NORTHERN TERRITORY OF AUSTRALIA

LEGAL PROFESSION ACT

As in force at 1 January 2013

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

LEGAL PROFESSION ACT

An Act to provide for admission to, and the regulation of, the legal profession, and for entities relating to the legal profession, and for other purposes

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

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

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Main purposes of this Act

The main purposes of this Act are as follows:

(a) to promote the administration of justice;

(b) to provide for the protection of consumers of legal services and the public generally;

(c) to regulate legal practice in this jurisdiction, including the legal practice of foreign law by foreign lawyers;

(d) to facilitate the regulation of legal practice on a national basis.

Part 1.2 Interpretation

4 Definitions

In this Act:

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).

Admission Board means the Legal Practitioners Admission Board of the Northern Territory established by section 650.

admission rules means rules relating to the admission of persons to the legal profession and associated matters made under section 43.

admission to the legal profession, see section 9.

affairs, of a law practice, includes the following:

(a) all accounts and records required under this Act or the regulations to be maintained by the practice or an associate or former associate of the practice;

(b) other records of the practice or an associate or former associate of the practice;

(c) any transaction:

(i) to which the practice or an associate or former associate of the practice was or is a party; or

(ii) in which the practice or an associate or former associate of the practice has acted for a party.

allow, for Part 3.5, see section 382.

amend includes:

(a) in relation to a practising certificate:

(i) impose a condition on the certificate; or

(ii) amend or revoke a condition already imposed on the certificate; and

(b) in relation to registration as a foreign lawyer:

(i) amend the lawyer's registration certificate; or

(ii) impose a condition on the registration; or

(iii) amend or revoke a condition already imposed on the registration.

application date, for Part 3.6, see section 438.

approved, for professional indemnity insurance, see section 373.

approved academic qualifications, see section 10.

approved ADI, for Part 3.1, see section 235(1).

approved form means a form approved under section 706.

approved practical legal training requirements, see section 10.

ASIC exemption, for Part 3.6, see section 438.

associate:

(a) of a law practice – see section 7(1); or

(b) of a legal practitioner, for Part 3.6 – see section 439.

Australia, for Part 2.7, see section 170.

Australian law, for Part 2.7, see section 170.

Australian lawyer, see section 5(a).

Australian legal practitioner, see section 6(a).

Australian practising certificate means a local practising certificate or interstate practising certificate.

Australian-registered foreign lawyer means a locally-registered foreign lawyer or interstate-registered foreign lawyer.

Australian roll means the local roll or an interstate roll.

Australian trust account means a local trust account or an interstate trust account.

barrister means:

(a) a local legal practitioner who holds a current local practising certificate to practise as or in the manner of a barrister; or

(b) an interstate legal practitioner who holds a current interstate practising certificate that entitles the practitioner to engage in legal practice only as or in the manner of a barrister.

bill, for Part 3.3, see section 295(1).

borrower, for Part 3.6, see section 438.

business day means a day other than a Saturday, a Sunday or a public holiday.

capping and sufficiency provisions, for Part 3.5, see section 382.

chief executive officer, of the Law Society, means the person occupying or holding the office of chief executive officer established by section 640.

Chief Justice means the Chief Justice of the Supreme Court.

claim, see:

(a) for Part 3.2 – section 289; or

(b) for Part 3.5 – section 382.

claimant, for Part 3.5, see section 382.

client:

(a) for Part 3.3, Division 7 – see section 329; or

(b) for Part 3.3, Division 8 – see section 331; or

(c) for Part 3.6 – see section 438; or

(d) otherwise – includes a person to whom or for whom legal services are provided.

compensation order, see section 534.

complaint, see section 462.

complaint investigation, for Chapter 6, see section 617(d).

compliance certificate, see section 36(2).

complying community legal centre, see section 227.

concerted interstate default, for Part 3.5, see section 382.

conditional costs agreement, for Part 3.3, see section 295(1).

conditions means conditions, limitations or restrictions.

conduct, for Chapter 4, see section 462.

consumer dispute, see section 480.

contravene includes fail to comply with.

contributor, for Part 3.6, see section 438.

contributory mortgage, for Part 3.6, see section 438.

controlled money, for Part 3.1, see section 235(1).

controlled money account, for Part 3.1, see section 235(1).

conviction, see section 15.

corporation, for Part 2.6, see section 118.

corresponding academic qualifications, see section 10.

Corporations Act means the *Corporations Act 2001* (Cth).

corresponding authority, see section 12.

corresponding disciplinary body, see section 13.

corresponding foreign law, see section 14(2).

corresponding law, see section 14(1).

corresponding practical legal training requirements, see section 10.

costs, for Part 3.3, see section 295(1).

costs agreement, for Part 3.3, see section 295(1).

costs assessment, for Part 3.3, see section 295(1).

costs assessor, for Part 3.3, see section 295(1).

Council means the Council of the Law Society established by section 638(1).

default, for Part 3.5, see section 382.

deposit record, for Part 3.1, see section 235(1).

designated persons, for Part 3.1, see section 235(1).

determination, for Part 3.3, Division 8, Subdivision 5, see section 351.

director, for Part 2.6, see section 118.

disbursements, for Part 3.3, see section 295(1).

disciplinary action, for Chapter 4, Part 4.13, see section 540.

disciplinary application, for Chapter 4, see section 462.

Disciplinary Tribunal means the Legal Practitioners Disciplinary Tribunal established by section 669.

dishonesty, for Part 3.5, see section 382.

disqualified person means any of the following persons whether the thing that has happened to the person happened before or after the commencement of this definition:

(a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;

(b) a person whose Australian practising certificate has been suspended or cancelled under this Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;

(c) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law and to whom an Australian practising certificate has not been granted at a later time;

(d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;

(e) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice;

(f) a person who is the subject of an order under section 140 or 165 or under provisions of a corresponding law that correspond to section 140 or 165.

document means any record of information, and includes:

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

(d) a map, plan, drawing or photograph;

and a reference in this Act to a document (as so defined) includes a reference to:

(e) any part of the document; and

(f) any copy, reproduction or duplicate of the document or any part of the document; and

(g) any part of such a copy, reproduction or duplicate.

employ, for Part 2.8, see section 226.

employment, for Part 3.2, see section 289.

engage, for Part 2.8, see section 226.

engage in legal practice includes practise law.

external examination, for Part 3.1, see section 235(1).

external examiner, for Part 3.1, see section 235(1).

external intervener, for Chapter 5, see section 567(1).

external intervention, for Chapter 5, see section 567(1).

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

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

Fidelity Fund means the Legal Practitioners Fidelity Fund established under section 385.

financial institution, for Part 3.6, see section 438.

financial year means a year ending on 30 June.

fixed costs provisions, for Part 3.3, see section 295(1).

foreign country means:

(a) a country other than Australia; or

(b) a state, province or other part of a country other than Australia.

foreign law, for Part 2.7, see section 170.

foreign law practice, for Part 2.7, see section 170.

foreign registration authority, for Part 2.7, see section 170.

foreign regulatory action, for Part 2.5, see section 102.

foreign roll means an official roll of lawyers (whether admitted, practising or otherwise) kept in a foreign country, but does not include a roll prescribed by the regulations or a kind of roll prescribed by the regulations.

Funds Management Committee means the Legal Practitioners Funds Management Committee established by section 659(1).

general trust account, for Part 3.1, see section 235(1).

graduate clerk means a person who:

(a) is employed for at least 9 months in a law practice or as a government lawyer while completing a course of practical legal training; and

(b) in the course of the employment provides legal services under the supervision of an Australian legal practitioner.

grant, of an interstate practising certificate, includes the issue of a practising certificate.

GST, see the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

home jurisdiction, see:

(a) for an Australian legal practitioner – section 8(2);

(b) for an Australian-registered foreign lawyer – section 8(3); or

(c) for an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer – section 8(4).

hospital, for Part 3.2, see section 289.

ILP compliance audit, for Chapter 6, see section 617(a).

inability, in relation to a person engaging in legal practice, means an inability arising wholly or principally from infirmity, injury or mental or physical illness.

incident, for Part 3.2, see section 289.

incorporated legal practice, see section 119.

information notice means a written notice to a person about a decision specifying:

(a) the decision; and

(b) the reasons for the decision; and

(c) the rights of appeal available to the person in relation to the decision and the period within which the appeal must be made.

insolvent under administration means:

(a) a person who is an undischarged bankrupt within the meaning of the *Bankruptcy Act 1966* (Cth) (or the corresponding provisions of the law of a foreign country or external territory); or

(b) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* (Cth) (or the corresponding provisions of the law of a foreign country or external territory) if the terms of the deed have not been fully complied with; or

(c) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* (Cth) (or the corresponding provisions of the law of a foreign country or external territory) if a final payment has not been made under that composition; or

(d) a person for whom a debt agreement has been made under Part IX of the *Bankruptcy Act 1966* (Cth) (or the corresponding provisions of the law of a foreign country or external territory) if the debt agreement has not ended or has not been terminated; or

(e) a person who has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth) (or the corresponding provisions of the law of a foreign country or external territory) but not if the agreement has been set aside or terminated or all of the obligations that the agreement created have been discharged.

interstate lawyer, see section 5(c).

interstate legal practitioner, see section 6(c).

interstate practising certificate means a current practising certificate granted under a corresponding law.

interstate-registered foreign lawyer means a person who is registered as a foreign lawyer under a corresponding law.

interstate roll means a roll of lawyers maintained under a corresponding law.

interstate trust account means a trust account maintained under a corresponding law.

investigation, for Part 3.1, see section 235(1).

investigator, see:

(a) for Part 3.1 – section 235(1); or

(b) for Chapter 6 – section 618.

itemised bill, for Part 3.3, see section 295(1).

jurisdiction means a State or Territory of the Commonwealth.

law firm means a partnership consisting only of:

(a) Australian legal practitioners; or

(b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers.

law practice means:

(a) an Australian legal practitioner who is a sole practitioner; or

(b) a law firm; or

(c) a multi-disciplinary partnership; or

(d) an incorporated legal practice.

Law Society means the Law Society Northern Territory established by section 635(1).

lay associate, see section 7(2)(b).

lay person means a person who is not an Australian lawyer.

legal costs means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest.

legal practitioner, for Part 3.6, see section 438.

legal practitioner associate, see section 7(2)(a).

legal practitioner director, in relation to an incorporated legal practice, see section 118.

legal practitioner partner, in relation to a multi-disciplinary partnership, see section 118.

legal profession rules means rules relating to legal practice made under Part 8.1.

legal services means work done, or business transacted, in the ordinary course of legal practice.

lender, for Part 3.6, see section 438.

litigious matter, for Part 3.3, see section 295(1).

local lawyer, see section 5(b).

local legal practitioner, see section 6(b).

local practising certificate means a practising certificate granted under this Act.

local registration certificate, for Part 2.7, see section 170.

local roll, see section 27(1).

local trust account means a trust account maintained under this Act.

locally-registered foreign lawyer means a person who is registered as a foreign lawyer under this Act.

lump sum bill, for Part 3.3, see section 295(1).

managed investment scheme has the same meaning as in Chapter 5C of the Corporations Act.

Master means the person holding or occupying the office of Master of the Supreme Court established by section 41A of the *Supreme Court Act*.

member, of a managed investment scheme, for Part 2.7, see the Corporations Act.

modifications includes modifications by way of alteration, omission, addition and substitution.

mortgage means an instrument under which an interest in real property is charged, encumbered or transferred as security for the payment or repayment of money, and includes:

(a) an instrument of a kind prescribed by the regulations as being a mortgage; and

(b) a proposed mortgage.

mortgage financing means facilitating a loan secured or intended to be secured by mortgage by:

(a) acting as an intermediary to match a prospective lender and borrower; or

(b) arranging the loan; or

(c) receiving or dealing with payments for, or under, the loan;

but does not include providing legal service or preparing an instrument for the loan.

multi-disciplinary partnership, see section 151.

Mutual Recognition Act means:

(a) the *Mutual Recognition Act 1992* (Cth); or

(b) the *Trans-Tasman Mutual Recognition Act 1997* (Cth).

officer, for Part 2.6, see section 118.

official complaint, for Chapter 4, see section 462.

overseas-registered foreign lawyer, for Part 2.7, see section 170.

pecuniary loss, for Part 3.5, see section 382.

permanent form, for Part 3.1, see section 235(1).

personal injury, for Part 3.2, see section 289.

potential claimant, for Part 3.2, see section 289.

power, for Part 3.1, see section 235(1).

practical legal training means either, or a combination of both, of the following:

(a) legal training by participation in course work;

(b) supervised legal training, whether involving articles of clerkship or otherwise.

practise foreign law, for Part 2.7, see section 170.

pre-admission event, in relation to an applicant for or holder of a local practising certificate, means a show cause event in relation to the applicant or holder before the applicant or holder was first admitted to the legal profession in this or another jurisdiction.

prescribed mediator means a person who, under the regulations, is permitted to conduct mediations of the type specified in the regulations.

principal, see section 7(3).

professional misconduct, see section 465.

professional obligations, for Part 2.6, see section 118.

public authority, for Part 3.3, see section 295(1).

Register, for Part 4.13, means the Register of Disciplinary Action mentioned in section 541.

registered, for Part 2.7, see section 170.

Registrar, see section 9(1) of the *Supreme Court Act*.

regulated mortgage, for Part 3.6, see section 438.

regulated property, for Chapter 5, see section 567(1).

regulation means a regulation made under this Act.

Regulator, for Part 2.6, see section 118.

regulatory authority means:

(a) in relation to this jurisdiction, the Law Society; or

(b) in relation to another jurisdiction:

(i) if there is only one regulatory authority for the other jurisdiction – that regulatory authority, unless subparagraph (iii) applies; or

(ii) if there are separate regulatory authorities for the other jurisdiction for different branches of the legal profession or for persons who practise in a particular style of legal practice – the regulatory authority relevant to the branch or style concerned, unless subparagraph (iii) applies; or

(iii) if the regulations specify or provide for the determination of one or more regulatory authorities for the other jurisdiction either generally or for particular purposes – the regulatory authority or authorities specified or determination under the regulations.

related body corporate, for Part 2.6, see section 118.

related entity, in relation to a person, means:

(a) if the person is a company within the meaning of the Corporations Act – a related body corporate within the meaning of section 50 of that Act; or

(b) otherwise – a person specified or described by the regulations.

relevant jurisdiction, for Part 3.5, see section 396.

responsible entity, for Part 3.6, see section 438.

reviewer, for Part 3.3, Division 8, Subdivision 5, see section 351.

run-out mortgage, for Part 3.6, see section 438.

serious offence means an offence (whether committed in or outside this jurisdiction) that is:

(a) an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily); or

(b) an offence against a law of another jurisdiction that would be an indictable offence against a law of this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or

(c) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction).

show cause event, in relation to a person, means:

(a) his or her becoming bankrupt or being served with notice of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* (Cth); or

(b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* (Cth) of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or

(c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or made an assignment of his or her remuneration for their benefit; or

(d) his or her conviction for a serious offence or tax offence, whether or not:

(i) the offence was committed in or outside this jurisdiction; or

(ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires; or

(iii) other persons are prohibited from disclosing the identity of the offender.

sole practitioner means an Australian legal practitioner who engages in legal practice on his or her own account.

solicitor means:

(a) a local legal practitioner who holds a current local practising certificate to practise as a barrister and solicitor or a solicitor; or

(b) an interstate legal practitioner who holds a current interstate practising certificate that does not restrict the practitioner to engage in legal practice only as or in the manner of a barrister.

sophisticated client, for Part 3.3, see section 295(1).

statutory deposit holder, see section 281(1).

Statutory Supervisor means the person holding or occupying the office of Statutory Supervisor established by section 678(1).

suitability matter, see section 11.

supervised legal practice means legal practice by a person who is an Australian legal practitioner:

(a) as an employee of, or other person working under supervision in, a law practice, where:

(i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or

(b) as a partner in a law firm, where:

(i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or

(c) in a capacity approved under the legal profession rules.

supervising legal practitioner, see section 227(d).

tax offence means an offence under the *Taxation Administration Act 1953* (Cth), whether committed in or outside this jurisdiction.

Territory regulated mortgage, for Part 3.6, see section 440.

Territory regulated mortgage practice, for Part 3.6, see section 438.

third party payer, for Part 3.3, see section 296.

this Act includes statutory instruments made under this Act.

this jurisdiction means the Territory.

transit money, for Part 3.1, see section 235(1).

trust account, see section 235(1).

trust account examination, for Chapter 6, see section 617(c).

trust account investigation, for Chapter 6, see section 617(b).

trust money, see section 235(1).

trust money protocols, see section 239(1).

trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, but does not include trust money or money referred to in section 236.

trust records, for Part 3.1, see section 235(1).

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

unsatisfactory professional conduct, see section 464.

uplift fee, for Part 3.3, see section 295(1).

5 Terms relating to lawyers

For this Act:

(a) an Australian lawyer is a person who is admitted to the legal profession under this Act or a corresponding law; and

(b) a local lawyer is a person who is admitted to the legal profession under this Act (whether or not the person is also admitted under a corresponding law); and

(c) an interstate lawyer is a person who is admitted to the legal profession under a corresponding law, but not under this Act.

6 Terms relating to legal practitioners

For this Act:

(a) an Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate; and

(b) a local legal practitioner is an Australian lawyer who holds a current local practising certificate; and

(c) an interstate legal practitioner is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.

7 Terms relating to associates and principals of law practices

(1) For this Act, an associate of a law practice is:

(a) an Australian legal practitioner who is:

(i) a sole practitioner (in the case of a law practice constituted by the practitioner); or

(ii) a partner in the law practice (in the case of a law firm); or

(iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or

(iv) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership); or

(v) an employee of, or consultant to, the law practice; or

(b) an agent of the law practice who is not an Australian legal practitioner; or

(c) an employee of the law practice who is not an Australian legal practitioner; or

(d) an Australian-registered foreign lawyer who is a partner in the law practice; or

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

(f) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations.

(2) For this Act:

(a) a legal practitioner associate of a law practice is an associate of the practice who is an Australian legal practitioner; and

(b) a lay associate of a law practice is an associate of the practice who is not an Australian legal practitioner.

(3) For this Act, a principal of a law practice is an Australian legal practitioner who is:

(a) a sole practitioner (in the case of a law practice constituted by the practitioner); or

(b) a partner in the law practice (in the case of a law firm); or

(c) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or

(d) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership).

8 Home jurisdiction

(1) This section has effect for this Act.

(2) The home jurisdiction for an Australian legal practitioner is the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted.

(3) The home jurisdiction for an Australian-registered foreign lawyer is the jurisdiction in which the lawyer's only or most recent current registration was granted.

(4) The home jurisdiction for an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer is:

(a) where only one jurisdiction is the home jurisdiction for the only associate of the practice who is an Australian legal practitioner or for all the associates of the practice who are Australian legal practitioners – that jurisdiction; or

(b) where no one jurisdiction is the home jurisdiction for all the associates of the practice who are Australian legal practitioners:

(i) the jurisdiction in which the office is situated at which the associate performs most of the associate's duties for the law practice; or

(ii) if a jurisdiction cannot be determined under subparagraph (i) – the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or

(iii) if a jurisdiction cannot be determined under subparagraph (i) or (ii) – the jurisdiction decided in accordance with criteria specified or referred to in the regulations.

9 Admission to legal profession

(1) Admission to the legal profession is admission under this Act or a corresponding law by a Supreme Court as:

(a) a lawyer; or

(b) a legal practitioner; or

(c) a barrister; or

(d) a solicitor; or

(e) a barrister and solicitor; or

(f) a solicitor and barrister.

(2) However, admission to the legal profession does not include the grant of a practising certificate under this Act or a corresponding law.

10 Academic qualifications and legal training requirements

(1) Approved academic qualifications are academic qualifications approved, under the admission rules, for admission to the legal profession in this jurisdiction.

(2) Approved practical legal training requirements are legal training requirements approved, under the admission rules, for admission to the legal profession in this jurisdiction.

(3) Corresponding academic qualifications are academic qualifications that would qualify the person for admission to the legal profession in another jurisdiction if the Admission Board is satisfied substantially the same minimum criteria apply for the approval of academic qualifications for admission in the other jurisdiction as apply in this jurisdiction.

(4) Corresponding practical legal training requirements are legal training requirements that would qualify the person for admission to the legal profession in another jurisdiction if the Board is satisfied substantially the same minimum criteria apply for the approval of legal training requirements for admission in the other jurisdiction as apply in this jurisdiction.

(5) For this section, the Board may satisfy itself regarding the minimum criteria for the approval of academic qualifications, or legal training requirements, for admission in another jurisdiction by considering appropriate advice from an authority of the other jurisdiction that the criteria were established consistently with relevant agreed standards.

(6) Accordingly, the Board need not examine (in detail or at all) the content of courses of legal study or legal training requirements prescribed in the other jurisdiction.

(7) The regulations may identify or provide a way of identifying the agreed standards.

11 Suitability matters

(1) Each of the following is a suitability matter in relation to an individual:

(a) whether the person is currently of good fame and character;

(b) whether the person is or has been an insolvent under administration;

(c) whether the person has been convicted of an offence in Australia or a foreign country, and if so:

(i) the nature of the offence; and

(ii) how long ago the offence was committed; and

(iii) the person's age when the offence was committed;

(d) whether the person engaged in legal practice in Australia:

(i) when not admitted, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or

(ii) if admitted, in contravention of a condition on which admission was granted; or

(iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;

(e) whether the person has practised law in a foreign country:

(i) when not permitted by or under a law of that country to do so; or

(ii) if permitted to do so, in contravention of a condition of the permission;

(f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:

(i) this Act or a previous law of this jurisdiction that corresponds to this Act;

(ii) a corresponding law or corresponding foreign law;

(g) whether the person:

(i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or

(ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;

(ga) whether the person has been found to have engaged in academic dishonesty (including, for example, plagiarism);

(h) whether the person's name has been removed from:

(i) a local roll, and has not since been restored to or entered on a local roll; or

(ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or

(iii) a foreign roll;

(i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;

(j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;

(k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;

(l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;

(m) whether the person currently has a material inability to engage in legal practice.

(2) A matter is a suitability matter even if it happened before the commencement of this section.

12 Corresponding authorities

(1) A corresponding authority is:

(a) a person or body having powers or functions under a corresponding law; or

(b) when used in the context of a person or body having powers or functions under this Act (the ***local authority***), a person or body having corresponding powers or functions under a corresponding law.

(2) Without limiting subsection (1)(b), if the powers or functions of the local authority relate to local lawyers or local legal practitioners generally or are limited to any particular class of local lawyers or local legal practitioners, a person or body having corresponding powers or functions under a corresponding law is a corresponding authority to the local authority.

(3) Subsection (2) applies regardless of whether the powers or functions relate to interstate lawyers or interstate legal practitioners generally or are limited to any particular class of interstate lawyers or interstate legal practitioners.

13 Corresponding disciplinary bodies

A corresponding disciplinary body is:

(a) a court or tribunal having powers or functions under a corresponding law that correspond to any of the powers and functions of the Disciplinary Tribunal; or

(b) the Supreme Court of another jurisdiction exercising:

(i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyers; or

(ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to any Australian lawyers.

14 Corresponding laws and corresponding foreign laws

(1) A corresponding law is:

(a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if a law of the other jurisdiction is declared by regulation to be a law that corresponds to this Act, the law declared for the other jurisdiction; or

(b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction, a previous law applying to legal practice in the other jurisdiction.

(2) A corresponding foreign law is:

(a) a law of a foreign country that corresponds to the relevant provisions of this Act or, if a law of the foreign country is declared by regulation to be a law that corresponds to this Act, the law declared for the foreign country; or

(b) if the term is used in relation to a matter that happened before the commencement of the law of a foreign country that, under paragraph (a), is the corresponding law for the foreign country, a previous law applying to legal practice in the foreign country.

15 References to convictions for offences

(1) A reference in this Act to a conviction includes a finding of guilt, whether or not a conviction is recorded.

(2) Without limiting subsection (1), a reference to the quashing of a conviction for an offence includes a reference to the quashing of a finding of guilt in relation to the offence.

(3) However, a reference to the quashing of a conviction for an offence does not include a reference to the quashing of a conviction if a finding of guilt in relation to the offence remains unaffected.

16 Declared offences for Criminal Code

An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

Note for section 16

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences, for example, ***conduct****,* ***intention****,* ***recklessness*** *and* ***strict liability****.*

Chapter 2 General requirements for engaging in legal practice

Part 2.1 Reservation of legal work and legal titles

17 Purposes of Part

The purposes of this Part are as follows:

(a) to protect the public interest in the proper administration of justice by ensuring legal work is carried out only by those who are properly qualified to do so;

(b) to protect consumers by ensuring persons carrying out legal work are entitled to do so.

18 Prohibition on engaging in legal practice when not entitled

(1) A person who is not an Australian legal practitioner must not engage in legal practice in this jurisdiction.

Maximum penalty: 500 penalty units.

(2) Subsection (1) does not apply to engaging in legal practice of the following kinds:

(a) legal practice engaged in under the authority of a law of this jurisdiction or of the Commonwealth;

(b) legal practice engaged in by an incorporated legal practice in accordance with Part 2.6;

(c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 2.7;

(d) legal practice engaged in by a complying community legal centre;

(e) carrying on business as a conveyancing agent or real estate agent under a licence under the *Agents Licensing Act*;

(f) preparing wills or administering estates in the course of employment in the office of the Public Trustee;

(g) legal practice of a kind prescribed by the regulations.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant did not engage in the legal practice for fee, gain or reward.

(4) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (1).

(5) A person may recover from another person, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (1).

(6) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to persons engaged in legal practice of a kind referred to in subsection (2) other than paragraphs (a) and (b).

19 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled

(1) A person who is not an Australian legal practitioner must not represent or advertise that the person is entitled to engage in legal practice.

Maximum penalty: 500 penalty units.

(2) A person is guilty of an offence if:

(a) the person is a director, officer, employee or agent of a body corporate; and

(b) the person represents or advertises that the body corporate is entitled to engage in legal practice; and

(c) the body corporate is not an incorporated legal practice.

Maximum penalty: 500 penalty units.

(3) Subsections (1) and (2) do not apply to a representation or advertisement about being entitled to engage in legal practice of a kind referred to in section 18(2).

(4) A reference in this section to a person representing or advertising that the person or a body corporate is entitled to engage in legal practice includes a reference to the person doing anything that specifies or implies the person or body corporate is entitled to engage in legal practice.

