Law (NSW)*. Some procedures are covered by the *Civil and Administrative Tribunal Act 2013*.

(2) In this Part—

***disciplinary application*** means an application made to the Tribunal (as designated tribunal) under section 300 of the *Legal Profession Uniform Law (NSW)* with respect to a respondent lawyer.

***Tribunal*** means NCAT.

(3) A reference in this Part to the NSW Commissioner (as designated local regulatory authority) in a particular context includes, where relevant in that context, a reference to a delegate of the NSW Commissioner.

### **136 Proceedings may involve one or more matters**

Proceedings initiated in the Tribunal may relate to one or more matters that involve or may involve unsatisfactory professional conduct or professional misconduct.

### **137 Time for initiating proceedings**

(1) A disciplinary application may be made to the Tribunal at any time within 6 months after the NSW Commissioner decides to initiate proceedings in the Tribunal with respect to the alleged conduct.

(2) Despite subsection (1), the Tribunal may, on application in writing by the NSW Commissioner, extend the time for making a disciplinary application.

- (3) In exercising the power to extend the time for making a disciplinary application, the Tribunal is to have regard to all the circumstances of the case, and without limitation the Tribunal is to have regard to the following—
  - (a) the public interest,
  - (b) the extent to which, having regard to the delay, there is or may be prejudice to the lawyer concerned because evidence that would have been available if the application had been made within the 6-month period is no longer available,
  - (c) the reasonableness of the applicant's explanation for the delay in making the application.
- (4) The time for making a disciplinary application may be extended under subsection (2) even if that time has expired.
- (5) An official record or notification of a decision referred to in subsection (1) and stating the date the decision was made is evidence that the decision was made and of the date the decision was made.

### **138 Hearings**

The Tribunal is to conduct a hearing into each allegation particularised in a disciplinary application made to the Tribunal.

### **139 Joinder**

The Tribunal may, subject to its rules and the rules of procedural fairness, order the joinder of more than one disciplinary application against the same or different respondent lawyers.

### **140 Variation of disciplinary application**

- (1) The Tribunal may vary a disciplinary application, on the application of the person who made the disciplinary application or on its own motion, so as to omit allegations or to include additional allegations, if satisfied that it is reasonable to do so having regard to all the circumstances.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary a disciplinary application, the Tribunal is to have regard to whether varying the disciplinary application will affect the fairness of the proceedings.
- (3) The inclusion of an additional allegation is not precluded on any or all of the following grounds—
  - (a) the additional allegation has not been the subject of a complaint,
  - (b) the additional allegation has not been the subject of an investigation,



(c) the alleged conduct concerned occurred more than 3 years ago.

#### **141 Nature of allegations**

- (1) A disciplinary application in respect of a complaint cannot be challenged on the ground that the allegations contained in the application do not deal with all of the matters raised in the complaint or deal differently with matters raised in the complaint or deal with additional matters.
- (2) This section applies whether the allegations were included in the disciplinary application as made to the Tribunal or were included by way of variation of the application.

#### **142 Substitution of applicant**

- (1) If a disciplinary application was made by the NSW Commissioner (but not a delegate of the NSW Commissioner), the Tribunal may, on the application of the NSW Commissioner or the Bar Council or Law Society Council, and if satisfied that it is appropriate to do so, direct that a Council is to be regarded as the applicant in connection with the disciplinary application.
- (2) If a disciplinary application was made by a delegate of the NSW Commissioner, the Tribunal may, on the application of the NSW Commissioner or the delegate, and if satisfied that it is appropriate to do so, direct that the NSW Commissioner is to be regarded as the applicant in connection with the disciplinary application.
- (3) This section has effect even if a hearing of the matter has commenced before the Tribunal.

#### **143 Interlocutory and interim orders**

The Tribunal may make interlocutory or interim orders as it thinks fit before making its final decision about a complaint against a respondent lawyer.

#### **144 Consent orders**

- (1) The Tribunal may, with the consent of the respondent lawyer contained in a written instrument, make orders without conducting or completing a hearing in relation to the complaint.
- (2) Consent may be given before or after the proceedings were initiated in the Tribunal with respect to the complaint.
- (3) If consent is given before the proceedings were initiated, an investigation of the complaint (whether commenced or not) may be dispensed with, and any investigation of the complaint already being conducted may be suspended or terminated.
- (4) This section does not apply to consent given by the respondent lawyer unless the

lawyer and the NSW Commissioner have agreed on the terms of an instrument of consent.

- (5) Without limiting what may be included in the instrument of consent, the instrument is to contain an agreed statement of facts (including as to the grounds of complaint) and may contain undertakings on the part of the respondent lawyer.
- (6) The instrument of consent must be filed with the Tribunal.
- (7) Nothing in this section affects the procedures regarding the initiation of proceedings in the Tribunal where consent was given before the proceedings are initiated.
- (8) If consent was given before the proceedings are initiated, the proceedings are nevertheless to be initiated with respect to the complaint in the same way as if the consent had not yet been given.
- (9) The Tribunal is to be constituted in the same way as for the conduct of a hearing into the complaint.
- (10) In deciding whether to make orders pursuant to an instrument of consent, the Tribunal may make such inquiries of the parties as it thinks fit and may, despite any such consent, conduct or complete a hearing in relation to the complaint if it considers it to be in the public interest to do so.

#### **145 Compliance with determinations and orders**

- (1) Persons and bodies having relevant powers or functions under this Act or the *Legal Profession Uniform Law (NSW)* must—
  - (a) give effect to any order of the Tribunal made under the provisions of this Part or Division 3 of Part 5.4 of the *Legal Profession Uniform Law (NSW)* that requires official implementation in this jurisdiction, and
  - (b) enforce any order of the Tribunal made under any of those provisions that requires compliance by an Australian legal practitioner (except to the extent that the order relates to the practitioner's practice of law in another jurisdiction).

#### **Note—**

Section 461 of the *Legal Profession Uniform Law (NSW)* contains provisions relating to compliance in this jurisdiction with recommendations or orders made under corresponding laws.

- (2) The applicant that made the disciplinary application concerned must ensure that persons and bodies having relevant powers or functions under a corresponding law of another jurisdiction are notified of the making and contents of—
  - (a) any order of the Tribunal made under the provisions of this Part or Division 3 of Part 5.4 of the *Legal Profession Uniform Law (NSW)* that requires official implementation in the other jurisdiction, and

- (b) any order of the Tribunal made under any of those provisions that requires compliance by an Australian legal practitioner (except to the extent that the order relates to the practitioner's practice of law in another jurisdiction).
- (3) If the Tribunal makes an order that an Australian legal practitioner pay a fine, a copy of the order may be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount of the fine and the order may be enforced as if it were an order of the court.
- (4) Any fine imposed by the Tribunal must be paid in the manner and within the period specified by the Tribunal and is to be paid to the Public Purpose Fund.

#### **146 Notification of progress and result of proceedings before Tribunal**

- (1) The applicant in connection with a disciplinary application made to the Tribunal must cause the complainant to be notified in writing of the determination of the Tribunal.
- (2) This section does not apply in relation to a complaint made by the NSW Commissioner.

#### **147 Early termination of proceedings before Tribunal**

- (1) Proceedings before the Tribunal with respect to a complaint cannot be terminated, whether by withdrawal of the disciplinary application or otherwise, before the Tribunal makes its final decision about the complaint, without the leave of the Tribunal.
- (2) The Tribunal may give leave for the purposes of this section if it is satisfied that continuation of the proceedings is not warranted in the public interest.