20 Presumptions about taking or using name, title or description

(1) This section applies to the following names, titles and descriptions:

(a) lawyer or legal practitioner;

(b) barrister, solicitor or attorney;

(c) counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel, His Majesty's Counsel or Senior Counsel;

(d) another name, title or description prescribed by the regulations.

(2) Subject to section 21, the regulations may specify the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use a name, title or description to which this section applies.

(3) For section 19(1), the taking or using of a name, title or description to which this section applies by a person who is not entitled to take or use that name, title or description gives rise to a rebuttable presumption that the person represented the person is entitled to engage in legal practice.

(4) For section 19(2), the taking or using of a name, title or description to which this section applies by a person in relation to a body corporate, of which the person is a director, officer, employee or agent, gives rise to a rebuttable presumption the person represented the body corporate is entitled to engage in legal practice.

21 Appointment of Queen's Counsel or Senior Counsel

(1) The Chief Justice may appoint a local legal practitioner as a Queen's Counsel or Senior Counsel.

(2) An appointment must be made:

(a) under applicable rules of the Supreme Court; and

(b) only after consultation with:

(i) the Attorney-General; and

(ii) other Judges; and

(iii) the Law Society and Northern Territory Bar Association Incorporated; and

(iv) anyone else the Chief Justice considers appropriate.

(3) The practitioner must pay the Territory the fee prescribed by the regulations.

(4) In this section:

Queen's Counsel means one of Her Majesty's Counsel for the Territory, and extends to King's Counsel if appropriate.

22 Schemes for specialist lawyers

Section 20 does not prevent:

(a) the Law Society from establishing a merit based scheme for recognising and naming specialist lawyers; or

(b) a lawyer who is named under the scheme as a particular type of specialist lawyer using that description.

23 Contravention of Part by Australian lawyers who are not legal practitioners

(1) A contravention of this Part by an Australian lawyer who is not an Australian legal practitioner is capable of constituting unsatisfactory professional conduct or professional misconduct.

(2) Nothing in this Part affects any liability that a person who is an Australian lawyer but not an Australian legal practitioner may have under Chapter 4 and the person may be punished for an offence under this Part as well as being dealt with under Chapter 4 in relation to the same matter.

Part 2.2 Admission of local lawyers

Division 1 Preliminary matters

24 Purposes of Part

The purposes of this Part are as follows:

(a) in the interests of the administration of justice and for the protection of consumers of legal services, to provide a system under which only applicants who have appropriate academic qualifications and practical legal training and who are otherwise fit and proper persons to be admitted are qualified for admission to the legal profession in this jurisdiction;

(b) to provide for the recognition of equivalent qualifications and training that make applicants eligible for admission to the legal profession in other jurisdictions.

Division 2 Admission to legal profession

25 Admission

(1) A person may apply to the Supreme Court to be admitted as a local lawyer.

(2) The Court may, after considering a recommendation of the Admission Board and any representations made by the Law Society, admit the person as a local lawyer if:

(a) the Court is satisfied:

(i) the person is eligible for admission to the legal profession; or

(ii) if the recommendation is made under section 29(2) – it is reasonable the person be admitted because the person has sufficient academic qualifications or sufficient relevant experience in legal practice or relevant service with an Agency; and

(b) the Court is satisfied the person is a fit and proper person to be admitted to the legal profession.

(3) A recommendation of the Board may be contained in a compliance certificate.

(4) The Court may refuse:

(a) to consider the application if it is not made in accordance with the admission rules; or

(b) to admit the person if the person has not complied with the admission rules.

26 Conditions of admission

(1) The Supreme Court may:

(a) admit a person to the legal profession either unconditionally or on any conditions it considers appropriate; and

(b) vary or revoke any conditions on which a person is admitted to the legal profession under this Act.

Example of conditions for subsection (1)(a)

If the Court admits a person on a recommendation of the Admission Board made under section 29(2), the Court may admit the person on the conditions relating to the obtaining of further academic qualifications or further legal training the Court considers appropriate.

(2) The Court may order the removal of a person's name from the local roll for a contravention of a condition.

27 Roll of persons admitted to legal profession

(1) A Registrar must maintain a roll of persons admitted to the legal profession under this Act (the ***local roll***).

(2) If a person is admitted under this Act, the person's name must be entered on the local roll under the admission rules.

(3) A person admitted under this Act must sign the local roll.

(4) The person's admission under this Act takes effect when the person signs the local roll.

(5) A Registrar must give the Law Society the name, date of birth and date of admission of each person admitted under this Act as soon as practicable after the person has signed the local roll.

(6) A Registrar's functions under this section must be exercised by the Registrar or other person or body designated by the Chief Justice for the purpose.

(7) The regulations may make provision for or with respect to the following:

(a) the information that may or must be included in the local roll;

(b) publication of information contained in the local roll.

28 Local lawyer is officer of Supreme Court

(1) A person becomes an officer of the Supreme Court on being admitted as a local lawyer under this Act.

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

Division 3 Eligibility and suitability for admission

29 Eligibility for admission

(1) A person is eligible for admission to the legal profession under this Act only if:

(a) the person is an individual aged 18 years or over; and

(b) the person has attained:

(i) approved academic qualifications; or

(ii) corresponding academic qualifications; and

(c) the person has satisfactorily completed:

(i) approved practical legal training requirements; or

(ii) corresponding practical legal training requirements.

(2) However, the Admission Board may recommend the Supreme Court admit a person even if the person does not satisfy the requirements of subsection (1)(b) or (c), or both of those requirements, if the Board is satisfied it is reasonable that the person be admitted because the person has sufficient academic qualifications or sufficient relevant experience in legal practice or relevant service with an Agency.

(3) The Board may recommend the person be admitted unconditionally or subject to conditions relating to the obtaining of further academic qualifications or further legal training.

30 Suitability for admission

(1) The Supreme Court or Admission Board must, in deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, consider:

(a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and

(b) any other matter it considers relevant.

(2) However, the Court or Board may consider a person to be a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter.

31 Early consideration of suitability

(1) A person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board as to whether the person is a fit and proper person to be admitted.

(2) The Board must give written notice to the Law Society of the application.

(3) The Board must consider the application and, subject to section 32, make the declaration sought or refuse to do so.

(4) If the Board makes the declaration it must give the Law Society a copy of the declaration.

(5) If the Board refuses to make the declaration it must:

(a) give the applicant an information notice for the decision; and

(b) give the Society written notice of the decision.

32 Referral of matters to Supreme Court

(1) The Admission Board may refer the issue of whether or not an applicant is a fit and proper person to be admitted to the Supreme Court for decision if, in the Board's opinion, it would be appropriate for the Court to consider the issue.

(2) The Board also may refer to the Court an application for a declaration under section 31 if, in the Board's opinion, it would be appropriate for the Court to consider the application.

(3) The Court has the same powers as the Board to deal with an application referred to it under this section and its decision on an application is taken to be a decision of the Board.

(4) On a referral under this section, the Court may make the order or declaration it considers appropriate.

33 Binding effect of declaration or order

A declaration or order made under section 31(3) or 32(4) is binding on the Admission Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

34 Entitlement to be represented, heard and make representations

(1) The Admission Board is not a respondent to an application for admission to the legal profession under this Act.

(2) The Law Society and an applicant for admission to the legal profession under this Act or a declaration under section 31 are entitled to:

(a) make written representations to the Board in relation to any matter under consideration by the Board under this Division; and

(b) be represented and heard at any appeal under Division 5.

(3) The Society is entitled to:

(a) make written representations to the Supreme Court on an application for admission to the legal profession under this Act or a matter referred to the Court under section 32; and

(b) be represented and heard on the hearing of the application or reference.

Division 4 Powers and functions of Admission Board

35 Admission Board to advise on application for admission

The role of the Admission Board is to advise the Supreme Court whether or not the Board considers:

(a) an applicant for admission to the legal profession under this Act is:

(i) eligible for admission; and

(ii) a fit and proper person to be admitted, including having regard to all suitability matters in relation to the applicant to the extent appropriate; and

(b) the application conforms with the requirements of the admission rules.

36 Compliance certificates

(1) This section applies if, after considering an application for admission to the legal profession under this Act, the Admission Board considers:

(a) the applicant is:

(i) eligible for admission; and

(ii) a fit and proper person to be admitted; and

(b) the application conforms with the requirements of the admission rules and there are no grounds for refusing to give a certificate for the applicant.

(2) The Board must, within the time specified in or determined under the regulations, advise the Supreme Court to that effect by filing with a Registrar a certificate in the approved form (a ***compliance certificate***).

(3) The Board must give the Law Society a copy of the compliance certificate.

(4) If the Board refuses to give a compliance certificate for the applicant, the Board must, within the time specified in or determined under the regulations, give:

(a) a Registrar notice about the refusal; and

(b) the applicant an information notice about the refusal.

(5) If the Board does not comply with subsections (3) and (4), the Board is taken to have:

(a) decided to refuse to give a compliance certificate; and

(b) given an information notice about the refusal at the end of the time specified in or determined under the admission rules for deciding the application.

37 Consideration of applicant's eligibility and suitability

(1) To help it consider whether or not an applicant is eligible for admission to the legal profession under this Act or is a fit and proper person to be admitted under this Act, the Admission Board may, by notice to the applicant, require:

(a) the applicant to give it specified documents or information; or

(b) the applicant to cooperate with any inquiries by the Board that it considers appropriate.

(2) The applicant's failure to comply with the notice by the date specified in the notice, and in the way required by the notice, is a ground for refusing to give a compliance certificate for the applicant.

(3) The Board may refer a matter to the Supreme Court for directions.

Note for section 37

Under section 94, the Admission Board may obtain a police report about the applicant's criminal history. Also, under section 95, the Admission Board may require the applicant to undergo a health assessment.

Division 5 Appeals

38 Appeals

(1) An applicant for a declaration under section 31 may appeal to the Supreme Court against a decision of the Admission Board to refuse to make the declaration.

(2) An applicant for admission may appeal to the Court against a decision of the Board under section 36 to refuse to give a compliance certificate for the applicant.

(3) The Law Society may appeal to the Court against the following decisions:

(a) a decision under section 31 to make a declaration sought under the section;

(b) a decision under section 36 to give a compliance certificate.

(4) An appeal under this section must be started by filing notice of appeal:

(a) for an appeal under subsection (1) or (2) – within 28 days after the appellant receives the information notice for the decision; or

(b) for an appeal under subsection (3) – within 28 days after the decision is made.

(5) The notice of appeal must state fully the grounds of appeal.

(6) An appeal under this section must be by way of rehearing and fresh evidence or evidence in addition to or in substitution for the evidence before the Board may be given on the appeal.

(7) On hearing an appeal under this section, the Court may make the order or declaration it considers appropriate.

Division 6 Miscellaneous matters

39 Mutual recognition local registration authority

For a Mutual Recognition Act, the Admission Board is the local registration authority for an application for registration under that Act so far as the application relates to the admission of a person to engage in legal practice in the Territory.

40 Certificate of admission

A Registrar must issue a certificate of admission to a person admitted as a local lawyer under this Part.

41 Joinder of parties and counsel assisting

(1) The Supreme Court may, on application made to it, grant leave to a person to be joined as a party to an application for admission to the legal profession under this Act or a reference under section 32.

(2) In addition, the Court may appoint counsel to assist it in deciding the application or reference.

42 Costs relating to applications and referrals

(1) The Supreme Court may order the costs of counsel appointed to assist in an application for admission to the legal profession under this Act or a reference under section 32, as certified by the Solicitor for the Northern Territory, to be paid out of the Fidelity Fund.

(2) In addition, the Court may order the costs of the Law Society, as certified by the Solicitor for the Northern Territory, to be paid out of the Fidelity Fund:

(a) for an appeal by it under Division 5; or

(b) if it is heard on an application for admission to the legal profession under this Act or a reference under section 32.

(3) However, the Court must not make an order under subsection (2) if it is satisfied the Society has acted unreasonably in relation to the appeal, application or reference.

43 Admission rules

(1) The Judges appointed under section 32(1) of the *Supreme Court Act* who are not additional Judges, or a majority of them, may make rules, not inconsistent with this Act, for the admission of persons to the legal profession under this Act.

(2) Rules may be made about any of the following:

(a) the procedure for admission, including:

(i) how an application must be made; and

(ii) giving notice of the application to an entity or public notice of the application; and

(iii) the affidavits or certificates the applicant must provide with or for the application; and

(iv) the keeping and signing of the local roll and the particulars to be recorded on the roll; and

(v) the oath of office to be taken by a local lawyer;

(b) admission requirements regarding, and the approval of, academic qualifications and practical legal training;

(c) the examination of candidates for admission and the assessment of their qualifications;

(d) the disclosure of matters that may affect consideration of the eligibility of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed;

(e) applications for admission under the trans-Tasman mutual recognition legislative scheme;

(f) the assessment of the qualifications and practical legal training of overseas qualified or trained applicants against the academic requirements and practical legal training requirements that apply to local applicants;

(g) the conferral of a right of objection to an applicant's admission on persons of appropriate standing;

(h) the procedure to be adopted in the conduct of inquiries under this Part;

(i) examinations in academic subjects of candidates for registration as students-at-law or of applicants for admission;

(j) the establishment and conduct of bodies with functions concerning:

(i) the examination of applicants for admission; and

(ii) the assessment of applicants as to whether they are eligible for admission and are fit and proper persons to be admitted;

(k) authorising the Admission Board to exempt a person from the requirements of:

(i) section 29(1)(b) to the extent the person has engaged in relevant studies in a foreign country to the satisfaction of the Board; or

(ii) section 29(1)(c) to the extent the person has completed a period of relevant service with a government department or other government agency (including, for example, service in courts administration) to the satisfaction of the Board;

(l) accreditation of legal education and practical legal training courses;

(m) any other matters relating to the Board's functions.

(3) Rules may provide for abridging, in specified circumstances, any period of practical legal training required by the rules.

(4) Despite anything to the contrary in the rules, the Board must:

(a) give the Law Society a copy of each application for admission to the legal profession under this Act; and

(b) give the Society and any other person granted leave to be joined as a party to the application a copy of all other documents relevant to the application.

(5) The rules must not require a person to satisfactorily complete before admission a period of supervised training that exceeds in length a period or periods equivalent to one full-time year as determined under the rules.

Part 2.3 Legal practice by Australian legal practitioners

Division 1 Preliminary matters

44 Purposes of Part

The purposes of this Part are as follows:

(a) to facilitate the national practice of law by ensuring Australian legal practitioners can engage in legal practice in this jurisdiction and to provide for the certification of Australian lawyers whether or not admitted in this jurisdiction;

(b) to provide a system for the granting and renewing of local practising certificates.

Division 2 Legal practice in this jurisdiction by Australian legal practitioners

45 Entitlement of holder of Australian practising certificate to practise in this jurisdiction

An Australian legal practitioner is, subject to this Act, entitled to engage in legal practice in this jurisdiction.

Division 3 Local practising certificates generally

46 Local practising certificates

(1) Practising certificates may be granted under this Part.

(2) The regulations may prescribe the categories of local practising certificates.

(3) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the first-mentioned local practising certificate.

47 Suitability to hold local practising certificate

(1) This section has effect for section 54 or another provision of this Act if the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.

(2) The Law Society may, in considering whether or not a person is a fit and proper person to hold a local practising certificate, take into account any suitability matter relating to the person and any of the following, whether happening before or after the commencement of this section:

(a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;

(b) whether the person has contravened a condition of an Australian practising certificate held by the person;

(c) whether the person has contravened this Act or a corresponding law or the regulations or legal profession rules under this Act or a corresponding law;

(d) whether the person has contravened:

(i) an order of the Disciplinary Tribunal; or

(ii) an order of a corresponding disciplinary body or of another court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;

(e) without limiting any other paragraph:

(i) whether the person has failed to pay a required contribution or levy to the Fidelity Fund; or

(ii) whether the person has contravened a requirement of, or imposed under, this Act about professional indemnity insurance; or

(iii) whether the person has failed to pay other costs or expenses for which the person is liable under this Act;

(f) other matters the Society considers appropriate.

(3) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (2), if the Society considers the circumstances warrant the decision.

(4) A matter cannot be taken into account as a ground for refusing to grant or renew or for suspending or cancelling a local practising certificate if the matter was:

(a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and

(b) decided by a Supreme Court or by the Admission Board or a corresponding authority not to be sufficient for refusing admission.

(5) Subsection (4) does not apply if later disclosures demonstrate the matter is part of a course of conduct that may warrant refusal, suspension or cancellation.

Note for section 47

Under section 94, the Admission Board may obtain a police report about the applicant's criminal history. Also, under section 95, the Admission Board may require the applicant to undergo a health assessment.

48 Duration of local practising certificate

(1) A local practising certificate granted under this Act is in force from the date specified in it until the end of the financial year in which it is granted, unless the certificate is sooner suspended or cancelled.

(2) A local practising certificate renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the certificate is sooner suspended or cancelled.

(3) If an application for the renewal of a local practising certificate has not been decided by the following 1 July, the certificate:

(a) continues in force on and from that 1 July until the Law Society renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner cancelled or suspended; and

(b) if renewed, is taken to have been renewed on and from that 1 July.

49 Local legal practitioner is officer of Supreme Court

(1) A person who is not already an officer of the Supreme Court becomes an officer of the Court on being granted a local practising certificate.

(2) A person ceases to be an officer of the Court under subsection (1) if the person ceases to hold a local practising certificate.

Division 4 Grant or renewal of local practising certificates

50 Who may apply for grant or renewal of local practising certificate

(1) An Australian lawyer may apply to the Law Society for the grant or renewal of a local practising certificate if eligible to do so under this section.

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

(a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application:

(i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or

(ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to decide whether it applies to the lawyer – the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia; or

(b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application:

(i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or

(ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature; or

(iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or

(iv) if subparagraph (i), (ii) or (iii) does not apply to the lawyer or it is not reasonably practicable to decide whether subparagraph (i), (ii) or (iii) applies to the lawyer – the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.

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

(a) the application is made; or

(b) in the case of a late application – the application should have been made.

(4) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.

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

(6) An Australian legal practitioner who:

(a) engages in legal practice solely or principally in this jurisdiction during a financial year; and

(b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year;

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

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

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

(9) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia.

(10) Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.

51 Making application and fees

(1) An application for the grant or renewal of a local practising certificate must be:

(a) made under the regulations in the approved form; and

(b) accompanied by the information required by the regulations; and

(c) accompanied by the fee prescribed by the regulations.

(2) On receipt of the application, the Law Society must pay the fee paid under subsection (1)(c) to the Funds Management Committee.

(3) The regulations may require the applicant to disclose matters that may affect the applicant's eligibility for the grant or renewal of a local practising certificate or the question whether the applicant is a fit and proper person to hold a local practising certificate.

(4) The regulations may indicate that particular kinds of matters previously disclosed in a particular way need not be disclosed for the current application.

(5) Without limiting subsection (3), the regulations may require the applicant to disclose details of, or details of the nature of, pre-admission events.

52 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) the 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 sought to be renewed.

(3) The Law Society may reject an application for renewal made during the late fee period, and must reject an application for renewal made outside those periods unless the Society accepts the application under subsection (4).

(4) The Society may accept an application made within 6 months after that period (even after the expiry of the local practising certificate being sought to be renewed) if satisfied the delay was caused by reasons beyond the control of the applicant or other special circumstances exist warranting acceptance of the application.

(5) For an application accepted under subsection (4) after the expiry of the local practising certificate on 30 June in the year concerned, the certificate:

(a) is taken to have continued in force on and from the 1 July immediately following its expiry until the Society renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner suspended or cancelled; and

(b) if renewed, is taken to have been renewed on and from that 1 July.

53 Late fee

(1) Subsection (2) applies if an application for renewal of a local practising certificate is made during the late fee period prescribed by the regulations.

(2) Payment of the late fee may, if the Law Society considers it appropriate, be required as a condition of acceptance of the application.

54 Grant or renewal of local practising certificate

(1) The Law Society must consider an application that has been made for the grant or renewal of a local practising certificate and may:

(a) grant or refuse to grant the certificate; or

(b) renew or refuse to renew the certificate.

(2) In granting or renewing the certificate, the Society may impose conditions mentioned in section 70.

(3) The Society may refuse:

(a) to consider an application if:

(i) it is not made in accordance with this Act; or

(ii) the required fees and costs have not been paid; or

(b) to grant or renew a local practising certificate if the applicant has not complied with the regulations in relation to the application.

(4) The Society must not grant a local practising certificate unless it is satisfied the applicant:

(a) was eligible to apply for the grant when the application was made; and

(b) is a fit and proper person to hold the certificate.

(5) The Society must not renew a local practising certificate if it is satisfied the applicant:

(a) was not eligible to apply for the renewal when the application was made; or

(b) is not a fit and proper person to continue to hold the certificate.

(6) The Society must not grant or renew a local practising certificate if the Society considers:

(a) the applicant's circumstances have changed since the application was made; and

(b) the applicant would, having regard to information that has come to the Society's attention, not have been eligible to make the application when the application is being considered.

(7) Without limiting another provision of this section, the Society may refuse to grant or renew a local practising certificate if:

(a) the applicant is required by this Act to contribute to the Fidelity Fund and the application is not accompanied by the contribution payable; or

(b) any levy payable by the applicant under Part 3.5 is unpaid; or

(c) the Society is not satisfied the law practice in respect of which the applicant is:

(i) a sole practitioner (in the case of a law practice constituted by the practitioner); or

(ii) a partner (in the case of a law firm); or

(iii) a legal practitioner director (in the case of an incorporated legal practice); or

(iv) a legal practitioner partner (in the case of a multi-disciplinary partnership); or

(v) an employee of, or consultant to;

has approved professional indemnity insurance; or

(d) the applicant is in breach of a condition imposed under section 70.

(8) If the Society grants or renews a local practising certificate, the Society must, as soon as practicable, give the applicant:

(a) for the grant of a certificate – a local practising certificate; or

(b) for the renewal of a certificate – a new local practising certificate.

(9) If the Society:

(a) refuses to grant or renew a local practising certificate; or

(b) imposes a condition on the certificate;

the Society must, as soon as practicable, give the applicant an information notice.

Division 5 Amendment, suspension or cancellation of local practising certificates

55 Application of Division

This Division does not apply in relation to matters mentioned in Division 6.

56 Grounds for amending, suspending or cancelling local practising certificate

Each of the following is a ground for amending, suspending or cancelling a local practising certificate:

(a) the holder is no longer a fit and proper person to hold the certificate;

(b) if the holder does not have, or no longer has, professional indemnity insurance that complies with this Act in relation to the certificate;

(c) if a condition of the certificate is that the holder is or has been limited to legal practice specified in the certificate – the holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

57 Amending, suspending or cancelling local practising certificate

(1) If the Law Society believes a ground exists to amend, suspend or cancel a local practising certificate (the ***proposed action***), the Society must give the holder a notice that:

(a) specifies the proposed action and:

(i) if the proposed action is to amend the certificate – specifies the proposed amendment; and

(ii) if the proposed action is to suspend the certificate – specifies the proposed suspension period; and

(b) specifies the grounds for proposing to take the proposed action; and

(c) outlines the facts and circumstances that form the basis for the Society's belief; and

(d) invites the holder to make written representations to the Society, within a specified time of at least 7 days and not more than 28 days, as to why the proposed action should not be taken.

(2) If, after considering all written representations made within the specified time and, in its discretion, written representations made after the specified time, the Society still believes a ground exists to take the proposed action, the Society may:

(a) if the notice specified the proposed action was to amend the practising certificate – amend the certificate in the way specified or in a less onerous way the Society considers appropriate because of the representations; or

(b) if the notice specified the proposed action was to suspend the practising certificate for a specified period:

(i) suspend the certificate for a period no longer than the specified period; or

(ii) amend the certificate in a less onerous way the Society considers appropriate because of the representations; or

(c) if the notice specified the proposed action was to cancel the practising certificate:

(i) cancel the certificate; or

(ii) suspend the certificate for a period; or

(iii) amend the certificate in a less onerous way the Society considers appropriate because of the representations.

(3) If the Society decides to amend, suspend or cancel the practising certificate, the Society must give the holder an information notice for the decision.

(4) In this section:

amend, a certificate, means amend the certificate under section 70 during its currency, other than at the request of the holder of the certificate.

58 Operation of amendment, suspension or cancellation of local practising certificate

(1) This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 57.

(2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the practising certificate takes effect on the later of the following:

(a) the day notice of the decision is given to the holder;

(b) the day specified in the notice.

(3) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence:

(a) the Supreme Court may, on the application of the holder, order that the operation of the amendment, suspension or cancellation of the practising certificate be stayed until:

(i) the end of the time to appeal against the conviction; and

(ii) if an appeal is made against the conviction – the appeal is finally decided, lapses or otherwise ends; and

(b) the amendment, suspension or cancellation does not have effect during any period in relation to which the stay is in force.

(4) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence and the conviction is quashed:

(a) the amendment or suspension ceases to have effect when the conviction is quashed; or

(b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had merely been suspended.

59 Other ways of amending or cancelling local practising certificate

(1) The Law Society may amend or cancel a local practising certificate if the holder requests the Society to do so.

(2) The Society may amend a local practising certificate:

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the holder's interests.

(3) The Society must cancel a local practising certificate if:

(a) the holder's name has been removed from the local roll; or

(b) the holder ceases to be an Australian lawyer.

(4) The amendment or cancellation of a local practising certificate under this section is effected by written notice given to the holder.

(5) Section 57 does not apply in a case to which this section applies.

60 Relationship of this Division with Chapter 4

Nothing in this Division prevents a complaint being made under Chapter 4 about a matter to which this Division relates.

Division 6 Special powers in relation to local practising certificates show cause events

61 Applicant for local practising certificate – show cause event

(1) This section applies if:

(a) a person is applying for the grant of a local practising certificate; and

(b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person was first admitted to the legal profession in this or another jurisdiction, however the admission was expressed at the time of the admission.

(2) As part of the application, the person must give to the Law Society a written statement under the regulations:

(a) about the show cause event; and

(b) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a local practising certificate.

(3) However, the person need not provide a statement under subsection (2) if the person (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously provided to the Society:

(a) a statement under this section; or

(b) a notice and statement under section 62;

explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.

62 Holder of local practising certificate – show cause event

(1) This section applies to a show cause event that happens in relation to the holder of a local practising certificate.

(2) The holder must provide to the Law Society both of the following:

(a) within 7 days after the happening of the event – notice, in the approved form, that the event happened;

(b) within 28 days after the happening of the event – a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.

(3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Society may accept the statement and take it into consideration.

63 Refusal, amendment, suspension or cancellation of local practising certificate – failure to show cause

(1) The Law Society may refuse to grant or renew, or may amend, suspend or cancel, a local practising certificate if the applicant or holder:

(a) is required by section 61 or 62 to provide a notice or written statement about a show cause event and has failed to provide a written statement under the requirement; or

(b) has provided a written statement under section 61 or 62 but, in the Society's opinion, the statement is not a genuine or reasonable attempt to show that the applicant or holder is a fit and proper person to hold a practising certificate; or

(c) has failed without reasonable excuse to comply with a requirement under Chapter 6 made in connection with an investigation of the show cause event concerned or has committed an offence under that Part in connection with any such investigation.

(2) For this section only, a written statement accepted by the Society under section 62(3) is taken to have been provided under section 62.

(3) The Society must give the applicant or holder an information notice for the decision to refuse to grant or renew, or to amend, suspend or cancel, the certificate.

64 Restriction on making further applications

(1) This section applies if the Law Society decides under section 63 to:

(a) refuse to grant or renew a local practising certificate to a person; or

(b) cancel a person's local practising certificate.

(2) The Society may also decide the person is not entitled to apply for the grant of a local practising certificate for a specified period not exceeding 5 years.

(3) If the Society makes a decision under subsection (2), the Society must include the decision in the information notice required under section 63(3).

(4) A person in respect of whom a decision has been made under this section, or under a provision of a corresponding law, is not entitled to apply for the grant of a local practising certificate during the period specified in the decision.

65 Relationship of this Division with Part 46 and Chapter 6

(1) The Law Society has and may exercise powers under Part 4.6 and Chapter 6, in relation to a matter under this Division as if the matter were the subject of a complaint under Chapter 4.

(2) Accordingly, Part 4.6 and Chapter 6 apply (with the necessary modifications) in relation to a matter under this Division.

(3) Nothing in this Division prevents a complaint being made under Chapter 4 about a matter to which this Division relates.

Division 7 Further provisions relating to local practising certificates

66 Immediate suspension of local practising certificate

(1) This section applies if the Law Society considers it necessary in the public interest to immediately suspend a local practising certificate on:

(a) any of the grounds on which the certificate could be suspended or cancelled under Division 5; or

(b) the ground of the happening of a show cause event in relation to the holder; or

(c) another ground that the Society considers warrants suspension of the local practising certificate in the public interest.

(2) This section applies whether or not any action has been taken or started under Division 5 or 6 in relation to the holder.

(3) The Society may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following:

(a) the time at which the Society informs the holder of the Society's decision by notice under section 57;

(b) the end of the period of 56 days after the notice is given to the holder under this section.

(4) The notice under this section must:

(a) include an information notice about the suspension; and

(b) specify that the holder may make written representations to the Society about the suspension.

(5) The holder may make written representations to the Society about the suspension and the Society must consider the representations.

(6) The Society may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

(7) This section does not prevent the Society from making a complaint under Chapter 4 about a matter to which this section relates.

(8) The suspension of a local practising certificate under this section does not affect any disciplinary processes in relation to matters arising before the suspension.

67 Surrender and cancellation of local practising certificate

(1) The holder of a local practising certificate may surrender the certificate to the Law Society.

(2) The Society may cancel the certificate.

68 Return of local practising certificate

(1) This section applies if a local practising certificate granted to an Australian legal practitioner:

(a) is amended, suspended or cancelled by the Law Society; or

(b) is replaced by another certificate.

(2) The Society may give the practitioner a notice requiring the practitioner to return the certificate to the Society in the way specified in the notice within a specified period of not less than 14 days.

(3) The practitioner must comply with the notice.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the practitioner has a reasonable excuse.

(5) The Society must:

(a) if the certificate is amended – give the practitioner the amended certificate or a replacement certificate as soon as practicable after the amendment is made; or

(b) if the certificate is replaced – give the practitioner the replacement certificate as soon as practicable after it is issued; or

(c) if the certificate is suspended and is still current at the end of the suspension period – give the practitioner the amended certificate or a replacement certificate as soon as practicable after the end of the suspension period.

Division 8 Conditions on local practising certificates

69 Conditions generally

(1) A local practising certificate is subject to:

(a) any conditions imposed by the Law Society; and

(b) any statutory conditions imposed by this or any other Act; and

(c) any conditions imposed by or under the regulations or legal profession rules; and

(d) any conditions imposed or varied by the Disciplinary Tribunal under section 71; and

(e) any conditions imposed under Chapter 4 or under provisions of a corresponding law that correspond to Chapter 4.

(2) If a condition is imposed, varied or revoked under this Act (other than a statutory condition) during the currency of the local practising certificate concerned, the certificate must be amended by the Society, or a new certificate must be issued by the Society, to reflect on its face the imposition, variation or revocation.

70 Conditions imposed by Law Society

(1) The Law Society may impose conditions on a local practising certificate:

(a) when it is granted or renewed; or

(b) during its currency.

(2) A condition imposed under this section must be reasonable and relevant.

(3) A condition imposed under this section may be about any of the following:

(a) requiring the holder of the practising certificate to undertake and complete:

(i) continuing legal education prescribed by the regulations; or

(ii) specific legal education or training; or

(iii) a period of supervised legal practice;

(b) restricting the areas of law practised;

(c) controlling, restricting or prohibiting the operation of a trust account;

(d) restricting the holder to particular conditions concerning employment or supervision;

(e) requiring the holder to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder;

(f) requiring the holder to use the services of an accountant or other financial specialist in connection with the holder's practice;

(g) requiring the holder to provide the Society with evidence as to any outstanding tax obligations of the holder and as to provision made by the holder to satisfy any such outstanding obligations;

(h) a matter agreed to by the holder.

(4) Subsection (3) does not limit the matters about which a condition may be imposed under this section.

(5) The Society must not impose a condition requiring the holder to undertake and complete specific legal education or training unless:

(a) the Society is satisfied it is reasonable to require the education or training to be undertaken having regard to:

(i) the nature or currency of the holder's academic studies, legal training or legal experience; or

(ii) the holder's conduct; or

(b) the condition is one that is imposed generally on holders of local practising certificates or any class of holders of local practising certificates.

Note for subsection (5)(b)

A class of holders might comprise newly qualified lawyers or lawyers returning to legal practice after suspension or an extended break.

(6) The Society may vary or revoke conditions imposed under this section.

(7) If the Society imposes, varies or revokes a condition during the currency of the local practising certificate concerned, the imposition, variation or revocation takes effect when the holder has been notified of it or a later time specified by the Society.

(8) This section has effect subject to section 57 in relation to the imposition of a condition on a local practising certificate during its currency.

71 Imposition or variation of conditions pending criminal proceedings

(1) If a local legal practitioner has been charged with a relevant offence but the charge has not been decided, the Law Society may apply to the Disciplinary Tribunal for an order under this section.

(2) On the application, the Tribunal, if it considers it appropriate to do so having regard to the seriousness of the offence and to the public interest, may make either or both of the following orders:

(a) an order varying the conditions on the practitioner's local practising certificate;

(b) an order imposing further conditions on the practitioner's local practising certificate.

(3) An order under this section has effect until the sooner of:

(a) the end of the period specified by the Tribunal; or

(b) if the practitioner is convicted of the offence – 28 days after the day of the conviction; or

(c) if the charge is dismissed – the day of the dismissal.

(4) The Tribunal, on application by any party, may vary or revoke an order under this section at any time.

(5) In this section:

relevant offence means a serious offence or an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act.

72 Statutory condition regarding conditions imposed on interstate admission

It is a statutory condition of a local practising certificate that the holder must not contravene a condition that was imposed on the admission of the person to the legal profession under a corresponding law (with any variations of the condition made from time) and that is still in force.

73 Statutory condition regarding practice – general

(1) It is a statutory condition of a local practising certificate that the holder must engage in supervised legal practice only until the holder has completed:

(a) if the holder completed practical legal training principally under the supervision of an Australian lawyer (whether involving articles of clerkship, graduate clerk or otherwise) to qualify for admission to the legal profession in this or another jurisdiction – a period or periods equivalent to 18 months supervised legal practice after the day the holder's first practising certificate was granted; or

(b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction – a period or periods equivalent to 2 years supervised legal practice after the day the holder's first practising certificate was granted.

(2) For subsection (1), the period or periods must be worked out under the regulations.

(3) Subsection (1) has effect subject to any other conditions that relate to engaging in supervised legal practice after a period or periods referred to in that subsection.

(4) The Law Society may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for a person or class of persons, if satisfied the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to:

(a) the length and nature of any legal practice previously engaged in by the person or persons; and

(b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or persons.

(5) An exemption under subsection (4) may be given unconditionally or subject to the conditions the Society considers appropriate.

(6) In this section:

engage in supervised legal practice includes:

(a) employment as a government lawyer as defined in section 90(5); and

(b) employment by a complying community legal centre under the supervision of a supervising legal practitioner.

74 Statutory condition regarding practice as barrister

The regulations or legal profession rules may make provision for or with respect to prohibiting the holder of a local practising certificate as a barrister (but not a barristerand solicitor) from the following:

(a) engaging in legal practice:

(i) otherwise than as a sole practitioner; or

(ii) in partnership with any person; or

(iii) as the employee of any person;

(b) holding office as a legal practitioner director of an incorporated legal practice.

75 Additional conditions on practising certificates of barristers

(1) The Law Society may, under section 70, impose conditions of the following kinds on the practising certificate of a barrister:

(a) a condition requiring the holder to undertake and complete to the Society's satisfaction a full-time component or other component of a reading program applicable to the holder and decided or approved by:

(i) the Society; or

(ii) other body decided by the Statutory Supervisor;

(b) a condition requiring the holder to:

(i) read with a barrister of a specified class or description chosen by the holder (including a barrister chosen from a list of at least 10 barristers kept by the Society for the purpose) for a specified period; and

(ii) comply with the requirements that will enable the barrister, at the end of the specified period, to certify to the Society that the holder is fit to practise as a barrister without restriction.

(2) A condition of a kind mentioned in subsection (1) imposed on the practising certificate of a barrister may limit the barrister's practising rights until the condition is complied with.

(3) Subject to section 74, the Society may, under section 70, impose conditions of a kind mentioned in the section on a local practising certificate granted to a barrister (but not a barrister and solicitor).

(4) The Society may cancel or suspend a local practising certificate if the holder contravenes a condition of a kind mentioned in subsection (1) or (3).

(5) This section does not limit the Society's power under section 70 to impose conditions on a practising certificate.

76 Statutory condition regarding notice of offence

(1) It is a statutory condition of a local practising certificate that the holder of the certificate must give written notice to the Law Society that the holder has been:

(a) convicted of an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act; or

(b) charged with a serious offence.

(2) The notice must be given within 7 days after the event.

(3) The regulations, or legal profession rules if the regulations do not do so, may specify the person to whom or the address to which the notice is to be sent or delivered.

(4) This section does not apply to an offence to which Division 6 applies.

77 Conditions imposed by legal profession rules

The legal profession rules may:

(a) impose conditions on local practising certificates or any class of local practising certificates; or

(b) authorise conditions to be imposed on local practising certificates or any class of local practising certificates.

78 Compliance with conditions

The holder of a current local practising certificate must not contravene (in this jurisdiction or elsewhere) a condition to which the certificate is subject.

Maximum penalty: 500 penalty units.

Division 9 Interstate legal practitioners

79 Requirement for interstate practising certificate and professional indemnity insurance

(1) An interstate legal practitioner is guilty of an offence if the practitioner:

(a) either:

(i) engages in legal practice in this jurisdiction; or

(ii) represents or advertises that the practitioner is entitled to engage in legal practice in this jurisdiction; and

(b) is not covered by professional indemnity insurance that:

(i) covers legal practice in this jurisdiction; and

(ii) complies with the requirements prescribed by the regulations, being requirements that are no more onerous than the requirements for approved professional indemnity insurance.

Maximum penalty: 500 penalty units.

(2) This section does not apply to an interstate legal practitioner who:

(a) is employed by a corporation, other than an incorporated legal practice; and

(b) provides only in-house legal service in this jurisdiction.

(3) This section does not apply to an interstate legal practitioner who:

(a) is a government lawyer as defined in section 91(5); and

(b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work; and

(c) has an indemnity or immunity (whether provided by law or governmental policy) that is applicable in respect of that legal practice.

(4) The regulations may require an interstate legal practitioner to disclose information about professional indemnity insurance to clients or prospective clients.

80 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction

(1) This Part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.

(2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction:

(a) is subject to:

(i) any conditions imposed by the Law Society under section 81; and

(ii) any conditions imposed by or under the legal profession rules as referred to in that section; and

(b) is, to the greatest practicable extent and with all necessary changes:

(i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and

(ii) subject to any condition on the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on the practitioner's admission to the legal profession in this or another jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that are, in the opinion of the Society, more onerous prevail to the extent of the inconsistency.

(4) An interstate lawyer must not engage in legal practice in this jurisdiction in a manner not authorised by this Act or in contravention of any condition referred to in this section.

81 Additional conditions on practice of interstate legal practitioners

(1) The Law Society may, by written notice to an interstate legal practitioner engaged in legal practice in this jurisdiction, impose any condition on the practitioner's practice that it may impose under this Act on a local practising certificate.

(2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.

(3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to local legal practitioners.

(4) A notice under this section must include an information notice for the decision to impose a condition.

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

82 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction

(1) An interstate legal practitioner must not engage in unsupervised legal practice in this jurisdiction unless:

(a) if the interstate legal practitioner completed practical legal training principally under the supervision of an Australian lawyer (whether involving articles of clerkship, graduate clerk or otherwise) to qualify for admission to the legal profession in this or another jurisdiction – the interstate legal practitioner has undertaken a period or periods equivalent to 18 months supervised legal practice after the day the practitioner's first practising certificate was granted; or

(b) if the interstate legal practitioner completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction – the interstate legal practitioner has undertaken a period or periods equivalent to 2 years supervised legal practice after the day the practitioner's first practising certificate was granted.

Maximum penalty: 500 penalty units.

(2) For subsection (1):

(a) the period or periods must be worked out under the regulations; and

(b) a period of supervised legal practice in the practitioner's home jurisdiction must be worked out under the corresponding law for that jurisdiction.

(3) Subsection (1) does not apply if the practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction.

(4) Subsection (1) applies only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the practitioner in the practitioner's home jurisdiction.

83 Interstate legal practitioner is officer of Supreme Court

An interstate legal practitioner engaged in legal practice in this jurisdiction has all the duties and obligations of an officer of the Supreme Court, and is subject to the jurisdiction and powers of the Court in respect of those duties and obligations.

84 Mutual recognition local registration authority

For a Mutual Recognition Act, the Law Society is the local registration authority for an application for registration under that Act so far as the application relates to an application for the issue of a practising certificate in the Territory.

Division 10 Miscellaneous matters

85 Jurisdiction protocols

(1) The Law Society may enter into arrangements (***jurisdiction protocols***) with regulatory authorities of other jurisdictions about deciding:

(a) the jurisdiction in which an Australian lawyer engages in legal practice principally or can reasonably expect to engage in legal practice principally; or

(b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction:

(i) can be regarded as being of a temporary nature; or

(ii) ceases to be of a temporary nature; or

(c) the circumstances in which an Australian legal practitioner can reasonably expect to engage in legal practice principally in a jurisdiction during the currency of an Australian practising certificate.

(2) For this Act, and to the extent a jurisdiction protocol is relevant, a matter referred to in subsection (1)(a), (b) or (c) must be decided in accordance with the protocol.

(3) The Society may enter into arrangements that amend, revoke or replace a jurisdiction protocol.

(4) A jurisdiction protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

86 Consideration and investigation of applicants or holders

(1) To help it consider whether or not to grant, renew, amend, suspend or cancel a local practising certificate, the Law Society may, by notice to the applicant or holder, require the applicant or holder:

(a) to give it specified documents or information; or

(b) to cooperate with any inquiries by the Society that it considers appropriate.

(2) A contravention of a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the Society.

(3) Without limiting subsection (2), a contravention of a requirement for a medical examination may be accepted by the Society as evidence of the unfitness of the person to engage in legal practice.

87 Register of local practising certificates

(1) The Law Society must keep a register of the names of Australian lawyers to whom it grants local practising certificates.

(2) The regulations may make provision for or with respect to the following:

(a) particulars that may be included in the register;

(b) particulars that must be included in the register;

(c) notice by local legal practitioners to the Society of changes of particulars;

(d) notice by the Society to other authorities of particulars contained in the register.

(3) The register must specify the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice.

(4) A condition imposed on a local practising certificate relating to infirmity, injury or mental or physical illness must not be specified 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 specified on the register.

(5) The register may be kept in the way the Society decides.

(6) The Society may publish, in the circumstances it considers appropriate, the names of persons kept on the register and any other particulars included in the register concerning the persons.

(7) The register must be available for inspection, without charge, at the Society's office during normal business hours.

88 Orders about conditions

(1) The Statutory Supervisor or Law Society may apply to the Supreme Court for an order that:

(a) a local legal practitioner not contravene a condition imposed under this Part; or

(b) an interstate legal practitioner not contravene a requirement of section 80(4).

(2) No undertaking as to damages or costs is required.

(3) On hearing the application, the Court may make the order it considers appropriate.

(4) This section does not affect section 700.

89 Appeals

(1) An aggrieved person may appeal to the Supreme Court against any of the following decisions of the Law Society:

(a) a decision under section 54 or 63 to refuse to grant or renew a local practising certificate;

(b) a decision under section 54 to impose a condition on a local practising certificate;

(c) a decision under section 57, 63 or 66 to amend, suspend or cancel a local practising certificate;

(d) a decision under section 64 that the person is not entitled to apply for the grant of a local practising certificate for a specified period;

(e) a decision under section 81 to impose a condition on an interstate legal practitioner's right to engage in legal practice in this jurisdiction.

(2) An aggrieved person is the applicant for, or holder of, the practising certificate.

(3) The appeal must be started by filing a notice of appeal within 28 days after receiving the information notice for the decision.

(4) The notice of appeal must state fully the grounds of appeal.

(5) On hearing the appeal, the Court may make the order it considers appropriate.

(6) Except to the extent (if any) that may be ordered by the Court, the filing of an appeal does not stay the effect of the refusal, amendment, suspension or cancellation appealed against.

90 Government lawyers – general exemption from certain conditions

(1) A government lawyer's local practising certificate is not subject to conditions of the kind referred to in section 70(3)(a), (b) and (d) or 75(1), other than a condition relating to continuing legal education.

(2) However, a government lawyer's local practising certificate is not subject to a condition relating to continuing legal education if the lawyer holds an office prescribed by the regulations.

(3) Contributions and levies are not payable to the Fidelity Fund by or in relation to a government lawyer engaged in legal practice in the course of the lawyer's duties for the entity in relation to which the person is an employee.

(4) Without affecting subsections (1) and (2), this section does not prevent a government lawyer of another jurisdiction from being granted or holding a local practising certificate.

(5) In this section:

another jurisdiction means:

(a) another State or Territory of the Commonwealth; or

(b) the Commonwealth.

government agency means an entity, or class of entity, prescribed by the regulations.

government lawyer means an Australian lawyer, or a person eligible to be admitted as an Australian lawyer, employed by a government agency.

91 Government lawyers of other jurisdictions

(1) A government lawyer of another jurisdiction is not subject to:

(a) any prohibition under this Act about:

(i) engaging in legal practice in this jurisdiction; or

(ii) making representations about engaging in legal practice in this jurisdiction; or

(b) conditions imposed on a local practising certificate; or

(c) requirements of legal profession rules; or

(d) professional discipline;

in relation to the performance of official duties or functions as a government employee of the other jurisdiction to the extent the lawyer is exempt from matters of the same kind under a law of the other jurisdiction.

(2) Contributions and levies are not payable to the Fidelity Fund by or in relation to a government lawyer of another jurisdiction in the lawyer's capacity as a government employee.

(3) Without affecting subsection (1), that subsection extends to prohibitions under section 79 relating to professional indemnity insurance.

(4) Without affecting subsections (1), (2) and (3), this section does not prevent a government lawyer of another jurisdiction from being granted or holding a local practising certificate.

(5) In this section:

another jurisdiction means:

(a) another State or Territory of the Commonwealth; or

(b) the Commonwealth.

government agency, of another jurisdiction, means an entity, or class of entity, prescribed by the regulations.

government lawyer means an Australian lawyer, or a person eligible to be admitted as an Australian lawyer, employed by a government agency of another jurisdiction.

Part 2.4 Suitability reports

Division 1 Preliminary matters

92 Main purpose of Part

The main purpose of this Part is to ensure police reports and health assessment reports may be obtained when this Act provides for the reports or assessments.

93 Definitions

In this Part:

health assessor, see section 96(1).

interstate registration means registration under a corresponding law as a locally-registered foreign lawyer under that law.

legal practice includes the practice of foreign law in this jurisdiction by a foreign lawyer.

local registration means registration under this Act as a locally-registered foreign lawyer.

registration means local registration or interstate registration.

relevant authority means:

(a) for an applicant for admission – the Admission Board; or

(b) for an applicant for the grant or renewal of a local practising certificate or local registration, for the holder of a local practising certificate or for a locally-registered foreign lawyer – the Law Society.

subject person means:

(a) an applicant for admission; or

(b) an applicant for the grant or renewal of a local practising certificate; or

(c) the holder of a local practising certificate; or

(d) an applicant for registration as a locally-registered foreign lawyer; or

(e) a locally-registered foreign lawyer.

suitability report means a police report or health assessment report prepared under this Part or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

Division 2 Police reports

94 Relevant authority may ask for police report

(1) A relevant authority may ask the Commissioner of Police for a written report about a subject person's criminal history.

(2) Subsection (1), applies to the subject person's criminal history that is:

(a) in the Commissioner's possession; or

(b) ordinarily accessible to the Commissioner through arrangements with the police service of the Commonwealth or a State or another Territory.

(3) However, a relevant authority must not ask for a report about a local legal practitioner or locally-registered foreign lawyer unless the authority considers it appropriate.

(4) Subsection (3) applies to the relevant authority in relation to a local legal practitioner whether or not the practitioner is applying for the renewal of the local practising certificate or applying for another practising certificate.

(5) The Commissioner must give the report to the authority despite that part of the criminal history is a spent conviction as defined in the *Criminal Records (Spent Convictions) Act*.

Division 3 Health assessments

95 Health assessment

(1) This section applies if a relevant authority believes a subject person may have a material inability that may make the person unsuitable to engage in legal practice in this jurisdiction.

(2) The relevant authority may require the subject person to undergo a health assessment by a person appointed by the relevant authority.

(3) If the relevant authority decides to require the health assessment, the authority must give the subject person an information notice for the decision to require the assessment that includes:

(a) the name and qualifications of the person appointed by the authority to conduct the assessment; and

(b) a specified date, and a specified time and place, for the assessment that must be reasonable having regard to the circumstances of the subject person as known to the authority.

(4) The specified date must be not earlier than 28 days after the information notice is given to the subject person.

(5) The subject person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the subject person.

(6) On hearing the appeal, the Court may make the order it considers appropriate.

96 Appointment of health assessor

(1) The relevant authority may appoint one or more appropriately qualified persons (***health assessors***) to conduct all or part of a health assessment under this Division of a subject person.

(2) At least one health assessor must be a medical practitioner.

(3) If the relevant authority considers the subject person's criminal history is relevant to the assessment, the authority may disclose the history to the health assessor despite that part of the criminal history is a spent conviction as defined in the *Criminal Records (Spent Convictions) Act*.

(4) Before appointing a person as a health assessor, the relevant authority must be satisfied the person does not have a personal or professional connection with the subject person that may prejudice the way in which the person conducts the assessment.

(5) In this section:

appropriately qualified, for a medical practitioner or other person conducting a health assessment, includes having the qualifications, experience, skills or knowledge appropriate to conduct the assessment.

97 Health assessment report

(1) A health assessor conducting all or part of a health assessment of a subject person must prepare a report about the assessment (a ***health assessment report***).

(2) The health assessment report must include:

(a) the health assessor's findings as to any material inability of the subject person and the extent, if any, to which the inability may make the person unsuitable to engage in legal practice; and

(b) if the health assessor finds the person has a material inability that may make the person unsuitable to engage in legal practice, the health assessor's recommendations, if any, as to a condition:

(i) the Supreme Court could impose on the person's admission under this Act as a legal practitioner that would make, or would be likely to make, the person suitable to engage in legal practice, despite the inability; or

(ii) the relevant authority could impose on the person's practising certificate or local registration that would make, or would be likely to make, the person suitable to engage in legal practice, despite the inability.

(3) The health assessor must give the health assessment report to the relevant authority and a copy to the subject person.

98 Payment for health assessment and report

The relevant authority that appoints a health assessor to conduct all or part of a health assessment is liable for the cost of the assessment conducted by, and the report prepared by, the health assessor.

99 Use of health assessment report

(1) A report about a subject person is not admissible in any proceedings and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceedings.

(2) Subsection (1) does not apply in relation to:

(a) proceedings relating to an application by the subject person for admission under this Act as a local practitioner, for local registration, for admission to the legal profession in another jurisdiction or for interstate registration; or

(b) proceedings on an appeal by the subject person against a decision of a relevant authority of this or another jurisdiction:

(i) refusing to grant or renew a practising certificate or registration; or

(ii) imposing conditions on a practising certificate or registration; or

(iii) amending or cancelling a practising certificate or registration.

(3) Subsection (1) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in proceedings with the consent of:

(a) the health assessor who prepared the report; and

(b) the subject person to whom the report relates.

(4) In this section:

report means a health assessment report prepared under this Division or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

Division 4 General matters

100 Operation of this Part

(1) This Part does not authorise the Admission Board to seek a suitability report about:

(a) an applicant for the grant or renewal of a local practising certificate; or

(b) the holder of a local practising certificate.

(2) This Part does not authorise the Law Society to seek a suitability report about an applicant for admission.

Part 2.5 Inter-jurisdictional provisions regarding admission and practising certificates

Division 1 Preliminary matters

101 Purpose

The purpose of this Part is to provide a nationally consistent scheme for notices of and response to action taken by courts and other authorities in relation to the admission of persons to the legal profession and their right to engage in legal practice in Australia.

102 Definition

In this Part:

foreign regulatory action, taken in relation to a person, means:

(a) removal of the person's name from a foreign roll for disciplinary reasons; or

(b) suspension or cancellation of, or refusal to renew, the person's right to engage in legal practice in a foreign country.