### **Part 12 Registers and publicising disciplinary action**

#### **148 Definitions**

In this Part—

***disciplinary action*** against a lawyer means any of the following actions taken under a law of this or another jurisdiction, whether or not taken under Chapter 5 of the [Legal Profession Uniform Law \(NSW\)](#) or under provisions of a corresponding law that correspond to that Chapter—

- (a) the suspension or cancellation of the Australian practising certificate or Australian registration certificate of the lawyer (other than a suspension or cancellation at the request or with the concurrence of the holder of the certificate that is not connected with a disciplinary matter),
- (b) the refusal to grant or renew an Australian practising certificate or Australian registration certificate applied for by the lawyer (other than a refusal on the ground that the lawyer is not eligible to apply for the grant or renewal),

- (c) the removal of the name of the lawyer from a roll of Australian lawyers,
- (d) the making of an order by a court or tribunal, or by another person or body, for or following a finding of unsatisfactory professional conduct or professional misconduct by the lawyer, other than an order cautioning the person,
- (e) the reprimanding of the lawyer, or the making of a compensation order against the lawyer, by a person or body without a formal finding of unsatisfactory professional conduct or professional misconduct,
- (f) the appointment of a manager or receiver for a law practice of which the lawyer is a legal practitioner associate, where the associate is specified or referred to in the notice of appointment served on the law practice.

**lawyer**, when used alone, has the same meaning as it has in Chapter 5 of the *Legal Profession Uniform Law (NSW)* (see section 261 of that Law).

#### **149 Register of local practising certificates**

- (1) The appropriate Council must keep a register of the names of Australian lawyers to whom it grants local practising certificates.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the following—
  - (a) the information that may or must be included in the register,
  - (b) the notification by local legal practitioners to the appropriate Council of changes of particulars,
  - (c) the notification by the appropriate Council to other authorities of particulars contained in the register,
  - (d) the removal of information from the register relating to former holders of certificates.
- (4) The register must state the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice.
- (5) A condition imposed on a local practising certificate relating to infirmity, injury or mental or physical illness is not to be stated on the register unless—
  - (a) the condition restricts the holder's right to engage in legal practice, or
  - (b) the holder consents to the condition being stated on the register.

- (6) The register may be kept in a form determined by the appropriate Council.
- (7) The appropriate Council may publish, in circumstances that it considers appropriate, the names of persons kept on the register and any other information included in the register concerning those persons.
- (8) The register must be available for inspection, without charge, at the appropriate Council's office during normal business hours.

#### **150 Register of local registration certificates**

- (1) The appropriate Council must keep a register of the names of persons to whom it grants local registration certificates.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register must state the conditions (if any) imposed on a foreign lawyer's registration.
- (5) The register may be kept in a form determined by the appropriate Council.
- (6) The register must be available for inspection, without charge, at the appropriate Council's office during normal business hours.

#### **151 Register of disqualification orders and approvals**

- (1) The appropriate Council must keep a register of—
  - (a) orders made under section 119 or 120 of the *Legal Profession Uniform Law (NSW)* on its application, and
  - (b) approvals given by it under section 121 (2) of that Law.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)*. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register may be kept in a form determined by the appropriate Council.
- (5) The register must be available for inspection, without charge, at the appropriate

Council's office during normal business hours, but only if the inspection is made by an Australian legal practitioner.

## **152 Register of Disciplinary Action**

- (1) The NSW Commissioner must keep a register (in this Act referred to as the **Register of Disciplinary Action**) of—
  - (a) disciplinary action taken under a law of this jurisdiction against lawyers, and
  - (b) disciplinary action taken under a corresponding law against lawyers who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred, and
  - (c) disciplinary action taken under a corresponding law against lawyers who are enrolled or practising in this jurisdiction if the disciplinary action was recorded on a register of disciplinary action kept under the corresponding law when the lawyer became enrolled or commenced to practise in this jurisdiction.
- (2) The register may include the details that may be included in the register under section 435 of the *Legal Profession Uniform Law (NSW)* and must not include the details that must not be included in the register under that section. Subsection (3) prevails over this subsection in the event of an inconsistency.
- (3) The local regulations may make provision for or with respect to the information that may or must be included in the register.
- (4) The register may be kept in a form determined by the NSW Commissioner.
- (5) The register is to be made available for public inspection on—
  - (a) the internet site of the NSW Commissioner, or
  - (b) an internet site identified on the internet site of the Commissioner.
- (6) Information recorded in the register may be provided to members of the public in any other manner approved by the NSW Commissioner.
- (7) The NSW Commissioner may cause any error in or omission from the register to be corrected.
- (8) The requirement to keep the register applies only in relation to disciplinary action taken after the commencement of section 577 of the *Legal Profession Act 2004*, but details relating to earlier disciplinary action may be included in the register.
- (9) A Council or NCAT must provide to the NSW Commissioner sufficient information to enable the Commissioner to exercise the Commissioner's functions in respect of the register.

**153 Other means of publicising disciplinary action**

- (1) The NSW Commissioner or a Council may publicise disciplinary action taken against a lawyer in any manner the Commissioner or Council thinks fit.
- (2) Nothing in this section affects the provisions of this Part relating to the Register of Disciplinary Action.

**154 Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register of Disciplinary Action.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the NSW Commissioner or a Council under section 153, the result of the appeal or review must be publicised with equal prominence by the Commissioner or Council.

**155 Liability for publicising disciplinary action**

- (1) No liability is incurred by a protected person in respect of anything done, or omitted to be done, in good faith for the purpose of—
  - (a) publicising disciplinary action taken against a lawyer, or
  - (b) exercising the powers or functions of the NSW Commissioner or a Council under sections 151-153, or
  - (c) keeping, publishing or enabling access to the Register of Disciplinary Action.
- (2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith—
  - (a) information about disciplinary action—
    - (i) recorded in the Register of Disciplinary Action, or
    - (ii) otherwise publicised by the NSW Commissioner or a Council under this Part, or matter purporting to contain information of that kind where the matter is incorrect in any respect, or
  - (b) a fair report or summary of that information.
- (3) In this section—

**protected person** means—

  - (a) the State, or
  - (b) the NSW Commissioner, or

- (c) a Council, or
- (d) a person responsible for keeping the whole or any part of the Register of Disciplinary Action, or
- (e) an internet service provider or internet content host, or
- (f) a member of staff of or a person acting at the direction of an authority of the State or any person or body referred to in this definition.

**156 Disciplinary action taken where infirmity, injury or illness is involved**

- (1) Disciplinary action taken against a person is not to be recorded in the Register of Disciplinary Action or otherwise publicised under this Part if the action was taken because of the person's inability properly to carry out the requirements of legal practice and the inability arises wholly or principally from infirmity, injury or mental or physical illness.
- (2) Subsection (1) does not apply where the disciplinary action involves—
  - (a) the suspension or cancellation of the person's Australian practising certificate, or
  - (b) a refusal to grant or renew an Australian practising certificate applied for by the person, or
  - (c) a restriction or prohibition on the person's right to engage in legal practice,but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register of Disciplinary Action or otherwise publicised under this Part without the person's consent.

**157 Effect of secrecy provisions and non-disclosure orders**

- (1) The provisions of this Part apply despite any confidentiality or secrecy provisions of this Act or the *Legal Profession Uniform Law (NSW)*.
- (2) The provisions of this Part are subject to any order made by—
  - (a) NCAT in relation to disciplinary action taken under the *Legal Profession Uniform Law (NSW)*, or
  - (b) a corresponding authority in relation to disciplinary action taken under provisions of a corresponding law that correspond to that Law, or
  - (c) a court or tribunal of this or another jurisdiction,so far as the order prohibits or restricts the disclosure of information.
- (3) Despite subsection (2), the name and other identifying particulars of the person



against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register of Disciplinary Action in accordance with the requirements of this Part and may be otherwise publicised under this Part.

## Part 13 Miscellaneous

### 158 Information sharing

The NSW Commissioner and the Councils may share information for the purposes of performing their functions under this Act and the *Legal Profession Uniform Law (NSW)*.

### 159 Liability of principals

Section 35 of the *Legal Profession Uniform Law (NSW)* applies in relation to a contravention by a law practice of a provision of this Act imposing an obligation on the law practice in the same way as it applies in relation to a contravention by a law practice of a provision of the *Legal Profession Uniform Law (NSW)* imposing an obligation on the law practice.