103 Other requirements not affected

This Part does not affect any powers or duties under Chapter 4.

Division 2 Notices to be given by local authorities to interstate authorities

104 Official notice to other jurisdictions of applications for admission and associated matters

(1) This section applies if an application for admission to the legal profession is made under this Act.

(2) The Admission Board may give the corresponding authority for another jurisdiction written notice of any of the following (as relevant):

(a) the making of the application;

(b) the refusal to issue a compliance certificate in relation to the application;

(c) the withdrawal of the application after an inquiry is proposed or started in relation to the application or a suitability report is sought or obtained;

(d) the refusal of the Supreme Court to admit the applicant to the legal profession under this Act.

(3) The notice must specify the applicant's name and address as last known to the Board and may contain other relevant information.

105 Official notice to other jurisdictions of removals from local roll

(1) This section applies if a person's name is removed from the local roll, except if the removal occurs under section 111.

(2) A Registrar must, as soon as practicable, give written notice of the removal to:

(a) the corresponding authority of every other jurisdiction; and

(b) the registrar or other proper officer of the High Court of Australia.

(3) The notice must specify:

(a) the person's name and address as last known to the Registrar; and

(b) the date the person's name was removed from the roll; and

(c) the reason for removing the person's name.

(4) The notice may contain other relevant information.

106 Law Society to notify other jurisdictions of certain matters

(1) This section applies if:

(a) the Law Society takes any of the following actions:

(i) refuses to grant an Australian lawyer a local practising certificate;

(ii) suspends, cancels or refuses to renew an Australian lawyer's local practising certificate; or

(b) the lawyer successfully appeals against the action taken.

(2) The Society must, as soon as practicable, give the corresponding authorities of other jurisdictions written notice of the action taken or the result of the appeal.

(3) The notice must specify:

(a) the lawyer's name and address as last known to the Society; and

(b) particulars of:

(i) the action taken and the reasons for it; or

(ii) the result of the appeal.

(4) The notice may contain other relevant information.

(5) The Society may give corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

Division 3 Notices to be given by lawyers to local authorities

107 Lawyer to give notice of removal in another jurisdiction

(1) A person is guilty of an offence if:

(a) the person is a local lawyer other than a local legal practitioner; and

(b) the person's name is removed from an interstate roll; and

(c) the person fails to give a Registrar written notice of the removal as soon as practicable after the removal.

Maximum penalty: 500 penalty units.

(2) A person is guilty of an offence if:

(a) the person is a local legal practitioner; and

(b) the person's name is removed from an interstate roll; and

(c) the person fails to give a Registrar written notice of the removal as soon as practicable after the removal.

Maximum penalty: 500 penalty units.

(3) This section does not apply if the name has been removed from an interstate roll under a provision that corresponds to section 111.

(4) Strict liability applies to subsections (1)(a) and (2)(a).

108 Lawyer to give notice of interstate orders

(1) A person is guilty of an offence if:

(a) the person is a local lawyer other than a local legal practitioner; and

(b) an order is made under a corresponding law recommending that the person's name be removed from the local roll; and

(c) the person fails to give a Registrar written notice of the removal under section 110 as soon as practicable after the removal.

Maximum penalty: 500 penalty units.

(2) A person is guilty of an offence if:

(a) the person is a local legal practitioner; and

(b) an order or decision is made under a corresponding law that:

(i) the person's local practising certificate be suspended or cancelled; or

(ii) a local practising certificate not be granted to the person for a period; or

(iii) conditions be imposed on the person's local practising certificate; and

(c) the person fails to give a Registrar written notice of the order or decision under section 110 as soon as practicable after the removal.

Maximum penalty: 500 penalty units.

(3) Strict liability applies to subsections (1)(a) and (2)(a).

109 Lawyer to give notice of foreign regulatory action

(1) A person is guilty of an offence if:

(a) the person is a local lawyer other than a local legal practitioner; and

(b) foreign regulatory action has been taken in relation to the person; and

(c) the person fails to give a Registrar written notice of the action as soon as practicable after it is taken.

Maximum penalty: 500 penalty units.

(2) A person is guilty of an offence if:

(a) the person is a local legal practitioner; and

(b) foreign regulatory action has been taken in relation to the person; and

(c) the person fails to give the Law Society written notice of the action as soon as practicable after it is taken.

Maximum penalty: 500 penalty units.

(3) Strict liability applies to subsections (1)(a) and (2)(a).

110 Provisions relating to requirement to give notice

A notice to be given under this Division by a local lawyer or local legal practitioner must:

(a) specify his or her name and address; and

(b) disclose full details of the action to which the notice relates, including the date on which that action was taken; and

(c) be accompanied by a copy of any official notification provided to him or her in connection with that action.

Division 4 Taking of action by local authorities in response to notices received

111 Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction

(1) This section applies if a Registrar is satisfied:

(a) a local lawyer's name has been removed from an interstate roll; and

(b) no order referred to in section 115(1)(a) is, at the time of the removal, in force in relation to it.

(2) The Registrar must remove the lawyer's name from the local roll.

(3) The Registrar may, but need not, give the lawyer notice of the date on which the registrar proposes to remove the name from the local roll.

(4) The Registrar must, as soon as practicable, give the former local lawyer notice of the removal of the name from the local roll, unless notice of the date of the proposed removal was previously given.

(5) The name of the former local lawyer must, on his or her application to the Registrar or on the Registrar's own initiative, be restored to the local roll if the name is restored to the interstate roll.

(6) This section does not prevent the former local lawyer from afterwards applying for admission under Part 2.2.

112 Peremptory cancellation of local practising certificate following removal of name from interstate roll

(1) This section applies if:

(a) a person's name is removed from an interstate roll but the person remains an Australian lawyer; and

(b) the person is the holder of a local practising certificate; and

(c) no order mentioned in section 115(1)(b) is, at the time of the removal, in force in relation to it.

(2) The Law Society must cancel the local practising certificate as soon as practicable after receiving official written notice of the removal.

(3) The Society may, but need not, give the person notice of the date on which the Society proposes to cancel the local practising certificate.

(4) The Society must, as soon as practicable, give the person notice of the cancellation, unless notice of the date of the proposed cancellation was previously given.

(5) This section does not prevent the former local lawyer from afterwards applying for a local practising certificate.

113 Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action

(1) This section applies if the Law Society is satisfied:

(a) foreign regulatory action has been taken in relation to a local lawyer; and

(b) no order mentioned in section 115(1)(a) is, at the time of the removal, in force in relation to it.

(2) The Society may serve on the lawyer a notice specifying that the Society will apply to the Supreme Court for an order that the lawyer's name be removed from the local roll unless the lawyer shows cause to the Society why the lawyer's name should not be removed.

(3) If the lawyer does not satisfy the Society that the lawyer's name should not be removed from the local roll, the Society may apply to the Court for an order that the lawyer's name be removed from the local roll.

(4) Before applying for an order that the lawyer's name be removed, the Society must afford the practitioner a reasonable opportunity to show cause why the lawyer's name should not be removed.

(5) The Court may, on application made under this section, order that the lawyer's name be removed from the local roll, or may refuse to do so.

(6) The lawyer is entitled to appear before and be heard by the Court at a hearing of an application under this section.

114 Show cause procedure for cancellation of local practising certificate following foreign regulatory action

(1) This section applies if the Law Society is satisfied:

(a) foreign regulatory action has been taken in relation to a local legal practitioner; and

(b) no order mentioned in section 115(1)(b) is, at the time the action was taken, in force in relation to the action taken.

(2) The Society may serve on the practitioner a notice specifying that the Society proposes to cancel the practitioner's local practising certificate unless the practitioner shows cause to the Society why the practitioner's practising certificate should not be cancelled.

(3) The Society must afford the practitioner a reasonable opportunity to show cause why the practitioner's practising certificate should not be cancelled.

(4) If the practitioner does not satisfy the Society that the practising certificate should not be cancelled, the Society may cancel the certificate.

(5) The Society must, as soon as practicable, give the practitioner an information notice for its decision to cancel the practising certificate.

(6) The practitioner may appeal to the Supreme Court against the decision.

(7) The appeal must be started by filing notice of appeal within 28 days after receiving the information notice.

(8) The notice of appeal must state fully the grounds of appeal.

(9) On hearing the appeal, the Court may make the order it considers appropriate.

115 Order for non-removal of name or non-cancellation of local practising certificate

(1) If an Australian lawyer reasonably expects that the lawyer's name will be removed from an interstate roll or that foreign regulatory action may be taken against the lawyer, the lawyer may apply to the Supreme Court for:

(a) an order that the lawyer's name not be removed from the local roll under section 111 or 113; or

(b) an order that the lawyer's local practising certificate not be cancelled under section 112 or 114;

or both.

(2) The Court may make the order or orders applied for if satisfied:

(a) the lawyer's name is likely to be removed from the interstate roll or the foreign regulatory action is likely to be taken; and

(b) the reason for the removal of the name or the taking of the foreign regulatory action will not involve disciplinary action or the possibility of disciplinary action;

or may refuse to make an order.

(3) An order under this section may be made subject to any conditions the Court considers appropriate and remains in force for the period specified in it.

(4) The Court may revoke an order made under this section and sections 111 to 114 (as relevant) then apply as if the lawyer's name were removed from the interstate roll when the revocation takes effect.

(5) Nothing in this section affects action being taken in relation to the lawyer under other provisions of this Act.

116 Local authority may give information to other local authorities

An authority of this jurisdiction that receives information from an authority of another jurisdiction under provisions of a corresponding law that correspond to this Part may give the information to other authorities of this jurisdiction that have powers or duties under this Act.

Part 2.6 Incorporated legal practices and multi-disciplinary partnerships

Division 1 Preliminary matters

117 Purposes of Part

The purposes of this Part are:

(a) to regulate the provision of legal services by corporations in this jurisdiction; and

(b) to regulate the provision of legal services in this jurisdiction in conjunction with the provision of other services (whether by a corporation or persons acting in partnership with each other).

118 Definitions

In this Part:

corporation means:

(a) a company within the meaning of the Corporations Act; or

(b) any other body corporate, or body corporate of a kind, prescribed by the regulations.

director, in relation to:

(a) a company within the meaning of the Corporations Act – means a director as defined in section 9 of that Act; or

(b) any other body corporate, or body corporate of a kind, prescribed by the regulations – means a person specified or described in the regulations.

legal practitioner director means a director of an incorporated legal practice who is an Australian legal practitioner holding an unrestricted practising certificate.

legal practitioner partner means a partner of a multi-disciplinary partnership who is an Australian legal practitioner holding an unrestricted practising certificate.

officer means:

(a) in relation to a company within the meaning of the Corporations Act – an officer as defined in section 9 of that Act; or

(b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations – a person specified or described in the regulations.

professional obligations, of an Australian legal practitioner, include:

(a) duties to the Supreme Court; and

(b) obligations in connection with conflicts of interest; and

(c) duties to clients, including disclosure; and

(d) ethical rules required to be observed by the practitioner.

Regulator, for another jurisdiction, means the entity defined as the Regulator for that jurisdiction by the corresponding law of that jurisdiction or, if there is no such definition, the corresponding authority.

related body corporate means:

(a) in relation to a company within the meaning of the Corporations Act – a related body corporate within the meaning of section 50 of that Act; or

(b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations – a person specified or described in the regulations.

Division 2 Incorporated legal practices

119 Nature of incorporated legal practice

(1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction, whether or not it also provides services that are not legal services.

(2) However, a corporation is not an incorporated legal practice if:

(a) the corporation does not receive any fee, gain or reward for the legal services it provides; or

(b) the only legal services that the corporation provides are any or all of the following services:

(i) in-house legal services, namely, legal services provided to the corporation concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party;

(ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner; or

(c) the corporation is a complying community legal centre; or

(d) the corporation is a practising company as defined in section 720; or

(e) this Part or the regulations exempt the corporation from this Part.

(3) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to corporations that are not incorporated legal practices because of the operation of subsection (2).

(4) Nothing in this Part affects or applies to the provision by an incorporated legal practice of legal services in one or more other jurisdictions.

120 Non-legal services and businesses of incorporated legal practices

(1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.

(2) An incorporated legal practice (or a related body corporate) must not conduct a managed investment scheme.

(3) The regulations may prohibit an incorporated legal practice (or a related body corporate) from providing a service or conducting a business of a kind specified in the regulations.

121 Corporations eligible to be incorporated legal practice

(1) Any corporation is, subject to this Part, eligible to be an incorporated legal practice.

(2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by any Act or law (whether of this jurisdiction, the Commonwealth or any other jurisdiction) under which it is incorporated or its affairs are regulated.

(3) An incorporated legal practice is not itself required to hold an Australian practising certificate.

122 Notice of intention to start providing legal services

(1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the Law Society written notice, in the approved form, of its intention to do so.

(2) A corporation must not engage in legal practice in this jurisdiction if it is in default of this section under subsection (3).

Maximum penalty: 500 penalty units.

(3) A corporation that fails to comply with subsection (1) is in default of this section until it gives the Society written notice, in the approved form, of:

(a) the failure; and

(b) the fact that it has started to engage in legal practice.

(4) The giving of a notice under subsection (3) does not affect a corporation's liability under subsection (1) or (2).

(5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subsection (2).

(6) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subsection (2).

(7) An offence against subsection (2) is an offence of strict liability.

(8) This section does not apply to a corporation referred to in section 119(2)(a) to (e).

123 Prohibition on representations that corporation is incorporated legal practice

(1) A corporation must not represent or advertise it is an incorporated legal practice unless it has given notice under section 122.

Maximum penalty: 2 500 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) A person is guilty of an offence if:

(a) the person is a director, officer, employee or agent of a corporation; and

(b) the person represents or advertises that the corporation is an incorporated legal practice; and

(c) the corporation has not given notice under section 122.

Maximum penalty: 500 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the person has a reasonable excuse.

(5) A reference in this section to:

(a) a corporation representing or advertising that the corporation is an incorporated legal practice; or

(b) a person representing or advertising that a corporation is an incorporated legal practice;

includes a reference to the corporation or person doing anything that specifies or implies that the corporation is entitled to engage in legal practice.

124 Notice of ceasing provision of legal services

(1) A corporation is guilty of an offence if:

(a) it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice; and

(b) it fails to give the Law Society written notice in the approved form of that fact within the period prescribed by the regulations after the day it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) The regulations may make provision for or with respect to determining whether and when a corporation ceases to engage in legal practice in this jurisdiction.

125 Incorporated legal practice must have legal practitioner director

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

(2) Each legal practitioner director of an incorporated legal practice is, for this Act only, responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice.

(3) Each legal practitioner director of an incorporated legal practice must ensure appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice:

(a) in accordance with the professional obligations of Australian legal practitioners and other obligations imposed by or under this Act; and

(b) so that those obligations of Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.

(4) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of Australian legal practitioners or other obligations imposed by or under this Act, the director must take all reasonable action available to the director to ensure:

(a) the breaches do not occur; and

(b) appropriate remedial action is taken in respect of breaches that do occur.

(5) Nothing in this Part derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.

(6) The reference in subsection (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression ***legal practitioner director*** in other provisions of this Act.

126 Obligations of legal practitioner director relating to misconduct

(1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director:

(a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;

(b) conduct of any other director (not being an Australian legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the practice;

(c) the unsuitability of any other director (not being an Australian legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.

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

(a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subsection (1)(a); or

(b) directors (not being Australian legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subsection (1)(b); or

(c) unsuitable directors (not being Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subsection (1)(c);

as the case requires.

(3) A legal practitioner director of an incorporated legal practice must ensure all reasonable action available to the legal practitioner director is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the practice.

127 Incorporated legal practice without legal practitioner director

(1) An incorporated legal practice contravenes this subsection if it does not have any legal practitioner directors for a period exceeding 7 days.

Maximum penalty: 20 penalty units.

(2) If an incorporated legal practice ceases to have any legal practitioner directors, the incorporated legal practice must notify the Law Society as soon as possible.

Maximum penalty: 20 penalty units.

(3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this section.

Maximum penalty: 20 penalty units.

(4) An incorporated legal practice that contravenes subsection (1) is taken to be in default of director requirements under this section for the period from the end of the 7-day period until:

(a) it has at least one legal practitioner director; or

(b) a person is appointed under this section or a corresponding law in relation to the practice.

(5) The Society may, if it thinks it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice or another person nominated by the Society, in the absence of a legal practitioner director, to exercise or perform the functions or duties conferred or imposed on a legal practitioner director under this Part.

(6) An Australian legal practitioner is not eligible to be appointed under this section unless the practitioner holds an unrestricted practising certificate.

(7) The appointment under this section of a person to exercise or perform functions or duties of a legal practitioner director does not, for any other purpose, confer or impose on the person any of the other functions or duties of a director of the incorporated legal practice.

(8) An incorporated legal practice does not contravene subsection (1) during any period during which a person holds an appointment under this section in relation to the practice.

(9) A reference in this section to a ***legal practitioner director*** does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression ***legal practitioner director*** in other provisions of this Act.

128 Obligations and privileges of practitioners who are officers or employees

(1) An Australian legal practitioner who provides legal services on behalf of an incorporated legal practice in the capacity of an officer or employee of the practice:

(a) is not excused from compliance with professional obligations as an Australian legal practitioner, or any obligations as an Australian legal practitioner under any law; and

(b) does not lose the professional privileges of an Australian legal practitioner.

(2) For the purposes only of subsection (1), the professional obligations and professional privileges of a practitioner apply as if:

(a) where there are 2 or more legal practitioner directors of an incorporated legal practice – the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; or

(b) where there is only one legal practitioner director of an incorporated legal practice – the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.

(3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.

(4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by an Australian legal practitioner employed by the practice.

129 Conflicts of interest

(1) For the application of any law (including the common law) or legal profession rules relating to conflicts of interest to the conduct of an Australian legal practitioner who is:

(a) a legal practitioner director of an incorporated legal practice; or

(b) an officer or employee of an incorporated legal practice;

the interests of the incorporated legal practice or any related body corporate are also taken to be those of the practitioner (in addition to any interests the practitioner has apart from this subsection).

(2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

Note for section 129

Under section 128, an Australian legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other practitioners.

130 Disclosure obligations

(1) A person (the ***legal practitioner***) is guilty of an offence if:

(a) someone else (the ***client***) engages an incorporated legal practice to provide services (the ***required services***) that the client might reasonably assume to be legal services; and

(b) the practice provides services other than legal services in this jurisdiction; and

(c) the legal practitioner is:

(i) a legal practitioner director of the practice; or

(ii) an employee of the practice who is an Australian legal practitioner and provides the required services on behalf of the practice; and

(d) the legal practitioner fails to ensure a disclosure, complying with the requirements of this section and the regulations made for this section, is made to the client about the required services.

Maximum penalty: 100 penalty units.

(2) The disclosure must be made by giving the person written notice:

(a) specifying the services to be provided; and

(b) specifying whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and

(c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner – identifying the services and indicating the status or qualifications of the person or persons who will provide the services; and

(d) specifying that this Act applies to the provision of legal services but not to the provision of the non-legal services.

Example of status of person for subsection (2)(c)

A conveyancing agent as defined in the Agents Licensing Act.

(3) The regulations may provide for any of the following:

(a) how a disclosure must be made;

(b) additional matters required to be disclosed in relation to the provision of legal services or non-legal services by an incorporated legal practice.

(4) Without limiting subsection (3), the additional matters may include the kind of services provided by the incorporated legal practice and whether the services are or are not covered by the insurance or other provisions of this Act.

(5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion or on an on-going basis.

131 Effect of non-disclosure of provision of certain services

(1) This section applies if:

(a) section 130 applies in relation to a service that is provided to a person who has engaged an incorporated legal practice to provide the service and that the person might reasonably assume to be a legal service; and

(b) a disclosure has not been made under that section in relation to the service.

(2) The standard of care owed by the incorporated legal practice in respect of the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

132 Application of legal profession rules

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are officers or employees of an incorporated legal practice, unless the rules otherwise provide.

133 Requirements relating to advertising

(1) Any restriction imposed by or under this Act or any other Act, the regulations or legal profession rules in connection with advertising by Australian legal practitioners applies to advertising by an incorporated legal practice with respect to the provision of legal services.

(2) If a restriction referred to in subsection (1) is limited to a particular branch of the legal profession or for persons who practise in a particular style of legal practice, the restriction applies only to the extent that the incorporated legal practice carries on the business in that branch of the legal profession or in that style of legal practice.

(3) Any advertisement of the kind referred to in this section is, for disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.

(4) This section does not apply if the provision by which the restriction is imposed expressly excludes its application to incorporated legal practices.

134 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices

(1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):

(a) civil proceedings relating to a failure to account for, pay or deliver money or property received by, or entrusted to, the practice (or to any officer or employee of the practice) in the course of the provision of legal services by the practice, being money or property under the direct or indirect control of the practice;

(b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by an Australian legal practitioner who is an employee of the practice in connection with the provision of legal services to the client.

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

135 Sharing of receipts, revenue or other income

(1) Nothing in this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 136 and has effect subject to section 74.

136 Disqualified persons

(1) An incorporated legal practice is guilty of an offence if a disqualified person:

(a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate; or

(b) is a partner of the incorporated legal practice in a business that includes the provision of legal services; or

(c) shares the receipts, revenue or other income arising from the provision of legal services by the incorporated legal practice; or

(d) is engaged or paid in connection with the provision of legal services by the incorporated legal practice.

Maximum penalty: 500 penalty units.

(2) The failure of a legal practitioner director of an incorporated legal practice to ensure the practice complies with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

137 Audit of incorporated legal practice

(1) The Law Society may conduct an audit of:

(a) the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of:

(i) this Part; or

(ii) the regulations or legal profession rules, so far as they relate specifically to incorporated legal practices; and

(b) the management of the provision of legal services by the incorporated legal practice (including the supervision of officers and employees providing the services).

Note for subsection (1)

Section 125(3) requires legal practitioner directors to ensure appropriate management systems are implemented and maintained.

(2) The Society may, in writing, appoint a suitably qualified person to conduct an audit under this section.

(3) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit.

(4) An audit may be conducted whether or not a complaint has been made against an Australian lawyer with respect to the provision of legal services by the incorporated legal practice.

(5) A report of an audit:

(a) must be provided to the incorporated legal practice concerned; and

(b) may be provided to the Statutory Supervisor by the Society; and

(c) may be provided by the Society to the Regulator of another jurisdiction; and

(d) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the grant, amendment, suspension or cancellation of Australian practising certificates.

138 Application of Chapter 6

Chapter 6 applies to an audit under this Division.

139 Banning of incorporated legal practices

(1) The Supreme Court may, on the application of the Law Society, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the Court considers appropriate if satisfied:

(a) a ground for disqualifying the corporation under this section has been established; and

(b) the disqualification is justified.

(2) An order under this section may, if the Court thinks it appropriate, be made:

(a) subject to conditions as to the conduct of the incorporated legal practice; or

(b) subject to conditions as to when or in what circumstances the order is to take effect; or

(c) together with orders to safeguard the interests of clients or employees of the incorporated legal practice.

(3) Action may be taken against an incorporated legal practice on any of the following grounds:

(a) a legal practitioner director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;

(b) the Society is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;

(c) the incorporated legal practice (or a related body corporate) has contravened section 120 or the regulations made under that section;

(d) the incorporated legal practice has contravened section 136;

(e) a person who is an officer of the incorporated legal practice and who is the subject of an order under:

(i) section 140 or under provisions of a corresponding law that correspond to that section; or

(ii) section 165 or under provisions of a corresponding law that correspond to that section;

is acting in the management of the incorporated legal practice.

(4) If a corporation is disqualified under this section, the Society must, as soon as practicable, notify the Regulator of every other jurisdiction.

(5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Society may decide that the corporation is taken to be disqualified from providing legal services in this jurisdiction for the same period, but nothing in this subsection prevents the Society from instead applying for an order under this section.

(6) A corporation is guilty of an offence if it provides legal services in contravention of an order under this section.

Maximum penalty: 500 penalty units.

(7) A corporation that is disqualified under this section ceases to be an incorporated legal practice.

(8) Conduct of an Australian legal practitioner who provides legal services on behalf of a corporation in the capacity of an officer or employee of the corporation is capable of constituting unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the corporation is disqualified under this section.

(9) The regulations may make provision for or with respect to the publication and notification of orders made under this section, including notification of appropriate authorities of other jurisdictions.

140 Disqualification from managing incorporated legal practice

(1) The Supreme Court may, on the application of the Law Society, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate if satisfied:

(a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the Corporations Act from managing corporations; and

(b) the disqualification is justified.

(2) The Court may, on the application of a person subject to a disqualification order under this section, revoke the order.

(3) A disqualification order made under this section has effect for the purposes only of this Act and does not affect the application or operation of the Corporations Act.

(4) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

(5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this section is taken to be disqualified from managing a corporation under this section.

141 Disclosure of information to ASIC

(1) This section applies if the Law Society, in connection with exercising powers or performing functions under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.

(2) The Society may disclose to the Australian Securities and Investments Commission information concerning the corporation that is relevant to the Commission's functions.

(3) Information may be provided under subsection (2) despite any law relating to secrecy or confidentiality, including any provisions of this Act.

142 External administration proceedings under Corporations Act

(1) This section applies to proceedings in any court under Chapter 5 of the Corporations Act:

(a) relating to a corporation that is an externally-administered body corporate under that Act; or

(b) relating to a corporation becoming an externally-administered body corporate under that Act;

being a corporation that is or was an incorporated legal practice.

(2) The Law Society is entitled to intervene in the proceedings, unless the court decides the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.

(4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of the Corporations Act.

(5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note for subsection (5)

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

143 External administration proceedings under other legislation

(1) This section applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which section 142 applies.

(2) The Law Society is entitled to intervene in the proceedings, unless the court decides the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.

(4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applicable to the incorporated legal practice.

144 Incorporated legal practice subject to receivership under this Act and external administration under Corporations Act

(1) This section applies if an incorporated legal practice is the subject of both:

(a) the appointment of a Chapter 5 receiver; and

(b) the appointment of a Corporations Act administrator.

(2) The Chapter 5 receiver is under a duty to notify the Corporations Act administrator of the appointment of the Chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.

(3) The Chapter 5 receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except where proceedings referred to in section 142 have been commenced.

(4) The Court may make the order it considers appropriate, and no liability attaches to the Chapter 5 receiver or Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for carrying out or acting under the order.

(5) The Law Society is entitled to intervene in the proceedings, unless the Court decides the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

(7) In this section:

Chapter 5 receiver means a receiver appointed under Chapter 5.

Corporations Act administrator means:

(a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or

(b) a person who:

(i) is appointed to exercise powers under that Act; and

(ii) is prescribed, or of a class prescribed, by the regulations.

145 Incorporated legal practice subject to receivership under this Act and external administration under other legislation

(1) This section applies if an incorporated legal practice is the subject of both:

(a) the appointment of a Chapter 5 receiver; and

(b) the appointment of an external administrator.

(2) The Chapter 5 receiver is under a duty to notify the external administrator of the appointment of the Chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.

(3) The Chapter 5 receiver or the external administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers.

(4) The Court may make the order it considers appropriate, and no liability attaches to the Chapter 5 receiver or external administrator for any act or omission done by the receiver or administrator in good faith for carrying out or acting under the order.

(5) The Law Society is entitled to intervene in the proceedings, unless the Court decides the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(6) In this section:

Chapter 5 receiver means a receiver appointed under Chapter 5.

external administrator means a person who:

(a) is appointed to exercise powers under other legislation (whether or not of this jurisdiction); and

(b) is prescribed, or of a class prescribed, by the regulations.

146 Cooperation between courts

Courts of this jurisdiction may make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this Part.

147 Relationship of Act to constitution of incorporated legal practice

The provisions of this Act that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.

148 Relationship of Act to legislation establishing incorporated legal practice

(1) This section applies to a corporation that is established by or under a law (whether or not of this jurisdiction) and is an incorporated legal practice, but is not a company within the meaning of the Corporations Act.

(2) The provisions of this Act or the regulations that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over provisions of the legislation by or under which the corporation is established or regulated that are specified or described in the regulations.

149 Relationship of Act to Corporations legislation

(1) The regulations may declare any provision of this Act that relates to an incorporated legal practice to be a Corporations legislation displacement provision for section 5G of the Corporations Act.

(2) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act to be an excluded matter for section 5F of the Corporations Act in relation to:

(a) the whole of the Corporations legislation; or

(b) a specified provision of the Corporations legislation; or

(c) the Corporations legislation other than a specified provision; or

(d) the Corporations legislation otherwise than to a specified extent.

(3) In this section:

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

150 Undue influence

A person is guilty of an offence if:

(a) the person causes or induces another person to contravene this Act or his or her professional obligations as an Australian legal practitioner; and

(b) the other person is:

(i) a legal practitioner director of an incorporated legal practice; or

(ii) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

Division 3 Multi-disciplinary partnerships

151 Nature of multi-disciplinary partnership

(1) A multi-disciplinary partnership is a partnership between one or more Australian legal practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services.

(2) However, a partnership consisting only of one or more Australian legal practitioners and one or more Australian-registered foreign lawyers is not a multi-disciplinary partnership.

(3) Nothing in this Part affects or applies to the provision by a multi-disciplinary partnership of legal services in one or more other jurisdictions.

152 Conduct of multi-disciplinary partnerships

(1) An Australian legal practitioner may be in partnership with a person who is not an Australian legal practitioner, where the business of the partnership includes the provision of legal services.

(2) Subsection (1) does not prevent an Australian legal practitioner from being in partnership with a person who is not an Australian legal practitioner, where the business of the partnership does not include the provision of legal services.

(3) The regulations may prohibit an Australian legal practitioner from being in partnership with a person providing a service or conducting a business of a kind specified in the regulations, where the business of the partnership includes the provision of legal services.

153 Notice of intention to start practice in multi-disciplinary partnership

(1) A person is guilty of an offence if:

(a) the person is a legal practitioner partner of a multi-disciplinary partnership; and

(b) the person starts to provide legal services in this jurisdiction as a member of the partnership; and

(c) the person has not given the Law Society written notice, in the approved form, of the person's intention to start providing legal services.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

154 General obligations of legal practitioner partners

(1) Each legal practitioner partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in this jurisdiction by the partnership.

(2) Each legal practitioner partner must ensure appropriate management systems are implemented and maintained to enable the provision of legal services by the multi-disciplinary partnership:

(a) in accordance with the professional obligations of Australian legal practitioners and the other obligations imposed by this Act; and

(b) so that the professional obligations of legal practitioner partners and employees who are Australian legal practitioners are not affected by other partners and employees of the partnership.

155 Obligations of legal practitioner partner relating to misconduct

(1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner partner:

(a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the multi-disciplinary partnership;

(b) conduct of any other partner (not being an Australian legal practitioner) of the multi-disciplinary partnership that adversely affects the provision of legal services by the partnership;

(c) the unsuitability of any other partner (not being an Australian legal practitioner) of the multi-disciplinary partnership to be a member of a partnership that provides legal services.

(2) A legal practitioner partner of a multi-disciplinary partnership must ensure all reasonable action available to the legal practitioner partner is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the partnership.

156 Actions of partner who is not Australian legal practitioner

A partner of a multi-disciplinary partnership who is not an Australian legal practitioner does not contravene a provision of this Act merely because of any of the following:

(a) the partner is a member of a partnership where the business of the partnership includes the provision of legal services;

(b) the partner receives any fee, gain or reward for business of the partnership that is the business of an Australian legal practitioner;

(c) the partner holds out, advertises or represents himself or herself as a member of a partnership where the business of the partnership includes the provision of legal services;

(d) the partner shares with any other partner the receipts of business of the partnership that is the business of an Australian legal practitioner;

unless the provision expressly applies to a partner of a multi-disciplinary partnership who is not an Australian legal practitioner.

157 Obligations and privileges of practitioners who are partners or employees

(1) An Australian legal practitioner who provides legal services in the capacity of a partner or an employee of a multi-disciplinary partnership:

(a) is not excused from compliance with professional obligations as an Australian legal practitioner, or any other obligations as an Australian legal practitioner under any law; and

(b) does not lose the professional privileges of an Australian legal practitioner.

(2) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of a partner or an employee of a multi-disciplinary partnership.

158 Conflicts of interest

(1) For the application of any law (including the common law) or legal profession rules relating to conflicts of interest to the conduct of an Australian legal practitioner who is:

(a) a legal practitioner partner of a multi-disciplinary partnership; or

(b) an employee of a multi-disciplinary partnership;

the interests of the partnership or any partner of the multi-disciplinary partnership are also taken to be those of the practitioner concerned (in addition to any interests that the practitioner has apart from this subsection).

(2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of a multi-disciplinary partnership.

Note for section 158

Under section 157, an Australian legal practitioner who is a partner of an multi-disciplinary partnership must comply with the same professional obligations as other practitioners.

159 Disclosure obligations

(1) A person (the ***legal practitioner***) is guilty of an offence if:

(a) someone else (the ***client***) engages a multi-disciplinary partnership to provide services (the ***required services***) that the client might reasonably assume to be legal services; and

(b) the legal practitioner is:

(i) a legal practitioner partner of the partnership; or

(ii) an employee of the partnership who is an Australian legal practitioner and provides the required services on behalf of the partnership; and

(c) the legal practitioner fails to ensure a disclosure, complying with the requirements of this section and regulations made for this section, is made to the client in relation to the provision of the required services.

Maximum penalty: 100 penalty units.

(2) The disclosure must be made by giving the person written notice:

(a) specifying the services to be provided; and

(b) specifying whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and

(c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner – identifying those services and indicating the status or qualifications of the person or persons who will provide the services; and

(d) specifying that this Act applies to the provision of legal services but not to the provision of the non-legal services.

Example for subsection (2)(c)

A conveyancing agent as defined in the Agents Licensing Act.

(3) The regulations may make provision for or with respect to any of the following:

(a) the way in which disclosure is to be made;

(b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by a multi-disciplinary partnership.

(4) Without limiting subsection (3), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether the services are or are not covered by the insurance or other provisions of this Act.

(5) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion or on an on-going basis.

160 Effect of non-disclosure of provision of certain services

(1) This section applies if:

(a) section 159 applies in relation to a service that is provided to a person who has engaged a multi-disciplinary partnership to provide the service and that the person might reasonably assume to be a legal service; and

(b) a disclosure has not been made under that section in relation to the service.

(2) The standard of care owed by the multi-disciplinary partnership in respect of the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

161 Application of legal profession rules

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are legal practitioner partners or employees of a multi-disciplinary partnership, unless the rules otherwise provide.

162 Requirements relating to advertising

(1) Any restriction imposed by or under this Act or any other Act, the regulations or legal profession rules in connection with advertising by Australian legal practitioners applies to advertising by a multi-disciplinary partnership with respect to the provision of legal services.

(2) If a restriction referred to in subsection (1) is limited to a particular branch of the legal profession or for persons who practise in a particular style of legal practice, the restriction applies only to the extent that the multi-disciplinary partnership carries on the business of the relevant class of Australian legal practitioners.

(3) An advertisement of the kind referred to in this section is, for disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner partner of the multi-disciplinary partnership.

(4) This section does not apply if the provision by which the restriction is imposed expressly excludes its applications to multi-disciplinary partnerships.

163 Sharing of receipts, revenue or other income

(1) Nothing in this Act prevents a legal practitioner partner, or an Australian legal practitioner who is an employee of a multi disciplinary partnership, from sharing receipts, revenue or other income arising from the provision of legal services by the partner or practitioner with a partner or partners who are not Australian legal practitioners.

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 164 and has effect subject to section 74.

164 Disqualified persons

A legal practitioner partner of a multi-disciplinary partnership is guilty of an offence if the partner knowingly:

(a) is a partner of a disqualified person in the partnership; or

(b) shares with a disqualified person the receipts, revenue or other income arising from the provision of legal services by the partnership; or

(c) employs or pays a disqualified person in connection with the provision of legal services by the partnership.

Maximum penalty: 500 penalty units.

165 Prohibition on partnerships with certain partners who are not Australian legal practitioners

(1) This section applies to a person who:

(a) is not an Australian legal practitioner; and

(b) is or was a partner of an Australian legal practitioner.

(2) On application by the Law Society, the Supreme Court may make an order prohibiting any Australian legal practitioner from being a partner, in a business that includes the provision of legal services, of a specified person to whom this section applies if:

(a) the Court is satisfied the person is not a fit and proper person to be a partner; or

(b) the Court is satisfied the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct; or

(c) in the case of a corporation – the Court is satisfied the corporation has been disqualified from providing legal services in this jurisdiction or there are grounds for disqualifying the corporation from providing legal services in this jurisdiction.

(3) An order made under this section may be revoked by the Court on application by the Society or by the person against whom the order was made.

(4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.

(5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

166 Undue influence

A person is guilty of an offence if:

(a) the person causes or induces another person to contravene this Act or his or her professional obligations as an Australian legal practitioner; and

(b) the other person is:

(i) a legal practitioner partner of a multi-disciplinary partnership; or

(ii) another Australian legal practitioner who is an employee of a multi-disciplinary partnership and provides legal services.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

Division 4 Miscellaneous matters

167 Obligations of individual practitioners not affected

Except as provided by this Part, nothing in this Part affects any obligation imposed on:

(a) a legal practitioner director or an Australian legal practitioner who is an employee of an incorporated legal practice; or

(b) a legal practitioner partner or an Australian legal practitioner who is an employee of a multi-disciplinary partnership;

under this Act or any other Act in his or her capacity as an Australian legal practitioner.

168 Regulations

(1) The regulations may make provision for or with respect to any of the following matters:

(a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships;

(b) other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.

(2) A regulation prevails over any inconsistent provision of the legal profession rules.

(3) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct:

(a) in the case of an incorporated legal practice – by a legal practitioner director, or by an Australian legal practitioner responsible for the breach, or both; or

(b) in the case of a multi-disciplinary partnership – by a legal practitioner partner, or by an Australian legal practitioner responsible for the breach, or both.

Part 2.7 Legal practice by foreign lawyers

Division 1 Preliminary matters

169 Purpose

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

170 Definitions

In this Part:

Australia includes the external Territories.

Australian law means law of the Commonwealth or of a jurisdiction.

foreign law means law of a foreign country.

foreign law practice means a partnership or corporate entity that is entitled to engage in legal practice in a foreign country.

foreign registration authority means an entity in a foreign country having the function, conferred by the law of the foreign country, of registering persons to engage in legal practice in the country.

local registration certificate means a registration certificate given under this Part.

overseas-registered foreign lawyer means an individual who is properly registered to engage in legal practice in a foreign country by the foreign registration authority for the country.

practise foreign law means doing work, or transacting business, in this jurisdiction concerning foreign law, being work or business of a kind that, if it concerned the law of this jurisdiction, would ordinarily be done or transacted by an Australian legal practitioner.

registered, when used in connection with a foreign country, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required by or under legislation for engaging in legal practice in the country.

171 Part does not apply to Australian legal practitioners

(1) This Part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer).

(2) Accordingly, nothing in this Part requires or enables an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer) to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.

Division 2 Practice of foreign law

172 Requirement for registration

(1) A person is guilty of an offence if:

(a) the person practises foreign law in this jurisdiction; and

(b) the person is not;

(i) an Australian-registered foreign lawyer; or

(ii) an Australian legal practitioner.

Maximum penalty: 500 penalty units.

(2) Subsection (1) does not apply to an overseas-registered foreign lawyer:

(a) who:

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

(ii) is subject to a restriction imposed under the *Migration Act 1958* (Cth) that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and

(b) who:

(i) does not maintain an office for practising foreign law in this jurisdiction; or

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

173 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

174 Scope of practice

(1) An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction:

(a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered by the foreign registration authority for the country;

(b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed by the regulations;

(c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is essential;

(d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed by the regulations.

(2) Nothing in this Act authorises an Australian-registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practise Australian law in this jurisdiction.

(3) Despite subsection (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if:

(a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and

(b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

175 Form of practice

(1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law:

(a) on the foreign lawyer's own account; or

(b) in partnership with one or more Australian-registered foreign lawyers or one or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or

(c) as a director or employee of an incorporated legal practice or a partner or employee of a multi-disciplinary partnership that is permitted by a law of this jurisdiction; or

(d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or

(e) as an employee of an Australian-registered foreign lawyer.

(2) An affiliation referred to in subsection (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

176 Application of Australian professional ethical and practice standards

(1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.

(2) Chapter 4 applies to a person who:

(a) is an Australian-registered foreign lawyer; or

(b) was an Australian-registered foreign lawyer when the relevant conduct allegedly occurred, but is no longer an Australian-registered foreign lawyer (in which case Chapter 4 applies as if the person were an Australian-registered foreign lawyer);

and so applies as if references in Chapter 4 to an Australian legal practitioner were references to a person of that kind.

(3) The regulations may make provision for or with respect to the application (with or without modifications) of the provisions of Chapter 4 for this section.

(4) Without limiting the matters that may be taken into account in deciding whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account:

(a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;

(b) whether the person contravened the subsection intentionally or without reasonable excuse.

(5) Without limiting any other provision of this section or the orders that may be made under Chapter 4 as applied by this section, the following orders may be made under that Chapter as applied by this section:

(a) an order that a person's registration under this Act as a foreign lawyer be cancelled;

(b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

177 Designation

(1) An Australian-registered foreign lawyer may use only the following designations:

(a) the lawyer's own name;

(b) a title or business name the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;

(c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);

(d) if the lawyer is a principal of any law practice in Australia whose principals include both one or more Australian-registered foreign lawyers and one or more Australian legal practitioners – a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, "Solicitors and locally-registered foreign lawyers" or "Australian solicitors and US attorneys").

(2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in connection with practising foreign law in this jurisdiction only if:

(a) the lawyer indicates, on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and

(b) the lawyer has provided the Law Society with acceptable evidence that the lawyer is a principal of the foreign law practice.

(3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as referred to in this section whether or not other principals of the practice are Australian-registered foreign lawyers.

(4) This section does not authorise the use of a name or other designation that contravenes any requirements of the law of this jurisdiction concerning the use of business names or that is likely to lead to any confusion with the name of any established domestic law practice or foreign law practice in this jurisdiction.

178 Letterhead and other identifying documents

(1) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.

(2) Subsection (1) is satisfied if the lawyer includes in the public document the words:

(a) "registered foreign lawyer" or "registered foreign practitioner"; and

(b) "entitled to practise foreign law only".

(3) An Australian-registered foreign lawyer may (but need not) include any or all of the following on any public document:

(a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;

(b) a description of himself or herself, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in section 177.

(4) In this section:

public document includes any business letter, statement of account, invoice, business card and promotional and advertising material.

179 Advertising

(1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the Law Society or by law on legal practice engaged in by an Australian legal practitioner that are relevant to the practice of law engaged in this jurisdiction.

(2) Without limiting subsection (1), an Australian-registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as a lawyer) in any way that:

(a) might reasonably be regarded as:

(i) false, misleading or deceptive; or

(ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner; or

(b) contravenes any requirements of the regulations.

180 Foreign lawyer employing Australian legal practitioner

(1) An Australian-registered foreign lawyer may employ one or more Australian legal practitioners.

(2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

(3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.

(4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not:

(a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer; or

(b) otherwise practise Australian law in this jurisdiction in the course of that employment.

(5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least one other partner is an Australian legal practitioner.

(6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

181 Trust money and trust accounts

(1) The provisions of Part 3.1, and any other provisions of this Act, relating to requirements for trust money and trust accounts, apply (subject to this section) to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners.

(2) In this section, a reference to money is not limited to a reference to money in this jurisdiction.

(3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act relating to trust money and trust accounts for this section.

182 Professional Indemnity insurance

(1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with one of the following:

(a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;

(b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) – the foreign lawyer:

(i) must have professional indemnity insurance that covers the practice of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and

(ii) if the insurance is for less than $1.5 million (inclusive of defence costs) – must provide a disclosure statement to each client disclosing the level of cover;

(c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b) – the foreign lawyer must provide a disclosure statement to each client specifying the lawyer does not have complying professional indemnity insurance.

(2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.

(3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for this section.

(4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

183 Fidelity cover

The regulations may provide that provisions of Part 3.5 apply to classes of Australian-registered foreign lawyers prescribed by the regulations and so apply with any modifications specified in the regulations.

Division 3 Local registration of foreign lawyers generally

184 Local registration of foreign lawyers

Overseas-registered foreign lawyers may be registered as foreign lawyers under this Act.

185 Duration of registration

(1) Registration as a foreign lawyer granted under this Act is in force from the day specified in the local registration certificate until the end of the financial year in which it is granted, unless the registration is sooner suspended or cancelled.

(2) Registration as a foreign lawyer renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the registration is sooner suspended or cancelled.

(3) If an application for the renewal of registration as a foreign lawyer has not been decided by the following 1 July, the registration:

(a) continues in force on and from that 1 July until the Law Society renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and

(b) if renewed, is taken to have been renewed on and from that 1 July.

186 Locally-registered foreign lawyer is not officer of Supreme Court

A locally-registered foreign lawyer is not an officer of the Supreme Court.

Division 4 Applications for grant or renewal of local registration

187 Application for grant or renewal of registration

An overseas-registered foreign lawyer may apply to the Law Society for the grant or renewal of registration as a foreign lawyer under this Act.

188 Manner of application

(1) An application for the grant or renewal of registration as a foreign lawyer must be:

(a) made in the approved form; and

(b) accompanied by the fee prescribed by the regulations.

(2) Different fees may be set according to different factors.

(3) The fees must not be greater than the maximum fees for a local practising certificate.

(4) The Society may also require the applicant to pay any reasonable costs and expenses incurred by the Society 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.

(5) The fees and costs must not include any component for compulsory membership of any professional association.

(6) The approved form may require the applicant to disclose:

(a) matters that may affect the Society's consideration of the application for the grant or renewal of registration; and

(b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.

(7) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.

(8) The approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

189 Requirements regarding applications for grant or renewal of registration

(1) An application for grant of registration must specify the applicant's educational and professional qualifications.

(2) An application for grant or renewal of registration must:

(a) specify that the applicant is registered to engage in legal practice by one or more specified foreign registration authorities in one or more foreign countries; and

(b) specify that the applicant is not an Australian legal practitioner; and

(c) specify that the applicant is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the applicant's capacity as:

(i) an overseas-registered foreign lawyer; or

(ii) an Australian-registered foreign lawyer; or

(iii) an Australian lawyer; and

(d) specify whether the applicant has been convicted of an offence in Australia or a foreign country and if so:

(i) the nature of the offence; and

(ii) how long ago the offence was committed; and

(iii) the applicant's age when the offence was committed; and

(e) specify that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and

(f) specify:

(i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and

(ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place;

as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and

(g) specify any special conditions imposed in Australia or a foreign country as a restriction on legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and

(h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities the Law Society considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and

(i) specify which of the paragraphs of section 182(1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and

(j) provide the information or be accompanied by the other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the Society.

(3) The application must (if the Society so requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that:

(a) verifies the applicant's educational and professional qualifications; and

(b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned and the date of registration; and

(c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.

(4) The applicant must (if the Society so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.

(5) The Society may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the Society.

(6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Society.

Division 5 Grant or renewal of registration

190 Grant or renewal of registration

(1) The Law Society must consider an application that has been made for the grant or renewal of registration as a foreign lawyer and may:

(a) grant or refuse to grant the registration; or

(b) renew or refuse to renew the registration.

(2) The Society may, when granting or renewing registration, impose conditions as referred to in section 210.

(3) If the Society grants or renews registration, it must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.

(4) If the Society:

(a) refuses to grant or renew registration; or

(b) imposes a condition of the registration and the applicant does not agree to the condition;

the Society must, as soon as practicable, give the applicant an information notice.

(5) A notice of renewal may be in the form of a new registration certificate or any other form the Society considers appropriate.

191 Requirement to grant or renew registration if criteria satisfied

(1) The Law Society must grant an application for registration as a foreign lawyer if the Society:

(a) is satisfied the applicant is registered to engage in legal practice in one or more foreign countries and is not an Australian legal practitioner; and

(b) considers an effective system exists for regulating engaging in legal practice in one or more of the foreign countries; and

(c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to:

(i) any special conditions in engaging in legal practice in any of the foreign countries; or

(ii) any undertakings concerning engaging in legal practice in any of the foreign countries;

that would make it inappropriate to register the person; and

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

unless the Society refuses the application under this Part.

(2) The Society must grant an application for renewal of a person's registration, unless the Society refuses renewal under this Part.

(3) Residence or domicile in this jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant or renewal of registration.

192 Refusal to grant or renew registration

(1) The Law Society may refuse to consider an application if:

(a) it is not made in accordance with this Act; or

(b) the fee prescribed by the regulations and costs have not been paid.

(2) The Society may refuse to grant or renew registration if:

(a) the application is not accompanied by, or does not contain, the information required by this Part or prescribed by the regulations; or

(b) the applicant has contravened this Act or a corresponding law; or

(c) the applicant has contravened an order of the Disciplinary Tribunal or a corresponding disciplinary body, including but not limited to an order to pay any fine or costs; or

(d) the applicant has contravened an order of a regulatory authority of any jurisdiction to pay any fine or costs; or

(e) the applicant has failed to comply with a requirement under this Act to pay a contribution to, or levy for, the Fidelity Fund; or

(f) the applicant has contravened a requirement of or made under this Act about professional indemnity insurance; or

(g) the applicant has failed to pay any expenses of receivership payable under this Act; or

(h) the applicant's foreign legal practice is in receivership (however described).

(3) The Society may refuse to grant or renew registration if an authority of another jurisdiction has under a corresponding law:

(a) refused to grant or renew registration for the applicant; or

(b) suspended or cancelled the applicant's registration.

(4) The Society may refuse to grant registration if it is satisfied the applicant is not a fit and proper person to be registered after considering:

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section; and

(b) how long ago the offence was committed; and

(c) the person's age when the offence was committed.

(5) The Society may refuse to renew registration if it is satisfied the applicant is not a fit and proper person to continue to be registered after considering:

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section, other than an offence disclosed in a previous application to the Society; and

(b) how long ago the offence was committed; and

(c) the person's age when the offence was committed.

(6) The Society may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.

(7) If the Society refuses to grant or renew registration, the Society must, as soon as practicable, give the applicant an information notice.

(8) Nothing in this section affects the operation of Division 7.

Division 6 Amendment, suspension or cancellation of local registration

193 Application of this Division

This Division does not apply in relation to matters referred to in Division 7.

194 Grounds for amending, suspending or cancelling registration

(1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer:

(a) the registration was obtained because of incorrect or misleading information;

(b) the person contravenes a requirement of this Part;

(c) the person contravenes a condition imposed on the person's registration;

(d) the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the person's capacity as:

(i) an overseas-registered foreign lawyer; or

(ii) an Australian-registered foreign lawyer; or

(iii) an Australian lawyer;

(e) the person is a party in pending criminal or civil proceedings in Australia or a foreign country, or is convicted of an offence, that is likely to result in disciplinary action being taken against the person;

(f) the person's registration is cancelled or currently suspended in any place because of disciplinary action in Australia or a foreign country;

(g) the person does not meet the requirements of section 182;

(h) the person has become an insolvent under administration;

(i) another ground the Law Society considers sufficient.

(2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 210.

195 Amending, suspending or cancelling registration

(1) If the Law Society considers reasonable grounds exist to amend, suspend or cancel a person's registration by it as a foreign lawyer (the ***action***), the Society must give the person a notice that:

(a) specifies the action proposed and:

(i) if the proposed action is to amend the registration in any way – specifies the proposed amendment; and

(ii) if the proposed action is to suspend the registration – specifies the proposed suspension period; and

(b) specifies the grounds for proposing to take the action; and

(c) outlines the facts and circumstances that form the basis for the Society's belief; and

(d) invites the person to make written representations to the Society, within a specified time not less than 7 days and not more than 28 days, as to why the action proposed should not be taken.

(2) If, after considering all written representations made within the specified time, the Society still believes grounds exist to take the action, the Society may:

(a) if the notice specified the action proposed was to amend the registration – amend the registration in the way specified or in another way the Society considers appropriate in the light of the representations; or

(b) if the notice specified the action proposed was to suspend the registration for a specified period – suspend the registration for a period no longer than the specified period; or

(c) if the notice specified the action proposed was to cancel the registration:

(i) cancel the registration; or

(ii) suspend the registration for a period; or

(iii) amend the registration in a less onerous way the Society considers appropriate because of the representations.

(3) The Society may, at its discretion, consider representations made after the specified time.

(4) The Society must give the person notice of the Society's decision.

(5) If the Society amends, suspends or cancels the registration, the Society must give the person an information notice.

(6) In this section:

amend, registration, means amend the registration by imposing a condition under section 216 during its currency, otherwise than at the request of the foreign lawyer concerned.