### 160 Prohibition of official schemes for recognition of seniority or status

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

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

Justice of New South Wales or other judicial office holder.

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

### **161 Defect or irregularity in person's appointment**

A defect or irregularity in the appointment of any person exercising, or purporting to exercise, a function under this Act or the *Legal Profession Uniform Law (NSW)* does not invalidate an act or omission done or omitted by the person in good faith.

### **162 Approved forms**

- (1) An authority having a function under this Act may approve forms for use in connection with that function.
- (2) The local regulations may make provision for or with respect to the approval of forms for use under or in connection with this Act or the local regulations.

### **163 Delegation**

- (1) A person or body having functions under this Act may delegate in writing all or any of those functions to a person or persons if the local regulations authorise the delegation of the functions to the person or persons.
- (2) Subsection (1) does not apply in respect of the functions of the NSW Commissioner, Bar Council or Law Society Council under this Act.

**Note—**

Sections 28, 30 and 32 provide for the delegation of functions of the NSW Commissioner, Bar Council and Law Society Council.

### **164 Protection from liability**

- (1) No liability attaches to a relevant person for any act or omission done or omitted in good faith and in the exercise or purported exercise of functions under this Act or the local regulations.

- (2) In this section—

**relevant person** means—

- (a) the NSW Admission Board or a member of the Board, or
- (b) the NSW Commissioner, or
- (c) the Bar Association or the Bar Council, or their committees, or a member of the Bar Council, or
- (d) the Law Society or the Law Society Council, or their committees, including a

Management Committee to which a function is delegated under section 119, or a member of the Law Society Council, or

- (e) the Company referred to in Part 8 (Professional indemnity insurance) or its directors, or
- (f) the Trustees of the Public Purpose Fund, or
- (g) NCAT or any member of NCAT, or
- (h) a registrar of NCAT, or
- (i) a delegate of any of the entities referred to in paragraphs (a)–(h), to the extent delegation is permitted under this Act or the *Legal Profession Uniform Law (NSW)*, or
- (j) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a)–(i).

### 165 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act, the local regulations or the *Legal Profession Uniform Law (NSW)* that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

#### Note—

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a person who is designated by the local regulations as an authorised officer for the purposes of this section.

### 165A Proceedings for offences

- (1) Proceedings for—
  - (a) an offence against this Act or the local regulations, or

(b) an offence referred to in section 451 (1) of the *Legal Profession Uniform Law (NSW)* against that Law (except an offence against section 148 or 353 of that Law),

are to be dealt with summarily before the Local Court.

- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 148 (Deficiency in trust account) or section 353 (Improperly destroying property etc) of the *Legal Profession Uniform Law (NSW)*.
- (3) Proceedings for an offence may be brought at any time within 12 months after the date of the alleged offence.

#### **165B Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

- (1) Without limitation, conduct of a lawyer involving contravention of the local regulations or the costs assessment rules is capable of constituting unsatisfactory professional conduct or professional misconduct, whether or not the lawyer has been convicted of an offence in relation to the contravention.
- (2) In this section, **lawyer** has the same meaning as it has in Chapter 5 of the *Legal Profession Uniform Law (NSW)* when used alone (see section 261 of that Law).

#### **166 Local regulations**

- (1) The Governor may make regulations (**local regulations**), not inconsistent with this Act or the *Legal Profession Uniform Law (NSW)*, for or with respect to any matter that by this Act or that Law is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act or that Law.
- (2) Without limiting subsection (1), the local regulations may make provision for or with respect to—
  - (a) fixing fees for admission to the Australian legal profession in New South Wales, including—
    - (i) the manner of paying fees (including the person or body to whom they are payable), and
    - (ii) the manner of allocating the proceeds of fees between the NSW Admission Board and the Department of Justice, and
    - (iii) the waiver, postponement or refund of fees, and
  - (b) prescribing delegates or classes of delegates of local regulatory authorities, as

contemplated by section 406 of the *Legal Profession Uniform Law (NSW)*, and

- (c) exempting an industrial or similar organisation that is registered under prescribed legislation of a jurisdiction or of the Commonwealth, and that is engaged in legal practice in this jurisdiction, from section 10 (1) of the *Legal Profession Uniform Law (NSW)* but only to the extent (if any) specified in the relevant local regulation, and
  - (d) prohibiting, regulating or otherwise providing for the receiving or holding of money by or on behalf of a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the legal services.
- (3) A local regulation may create an offence punishable by a penalty not exceeding—
- (a) 20 penalty units in the case of an individual, and
  - (b) 100 penalty units in any other case.
- (4) The local regulations may make provision for or with respect to any matters for or with respect to which costs assessment rules may be made.
- (5) (Repealed)

#### **167 Tabling of certain annual reports in Parliament when it is not sitting**

- (1) This section applies with respect to a report that the Attorney General is required by the following provisions to lay (or cause to be laid) before a House of Parliament—
- (a) section 26 or 34 of this Act,
  - (b) clause 26 (5) of Schedule 1 or clause 10 (7) of Schedule 2 to the *Legal Profession Uniform Law (NSW)*.
- (2) If a House of Parliament is not sitting when the Attorney General seeks to lay the report before it, the Attorney General is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (3) A report presented under subsection (2)—
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded—
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the

Legislative Council, and

(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the copy of the report by the Clerk.

(4) In this section, **lay** includes table.

## **Schedule 1 Maximum costs in personal injury damages matters**

### **1 Interpretation and application**

(1) In this Schedule—

**defendant** means a person against whom a claim for personal injury damages is or may be made.

**party** means plaintiff or defendant.

**personal injury damages** has the same meaning as in Part 2 of the [Civil Liability Act 2002](#).

**plaintiff** means a person who makes or is entitled to make a claim for personal injury damages.

(2) This Schedule does not apply to the following costs—

(a) costs for legal services provided in respect of a claim under the [Motor Accidents Act 1988](#) or [Motor Accidents Compensation Act 1999](#),

(b) costs for legal services provided in respect of a claim for work injury damages (as defined in the [Workplace Injury Management and Workers Compensation Act 1998](#)),

(c) costs for legal services provided in respect of a claim for damages in proceedings of the kind referred to in section 11 (Claims for damages for dust diseases etc to be brought under this Act) of the [Dust Diseases Tribunal Act 1989](#).

### **2 Maximum costs fixed for claims up to \$100,000**

(1) If the amount recovered on a claim for personal injury damages does not exceed \$100,000, the maximum costs for legal services provided to a party in connection with the claim are fixed as follows—

(a) in the case of legal services provided to a plaintiff—maximum costs are fixed at 20% of the amount recovered or \$10,000, whichever is greater,

(b) in the case of legal services provided to a defendant—maximum costs are fixed at

20% of the amount sought to be recovered by the plaintiff or \$10,000, whichever is greater.

- (2) The local regulations may prescribe an amount to replace the amount of \$100,000 or \$10,000 in subclause (1) and may prescribe a percentage to replace the percentage of 20% in subclause (1). When such a replacement amount or percentage is prescribed, it applies for the purposes of subclause (1) in place of the amount or percentage that it replaces.
- (3) The local regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this clause.
- (4) When the maximum costs for legal services provided to a party are fixed by this Schedule the following provisions apply (subject to clauses 4-6)—
  - (a) a law practice is not entitled to be paid or recover for those legal services an amount that exceeds those maximum costs,
  - (b) a court or tribunal cannot order the payment by another party to the claim of costs in respect of those legal services in an amount that exceeds that maximum,
  - (c) in assessing the amount of those costs that is a fair and reasonable amount, a costs assessor cannot determine an amount that exceeds the maximum set by this clause.
- (5) In this Schedule—
  - (a) a reference to legal services provided to a party is a reference to legal services provided to the party by a law practice (including by an associate of the law practice), and
  - (b) a reference to costs for legal services does not include costs charged as disbursements for services provided by any other person or other disbursements.
- (6) If proceedings are commenced on a claim, the amount sought to be recovered by the plaintiff is taken to be the amount sought to be proved by the plaintiff at the hearing of the claim.
- (7) Maximum costs fixed by this Schedule apply despite local regulations under section 59 (1) (b) fixing those costs.

### **3 Maximum costs increased by additional amount for certain claims heard by District Court**

- (1) This clause applies to a claim for personal injury damages in respect of which the amount recovered does not exceed \$100,000 that is made by proceedings heard by the District Court.

- (2) If the District Court has referred the proceedings to arbitration and, following the arbitration, made an order for a full or limited rehearing of the proceedings concerned on the application of a party, the maximum costs fixed by this Schedule for legal services provided in connection with the claim to the other party are increased by the additional amount.
- (3) If the decision of the District Court in respect of a claim is the subject of an appeal, the maximum costs fixed by this Schedule for legal services provided in connection with the claim to the party who is the respondent to the appeal are increased by the additional amount or, if subclause (2) also applies to legal services provided to the respondent, by 2 times the additional amount.
- (4) For the purposes of this section, the **additional amount** is—
  - (a) in the case of legal services provided to the plaintiff—15% of the amount recovered, or \$7,500, whichever is the greater, and
  - (b) in the case of legal services provided to the defendant—15% of the amount sought to be recovered by the plaintiff, or \$7,500, whichever is the greater.
- (5) The local regulations may prescribe a percentage to replace the percentage of 15% in subclause (4) and may prescribe an amount to replace the amount of \$7,500 in subclause (4). When such a replacement percentage or amount is prescribed, it applies for the purposes of subclause (4) in place of the percentage or amount that it replaces.
- (6) The local regulations may contain provisions of a savings or transitional nature consequent on the making of regulations under this clause.

#### **4 Maximum costs do not affect solicitor-client costs under costs agreements**

- (1) This Schedule does not apply to the recovery of costs payable as between a law practice and the practice's client to the extent that recovery of those costs is provided for by a costs agreement that complies with Division 4 of Part 4.3 of the [Legal Profession Uniform Law \(NSW\)](#).
- (2) The local regulations may make provision for or with respect to requiring disclosure by a law practice to the practice's client of information in relation to the effect of a costs agreement in connection with the operation of this Schedule.
- (3) The local regulations may provide that a failure by a law practice to comply with the requirements of the local regulations under this clause disentitles the law practice to the benefit of this clause, and in such a case this Schedule applies in respect of the claim concerned despite the terms of any costs agreement.

#### **5 Costs can be awarded on indemnity basis for costs incurred after failure to accept offer**



**of compromise**

- (1) If a party to a claim for personal injury damages makes a reasonable offer of compromise on the claim that is not accepted, this Schedule does not prevent the awarding of costs against another party to be assessed on an indemnity basis in respect of legal services provided after the offer is made.
- (2) An offer of compromise on a claim by a party is reasonable if the court determines or makes an order or award on the claim in terms that are no less favourable to the party than the terms of the offer.
- (3) The local regulations may make provision for or with respect to requiring disclosure by a law practice to the practice's client of information in relation to the operation of this clause in respect of any refusal by the client to accept an offer of compromise.
- (4) If it appears to the court in which proceedings are taken on a claim for personal injury damages that a law practice has failed to comply with any provision of the local regulations under this clause, and that the client of the practice has incurred an increased liability for costs as a result of refusing a reasonable offer of compromise in connection with the claim concerned, the court may of its own motion or on the application of the client make either or both of the following orders—
  - (a) an order directing the law practice to repay to the client the whole or any part of those increased costs that the client has been ordered to pay to any other party,
  - (b) an order directing the law practice to indemnify any party other than the client against the whole or any part of the costs payable by the party indemnified in respect of legal services provided after the offer is refused.

**6 Court may order certain legal services to be excluded from maximum costs limitation**

A court hearing a claim for personal injury damages may by order exclude from the operation of this Schedule legal services provided to a party to the claim if the court is satisfied that the legal services were provided in response to any action on the claim by or on behalf of the other party to the claim that in the circumstances was not reasonably necessary for the advancement of that party's case or was intended or reasonably likely to unnecessarily delay or complicate determination of the claim.

**7 Apportionment of maximum costs between law practices**

- (1) If more than one law practice provides legal services to a party in connection with a claim, the maximum costs fixed by this Schedule are to be apportioned between them as agreed by them or (failing agreement) as ordered by the court hearing proceedings on the claim.

**Note—**

For example, this provision would apply in relation to the provision of legal services by both a firm of solicitors and a barrister.

- (2) The maximum then applicable to a particular law practice is the law practice's apportioned share of those maximum costs.

## **8 Meaning of "amount recovered" on a claim**

- (1) A reference in this Schedule to the amount recovered on a claim includes any amount paid under a compromise or settlement of the claim (whether or not legal proceedings have been instituted).
- (2) In determining the amount recovered on a claim for personal injury damages, no regard is to be had to any part of the amount recovered that is attributable to costs or to the addition of interest.

## **Schedule 2 Costs in civil claims where no reasonable prospects of success**

### **1 Application of Schedule**

- (1) **Schedule extends to appeals** This Schedule extends to legal services in connection with proceedings in a court on appeal as well as a court at first instance.
- (2) **Legal services provided by both barrister and solicitor** If legal services in relation to a particular matter are provided by both a solicitor and a barrister instructed by the solicitor, any function imposed by this Schedule on a law practice in respect of the provision of the services is to be read as imposing the function on both the solicitor and barrister.

### **2 Law practice not to act unless there are reasonable prospects of success**

- (1) A law practice must not provide legal services on a claim or defence of a claim for damages unless a legal practitioner associate responsible for the provision of the services concerned reasonably believes on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.
- (2) A fact is provable only if the associate reasonably believes that the material then available to him or her provides a proper basis for alleging that fact.
- (3) This Schedule applies despite any obligation that a law practice or a legal practitioner associate of the practice may have to act in accordance with the instructions or wishes of the client.
- (4) A claim has reasonable prospects of success if there are reasonable prospects of damages being recovered on the claim. A defence has reasonable prospects of success if there are reasonable prospects of the defence defeating the claim or leading to a reduction in the damages recovered on the claim.

- (5) Provision of legal services in contravention of this clause constitutes for the purposes of this Schedule the provision of legal services without reasonable prospects of success.

### **3 Preliminary legal work not affected**

This Schedule does not apply to legal services provided as a preliminary matter for the purpose of a proper and reasonable consideration of whether a claim or defence has reasonable prospects of success.

### **4 Restrictions on commencing proceedings without reasonable prospects of success**

- (1) The provision of legal services by a law practice without reasonable prospects of success does not constitute an offence but is capable of being unsatisfactory professional conduct or professional misconduct by a legal practitioner associate of the practice who is responsible for the provision of the service or by a principal of the practice.
- (2) A law practice cannot file court documentation on a claim or defence of a claim for damages unless a principal of the practice, or a legal practitioner associate responsible for the provision of the legal service concerned, certifies that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.
- (3) Court documentation on a claim or defence of a claim for damages, which has been lodged for filing, is not to be filed in a court or court registry unless accompanied by the certification required by this clause. Rules of court may make provision for or with respect to the form of that certification.
- (4) In this clause—

***court documentation*** means—

- (a) an originating process (including for example, a statement of claim, summons or cross-claim), defence or further pleading, or
- (b) an amended originating process, defence or further pleading, or
- (c) a document amending an originating process, defence or further pleading, or
- (d) any other document of a kind prescribed by the local regulations.