196 Operation of amendment, suspension or cancellation of registration

(1) This section applies if a decision is made to amend, suspend or cancel a person's registration under section 195.

(2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the registration takes effect on the later of the following:

(a) the day notice of the decision is given to the person;

(b) the day specified in the notice.

(3) If the registration is amended, suspended or cancelled because the person has been convicted of an offence:

(a) the Supreme Court may, on the application of the person, order that the operation of the amendment, suspension or cancellation of the registration be stayed until:

(i) the end of the time to appeal against the conviction; and

(ii) if an appeal is made against the conviction – the appeal is finally decided, lapses or otherwise ends; and

(b) the amendment, suspension or cancellation does not have effect during any period in relation to which the stay is in force.

(4) If the registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed:

(a) the amendment or suspension ceases to have effect when the conviction is quashed; or

(b) the cancellation ceases to have effect when the conviction is quashed and the registration is restored as if it had merely been suspended.

197 Other ways of amending or cancelling registration

(1) The Law Society may amend or cancel the registration of a locally-registered foreign lawyer if the lawyer requests the Society to do so.

(2) The Society may amend the registration of a locally-registered foreign lawyer:

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the lawyer's interests.

(3) The amendment or cancellation of a registration under this section must be effected by written notice given to the foreign lawyer.

(4) Section 195 does not apply in a case to which this section applies.

198 Relationship of this Division with Chapter 4

Nothing in this Division prevents a complaint being made under Chapter 4 about a matter to which this Division relates.

Division 7 Special powers in relation to local registration show cause events

199 Applicant for local registration – show cause event

(1) This section applies if:

(a) a person is applying for registration as a foreign lawyer under this Act; and

(b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.

(2) As part of the application, the person must give the Law Society a written statement, in accordance with the regulations:

(a) about the show cause event; and

(b) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to be a locally-registered foreign lawyer.

(3) However, the person need not provide a statement under subsection (2) if the person has previously provided to the Society a statement under this section, or a notice and statement under section 200, explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally-registered foreign lawyer.

200 Locally-registered foreign lawyer – show cause event

(1) This section applies to a show cause event that happens in relation to a locally-registered foreign lawyer.

(2) The locally-registered foreign lawyer must provide to the Law Society both of the following:

(a) within 7 days after the happening of the event – notice, in the approved form, that the event happened;

(b) within 28 days after the happening of the event – a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally-registered foreign lawyer.

(3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Society may accept the statement and take it into consideration.

201 Refusal, amendment, suspension or cancellation of local registration – failure to show cause

(1) The Law Society may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally-registered foreign lawyer:

(a) is required by section 199 or 200 to give a written statement relating to a matter and has failed to comply with the requirement; or

(b) has given a written statement under section 199 or 200 but the Society does not consider the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, the applicant or lawyer is a fit and proper person to be a locally-registered foreign lawyer.

(2) For this section only, a written statement accepted by the Society under section 200(3) is taken to have been given under section 200.

(3) The Society must give the applicant or foreign lawyer an information notice for the decision to refuse to grant or renew, or to suspend or cancel, the registration.

202 Restriction on making further applications

(1) If the Law Society decides under this Division to cancel a person's registration, the Society may also decide that the person is not entitled to apply for registration under this Part for a specified period (being a period not exceeding 5 years).

(2) A person for whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this Part during the period specified in the decision.

(3) As soon as practicable after making a decision under this section, the Society must give the person an information notice for the decision.

203 Relationship of this Division with Part 46 and Chapter 6

(1) The Law Society has and may exercise powers under Part 4.6 and Chapter 6, in relation to a matter under this Division, as if the matter were the subject of a complaint under Chapter 4.

(2) Accordingly, the provisions of Part 4.6 and Chapter 6 apply (with the necessary modifications) in relation to a matter under this Division.

(3) Nothing in this Division prevents a complaint being made under Chapter 4 about a matter to which this Division relates.

Division 8 Further provisions relating to local registration

204 Immediate suspension of registration

(1) This section applies, despite sections 195 and 196 if the Law Society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.

(2) The Society may, by written notice given to the person, immediately suspend the registration until the earlier of the following:

(a) the time at which the Society informs the person of the Society's decision by notice under section 195;

(b) the end of the period of 56 days after the notice is given to the person under this section.

(3) The notice under this section must:

(a) include an information notice about the suspension; and

(b) specify that the person may make written representations to the Society about the suspension.

(4) The person may make written representations to the Society about the suspension, and the Society must consider the representations.

(5) The Society may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.

205 Surrender of local registration certificate and cancellation of registration

(1) A person registered as a foreign lawyer under this Part may surrender the local registration certificate to the Law Society.

(2) The Society may cancel the registration.

206 Automatic cancellation of registration on grant of practising certificate

A person's registration as a foreign lawyer under this Part is taken to be cancelled if the person becomes an Australian legal practitioner.

207 Suspension or cancellation of registration not to affect disciplinary processes

The suspension or cancellation of a person's registration as a foreign lawyer under this Part does not affect any disciplinary processes in relation to matters arising before the suspension or cancellation.

208 Return of local registration certificate on amendment, suspension or cancellation of registration

(1) This section applies if a person's registration under this Part as a foreign lawyer is amended, suspended or cancelled.

(2) The Law Society may give the person a notice requiring the person to return the certificate to the Society in the way specified in the notice within a specified period of not less than 14 days.

(3) The person must comply with the notice.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the person has a reasonable excuse.

(5) An offence against subsection (3) is an offence of strict liability.

(6) If the certificate is amended, the Society must return the certificate to the person as soon as practicable after amending it.

Division 9 Conditions on registration

209 Conditions generally

Registration as a foreign lawyer under this Part is subject to:

(a) any conditions imposed by the Law Society; and

(b) any statutory conditions imposed by this or any other Act; and

(c) any conditions imposed by or under the legal profession rules; and

(d) any conditions imposed under Chapter 4 or under provisions of a corresponding law that correspond to Chapter 4.

210 Conditions imposed by Law Society

(1) The Law Society may impose conditions on registration as a foreign lawyer:

(a) when it is granted or renewed; or

(b) during its currency.

(2) A condition imposed under this section must be reasonable and relevant.

(3) A condition imposed under this section may be about any of the following:

(a) any matter in relation to which a condition could be imposed on a local practising certificate;

(b) a matter agreed to by the foreign lawyer.

(4) The Society must not impose a condition under subsection (3)(a) that is more onerous than a condition that would be imposed on a local practising certificate of a local legal practitioner in the same or similar circumstances.

(5) The Society may vary or revoke conditions imposed by it under this section.

211 Imposition or variation of conditions pending criminal proceedings

(1) If a person registered as a foreign lawyer under this Part has been charged with a relevant offence but the charge has not been decided, the Law Society may apply to the Disciplinary Tribunal for an order under this section.

(2) On an application under subsection (1), the Tribunal, if it considers it appropriate to do so having regard to the seriousness of the offence and to the public interest, may make either or both of the following orders:

(a) an order varying the conditions on the practitioner's registration;

(b) an order imposing further conditions on the practitioner's registration.

(3) An order under this section has effect until the sooner of:

(a) the end of the period specified by the Tribunal; or

(b) if the practitioner is convicted of the offence – 28 days after the day of the conviction; or

(c) if the charge is dismissed – the day of the dismissal.

(4) The Tribunal, on application by any party, may vary or revoke an order under this section at any time.

(5) In this section:

relevant offence means a serious offence or an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act.

212 Statutory condition regarding notice of offence

(1) It is a statutory condition of registration as a foreign lawyer that the lawyer:

(a) must give written notice to the Law Society that the lawyer has been:

(i) convicted of an offence that would have to be disclosed in relation to an application for registration as a foreign lawyer under this Act; or

(ii) charged with a serious offence; and

(b) must do so within 7 days after the event.

(2) The legal profession rules may specify:

(a) the particulars to be included in the notice; and

(b) the person to whom or the address to which the notice is to be sent or delivered.

(3) This section does not apply to an offence to which Division 7 applies.

213 Conditions imposed by legal profession rules

The regulations may:

(a) impose conditions on the registration of foreign lawyers or any class of foreign lawyers; or

(b) authorise conditions to be imposed on the registration of foreign lawyers or any class of foreign lawyers.

214 Compliance with conditions

A locally-registered foreign lawyer must not contravene a condition to which the registration is subject.

Maximum penalty: 500 penalty units.

Division 10 Interstate-registered foreign lawyers

215 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction

(1) This Part does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally-registered foreign lawyer could be authorised under a local registration certificate.

(2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction:

(a) is subject to:

(i) any conditions imposed by the Law Society under section 216; and

(ii) any conditions imposed by or under the legal profession rules as referred to in that section; and

(b) is, to the greatest practicable extent and with all necessary modifications:

(i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and

(ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that are, in the opinion of the Society, more onerous prevail to the extent of the inconsistency.

(4) An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a way not authorised by this Act or in contravention of any condition referred to in this section.

216 Additional conditions on practice of interstate-registered foreign lawyers

(1) The Law Society may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally-registered foreign lawyer.

(2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.

(3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to locally-registered foreign lawyers in the same or similar circumstances.

(4) A notice under this section must include an information notice for the decision to impose a condition.

Division 11 Miscellaneous matters

217 Consideration and investigation of applicants and locally-registered foreign lawyers

(1) To help it consider whether or not to grant, renew, suspend or cancel registration under this Part, or impose conditions on a person's registration under this Part, the Law Society may, by notice to the applicant or locally-registered foreign lawyer, require the applicant or lawyer:

(a) to give it specified documents or information; or

(b) to cooperate with any inquiries it considers appropriate.

(2) A failure to comply with the notice by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the Society.

218 Register of locally-registered foreign lawyers

(1) The Law Society must keep a register of the names of locally-registered foreign lawyers.

(2) The register must:

(a) specify the conditions (if any) imposed on a foreign lawyer's registration; and

(b) include other particulars prescribed by the regulations.

(3) The register may be kept in the way the Society decides.

(4) The register must be available for inspection, without charge, at the Society's office during normal business hours.

219 Publication of information about locally-registered foreign lawyers

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

220 Supreme Court orders about conditions

(1) The Law Society may apply to the Supreme Court for an order or injunction that an Australian-registered foreign lawyer not contravene a condition imposed under this Part.

(2) An undertaking as to damages or costs is not required.

(3) On hearing the application, the Court may make the order it considers appropriate.

(4) This section does not limit section 700.

221 Exemption by Law Society

(1) The Law Society may exempt an Australian-registered foreign lawyer or class of Australian-registered foreign lawyers from compliance with:

(a) a specified provision of this Act; or

(b) a specified rule or part of a rule that would otherwise apply to the foreign lawyer or class of foreign lawyers.

(2) An exemption may be granted unconditionally or subject to conditions specified in writing.

(3) The Society may revoke or vary any conditions imposed under this section or impose new conditions.

222 Membership of professional association

An Australian-registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

223 Refund of fees

(1) The regulations may provide for the refund of a portion of a fee paid in relation to registration as a foreign lawyer if it is suspended or cancelled during its currency.

(2) Without limiting subsection (1), the regulations may specify:

(a) the circumstances in which a refund must be made; and

(b) the amount of the refund or the way in which the amount of the refund must be decided.

224 Appeals

(1) An aggrieved person may appeal to the Supreme Court against any of the following decisions of the Law Society:

(a) a decision under section 190, 192 or 201 to refuse to grant or renew the registration of a person as a foreign lawyer;

(b) a decision under section 190 to impose a condition on the registration of a person as a foreign lawyer;

(c) a decision under section 216 to impose a condition on an interstate-registered foreign lawyer's practice in this jurisdiction;

(d) a decision under section 202 that the person is not entitled to apply for registration under this Part for a specified period;

(e) a decision under section 195, 201 or 204 to amend, suspend or cancel a person's registration as a foreign lawyer.

(2) An aggrieved person is:

(a) the applicant for registration; or

(b) the locally-registered foreign lawyer or interstate-registered foreign lawyer concerned.

(3) The appeal must be started by filing a notice of appeal within 28 days after receiving the information notice for the decision.

(4) The notice of appeal must state fully the grounds of appeal.

(5) On hearing the appeal, the Court may make the order it considers appropriate.

(6) Except to the extent (if any) that may be ordered by the Court, the filing of an appeal does not stay the effect of the refusal, amendment, suspension or cancellation appealed against.

Part 2.8 Complying community legal centres

225 Purpose of Part

The purpose of this Part is to facilitate the provision of legal services by non-profit bodies corporate for community purposes.

226 Definitions

In this Part:

employ means to employ under a contract of employment or service.

engage means to use the services of, whether or not for reward or remuneration.

supervising legal practitioner, see section 227(d).

227 Complying community legal centre

A body corporate is a complying community legal centre if:

(a) it is funded or expected to be funded to a significant level by donations or grants from government, charitable or other organisations; and

(b) it holds itself out as providing legal services mentioned in paragraph (c), whether or not they are the only services it provides; and

(c) it provides legal services, other than for deriving a profit:

(i) to persons or organisations lacking the financial means to obtain privately funded legal services; or

(ii) to persons or organisations in relation to a legal matter that is expected to raise issues of public interest or to be of general concern to disadvantaged groups in the community; or

(iii) to persons or organisations having a special need because of their location or the nature of the legal matter; or

(iv) to persons having a significant physical or social disability; and

(d) it employs, or under an approval given under section 229, temporarily engages, a qualified legal practitioner who is responsible for the provision of the legal services (the ***supervising legal practitioner***); and

(e) it has given the Society the information and fee prescribed by the regulations.

228 Qualifications of supervising legal practitioner

(1) A legal practitioner is qualified as the supervising legal practitioner of a complying community legal centre if the practitioner is an Australian legal practitioner who holds an unrestricted practising certificate.

(2) A complying community legal centre is not prevented from employing or temporarily engaging as the supervising legal practitioner a person who:

(a) is on the centre's board of management (however described); or

(b) is involved in the centre's management.

229 Temporary engagement of supervising legal practitioner

(1) A complying community legal centre may apply to the Law Society for approval to temporarily engage the legal practitioner named in the application to be the centre's supervising legal practitioner.

(2) The Society may give written approval only if it is satisfied:

(a) the practitioner is an Australian legal practitioner who holds an unrestricted practising certificate; and

(b) it is not practicable for the centre to employ a supervising legal practitioner; and

(c) the person will be able to properly supervise the provision of legal services at the centre; and

(d) the benefits of the temporary engagement to the centre's clients or potential clients will outweigh the disadvantage that would be caused to the clients if the centre were unable to provide legal services.

(3) The approval is for the period, not exceeding 12 weeks, specified in it.

(4) The centre may apply to the Society for further approvals under this section.

(5) If the Society refuses to give an approval under this section it must, as soon as practicable:

(a) publish particulars of the refusal in the *Gazette*; and

(b) give notice of the refusal to the Statutory Supervisor.

(6) Within 30 days after receiving the notice, the Supervisor:

(a) must review the Society's decision; and

(b) must:

(i) refuse to revoke the decision; or

(ii) revoke the decision and approve the application.

(7) The Supervisor may revoke the decision and approve the application only if satisfied it is in the public interest to do so.

(8) If the Supervisor revokes the decision and approves the application, the Supervisor must:

(a) publish notice of the decision in the *Gazette*; and

(b) give the Society written reasons for the decision.

230 Notice of change in supervising legal practitioner

(1) A complying community legal centre must give written notice to the Law Society of the name of, and of any change in, the supervising legal practitioner employed or engaged by it.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

231 Application of Parts 31, 34, 35 and Chapters 5, 6 and 9

(1) Subject to subsection (2) and the regulations, Parts 3.1, 3.4 and 3.5 and Chapters 5, 6 and 9 (the ***applied provisions***) apply (with the necessary modifications) in relation to a complying community legal centre as if:

(a) a reference in the applied provisions to a law practice were a reference to a complying community legal centre; and

(b) the supervising legal practitioner of the centre were the principal of the practice.

(2) In addition, a complying community legal centre must not operate a trust account under Part 3.1 unless the centre's supervising legal practitioner is a signatory to the account.

(3) For subsection (1), the following provisions also apply in relation to the application of the applied provisions:

(a) definitions necessary to give effect to the applied provisions;

(b) regulations made for the applied provisions.

232 Provision of legal services

(1) A complying community legal centre does not contravene this Act merely because:

(a) it employs, or otherwise uses the services of, Australian legal practitioners to provide legal services to members of the public; or

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

(c) it shares with an Australian legal practitioner employed or otherwise used by it to provide the legal services receipts, revenue or other income arising from the business of the centre of a kind usually conducted by an Australian legal practitioner; or

(d) it adopts or uses the word "legal" or a name, title or description to which section 20 applies (or a related term) in its name or any registered business name under which it provides legal services to members of the public.

(2) Subsection (1) has effect despite anything to the contrary in this Act.

(3) The regulations may make provision in relation to:

(a) the application (with any modifications prescribed by the regulations) of a provision of this Act to a complying community legal centre; and

(b) the legal services provided by a complying community legal centre.

(4) The regulations may provide that a breach of the regulations is capable of being unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner responsible for the breach.

(5) A provision of the legal profession rules that applies to an Australian legal practitioner also applies to an Australian legal practitioner who is an officer or employee of, or whose services are used by, a complying community legal centre, unless the rules otherwise provide.

233 Entitlement to costs in proceedings

(1) For the making or enforcement of an order for costs, or deciding an entitlement to costs, in a proceeding before a court or tribunal to which an assisted person is a party, the person is taken to be liable to pay:

(a) the ordinary professional costs of the legal services provided to the person or in connection with the proceeding; and

(b) disbursements and out-of-pocket expenses incurred in connection with the provision of the services.

(2) In this section:

assisted person means a person to whom legal services are provided by a complying community legal centre.

Chapter 3 Conduct of legal practice

Part 3.1 Trust money and trust accounts

Division 1 Preliminary matters

234 Purposes of Part

The purposes of this Part are as follows:

(a) to ensure trust money is held by law practices in a way that protects the interests of persons for whom money is held, both inside and outside this jurisdiction;

(b) to minimise compliance requirements for law practices that provide legal services within and outside this jurisdiction;

(c) to ensure the Law Society can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

235 Interpretation

(1) In this Part:

approved ADI means an ADI approved under section 278 by the Law Society.

approved trust account means a trust account approved under section 278 by the Law Society.

controlled money means money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control.

Note for definition ***controlled money***

Section 248(6) prevents pooling of controlled money.

controlled money account means an account maintained by a law practice with an ADI for the holding of controlled money received by the practice.

deposit record includes a deposit slip or duplicate deposit slip.

designated persons, for Division 3, Subdivision 2, see section 268(1).

external examination means an external examination under Division 3, Subdivision 2 of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under Division 3, Subdivision 2.

general trust account means an approved trust account maintained by a law practice for the holding of trust money received by the practice, other than controlled money or transit money.

investigation means an investigation under Division 3, Subdivision 1 of the affairs of a law practice.

investigator means a person holding an appointment as an investigator under Division 3, Subdivision 1.

permanent form, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material.

power includes authority.

transit money means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

trust account means an account maintained by a law practice with an approved ADI to hold trust money.

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

(a) money received by the practice on account of legal costs in advance of providing the services; and

(b) controlled money received by the practice; and

(c) transit money received by the practice; and

(d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

trust money protocols, see section 239(1).

trust records includes the following documents:

(a) receipts;

(b) cheque butts or cheque requisitions;

(c) records of authorities to withdraw by electronic funds transfer;

(d) deposit records;

(e) trust account ADI statements;

(f) trust account receipts and payments cash books;

(g) trust ledger accounts;

(h) records of monthly trial balances;

(i) records of monthly reconciliations;

(j) trust transfer journals;

(k) statements of account as required to be furnished under the regulations;

(l) registers required to be kept under the regulations;

(m) monthly statements required to be kept under the regulations;

(n) files relating to trust transactions or bills of costs or both;

(o) written directions, authorities or other documents required to be kept under this Act;

(p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.

(2) A reference in this Part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.

(3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by:

(a) the practice alone; or

(b) an associate of the practice alone (otherwise than in a private and personal capacity); or

(c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following:

(i) one or more associates of the practice;

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

236 Money involved in financial services or investments

(1) Money that is entrusted to or held by a law practice for or in connection with the following is not trust money for this Act:

(a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time);

(b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(2) Without limiting subsection (1), money that is entrusted to or held by a law practice for or in connection with a managed investment scheme, or mortgage financing, undertaken by the practice is not trust money for this Act.

(3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for this Act, unless:

(a) the money was entrusted to or held by the practice:

(i) in the ordinary course of legal practice; and

(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

(b) the investment is or is to be made:

(i) in the ordinary course of legal practice; and

(ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

(4) In this section:

Australian financial services licence, see Chapter 7 of the Corporations Act.

authorised representative, see Chapter 7 of the Corporations Act.

financial service, see Chapter 7 of the Corporations Act.

financial services business, see Chapter 7 of the Corporations Act.

237 Determinations about status of money

(1) This section applies to money received by a law practice if the Law Society considers there is doubt or a dispute as to whether the money is trust money.

(2) The Society may determine that the money is or is not trust money.

(3) The Society may revoke or modify a determination under this section.

(4) While a determination under this section is in force that money is trust money, the money is taken to be trust money for this Act.

(5) While a determination under this section is in force that money is not trust money, the money is taken not to be trust money for this Act.

(6) This section has effect subject to a decision of a court made in relation to the money concerned.

238 Application of Part to law practices and trust money

(1) This Part applies to the following law practices in respect of trust money received by them in this jurisdiction:

(a) a law practice that has an office in this jurisdiction, whether or not the practice has an office in another jurisdiction;

(b) a law practice that does not have an office in any jurisdiction at all.

(2) This Part applies to the following law practices in respect of trust money received by them in another jurisdiction:

(a) a law practice that has an office in this jurisdiction and in no other jurisdiction;

(b) a law practice that has an office in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with under the corresponding law of another jurisdiction.

(3) However, this Part does not apply to:

(a) prescribed law practices or classes of law practices; or

(b) prescribed law practices or classes of law practices in prescribed circumstances; or

(c) prescribed kinds of trust money; or

(d) prescribed kinds of trust money in prescribed circumstances.

(4) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

Note for section 238

Section 181 applies this Part to Australian-registered foreign lawyers.

239 Trust money protocols

(1) The Law Society may enter into arrangements (***trust money protocols***) with corresponding authorities about any or all of the following:

(a) deciding the jurisdiction where a law practice receives trust money;

(b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.

(2) For this Act, to the extent a trust money protocol is relevant, the jurisdiction where a law practice receives trust money must be decided in accordance with the protocol.

(3) The Society may enter into arrangements that amend, revoke or replace a trust money protocol.

(4) A trust money protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

240 When money is received

(1) For this Act, a law practice receives money when:

(a) the practice obtains possession or control of it directly; or

(b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or

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

(2) For this Act, a law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or another way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

241 Discharge by legal practitioner associate of obligations of law practice

(1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money:

(a) the establishment of a trust account;

(b) the maintenance of a trust account;

(c) the payment of trust money into and out of a trust account and other dealings with trust money;

(d) the maintenance of trust records;

(e) engaging an external examiner to examine trust records;

(f) the payment of an amount into an ADI account as referred to in section 281;

(g) an action of a kind prescribed by the regulations.

(2) If the legal practitioner associate maintains a trust account in relation to trust money received by the law practice, the provisions of this Part and the regulations made for this Part apply to the associate in the same way as they apply to a law practice.

(3) Subsection (1) does not apply to the extent the associate is prevented by the regulations from taking any action referred to in that subsection.

242 Liability of principals of law practice

(1) A provision of this Part or the regulations made for this Part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

(2) References in this Part or the regulations made for this Part to a law practice include references to the principals of the law practice.

243 Former practices, principals and associates

This Part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.

244 Barristers receiving money on behalf of other persons

(1) A barrister must not, in the course of practising as a barrister, receive money on behalf of another person unless authorised under this section.

(2) The regulations may authorise a barrister to do so.

(3) For subsection (2), the regulations may apply to barristers any of the provisions of this Part or make other provision relating to the matter.

Division 2 Trust accounts and trust money

245 Maintenance of general trust account

(1) A law practice that receives trust money to which this Part applies must maintain a general trust account in this jurisdiction.

(2) A law practice that is required to maintain a general trust account in this jurisdiction must establish and maintain the account under the regulations.

(3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following:

(a) controlled money;

(b) transit money received in a form other than cash.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (2), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) An offence against subsection (4) or (5) is an offence of strict liability.

(7) Subject to any requirements of the regulations, a requirement of this section for a law practice to maintain, or establish and maintain, a general trust account in this jurisdiction does not prevent the practice from maintaining, or establishing and maintaining, more than one general trust account in this jurisdiction, whether during the same or different periods.

(8) Without limiting the other provisions of this section, the regulations may provide that a law practice must not close a general trust account except as permitted by the regulations, either generally or in any circumstances prescribed by the regulations.

246 Certain trust money to be deposited in general trust account

(1) As soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice.

(2) Subsection (1) does not apply if:

(a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or

(b) the money is controlled money; or

(c) the money is transit money; or

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

(3) A law practice that has received money that is the subject of a written direction mentioned in subsection (2)(a) must deal with the money in accordance with the direction:

(a) within the period (if any) specified in the direction; or

(b) subject to paragraph (a), as soon as practicable after it is received.

(4) The law practice must keep a written direction mentioned in subsection (2)(a) for the period prescribed by the regulations.

(5) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (3) or (4), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), (3) or (4), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(7) An offence against subsection (5) or (6) is an offence of strict liability.

(8) A person is an appropriate person for this section if the person is legally entitled to give the law practice directions in respect of dealings with the trust money.

247 Holding, disbursing and accounting for trust money

(1) A law practice must:

(a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and

(b) disburse the trust money only in accordance with a direction given by the person.

(2) Subsection (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.

(3) The law practice must account for the trust money as required by the regulations.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (3), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (3), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) An offence against subsection (4) or (5) is an offence of strict liability.

248 Controlled money

(1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money.

(2) The law practice must hold controlled money deposited in a controlled money account under subsection (1) exclusively for the person on whose behalf it was received.

(3) The law practice must not disburse the controlled money deposited in a controlled money account under subsection (1) except in accordance with:

(a) the written direction mentioned in that subsection; or

(b) a later written direction given by or on behalf of the person on whose behalf the money was received.

(4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the regulations.

(5) The law practice must keep a written direction mentioned in this section for the period prescribed by the regulations.

(6) The law practice must ensure the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent the regulations otherwise permit.