***cross-claim*** includes counter-claim and cross-action.

### **5 Costs order against law practice acting without reasonable prospects of success**

- (1) If it appears to a court in which proceedings are taken on a claim for damages that a law practice has provided legal services to a party without reasonable prospects of

success, the court may of its own motion or on the application of any party to the proceedings make either or both of the following orders in respect of the practice or of a legal practitioner associate of the practice responsible for providing the services—

- (a) an order directing the practice or associate to repay to the party to whom the services were provided the whole or any part of the costs that the party has been ordered to pay to any other party,
  - (b) an order directing the practice or associate to indemnify any party other than the party to whom the services were provided against the whole or any part of the costs payable by the party indemnified.
- (2) The Supreme Court may on the application of any party to proceedings on a claim for damages make any order that the court in which proceedings on the claim are taken could make under this clause.
  - (3) An application for an order under this clause cannot be made after a final determination has been made under Part 7 by a costs assessor of the costs payable as a result of an order made by the court in which the proceedings on the claim concerned were taken.
  - (4) A law practice or legal practitioner associate of the practice is not entitled to demand, recover or accept from a client any part of the amount for which the practice or associate is directed to indemnify a party pursuant to an order under this clause.

## **6 Onus of showing facts provided reasonable prospects of success**

- (1) If the court (the **trial court**) hearing proceedings on a claim for damages finds that the facts established by the evidence before the court do not form a basis for a reasonable belief that the claim or the defence had reasonable prospects of success, there is a presumption for the purposes of this Schedule that legal services provided on the claim or the defence (as appropriate) were provided without reasonable prospects of success.
- (2) If the Supreme Court (when the Supreme Court is not the trial court) is satisfied, either as a result of a finding of the trial court or otherwise on the basis of the judgment of the trial court, that the facts established by the evidence before the trial court do not form a basis for a reasonable belief that the claim or the defence had reasonable prospects of success, there is a presumption for the purposes of this Schedule that legal services provided on the claim or the defence (as appropriate) were provided without reasonable prospects of success.
- (3) A presumption arising under this clause is rebuttable and a person seeking to rebut it bears the onus of establishing that at the time legal services were provided there were provable facts (as provided by clause 2 (Law practice not to act unless there are reasonable prospects of success)) that provided a basis for a reasonable belief that

the claim or the defence on which they were provided had reasonable prospects of success.

- (4) A law practice or legal practitioner associate of the practice may, for the purpose of establishing that at the time legal services were provided there were provable facts (as provided by clause 2 (Law practice not to act unless there are reasonable prospects of success)) that provided a basis for a reasonable belief that the claim or the defence on which they were provided had reasonable prospects of success, produce information or a document despite any duty of confidentiality in respect of a communication between the law practice or a legal practitioner associate of the practice and a client, but only if—
- (a) the client is the client to whom the legal services were provided or consents to its disclosure, or
  - (b) the court is satisfied that it is necessary for the law practice or associate to do so in order to rebut a presumption arising under this clause.

### **Schedule 3 Legal Profession Admission Board**

#### **1 Membership of NSW Admission Board**

- (1) The NSW Admission Board is to consist of 11 members, being—
- (a) the Chief Justice of New South Wales, and
  - (b) 3 Judges of the Supreme Court for the time being nominated by the Chief Justice of New South Wales, and
  - (c) the Attorney General or a person for the time being nominated by the Attorney General, and
  - (d) 2 persons for the time being nominated by the Council of Australian Law Deans, being members from New South Wales, and
  - (e) 2 barristers for the time being nominated by the Bar Council, and
  - (f) 2 solicitors for the time being nominated by the Law Society Council.
- (2) A member of the NSW Admission Board who holds office on the nomination of a person or body ceases to hold office if the person or body by whom the member was nominated withdraws the nomination.
- (3) A reference in this clause to a Judge of the Supreme Court includes a reference to the following—
- (a) an acting Judge appointed under section 37 of the *Supreme Court Act 1970*,
  - (b) a retired Judge (within the meaning of the *Judges' Pensions Act 1953*) of the

Supreme Court.

## **2 Reserve members**

- (1) For each member of the Admission Board, one or more reserve members may be nominated to act in the office of the member during the member's illness or absence, and the reserve member, while so acting, has and may exercise all the functions of the member and is taken to be a member of the Admission Board.
- (2) For a member who is the Attorney General or a nominee of the Attorney General, the reserve member or members may be nominated by the Attorney General.
- (3) For any other member, the reserve member or members are to be nominated by the person or body that nominated the member and must be qualified for nomination in the same way as the member.
- (4) A person may be removed, by the nominating person or body, from any office for which the person was nominated under this clause.

## **3 General procedure**

The procedure for the calling of meetings of the Admission Board and for conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

## **4 Quorum**

The quorum for a meeting of the Admission Board is 6 members including the member presiding at the meeting.

## **5 Nomination of presiding and deputy presiding member**

The Chief Justice of New South Wales may from time to time nominate one of the judicial members of the Admission Board to be the presiding member of the Board and another of the judicial members of the Board to be the deputy presiding member of the Board.

## **6 Presiding member**

- (1) The Chief Justice of New South Wales is to preside at a meeting of the Admission Board if electing to be present and electing to preside.
- (2) Otherwise—
  - (a) the presiding member, or
  - (b) in the absence of the presiding member—the deputy presiding member, or
  - (c) in the absence of both—a member elected by and from the members present and voting,is to preside at the meeting.

- (3) The member presiding at a meeting of the Admission Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **7 Voting**

A decision supported by a majority of the votes cast at a meeting of the Admission Board at which a quorum is present is the decision of the Board.

## **8 Minutes**

The Admission Board is to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

## **9 Seal**

The local regulations may make provision for or with respect to the custody and use of the seal of the Admission Board.

# **Schedule 4 Legal Services Commissioner**

## **1 Term of office**

- (1) The NSW Commissioner holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as NSW Commissioner (whether or not consecutive terms).

## **2 Full-time office**

The office of NSW Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

## **3 Employment and remuneration**

- (1) The employment of the NSW Commissioner is (subject to this Schedule) to be governed by a contract of employment between the NSW Commissioner and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the NSW Commissioner (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister)—
- (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of

an executive.

#### **4 Vacancy in office**

- (1) The office of NSW Commissioner becomes vacant if the holder—
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) has held the office for more than 10 years in total, as referred to in clause 1, or
  - (h) is removed from office under clause 5.
- (2) If the office of NSW Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **5 Removal from office**

The Governor may remove the NSW Commissioner from office, but only for incompetence, incapacity or misbehaviour.

#### **6 NSW Commissioner not Public Service employee**

The office of NSW Commissioner is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

### **Schedule 5 Trustees of the Public Purpose Fund**

#### **1 Definitions**

In this Schedule—

**appointed Trustee** means a person appointed under section 49 (2) (a).

**Trustee** means a Trustee of the Public Purpose Fund.



## **2 Terms of office of Trustees**

Subject to this Schedule, an appointed Trustee holds office for such period (not exceeding 3 years) as is specified in the Trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **3 Remuneration**

An appointed Trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the Trustee.

## **4 Deputies**

- (1) The Attorney General may, from time to time, appoint a person to be the deputy of a Trustee, and the Attorney General may revoke any such appointment.
- (2) In the absence of a Trustee, the Trustee's deputy may, if available, act in the place of the Trustee.
- (3) While acting in the place of a Trustee, a person—
  - (a) has all the functions of the Trustee and is taken to be a Trustee, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a Trustee is taken to be an absence of the Trustee.

## **5 Vacancy in office of appointed Trustee**

- (1) The office of an appointed Trustee becomes vacant if the Trustee—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Attorney General, or
  - (d) is removed from office by the Attorney General under this clause, or
  - (e) is absent from 4 consecutive meetings of the Trustees of which reasonable notice has been given to the Trustee personally or by post, except on leave granted by the Attorney General or unless the Trustee is excused by the Attorney General for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment

of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(i) in the case of a Trustee referred to in section 49 (2) (a) (i), ceases to be a member of the Law Society Council.

(2) The Attorney General may at any time remove an appointed Trustee from office.

## **6 Filling of vacancy in office of Trustee**

If the office of an appointed Trustee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson**

(1) The chairperson of the Trustees is the person elected to the office of chairperson from time to time by the Trustees from among their number.

(2) The office of chairperson—

(a) commences on the day the person elected to the office is declared to be so elected, and

(b) becomes vacant when the person's successor is declared to be elected to the office or when the person so elected ceases to hold office as a Trustee (whichever happens first).

## **8 Disclosure of pecuniary interests**

(1) If—

(a) a Trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trustees, and

(b) the interest appears to raise a conflict with the proper performance of the Trustee's duties in relation to the consideration of the matter,

the Trustee must, as soon as possible after the relevant facts have come to the Trustee's knowledge, disclose the nature of the interest at a meeting of the Trustees.

(2) A Trustee is not to be regarded as having a direct or indirect pecuniary interest in a matter merely because he or she is a local legal practitioner or a member of the Law Society, the Bar Association or a Council.

- (3) A disclosure by a Trustee at a meeting of the Trustees that the Trustee—
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (4) Particulars of any disclosure made under this clause must be recorded by the Trustees in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trustees.
- (5) After a Trustee has disclosed the nature of an interest in any matter, the Trustee must not, unless the Attorney General or the Trustees otherwise determine, take part in any decision of the Trustees with respect to the matter.
- (6) For the purposes of the making of a determination by the Trustees under subclause (5), a Trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not take part in the making by the Trustees of the determination.
- (7) If a Trustee is prevented from taking part in a decision by virtue of this clause and the determination relates to a matter that requires a unanimous decision of the Trustees under section 55 (5), the decision is unanimous for the purposes of that section if it is supported by all of the Trustees who are entitled to take part in the determination.
- (8) A contravention of this clause does not invalidate any decision of the Trustees.

## **9 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a Trustee.
- (2) If by or under any Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a Trustee or from accepting and retaining any remuneration payable to the person under this Act as a Trustee.

## **10 General procedure**

The procedure for the calling of meetings of the Trustees and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trustees.

## **11 Quorum**

The quorum for a meeting of the Trustees is 4 Trustees.

## **12 Presiding member**

- (1) The chairperson or, in the absence of the chairperson, a Trustee elected by the Trustees present at the meeting, is to preside at a meeting of the Trustees.
- (2) The person presiding at a meeting of the Trustees has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) Subclause (2) does not affect the requirement under section 55 (5) that certain decisions of the Trustees be unanimous.

## **13 Voting**

- (1) A decision supported by a majority of the votes cast at a meeting of the Trustees at which a quorum is present is the decision of the Trustees.
- (2) This clause does not apply in respect of a decision that is required to be unanimous by section 55 (5).

## **14 Transaction of business outside meetings or by telephone**

- (1) The Trustees may, if they think fit, transact any of their business by the circulation of papers among all the Trustees for the time being and a resolution in writing has effect as a decision of the Trustees if it is approved in writing by a majority of those Trustees and, for the purposes of section 55 (5), has effect as a unanimous decision of the Trustees if it is approved in writing by all the Trustees for the time being.
- (2) The Trustees may, if they think fit, transact any of their business at a meeting at which the Trustees (or some Trustees) participate by telephone, closed-circuit television or other means, but only if any Trustee who speaks on a matter before the meeting can be heard by the other Trustees.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson and each Trustee have the same voting rights as they have at an

ordinary meeting of the Trustees.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trustees.
- (5) Papers may be circulated among the trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **15 Minutes**

The Trustees are to cause full and accurate minutes to be kept of the proceedings of each meeting of the Trustees.

## **Schedule 6 Costs assessors**

### **1 Eligibility for appointment**

A person is not eligible to be appointed as a costs assessor unless the person is an Australian legal practitioner of at least 5 years' standing.

### **2 Terms of office**

- (1) Subject to this Schedule, a costs assessor holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the costs assessor, but is eligible (if otherwise qualified) for re-appointment.
- (2) A costs assessor may, with the consent of the Chief Justice of New South Wales, continue in office after the expiry of his or her term of office for the purpose of making a determination in respect of, or otherwise completing, any application for costs assessment that was referred to the costs assessor before the expiry of his or her term of office.

### **3 Remuneration**

A costs assessor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the costs assessor.

### **4 Vacancy in office of costs assessor**

- (1) A costs assessor vacates office if the costs assessor—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) resigns the office by instrument in writing addressed to the Attorney General, or
- (g) ceases to be eligible to be a costs assessor, or
- (h) is removed from office by the Chief Justice of New South Wales, under subclause (2).

(2) The Chief Justice of New South Wales may remove a costs assessor from office.

## 5 Effect of certain other Acts

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a costs assessor.
- (2) If by or under any other Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a costs assessor or from accepting and retaining any remuneration payable to the person under this Act as a costs assessor.

## Schedule 7 Professional indemnity insurance—provisions relating to HIH insurance

### 1 Interpretation and construction

- (1) In this Schedule—

**HIH group member** means—

- (a) HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited or CIC Insurance Limited, or
- (b) any corporation that is, with respect to one of the corporations referred to in paragraph (a), a related body corporate within the meaning of section 50 of the [Corporations Act 2001](#) of the Commonwealth.

**Lawcover Insurance** means Lawcover Insurance Pty Limited (ABN 15 095 082 509).

(2), (3) (Repealed)

## **2 Payments relating to HIH group insurance policies**

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

### **Note—**

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

(2) On the making of such a payment, Lawcover Insurance is subrogated to the rights and remedies of the insured person under the approved insurance policy, in connection with the subject matter of the payment, subject to the terms of any agreement entered into under this clause.

(3) Subclause (2) extends, but is not limited to, a right or remedy against any of the following—

(a) an HIH group member,

(b) any insurer or re-insurer of an HIH group member,

(c) any person who, under any Act or other law, is liable for a failure of an HIH group member to satisfy its obligations under or in connection with an approved insurance policy.

(4) Lawcover Insurance may exercise its rights and remedies under this clause in its own name or in the name of an insured person.

(5) If Lawcover Insurance exercises its rights and remedies under this clause in the name of an insured person, Lawcover Insurance is to indemnify the insured person against any liability incurred by the insured person as a result of the exercise of those rights and remedies.

(6) The Law Society and Lawcover Insurance may enter into an agreement with an HIH group member (including a provisional liquidator or liquidator of an HIH group member), or with any insured person, in connection with the payment of amounts under this clause.

(7) In particular, any such agreement may provide for the following—

(a) the assignment or subrogation to Lawcover Insurance of the rights and remedies

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

(b) the recovery by Lawcover Insurance from an HIH group member of any amount paid under this clause.

(8) Any payment made by Lawcover Insurance under this clause, and any agreement entered into with an insured person under this clause, does not prevent the recovery by Lawcover Insurance from an HIH group member of any amount that would have been recoverable by the insured person under or in connection with the approved insurance policy had the payment not been made or the agreement not been entered into.

(9), (10) (Repealed)

### **3 (Repealed)**

## **Schedule 8 (Repealed)**

## **Schedule 9 Savings, transitional and other provisions**

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

(1) The local regulations may contain provisions of a savings or transitional nature consequent on—

(a) the enactment of this Act or any Act that amends this Act, or

(b) the enactment of any Act of Victoria that amends the Legal Profession Uniform Law set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria.

(2) Any such provision may, if the local regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.