(7) Subsection (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

(8) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (2), (3), (4), (5) or (6), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(9) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), (2), (3), (4), (5) or (6), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(10) An offence against subsection (8) or (9) is an offence of strict liability.

249 Transit money

(1) A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money:

(a) within the period (if any) specified in the instructions; or

(b) subject to paragraph (a), as soon as practicable after it is received.

(2) The law practice must account for the money as required by the regulations.

(3) Subsections (1) and (2) do not apply to trust money if section 251 applies to the money.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (2), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) An offence against subsection (4) or (5) is an offence of strict liability.

250 Trust money subject to specific powers

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

(2) The law practice must account for the money in the way prescribed by the regulations.

(3) Subsections (1) and (2) do not apply to trust money if section 251 applies to the money.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (2), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) An offence against subsection (4) or (5) is an offence of strict liability.

251 Trust money received in form of cash

(1) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.

(2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice:

(a) the practice must nevertheless deposit the money in a general trust account of the practice under subsection (1); and

(b) afterwards, the practice must deal with the money in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

(3) A law practice must deposit controlled money received in the form of cash in a controlled money account under section 248.

(4) A law practice must deposit transit money received in the form of cash in a general trust account of the law practice concerned before the money is otherwise dealt with in accordance with the instructions relating to the money.

(5) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.

(6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.

(7) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (2), (3), (4) or (5), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(8) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), (2), (3), (4) or (5), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(9) An offence against subsection (7) or (8) is an offence of strict liability.

(10) In this section:

appropriate person, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in respect of dealings with the money.

general trust money means trust money, other than:

(a) controlled money; and

(b) transit money; and

(c) money that is the subject of a power.

252 Protection of trust money

(1) Money standing to the credit of a trust account maintained by a law practice is not available for the payment of debts of the practice or any of its associates.

(2) Money standing to the credit of a trust account maintained by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the practice or any of its associates.

(3) This section does not apply to money to which a law practice or associate is entitled.

253 Intermixing money

(1) A law practice must not mix trust money with other money.

(2) Subsection (1) does not apply in relation to the mixing of trust money with other money if:

(a) the Law Society has authorised the mixing of the trust money with other money to the extent to which it is mixed; and

(b) the law practice has complied with any conditions imposed on the authorisation by the Society.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) An offence against subsection (3) or (4) is an offence of strict liability.

254 Dealing with trust money – legal costs and unclaimed money

(1) A law practice may do any of the following, in relation to trust money held in a general trust account or controlled money account of the practice for a person:

(a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;

(b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act are complied with;

(c) after deducting any legal costs properly owing to the practice, deal with the balance as an unclaimed amount under section 259.

(2) Subsection (1) applies despite any other provision of this Part but has effect subject to Part 3.3.

255 Deficiency in trust account

(1) An Australian legal practitioner is guilty of an offence if the practitioner causes:

(a) a deficiency in any trust account or trust ledger account; or

(b) a failure to pay or deliver any trust money.

Maximum penalty: 500 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the practitioner has a reasonable excuse.

(3) In this section:

account, in relation to an Australian legal practitioner, includes an account of the practitioner or of the law practice of which the practitioner is an associate.

cause includes be responsible for.

deficiency in a trust account or trust ledger account includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account.

256 Reporting certain irregularities and suspected irregularities

(1) A legal practitioner is guilty of an offence if:

(a) the practitioner is a legal practitioner associate of a law practice; and

(b) the practitioner becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts; and

(c) the practitioner fails, as soon as practicable after becoming aware of the irregularity, to give written notice of the irregularity to:

(i) the Law Society; and

(ii) if a corresponding authority is responsible for the regulation of the accounts concerned – the corresponding authority.

Maximum penalty: 20 penalty units.

(2) An Australian legal practitioner is guilty of an offence if:

(a) the practitioner believes on reasonable grounds that there is an irregularity in relation to the receipt, recording or disbursement of any trust money received by a law practice; and

(b) the practitioner is not a legal practitioner associate of the practice; and

(c) the practitioner fails, as soon as practicable after forming the belief, to give written notice of it to:

(i) the Law Society; and

(ii) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money concerned – the corresponding authority.

Maximum penalty: 20 penalty units.

(3) The validity of a requirement imposed on an Australian legal practitioner under subsection (1) or (2) is not affected, and the practitioner is not excused from complying with subsection (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.

(4) An Australian legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subsection (1) or (2).

257 Keeping trust records

(1) A law practice must keep in permanent form trust records in relation to trust money received by the practice.

(2) The law practice must keep the trust records:

(a) in accordance with the regulations; and

(b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and

(c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and

(d) for a period determined under the regulations.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (2), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) An offence against subsection (3) or (4) is an offence of strict liability.

258 False names

(1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.

(2) If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the practice must ensure the practice's trust records record all names by which the person is known.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1) or (2), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(5) An offence against subsection (3) or (4) is an offence of strict liability.

259 Unclaimed trust money

(1) If an amount of trust money held by a law practice has become an unclaimed amount, the practice must:

(a) within one month after the amount becomes an unclaimed amount, pay the amount to the Funds Management Committee; and

(b) within 7 days after payment, give the Committee the information the Committee requires in relation to the amount and the person on whose behalf the amount was held by the practice.

(2) An amount of trust money held by a law practice is an unclaimed amount if:

(a) the amount has been held by the practice for a period of at least 2 years and during that period the practice has had no knowledge of the existence or the address of the person on whose behalf the amount is held; or

(b) the person has refused to accept payment of the amount when tendered.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 10 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 10 penalty units.

(5) On payment of the amount to the Committee under subsection (1), the practice is relieved from any further liability in relation to the unclaimed amount.

260 When Funds Management Committee may pay unclaimed amount

(1) A person who claims to be entitled to an amount paid to the Funds Management Committee under section 259(1) may apply to the Committee for payment of the amount.

(2) Also, the Committee may, with the written approval of the Statutory Supervisor, use any unclaimed amount to find any person entitled to it.

(3) Payment of an unclaimed amount to a person who has satisfied the Committee as to the person's entitlement to it:

(a) discharges the Territory and the Committee from any liability in relation to the amount; and

(b) does not discharge the person from any liability to another person who establishes a right to the amount.

(4) The Committee may require any person to give information the person has, or can obtain, about:

(a) the entitlement of another person to an unclaimed amount paid to the Committee under this section; and

(b) attempts made to locate the other person.

(5) The person is guilty of an offence if the person:

(a) contravenes the requirement; or

(b) in purported compliance with the requirement, gives information to the Committee knowing the information:

(i) is misleading in a material particular; or

(ii) omits anything without which the information is misleading in a material particular.

Maximum penalty: 20 penalty units.

(6) If the Committee refuses an application made under subsection (1), the Committee must give the applicant an information notice for the decision.

261 Appeal against decision to refuse claim for unclaimed amount

(1) A person who is dissatisfied with a decision of the Funds Management Committee to refuse the person's application under section 260(1) may appeal to the Supreme Court against the decision.

(2) The appeal must be started by filing notice of appeal within 28 days after receiving the information notice.

(3) The notice of appeal must state fully the grounds of appeal.

(4) If the Court is satisfied the person is entitled to the amount claimed or part of it, it must make an order declaring the person to be so entitled.

(5) On receipt by the Committee of an office copy of an order under subsection (4), the Committee must pay the person the amount specified in the order out of the Fidelity Fund.

(6) Interest is not payable on the amount paid to the person.

Division 3 Investigations and external examinations

Subdivision 1 Investigations

262 Appointment of investigators

(1) The Law Society may appoint a suitably qualified person to investigate the affairs or specified affairs of a law practice.

(2) The appointment may be made generally or for the law practice specified in the instrument of appointment.

(3) An investigator may, with the Society's approval, appoint an assistant.

263 Investigations

(1) The instrument of appointment may authorise the investigator to conduct either or both of the following:

(a) routine investigations on a regular or other basis;

(b) investigations in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of a law practice.

(2) The principal purposes of an investigation are:

(a) to ascertain whether the law practice has complied with or is complying with the requirements of this Part and the regulations under this Part; and

(b) to detect and prevent fraud or defalcation.

(3) However, subsection (2) does not limit the scope of the investigation or the powers of the investigator.

264 Application of Chapter 6

Chapter 6 applies to an investigation under this Subdivision.

265 Investigator's report

As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the Law Society.

266 Confidentiality by investigator

(1) An investigator is guilty of an offence if the investigator:

(a) discloses information in an investigator's report or acquired in carrying out an investigation (***protected information***) to someone else; or

(b) does something that discloses protected information to someone else and is reckless about whether:

(i) the information is protected information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to the disclosure of information:

(a) to the practice person the subject of the investigation or report; or

(b) necessary for properly conducting the investigation and making the report of the investigation; or

(c) under section 634.

267 When costs of investigation are debt

(1) This section applies if:

(a) an investigator specifies in a report of an investigation there is evidence that a breach of this Act has been committed or that fraud or defalcation has been committed; and

(b) the Law Society is satisfied the breach is intentional or of a substantial nature.

(2) The Society may decide that the whole or part of the costs of carrying out the investigation is payable to the Society and may specify the amount payable.

(3) The amount specified is a debt owing to the Society by the law practice whose affairs are under investigation.

(4) The Society must, before seeking to recover the amount payable, give the law practice an information notice for the Society's decision and the amount specified as being payable.

Subdivision 2 External examinations

268 Designation of external examiners

(1) The Law Society may, in writing, designate persons (***designated persons***) as being eligible to be appointed as external examiners.

(2) Only designated persons may be appointed as external examiners.

(3) A person appointed as an external examiner may, with the Society's approval, appoint an assistant.

(4) An employee or agent of the Society may be a designated person.

(5) The Society may revoke a person's designation under this section.

269 Designation and appointment of associates as external examiners

(1) The Law Society may designate an associate of a law practice under this Subdivision only if the Society is satisfied it is appropriate to do so.

(2) However, an associate of a law practice cannot be appointed as an external examiner under this Subdivision to examine the practice's trust records.

270 Trust records to be externally examined

(1) A law practice must, at least once in each financial year, have its trust records externally examined by an external examiner appointed under the regulations.

(2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) The Law Society may appoint an external examiner to examine a law practice's trust records if the Society is not satisfied:

(a) the law practice has had its trust records externally examined as required by this section; or

(b) an external examination of the practice's trust records has been carried out under the regulations.

(5) Without limiting section 287, this section has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this section.

(6) An offence against subsection (2) or (3) is an offence of strict liability.

271 Final examination of trust records

(1) This section applies if a law practice:

(a) ceases to be authorised to receive trust money; or

(b) ceases to engage in legal practice in this jurisdiction.

(2) The law practice must appoint an external examiner to examine the practice's trust records:

(a) in relation to the period since an external examination was last conducted; and

(b) afterwards, in relation to each period comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

(3) The law practice must give the Law Society:

(a) a report of each examination under subsection (2) within 60 days after the end of the period to which the examination relates; and

(b) a statutory declaration in the approved form within 60 days after ceasing to hold trust money.

(4) The law practice must ensure that, within 12 months after the law practice ceases to be authorised to receive trust money or ceases to engage in legal practice in this jurisdiction:

(a) any general trust account maintained by the law practice in this jurisdiction is closed; and

(b) trust money held in any such account is dealt with as required by this Act (such as by being disbursed in accordance with a direction given by the person on whose behalf it was received).

(5) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (2) or (4), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(6) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (2) or (4), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(7) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (3), the practitioner or practice is guilty of an offence.

Maximum penalty: 20 penalty units.

(8) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (3), each principal of the practice is guilty of an offence.

Maximum penalty: 20 penalty units.

(9) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.

(10) This section does not affect any other requirements under this Part.

272 Examination of affairs in connection with examination of trust records

(1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for and in connection with an examination of the trust records.

(2) If the law practice is an incorporated legal practice or multi-disciplinary partnership, the reference in subsection (1) to the affairs of the law practice extends to the affairs of the incorporated legal practice or multi-disciplinary partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.

(3) A reference in this Subdivision and Chapter 6 to trust records includes a reference to the affairs of a law practice that may be examined under this section for and in connection with an examination of the practice's trust records.

273 Carrying out examination

(1) Chapter 6 applies to an external examination under this Subdivision.

(2) Subject to Chapter 5, an external examination of trust records must be carried out in accordance with the regulations.

(3) Without limiting subsection (2), the regulations may provide for any of the following:

(a) the standards to be adopted and the procedures to be followed by external examiners;

(b) the form and content of an external examiner's report on an examination.

274 External examiner's report

As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the Law Society.

275 Confidentiality of external examiner

(1) An external examiner is guilty of an offence if the examiner:

(a) discloses information in an examiner's report or acquired in carrying out an examination (***protected information***) to someone else; or

(b) does something that discloses protected information to someone else and is reckless about whether:

(i) the information is protected information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to the disclosure of information:

(a) necessary for properly conducting the examination and making the report of the examination; or

(b) to an investigator or supervisor, manager or receiver appointed under this Act; or

(c) if the law practice is an incorporated law practice – to a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed of administrator appointed for the practice under the Corporations Act; or

(d) to the law practice concerned or an associate of the law practice; or

(e) under section 634.

276 Law practice liable for costs of examination

(1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.

(2) If the Law Society appointed the external examiner to carry out the examination, the Society may specify the amount payable as the costs of the examination and the specified amount is a debt payable to it by the law practice.

(3) The Society must, before seeking to recover the amount payable, give the law practice an information notice for the Society's decision and the amount specified as being payable.

Subdivision 3 General matters

277 Appeals

(1) A law practice may appeal to the Supreme Court against a decision of the Law Society:

(a) under section 267 as to the amount of the costs of carrying out an investigation payable by the law practice; or

(b) under section 276 as to the amount of the costs of the examination and payable by the law practice .

(2) The appeal must be started by filing notice of appeal within 28 days after receiving the information notice.

(3) The notice of appeal must state fully the grounds of appeal.

(4) On hearing the appeal, the Court may make the order it considers appropriate.

Division 4 Provisions relating to ADIs

278 Approval of ADIs and general trust accounts

(1) The Law Society may approve:

(a) ADIs at which trust accounts to hold trust money may be maintained; and

(b) trust accounts at approved ADIs to hold trust money.

(2) The Society may approve trust accounts only if the interest paid on the accounts is at or above:

(a) the rate decided by the Attorney-General; or

(b) if a rate is not decided under paragraph (a) – the rate agreed between the ADI and the Society.

(3) The Society may impose conditions of the kind prescribed by the regulations on an approval under this section when the approval is given or during the currency of the approval.

279 ADI not subject to certain obligations and liabilities

(1) An ADI at which a trust account is maintained by a law practice must pay interest on the account to the Funds Management Committee.

(2) An ADI at which a trust account is maintained by a law practice:

(a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and

(b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right (whether by way of set-off counterclaim, charge or otherwise) against money in the account.

(3) Subsection (2) does not relieve an ADI from any liability to which it is subject apart from this Act.

280 Reports, records and information

(1) An ADI is guilty of an offence if:

(a) a trust account is maintained with the ADI; and

(b) the ADI becomes aware of a deficiency in the account; and

(c) the ADI fails to report the deficiency to the Law Society as soon as practicable after becoming aware of the deficiency.

Maximum penalty: 100 penalty units.

(2) An ADI is guilty of an offence if:

(a) a trust account is maintained at the ADI; and

(b) the ADI has reason to believe that an offence has been committed in relation to the account; and

(c) the ADI fails to report the belief to the Law Society as soon as practicable after forming the belief.

Maximum penalty: 100 penalty units.

(3) An ADI must give the Law Society a report about a trust account in accordance with the regulations.

Maximum penalty: 100 penalty units.

(4) An ADI is guilty of an offence if:

(a) a trust account is maintained with the ADI by a law practice; and

(b) an investigator or external examiner produces to the ADI evidence of the appointment of the investigator or external examiner in relation to the law practice; and

(c) an investigator or external examiner requires the ADI:

(i) to produce for inspection or copying by the investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; or

(ii) to give the investigator or external examiner full details of any transactions relating to the trust account or trust money; and

(d) the ADI fails to comply with the requirement.

Maximum penalty: 100 penalty units.

(5) An offence against subsection (3) or (4) is an offence of strict liability.

(6) Subsections (1) to (4) apply despite any law or duty of confidence to the contrary.

(7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of:

(a) reporting a deficiency under subsection (1); or

(b) making or furnishing a report under subsection (2) or (3); or

(c) producing records or providing details under subsection (4).

Division 5 Statutory deposits

281 Statutory deposits

(1) The regulations may require a law practice to pay amounts out of a general trust account of the practice into an ADI account maintained by the entity prescribed by the regulations (the ***statutory deposit holder***).

(2) Without limiting subsection (1), the regulations may provide for any of the following:

(a) the type of account to be maintained by the statutory deposit holder;

(b) the amount of the payments to be made;

(c) the person entitled to interest on the money in the account.

(3) For subsection (2)(c), the regulations may require the ADI to pay interest to the statutory deposit holder.

(4) This section applies despite any other provision of this Part.

282 Status and repayment of deposited money

(1) Money paid under section 281 into an ADI account maintained by the statutory deposit holder:

(a) is held by the statutory deposit holder in trust for the law practice depositing the money; and

(b) is repayable on demand.

(2) Subsection (1) does not excuse a contravention of section 281.

(3) Until repaid, money deposited under section 281 may be invested by the statutory deposit holder under Part I of the *Trustee Act* as if the money were trust funds.

Division 6 Miscellaneous matters

283 Restrictions on receipt of trust money

(1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.

(2) If a law practice that is an Australian legal practitioner who is a sole practitioner contravenes subsection (1), the practitioner is guilty of an offence.

Maximum penalty: 500 penalty units.

(3) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(4) An incorporated legal practice must not receive trust money unless:

(a) at least one legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money; or

(b) a person is holding an appointment under section 127 in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or

(c) the money is received during any period during which the practice:

(i) does not have any legal practitioner directors; and

(ii) is not in default of director requirements under section 127;

so long as there was, immediately before the start of that period, at least one legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Maximum penalty: 500 penalty units.

(5) An offence against subsection (2), (3) or (4) is an offence of strict liability.

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

(1) The obligations imposed on law practices by this Part, and any other provisions of this Act relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.

(2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act relating to trust money and trust accounts:

(a) do not apply to incorporated legal practices or multi-disciplinary partnerships or both; or

(b) apply to them with specified modifications.

285 Disclosure to clients – money not received as trust money

(1) If money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this section and the regulations, give written notice to the person who entrusted the money to the practice that:

(a) the money is not treated as trust money for this Act and is not subject to any supervision, investigation or audit requirements of this Act; and

(b) a claim against the Fidelity Fund under this Act cannot be made in relation to the money.

(2) A notice under subsection (1) must be given to the person at the time:

(a) the money was entrusted to the law practice – if the money was non-trust money when it was entrusted to the practice; or

(b) the money becomes non-trust money – if the money was trust money when it was entrusted to the practice.

(3) The regulations may make provision for or with respect to the way in which the notice must be given and the contents of it.

(4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(6) An offence against subsection (4) or (5) is an offence of strict liability.

(7) In this section:

non-trust money means money that is not trust money for this Act because of section 236 or because of a determination under section 237.

286 Disclosure of accounts used to hold money entrusted to legal practitioners

(1) A law practice must, in accordance with the regulations, give notice to the Law Society of the details required by the regulations of each account maintained at an ADI in which the practice or any legal practitioner associate of the practice holds money entrusted to the practice or legal practitioner associate.

(2) Subsection (1) applies whether or not the money is trust money and whether or not section 236 or 237 applies to the money.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) An offence against subsection (3) or (4) is an offence of strict liability.

287 Regulations

(1) The regulations may make provision for or with respect to any matter to which this Part relates, including for or with respect to the following:

(a) the establishment, maintenance and closure of general trust accounts and controlled money accounts;

(b) the way of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money;

(c) the notification to the Law Society of information relating directly or indirectly to matters to which this Part relates, including information about any of the following:

(i) trust accounts, trust money and trust records;

(ii) the proposed or actual termination of a law practice that holds trust money;

(iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money;

(iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money;

(d) the creation and exercise of liens over trust money;

(e) providing exemptions, or providing for the giving of exemptions, from all or any specified requirements of this Part.

(2) Without limiting subsection (1)(a) and (b), the regulations may provide for any of the following:

(a) the keeping and reconciliation of trust records;

(b) the establishment and keeping of trust ledger accounts;

(c) the establishment and keeping of records about controlled money and transit money;

(d) the establishment and keeping of registers of powers and estates where trust money is involved;

(e) the recording of information about the investment of trust money;

(f) the furnishing of statements regarding trust money.

Part 3.2 Advertising legal services for personal injury claims

288 Application of Part

(1) This Part does not apply in relation to the following advertisements and publications:

(a) an advertisement or publication published by an Australian legal practitioner about making a claim or engaging an Australian legal practitioner for making a claim;

(b) an advertisement or publication made for educating people about the content of the law or their rights, liabilities and duties under the law;

(c) an advertisement or publication made for identifying people who are entitled to become parties to a class action specified in the advertisement or publication;

(d) an advertisement or publication made under a statutory power or function;

(e) an advertisement or publication made by the Northern Territory Legal Aid Commission in relation to the Contingency Legal Aid Fund established by section 44 of the *Legal Aid Act*;

(f) an advertisement or publication made for confirming the existence of a contractual relationship between an Australian legal practitioner and another entity under which the practitioner is to provide legal services for personal injury claims;

(g) an advertisement or publication prescribed by the regulations.

(2) In addition, this Part does not apply in relation to statements made by any of the following persons about making, or engaging an Australian legal practitioner for making, a claim:

(a) a person holding an office (whether in or outside the Territory) in the course of carrying out the functions of the office;

(b) a person prescribed by the regulations.

289 Definitions

In this Part:

claim means a claim for compensation or damages under an Act or other law for a personal injury.

employment includes self-employment.

hospital includes a nursing home, community health facility, medical centre, physiotherapist's rooms, dentist's surgery, hostel and any other premises occupied or used in relation to:

(a) receiving, examining, caring for or treating a person who is injured, sick or mentally ill; or

(b) providing a service for maintaining, improving or restoring a person's health and wellbeing.

incident includes an accident, circumstance, act or omission.

newspaper includes a magazine, journal, periodical and directory.

personal injury, see section 3 of the Personal Injuries (Liabilities and Damages) Act.

potential claimant means:

(a) a person who may be entitled to make a claim because the person suffers or may suffer a personal injury arising out of an incident; or

(b) another person who has or may be entitled to make a claim in relation to a person mentioned in paragraph (a).

reward includes:

(a) a bonus, commission, cash payment, deduction, discount, rebate, remission or other valuable consideration; and

(b) employment, or an agreement to employ, in any capacity.

290 Restriction on advertising in relation to personal injury claims

(1) An Australian legal practitioner is guilty of an offence if:

(a) the practitioner publishes, or causes to be published, a statement; and

(b) the practitioner does so with the intention that a person:

(i) make a claim; and

(ii) engage a legal practice named in the statement for making a claim.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply if an Australian legal practitioner or a person acting for an Australian legal practitioner advertises legal services for making claims for personal injuries by a complying statement.

(3) A complying statement is a statement that is published under section 291 and specifies only the following:

(a) the name and contact details of:

(i) the legal practitioner; or

(ii) the legal practitioner's law practice; or

(iii) another legal practitioner or another legal practitioner's law practice by whom the legal practitioner or person is employed or engaged;

(b) details about any area of speciality of a legal practitioner or law practice mentioned in paragraph (a).

(4) In addition, subsection (1) does not apply if the statement is published under the legal profession rules.

291 Permitted methods of advertising

(1) A statement under section 290 must be published in one of the following ways:

(a) publication in an edition of a newspaper;

(b) publication on the Internet of an electronic version of an edition of a newspaper if:

(i) the statement is reproduced as published in the hard copy edition of the newspaper; and

(ii) the newspaper is published independently of the legal practitioner;

(c) publication on the Internet as part of the contents of a directory or database that is published or maintained independently of the legal practitioner;

(d) public exhibition of the statement in, on, over or under a building, vehicle or place or in the air in view of a person on a public place other than exhibition of the statement in or on a hospital;

(e) display of the statement on a printed document gratuitously sent or delivered to anyone or thrown or left on a vehicle or on premises occupied by anyone, other than display on a printed document gratuitously sent or delivered to a hospital, left in a hospital or left on a vehicle in the vicinity of a hospital;

(f) display of the statement on a printed document given to a person as a receipt or record for a transaction.

(2) For subsection (1)(b), an edition of a newspaper, or a directory or database published on the Internet, is published or maintained independently of a legal practitioner only if:

(a) it is not published or maintained by the legal practitioner, another legal practitioner in the same law practice as the legal practitioner or an employee employed or engaged by the legal practitioner or law practice; and

(b) it is published or maintained by a person in the ordinary course of conducting the person's business or affairs.

292 Prohibition against touting for potential claimants

(1) A person is guilty of an offence if the person:

(a) is at the scene of an incident, or at a hospital after an incident, at or from which another person allegedly suffers or suffered a personal injury; and

(b) solicits or induces a potential claimant involved in the incident to make a claim.

Maximum penalty: 50 penalty units.

Examples of persons for subsection (1)(a)

A police officer, medical practitioner, nurse, hospital worker, ambulance officer, emergency services officer or tow truck operator.

(2) A person is guilty of an offence if the person:

(a) for the person's employment:

(i) obtains information about an incident at or from which a person allegedly suffered a personal injury; or

(ii) has contact with a potential claimant that substantially arises because of an incident at or from which a person allegedly suffered a personal injury; and

(b) solicits or induces a potential claimant involved in the incident to make a claim.

Maximum penalty: 50 penalty units.

(3) Subsections (1) and (2) do not apply to a person (the ***discloser***) who discloses the name or address of another person involved in an incident to a legal practitioner if:

(a) the discloser is a client of the practitioner or a law practice of which the practitioner is a member for the purpose of making a claim or exercising a legal right arising out of the incident; and

(b) in the circumstances, it is reasonable for the discloser to think the discloser may be entitled to make a claim or exercise a legal right mentioned in paragraph (a); and

(c) the disclosure is for the purpose of making the claim or exercising the legal right.

(4) Also, subsections (1) and (2) do not apply if the disclosure is not likely to result in a potential claimant involved in the incident being solicited or induced to make a claim.