- (4) Any such provision has effect despite anything to the contrary in this Schedule or Schedule 4 to the *Legal Profession Uniform Law (NSW)*.
- (5) The local regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definition**

In this Part—

**repealed Act** means the *Legal Profession Act 2004*.

### **3 General savings and transitional provisions**

- (1) This clause has effect subject to this Act and the *Legal Profession Uniform Law (NSW)*.
- (2) Each person, body, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of relevant provisions of the *Legal Profession Uniform Law (NSW)* continues to have the same status, operation and effect as it would have had if this Act had not been enacted.
- (3) Any act, matter or thing subsisting immediately before the commencement of relevant provisions of the *Legal Profession Uniform Law (NSW)* that—
  - (a) was done or omitted under the repealed Act, and
  - (b) could have been done or omitted under that Law (with any necessary modifications) if that Law had been in force when it was done or omitted,is taken to have been done or omitted under that Law.
- (4) Any act, matter or thing subsisting immediately before the commencement of relevant provisions of this Act that—
  - (a) was done or omitted under the repealed Act, and
  - (b) could have been done or omitted under this Act (with any necessary modifications) if this Act had been in force when it was done or omitted,is taken to have been done or omitted under this Act.
- (5) Without limitation, subclause (2) extends to bodies in existence or continuing under the repealed Act, except the costs assessors' rules committee under section 394 of that Act.

#### **4 References to repealed Act**

A reference to the repealed Act in any Act (other than this Act or the *Legal Profession Uniform Law (NSW)*) or in any subordinate instrument, agreement, deed or other document, so far as the reference relates to any period on or after the date of the repeal and if not inconsistent with the subject-matter, is to be construed as—

- (a) a reference to the *Legal Profession Uniform Law (NSW)*, if the reference relates to a matter that is dealt with by that Law, or
- (b) a reference to this Act, if the reference relates to a matter that is dealt with by this Act but not by the *Legal Profession Uniform Law (NSW)*.

#### **5 Term of office of NSW Commissioner**

For the purposes of clause 1 of Schedule 4, any term for which a person was appointed as Legal Services Commissioner under the repealed Act is taken to be a term of office as NSW Commissioner.

#### **6 Approved insurance policies for professional indemnity insurance**

Any order of the Attorney General under section 403 or 406 of the repealed Act that is in force immediately before the commencement of section 95 of this Act is, with any necessary modifications, taken to be an order of the Attorney General under section 95 (2) of this Act.

### **Part 3 Provisions consequent on enactment of *Legal Profession Uniform Law Application Legislation Amendment Act 2015***

#### **7 Definition**

In this Part—

***repealed Act*** means the *Legal Profession Act 2004*.

#### **8 Working account for costs of Part 7**

The working account referred to in section 400 of the repealed Act immediately before the commencement of this clause is taken to be the working account established for the Department of Justice, as referred to in section 93G of this Act.

#### **9 Manager, Costs Assessment**

The registrar of the Supreme Court who was Manager, Costs Assessment immediately before the commencement of this clause is taken to have been appointed as Manager, Costs Assessment on that commencement.

## 10 Mortgage practices and managed investment schemes—transitional arrangements

- (1) Section 135 (2) of the repealed Act continues to apply to an incorporated legal practice (and to any related body corporate).
- (2) Part 3.5 of, and Schedule 8 to, the repealed Act continue to apply in respect of mortgages that were entered into before the repeal of that Act and to matters connected with managed investment schemes as referred to in those provisions.
- (3) Section 258 of the Legal Profession Uniform Law as set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria does not apply as a law of this jurisdiction.
- (4) Subclauses (1), (2) and (3) cease to have effect on 1 July 2018.
- (5) A reference in Schedule 8 to the repealed Act to the Fidelity Fund is taken to be a reference to the fidelity fund within the meaning of the *Legal Profession Uniform Law (NSW)*.
- (6) Without limiting any other provision of this Schedule, the local regulations may modify the operation of this clause.

## Part 4 Provisions consequent on enactment of Justice Legislation Amendment Act (No 3) 2018

### 11 Definitions

In this Part—

**amending Act** means the *Justice Legislation Amendment Act (No 3) 2018*.

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Indemnity Fund** means the Solicitors Mutual Indemnity Fund established under section 101 of this Act (as in force immediately before the repeal day).

**insolvent insurer agreements** means the following agreements entered into on 27 November 2001—

- (a) the LawCover scheme loan and claims authority agreement between CIC Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,
- (b) the LawCover scheme loan and claims authority agreement between HIH Casualty and General Insurance Limited (in liquidation), Lawcover Pty Limited, the Law Society

of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators,

- (c) the LawCover scheme loan and claims authority agreement between FAI General Insurance Company Limited (in liquidation), Lawcover Pty Limited, the Law Society of New South Wales and Anthony McGrath and Alexander Macintosh as liquidators.

**instrument** means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

**Lawcover Insurance** means Lawcover Insurance Pty Limited (ABN 15 095 082 509).

**Lawcover Pty Ltd** means Lawcover Pty Limited (ABN 48 003 326 618).

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**repeal day** means the day on which Division 3 of Part 8 of this Act is repealed by the amending Act.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

## 12 Closure of Indemnity Fund and transfer of contents

(1) On the repeal day, the following has effect—

- (a) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Law Society,
- (b) half of the monetary assets of the Indemnity Fund are transferred to, and become the assets of, the Public Purpose Fund,
- (c) all assets of the Indemnity Fund that are not monetary assets are transferred to, and become the assets of, Lawcover Insurance.

(2) On the repeal day, the following has effect—

- (a) the rights and liabilities arising in connection with the monetary assets transferred to the Law Society vest in the Law Society,
- (b) the rights and liabilities arising in connection with the monetary assets transferred to the Public Purpose Fund vest in the Trustees of the Public Purpose Fund,
- (c) all other rights and liabilities arising in connection with the Indemnity Fund or assets of the Indemnity Fund, and of Lawcover Pty Ltd as manager of the Indemnity Fund, vest in Lawcover Insurance.

- (3) Without limiting subclause (2) (c), the rights or liabilities transferred to Lawcover Insurance include any rights or liabilities relating to the Indemnity Fund, and Lawcover Pty Ltd as the manager of that Fund, under the insolvent insurer agreements.
- (4) Assets, rights and liabilities may be transferred to the Public Purpose Fund, the Law Society or Lawcover Insurance under this Part despite any other law or agreement (including the insolvent insurer agreements) and whether or not the consent of the Trustees of the Public Purpose Fund, the Law Society or Lawcover Insurance has been obtained.

(5) In this clause—

**monetary assets** means money and any property that may be realised as money.

### **13 Vesting of assets, rights and liabilities in transferees**

- (1) The following provisions apply to assets, rights or liabilities transferred under this Part—
  - (a) the assets vest by virtue of clause 12 and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities become by virtue of clause 12 the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to—
    - (i) the transferor, or
    - (ii) any predecessor of the transferor,

to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.

(2) No attornment to the transferee by a lessee from the transferor is required.

(3) In this clause—

***transferee***, in relation to assets, rights or liabilities, means a person to whom the assets, rights or liabilities are transferred under this Part.

***transferor*** means Lawcover Pty Ltd in its capacity as the manager of the Indemnity Fund.

#### **14 No compensation payable**

No compensation is payable to any person or body in connection with a transfer under this Part.

#### **15 Confirmation of vesting**

(1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities under this Part.

(2) The notice is conclusive evidence of the transfer.

#### **16 Law Society to subscribe for shares in Lawcover Insurance**

(1) The Law Society must, on or after the repeal day, subscribe to an amount of capital in Lawcover Insurance that is not less than the value, on the repeal day, of the monetary assets transferred to the Law Society under this Part.

(2) The Law Society may deduct from that amount any costs incurred by the Law Society relating to the subscription.

#### **17 Effect of amendment of Schedule 7**

Schedule 7, as amended by the amending Act, has effect despite any other law or agreement (including the insolvent insurer agreements).

#### **18 Payment of amounts to be shared with Public Purpose Fund**

(1) If an amount is recovered by Lawcover Insurance as a result of the exercise of its functions under Schedule 7 or this Part (including functions under the insolvent insurer agreements that are conferred under that Schedule or this Part)—

(a) half the amount is to be retained by Lawcover Insurance, and

(b) half the amount is to be paid into the Public Purpose Fund.

(2) This clause does not apply to an amount that is payable to another person under any

other Act or law or the insolvent insurer agreements (subject to this Part).

## **19 Operation of Part**

The operation of this Part, or the operation of Schedule 7 as amended by the amending Act, is not to be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

## **20 Additional matters relating to insolvent insurer agreements**

- (1) For the purposes of this Part, and the transfer of assets, rights and liabilities under this Part that arise under the insolvent insurer agreements—
  - (a) references in the agreements to Lawcover Pty Ltd acting in its capacity as the manager of the Indemnity Fund are taken to be references to Lawcover Insurance, and
  - (b) references in the agreements to the payment of amounts to or from the Indemnity Fund are taken to be references to payment of amounts to or from an account of Lawcover Insurance nominated by Lawcover Insurance for that purpose.
- (2) The amendments made to this Act by the amending Act do not affect—
  - (a) the operation of the insolvent insurer agreements, except as provided by or under this Schedule or Schedule 7, or
  - (b) the power of the Law Society and Lawcover Insurance to enter into amendments to those agreements to reflect the effect of the amendments made to this Act by the amending Act.

## **21 Law Society consent to change in functions**

The Law Society is taken to consent to the exercise by Lawcover Insurance of functions conferred on Lawcover Insurance under this Part or as a result of the amendments made to this Act by the amending Act.

## **22 Displacement of Corporations legislation**

This Part and Schedule 7 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the

Commonwealth in relation to section 477 of the Corporations legislation.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## **Part 5 Provisions consequent on enactment of Justice Legislation Amendment Act (No 2) 2019**

### **23 Validations**

- (1) The 2015 delegation is taken to be, and always to have been, validly made under section 406 of the Uniform Law.
- (2) The 2015 delegation is taken to have had the following operation during the relevant period for the purposes of this Act and the Uniform Law—
  - (a) the delegation of functions to the Bar Association also operated to delegate the functions to the Bar Council,
  - (b) the delegation of functions to the Law Society also operated to delegate the functions to the Law Society Council,
  - (c) the delegation authorised the Bar Association, Law Society and each Council (an **authorised delegate**) to make further delegations of functions to another entity (a **subdelegate**),
  - (d) the delegation authorised an authorised delegate or a subdelegate to appoint investigators under section 282 of the Uniform Law (whether generally or in relation to a particular law practice or a particular complaints investigation),
  - (e) the delegation authorised an authorised delegate or a subdelegate to exercise the Chapter 5 functions of the NSW Commissioner in relation to complaints even if—
    - (i) a complaint was made to or by the delegate or subdelegate instead of the Commissioner, or
    - (ii) a disciplinary matter or consumer matter dealt with by the delegate or subdelegate was a matter other than one the Commissioner decided not to deal with or continue to deal with, or
    - (iii) a decision or determination was made or other action taken by a delegate or subdelegate concerning a disciplinary matter without the matter being referred to the delegate by the Commissioner, or
    - (iv) a decision or determination was made or other action taken by a delegate or subdelegate concerning a consumer matter without the matter being referred



to the delegate by the Commissioner.

**Note—**

Under the Uniform Law, **Chapter 5 functions** means—

- (a) functions under Chapter 5, or
- (b) functions under another provision of that Law relating to Chapter 5, or
- (c) functions under the Uniform Rules relating to Chapter 5.

(3) Without limiting subclause (2), an authorised delegate or a subdelegate is taken during the relevant period—

(a) to have been authorised under this Act and the Uniform Law—

- (i) to receive or make complaints in exercise of the Chapter 5 functions of the NSW Commissioner, and
- (ii) to initiate or prosecute proceedings in respect of complaints in a court or tribunal in exercise of the Chapter 5 functions of the NSW Commissioner, and

(b) to have made a complaint even if there was non-compliance with a requirement of section 267 of the Uniform Law.

(4) Accordingly—

(a) any decision, determination or other action of an authorised delegate or subdelegate during the relevant period that would have been valid if subclauses (1)–(3) had been in force at the time is validated, and

(b) any proceedings commenced by an authorised delegate or subdelegate during the relevant period that would have been validly commenced if subclauses (1)–(3) had been in force at the time are validated, and

(c) any order or other decision of a court or tribunal made during the relevant period in proceedings referred to in paragraph (b) that would have been valid if subclauses (1)–(3) had been in force at the time is validated.

(5) Any proceedings commenced in a court or tribunal by an authorised delegate or subdelegate that were terminated on a relevant invalidity ground during the relevant period at the instigation of an authorised delegate or subdelegate—

(a) may be recommenced under the authority of this clause by the same delegate or subdelegate in the court or tribunal on the basis of the applications and other documents by which those proceedings were last commenced, and

(b) any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.

- (6) Proceedings may be recommenced under the authority of this clause despite section 137 of this Act, but only if they are recommenced no later than 6 months after the day on which this clause commences.
- (7) Without limiting any other power to make rules of court, rules of court may be made under the *Civil Procedure Act 2005* and the *Civil and Administrative Tribunal Act 2013* for or with respect to the practice and procedure to be followed in connection with recommenced proceedings.
- (8) To avoid doubt—
- (a) any decision that terminated proceedings during the relevant period on a relevant invalidity ground is not affected by this clause unless proceedings are recommenced, and
- (b) any decision as to costs made in respect of terminated proceedings is not affected by this clause regardless of whether proceedings are recommenced.
- (9) This clause (including anything authorised by this clause) has effect despite anything to the contrary in—
- (a) the 2015 delegation, or
- (b) this Act, the Uniform Law or any other law.
- (10) In this clause—

**2015 delegation** means the delegation of the NSW Commissioner’s functions to the Bar Association and Law Society purportedly made by the NSW Commissioner under section 406 of the Uniform Law on 18 June 2015.

**action** includes an omission.

**commenced**, in relation to proceedings, includes initiated or prosecuted.

**consumer matter** has the meaning given by section 269 of the Uniform Law.

**disciplinary matter** has the meaning given by section 270 of the Uniform Law.

**proceedings** include purported proceedings.

**relevant invalidity ground**, in relation to proceedings, means on the ground that the proceedings were not validly commenced by an authorised delegate or subdelegate because of any one or more of the following reasons—

- (a) the delegate or subdelegate was not authorised to commence the proceedings by the 2015 delegation, including because—
- (i) the 2015 delegation was not valid, or

- (ii) the terms of the 2015 delegation did not allow the delegate or subdelegate to commence the proceedings, or
  - (iii) the delegate, subdelegate or NSW Commissioner did not comply with a provision of the 2015 delegation,
- (b) the proceedings were based on a complaint purportedly made to or by the delegate or subdelegate in circumstances where this Act or the Uniform Law required the complaint to have been made to or by the NSW Commissioner,
  - (c) the proceedings were based on a complaint purportedly made to or by the delegate or subdelegate in circumstances where there was non-compliance with a requirement of section 267 of the Uniform Law.

**relevant period** means the period commencing on 18 June 2015 and ending immediately before the day on which this clause commences.

**rules of court**, in relation to the Civil and Administrative Tribunal, means—

- (a) Tribunal rules referred to in section 25 of the *Civil and Administrative Tribunal Act 2013*, and
- (b) procedural directions given by the President of the Tribunal under section 26 of that Act.

**terminated** includes withdrawn, stayed, dismissed, discontinued or otherwise not proceeded with.

**Uniform Law** means the *Legal Profession Uniform Law (NSW)*.

## Schedule 10 (Repealed)

### Note Legal Profession Uniform Law

#### Editorial note—

For the Legal Profession Uniform Law as published in this Act on its enactment, see <http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2014-16.pdf>. For the updated Legal Profession Uniform Law as it applies in New South Wales, see <http://www.legislation.nsw.gov.au/viewtop/inforce/act+16a+2014+cd+0+N/>.