(5) In this section:

member, of a law practice, means:

(a) if the law practice is constituted by an Australian legal practitioner who is a sole practitioner – the practitioner; or

(b) if the law practice is a law firm – each partner, and each employee of the law firm, who is a legal practitioner; or

(c) if the law practice is an incorporated legal practice – each legal practitioner director and each employee of the incorporated legal practice who is a legal practitioner; or

(d) if the law practice is a multi-disciplinary partnership – each legal practitioner partner and each employee of the multi-disciplinary partnership who is a legal practitioner.

293 Prohibition against paying or touting for potential claimants

(1) A person must not:

(a) reward another person for soliciting or inducing a potential claimant to make a claim; or

(b) seek a reward for soliciting or inducing a potential claimant to make a claim.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply merely because:

(a) if the person is not a legal practitioner or person acting for a legal practitioner – the person advertises or advertised, in the ordinary course of conducting the person's business as an advertiser or publisher, legal services about claims; or

(b) if the person is a legal practitioner or person acting for a legal practitioner – the person charges or charged a potential claimant a fee for legal services provided to the potential claimant as part of making a claim.

Part 3.3 Costs disclosure and assessment

Division 1 Preliminary matters

294 Purposes of Part

The purposes of this Part are as follows:

(a) to provide for law practices to make disclosures to clients and prospective clients regarding legal costs;

(b) to regulate the making of costs agreements in relation to legal services, including conditional costs agreements;

(c) to regulate the billing of costs for legal services;

(d) to provide a mechanism for the assessment of legal costs and the setting aside of certain costs agreements.

295 Interpretation

(1) In this Part:

bill means a bill of costs for providing legal services.

conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate, as referred to in section 318, but does not include a costs agreement to the extent to which section 320(1) applies.

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

costs agreement means an agreement about the payment of legal costs.

costs assessment means an assessment of legal costs under Division 8.

costs assessor means a person appointed as a costs assessor under section 366.

disbursements includes outlays.

fixed costs provisions means a determination, scale, arrangement or other provision fixing the costs or maximum costs of any legal services that is made by or under legislation.

itemised bill means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be assessed under Division 8.

litigious matter means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal.

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

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

sophisticated client means a client to whom, because of section 306(1)(c) or (d), disclosure under section 303 or 304(1) is or was not required.

third party payer, see section 296.

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

(2) In this Part, a reference to a law practice includes a reference to:

(a) for a person who was a sole practitioner when the legal services concerned were provided:

(i) the former sole practitioner; and

(ii) the executor of the will of the former sole practitioner; and

(iii) the trustee or administrator of the estate of the former sole practitioner; and

(b) subject to any other applicable arrangements:

(i) the persons who were the partners of a former law firm or multi-disciplinary partnership when the legal services concerned were provided; and

(ii) for a law firm or multi-disciplinary partnership if there has been a change of partners since the legal services concerned were provided – subject to any other applicable arrangements, the firm or partnership as currently constituted; and

(iii) the assignee of a law practice or former law practice; and

(iv) the receiver of a law practice or former law practice appointed under this Act; and

(c) a person of a class prescribed by the regulations.

296 Terms relating to third party payers

(1) For this Part:

(a) a person is a third party payer, in relation to a client of a law practice, if the person is not the client and:

(i) is under a legal obligation to pay all or any of a part of a bill for legal costs for legal services provided to the client; or

(ii) being under that obligation, has already paid all or a part of the legal costs; and

(b) a third party payer is an associated third party payer if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and

(c) a third party payer is a non-associated third party payer if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.

(2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.

(3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

Division 2 Application of Part

297 Application of Part – first instructions rule

This Part applies to a matter if the client first instructs the law practice in relation to the matter in this jurisdiction.

298 Part also applies by agreement or at client's election

(1) This Part applies to a matter if:

(a) either:

(i) this Part does not currently apply to the matter; or

(ii) it is not possible to decide the jurisdiction in which the client first instructs the law practice in relation to the matter; and

(b) either:

(i) the legal services are or will be provided wholly or primarily in this jurisdiction; or

(ii) the matter has a substantial connection with this jurisdiction;

or both; and

(c) either:

(i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2)(a) in respect of the matter; or

(ii) the client gives a notice under subsection (2)(b) in respect of the matter.

(2) For subsection (1)(c), the client may:

(a) accept, in writing or by other conduct, a written offer that complies with subsection (3) to enter into a written agreement with the law practice that this Part is to apply to the matter; or

(b) notify the law practice in writing that the client requires this Part to apply to the matter.

(3) An offer referred to in subsection (2)(a) must clearly specify:

(a) that it is an offer to enter into an agreement that this Part is to apply to the matter; and

(b) that the client may accept it in writing or by other conduct; and

(c) the type of conduct that will constitute acceptance.

(4) A notification has no effect for subsection (2)(b) if it is given after the period of 28 days after the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind but nothing in this subsection prevents an agreement referred to in subsection (2)(a) from coming into effect at any time.

299 Displacement of Part

(1) This section applies if this Part applies to a matter by the operation of section 297 or 298.

(2) This Part ceases to apply to the matter if:

(a) either:

(i) the legal services are or will be provided wholly or primarily in another jurisdiction; or

(ii) the matter has a substantial connection with another jurisdiction;

or both; and

(b) either:

(i) the client enters under the corresponding law of the other jurisdiction into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

(ii) the client notifies under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law) to the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

(3) Nothing in this section prevents the application of this Part to the matter by means of a later agreement or notice under section 298.

300 How and where client first instructs law practice

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

301 When does matter have substantial connection with this jurisdiction

The regulations may prescribe the circumstances in which, or the rules to be used to decide whether, a matter has or does not have a substantial connection with this jurisdiction for this Part.

302 What happens when different laws apply to matter

(1) This section applies if this Part applies to a matter for a period and a corresponding law applies for another period.

(2) If this Part applied to a matter for a period and a corresponding law applies to the matter afterwards, this Part continues to apply in respect of legal costs (if any) incurred while this Part applied to the matter.

(3) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.

(4) However:

(a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 8 accordingly applies in respect of those legal costs; or

(b) if the client enters into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 8 accordingly does not apply in respect of those legal costs.

(5) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by fax, email or some other written form.

(6) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.

(7) This section has effect despite any other provisions of this Part.

Division 3 Costs disclosure

303 Disclosure of costs to clients

(1) A law practice must disclose to a client in accordance with this Division:

(a) the basis on which legal costs will be calculated, including whether a fixed costs provision applies to any of the legal costs; and

(b) the client's right to:

(i) negotiate a costs agreement with the law practice; and

(ii) receive a bill from the law practice; and

(iii) request an itemised bill within 30 days after receipt of a lump sum bill; and

(iv) be notified under section 310 of any substantial change to the matters disclosed under this section; and

(c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable:

(i) a range of estimates of the total legal costs; and

(ii) an explanation of the major variables that will affect the calculation of those costs; and

(d) details of the intervals (if any) at which the client will be billed; and

(e) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (2)); and

(f) if the matter is a litigious matter, an estimate of:

(i) the range of costs that may be recovered if the client is successful in the litigation; and

(ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and

(g) the client's right to progress reports under section 312; and

(h) details of the person whom the client may contact to discuss the legal costs; and

(i) the following avenues that are open to the client in the event of a dispute in relation to legal costs:

(i) costs assessment under Division 8;

(ii) the setting aside of a costs agreement under section 323;

(iii) mediation under Division 7; and

(j) any time limits that apply to the taking of any action referred to in paragraph (i); and

(k) that the law of this jurisdiction applies to legal costs in relation to the matter; and

(l) information about the client's right:

(i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

(ii) to notify under a corresponding law (and within the time allowed by the corresponding law) to the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

(2) For subsection (1)(e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or decided from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.

(3) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.

(4) For subsection (1)(f), the disclosure must include:

(a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client's legal costs; and

(b) if applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.

(5) A law practice may disclose any or all of the details referred to in subsection (1)(b)(i) to (iii), (g), (i), (j) and (l) in or to the effect of the form prescribed by the regulations, and if it does so the practice is taken to have complied with this section in relation to the details so disclosed.

304 Disclosure if another law practice is to be retained

(1) If a law practice intends to retain another law practice on behalf of a client, the first law practice must disclose to the client the details specified in section 303(1)(a), (c) and (d) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 303.

(2) A law practice retained or to be retained on behalf of a client by another law practice is not required to make disclosure to the client under section 303, but must disclose to the other law practice the information necessary for the other law practice to comply with subsection (1).

(3) This section does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

Example for section 304

If a barrister is retained by a firm of solicitors on behalf of a client of the firm, the barrister must disclose to the firm details of the barrister's legal costs and billing arrangements, and the firm must disclose those details to the client. The barrister is not required to make a disclosure directly to the client.

305 How and when must disclosure be made to client

(1) Disclosure under section 303 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.

(2) Disclosure under section 304(1) must be made in writing before, or as soon as practicable after, the other law practice is retained.

(3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for sections 303 and 304.

306 Exceptions to requirement for disclosure

(1) Disclosure under section 303 or 304(1) is not required to be made in any of the following circumstances:

(a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed $1 500 (exclusive of GST) or the amount prescribed by the regulations (whichever is higher);

(b) if:

(i) the client has received one or more disclosures under section 303 or 304(1) from the law practice in the previous 12 months; and

(ii) the client has agreed in writing to waive the right to disclosure; and

(iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not warranted;

(c) if the client is:

(i) a law practice or an Australian legal practitioner; or

(ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (each within the meaning of the Corporations Act); or

(iii) a financial services licensee (within the meaning of that Act); or

(iv) a liquidator, administrator or receiver (as respectively referred to in that Act); or

(v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of that Act) if it were a company; or

(vi) a proprietary company (within the meaning of that Act) formed for carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or

(vii) unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure; or

(viii) a local government council constituted under a law of a jurisdiction or the Commonwealth; or

(ix) a minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth;

(d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;

(e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice, including, for example, if the law practice acts in the matter on a pro bono basis;

(f) in any circumstances prescribed by the regulations.

(2) Despite subsection (1)(a), if a law practice becomes aware that the total legal costs are likely to exceed $1 500 (exclusive of GST) or the amount prescribed by the regulations (whichever is higher), the law practice must disclose the matters in section 303 or 304 to the client as soon as practicable.

(3) A law practice must ensure a written record of a principal's decision that further disclosure is not warranted as mentioned in subsection (1)(b) is made and kept with the files relating to the matter concerned.

(4) The reaching of a decision referred to in subsection (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.

(5) Nothing in this section affects or takes away from any client's right:

(a) to progress reports under section 312; or

(b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 303; or

(c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

307 Additional disclosure – settlement of litigious matters

(1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed:

(a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and

(b) a reasonable estimate of any contributions towards those costs likely to be received from another party.

(2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1), if the other law practice makes the disclosure to the client before the settlement is executed.

308 Additional disclosure – uplift fees

(1) If a costs agreement involves an uplift fee, the law practice must, before entering the agreement, disclose to the client in writing:

(a) the practice's usual fees; and

(b) the uplift fee or basis of the calculation of the uplift fee; and

(c) reasons why the uplift fee is warranted.

(2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

309 Form of disclosure

(1) Written disclosures to a client under this Division:

(a) must be expressed in clear plain language; and

(b) may be in a language other than English if the client is more familiar with that language.

(2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written disclosure.

310 Ongoing obligation to disclose

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

311 Effect of failure to disclose

(1) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under Division 8.

Note for subsection (1)

Under section 350, the costs of an assessment in these circumstances are generally payable by the law practice.

(2) A law practice that does not disclose to a client or an associated third party payer anything required by this Division to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under Division 8.

(3) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed and the client or associated third party payer has entered a costs agreement with the law practice, the client or associated third party payer may also apply under section 323 for the costs agreement to be set aside.

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

(5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by section 304(2), then subsections (1) to (4):

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

(b) do apply to the legal costs owing to the retained law practice.

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

(a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and

(b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

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

312 Progress reports

(1) A law practice must give a client, on reasonable request:

(a) a written report of the progress of the matter in which the law practice is retained; and

(b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.

(2) A law practice may charge a client a reasonable amount for a report under subsection (1)(a) but must not charge a client for a report under subsection (1)(b).

(3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.

(4) Subsection (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

313 Disclosure to associated third party payers

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

(2) A disclosure under subsection (1) must be made in writing:

(a) at the time the disclosure to the client is required under this Division; or

(b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client – as soon as practicable after the practice became aware of the obligation.

(3) Section 309 applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.

(4) An associated third party payer for a client of a law practice has the same right to obtain reports under section 312 of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

Division 4 Legal costs generally

314 On what basis legal costs are recoverable

Subject to Division 2, legal costs are recoverable:

(a) in accordance with an applicable fixed costs provision; or

(b) if paragraph (a) does not apply, under a costs agreement made under Division 5 or the corresponding provisions of a corresponding law; or

(c) if paragraphs (a) and (b) do not apply, according to the fair and reasonable value of the legal services provided.

Note for section 314

See section 341(2) for the criteria to be applied on a costs assessment to decide whether legal costs are fair and reasonable.

315 Security for legal costs

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

316 Interest on unpaid legal costs

(1) A law practice may charge interest on unpaid legal costs if the costs are unpaid for at least 30 days after the practice has given a bill for the costs under this Part.

(2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.

(3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.

(4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

Division 5 Costs agreements

317 Making costs agreements

(1) A costs agreement may be made:

(a) between a client and a law practice retained by the client; or

(b) between a client and a law practice retained on behalf of the client by another law practice; or

(c) between a law practice and another law practice that retained that law practice on behalf of a client; or

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

(2) A costs agreement must be written or evidenced in writing.

(3) A costs agreement may consist of a written offer in accordance with subsection (4) that is accepted in writing or by other conduct.

(4) The offer must clearly specify:

(a) that it is an offer to enter into a costs agreement; and

(b) that the offer can be accepted in writing or by other conduct; and

(c) the type of conduct that will constitute acceptance.

(5) Except as provided by section 343, a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under Division 8.

Note for subsection (5)

If it attempts to do so, the costs agreement will be void – see section 322(1).

(6) A reference in section 323 and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

318 Conditional costs agreements

(1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.

(2) A conditional costs agreement may relate to any matter, except a matter that involves:

(a) criminal proceedings; or

(b) proceedings under the *Family Law Act 1975* (Cth); or

(c) proceedings prescribed by the regulations.

(3) A conditional costs agreement:

(a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and

(b) may provide for disbursements to be paid irrespective of the outcome of the matter; and

(c) must be:

(i) in writing; and

(ii) in clear plain language; and

(iii) signed by the client; and

(d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and

(e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.

(4) Subsection (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made under section 317(1)(c).

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

(6) If a client terminates an agreement within the period mentioned in subsection (3)(e), the law practice:

(a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal service s would b e performed during that period ; and

(b) without limiting paragraph (a), may not recover the uplift fee (if any).

319 Conditional costs agreements involving uplift fees

(1) A conditional costs agreement may provide for the payment of additional legal costs (excluding disbursements) on the successful outcome of the matter to which the agreement relates.

(2) The basis of calculation of the uplift fee must be separately identified in the agreement.

(3) An estimate of the uplift fee must be specified in the agreement or, if that is not reasonably practicable, a range of estimates of the uplift fee and an explanation of the major variables that will affect the calculation of the uplift fee.

(4) If a conditional costs agreement relates to a litigious matter, the premium must not exceed the percentage prescribed by the regulations of the legal costs (excluding disbursements) otherwise payable.

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

(6) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (5), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(7) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (5), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

320 Contingency fees prohibited

(1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

(2) Subsection (1) does not apply to the extent the costs agreement adopts an applicable fixed costs provision.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice is guilty of an offence.

Maximum penalty: 500 penalty units.

(4) If a law practice that is a law firm or multi-disciplinary partnership contravenes subsection (1), each principal of the practice is guilty of an offence.

Maximum penalty: 500 penalty units.

321 Effect of costs agreement

Subject to this Division and Division 8, a costs agreement may be enforced in the same way as any other contract.

322 Certain costs agreements void

(1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.

(2) Subject to this section and Division 8, legal costs under a void costs agreement are recoverable as set out in section 314(b) or (c).

(3) However, a law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.

(4) A law practice that has entered into a costs agreement in contravention of section 319 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.

(5) A law practice that has entered into a costs agreement in contravention of section 320 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.

(6) If a law practice does not repay an amount required by subsection (3), (4) or (5) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

323 Setting aside costs agreements

(1) On application by a client, the costs assessor may order that a costs agreement be set aside if satisfied the agreement is not fair or reasonable.

(2) In determining whether or not a costs agreement is fair or reasonable, and without limiting the matters to which the assessor can have regard, the assessor may have regard to any or all of the following matters:

(a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;

(b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;

(c) whether the law practice failed to make any of the disclosures required under Division 3;

(d) the circumstances and conduct of the parties before and when the agreement was made;

(e) the circumstances and the conduct of the parties in the matters after the agreement was made;

(f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;

(g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement the time at which the agreement was made.

(3) The assessor may adjourn the hearing of an application under this section pending the completion of any investigation of or determination on any charge in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.

(4) If the assessor orders that a costs agreement be set aside, the assessor may make an order in relation to the payment of legal costs the subject of the agreement.

(5) In making an order under subsection (4), the assessor must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account:

(a) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and

(b) whether or not it was reasonable to carry out the work; and

(c) whether or not the work was carried out in a reasonable way.

(6) In making an order under subsection (4), the assessor may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.

(7) For subsection (5), the assessor may have regard to any or all of the following matters:

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with any relevant legislation or legal profession rules;

(b) any disclosures made by the law practice under Division 3, or the failure to make any disclosures required under that Division;

(c) any relevant advertisement as to:

(i) the law practice's costs; or

(ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;

(d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(e) the retainer and whether the work done was within the scope of the retainer;

(f) the complexity, novelty or difficulty of the matter;

(g) the quality of the work done;

(h) the place where, and circumstances in which, the work was done;

(i) the time within which the work was required to be done;

(j) any other relevant matter.

(8) The assessor may determine whether or not a costs agreement exists.

(9) The assessor may order the payment of the costs of and incidental to determining an application under this section.

(10) A costs assessor must ensure an order or determination under this section is accompanied by a statement of the reasons for the order or determination.

Note

Under section 352, a party to a costs agreement may apply to a reviewer for a review of an order or determination made under this section.

(11) In this section:

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

Division 6 Billing

324 Legal costs cannot be recovered unless bill has been served

(1) A law practice must not start legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person under sections 325 and 326.

(2) A court of competent jurisdiction may make an order authorising a law practice to start legal proceedings against a person sooner if satisfied:

(a) the law practice has given a bill to the person under sections 325 and 326; and

(b) the person is about to leave this jurisdiction.

(3) A court or tribunal before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.

(4) This section applies whether or not the legal costs are the subject of a costs agreement.

325 Bills

(1) A bill may be in the form of a lump sum bill or an itemised bill.

(2) A bill must be signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice.

(3) It is sufficient compliance with subsection (2) if a letter signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice is attached to, or enclosed with, the bill.

(4) A bill or letter is taken to have been signed by a law practice that is an incorporated legal practice if it has the practice's seal affixed to it or is signed by a legal practitioner director of the practice or an officer or employee of the practice who is an Australian legal practitioner.

(5) A bill must be given to a person:

(a) by delivering it personally to the person or to an agent of the person; or

(b) by sending it by post to the person or agent at:

(i) the usual or last known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent; or

(c) by leaving it for the person or agent at:

(i) the usual or last known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent;

with a person on the premises who is apparently at least 16 years old and apparently employed or residing there.

(6) A reference in subsection (5) to any method of giving a bill to a person includes a reference to arranging for the bill to be given to that person by that method (for example, by delivery by courier).

(7) Despite anything in subsections (2) to (6), a bill may be given to a client electronically if the client request it be given electronically.

(8) In this section:

agent, of a person, means an agent, law practice or Australian legal practitioner who has authority to accept service of legal process for the person.

326 Notice of client's rights

(1) A bill must include or be accompanied by a written statement specifying:

(a) the following avenues that are open to the client in the event of a dispute in relation to legal costs:

(i) costs assessment under Division 8;

(ii) the setting aside of a costs agreement under section 323;

(iii) if the amount in dispute is less than $10 000 – mediation under Division 7; and

(b) other avenues available under rules of a court or tribunal that are open to the client in the event of a dispute in relation to legal costs; and

(c) any time limits that apply to the taking of any action referred to in paragraph (a) or (b).

(2) Subsection (1) does not apply in relation to a sophisticated client.

(3) A law practice may provide the written statement referred to in subsection (1) in or to the effect of the form prescribed by the regulations for this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.

327 Request for itemised bill

(1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.

(2) The law practice must comply with the request within 21 days after the date on which the request is made.

(3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

(4) Subject to subsection (5), a law practice must not start legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.

(5) If the person makes a request for an itemised bill under this section, the law practice must not start legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.

(6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.

(7) Section 325(2) and (5) apply to the giving of an itemised bill under this section.

328 Interim bills

(1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.

(2) Legal costs that are the subject of an interim bill may be assessed under Division 8, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been assessed or paid.

Division 7 Mediation of costs disputes

329 Definitions

In this Division:

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

costs dispute means a dispute between a client and an Australian legal practitioner concerning a bill, and includes a dispute over an amount claimed to be payable under a costs agreement.

330 Referral for mediation

(1) A client who is given a bill may refer a costs dispute about the bill to the Statutory Supervisor for mediation if the amount in dispute is less than $10 000.

(2) A Registrar may refer a costs dispute about a bill to the Supervisor for mediation if the amount in dispute is less than $10 000.

(3) A Registrar may, by written notice, require the client and the Australian legal practitioner concerned to enter into a process of mediation if the amount in dispute is less than $5 000.

(4) A costs dispute about a bill may be referred under this section at any time before an application for an assessment of the whole or part of a bill is accepted by a Registrar.

(5) Mediation is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, including the giving of informal advice designed to ensure:

(a) the parties are fully aware of their rights and obligations; and

(b) there is full and open communication between the parties concerning the dispute.

Division 8 Costs assessments

Subdivision 1 Interpretation

331 Definition

In this Division:

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

Subdivision 2 Applications

332 Application by clients or third party payers for costs assessment

(1) A client may apply to a costs assessor for an assessment of the whole or any part of legal costs.

(2) A third party payer may apply to a costs assessor for an assessment of the whole or any part of legal costs payable by the third party payer.

(3) An application for a costs assessor may be made even if the legal costs have been wholly or partly paid.

(4) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for a costs assessment.

(5) An application by a client or third party payer for a costs assessment under this section must be made within 12 months after:

(a) the bill was given or the request for payment was made to the client or third party payer; or

(b) the costs were paid if neither a bill was given nor a request was made.

(6) However, an application that is made out of time other than by:

(a) a sophisticated client; or

(b) third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned;

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

fair for the application for assessment to be dealt with after the 12 month period.

(7) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.

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

(a) nothing in this section prevents:

(i) the client from making one or more applications for assessment under this section in relation to costs for which the client is solely liable; and

(ii) the associated third party payer from making one or more applications for assessment under this section in relation to costs for which the associated third party payer is solely liable;

and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and

(b) the client or the associated third party payer:

(i) may participate in the costs assessment process where the other of them makes an application for assessment under this section in relation to costs for which they are both liable; and

(ii) is taken to be a party to the assessment and is bound by the assessment; and

(c) the law practice:

(i) must participate in the costs assessment process where an application is made under this section by the associated third party payer in the same way as the practice must participate in the process where an application is made under this section by a client; and

(ii) is taken to be a party to the assessment and is bound by the assessment.

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

(a) nothing in this section prevents:

(i) the client from making one or more applications for assessment under this section in relation to costs for which the client is liable; and

(ii) the non-associated third party payer from making one or more applications for assessment under this section in relation to costs for which the non-associated third party payer is liable;

and those applications may be made by them at the same time or at different times but must be dealt with separately; and

(b) the client:

(i) may participate in the costs assessment process where the non-associated third party payer makes an application under this section in relation to the legal costs for which the non-associated third party payer is liable; and

(ii) is taken to be a party to the assessment and is bound by the assessment; and

(c) the law practice:

(i) must participate in the costs assessment process; and

(ii) is taken to be a party to the assessment; and

(d) despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.

(10) In this section:

client includes the following:

(a) an executor or administrator of a client;

(b) a trustee of the estate of a client.

third party payer includes the following:

(a) an executor or administrator of a third party payer;

(b) a trustee of the estate of a third party payer.

333 Application for costs assessment by law practice retaining another law practice

(1) A law practice that retains another law practice to act for a client may apply to a costs assessor for an assessment of the whole or any part of the legal costs to which a bill given by the other law practice under Division 6 relates.

(2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.

(3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.

(4) An application under this section must be made within 60 days after:

(a) the bill was given or the request for payment was made; or

(b) the costs were paid if neither a bill was given nor a request was made.

(5) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

334 Application for costs assessment by law practice giving bill

(1) A law practice that has given a bill under Division 6 may apply to a costs assessor for an assessment of the whole or any part of the legal costs to which the bill relates.

(2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.

(3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.

(4) An application may not be made under this section unless at least 30 days have passed since:

(a) the bill was given or the request for payment was made; or

(b) the costs were paid if neither a bill was given nor a request was made; or

(c) an application has been made under this Division by another person in relation to the legal costs.

335 How to make an application for costs assessment

(1) An application for a costs assessment:

(a) must be made in accordance with the regulations; and

(b) subject to subsection (4), must be accompanied by the fee prescribed by the regulations or determined under the regulations.

(2) The application must authorise a costs assessor to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any law practice, Australian legal practitioner or Australian-registered foreign lawyer concerned, in relation to the matter to which the application relates.

(3) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.

(4) A costs assessor may waive or postpone payment of the application fee either wholly or in part if satisfied the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or the applicant's dependants.

(5) A costs assessor may refund the application fee either wholly or in part if satisfied it is appropriate because the application is not proceeded with.

336 Consequences of application

If an application for a costs assessment is made under this Division:

(a) the assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and

(b) the law practice must not start any proceedings to recover the legal costs until the assessment has been completed.

337 Persons to be notified of application

(1) A costs assessor must give a copy of an application for costs assessment to any law practice or client concerned or any other person whom the assessor considers it appropriate to notify.

(2) A person who is notified by the costs assessor under subsection (1):

(a) is entitled to participate in the costs assessment process; and

(b) is taken to be a party to the assessment; and

(c) if the assessor so determines, is bound by the assessment.

Subdivision 3 Assessments

338 Procedure on assessment

If, after proper notice that a costs assessment will take place, a party to the assessment does not attend, the costs assessor may proceed with the assessment in the absence of the party.

339 Assessment of complying costs agreements

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

(a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and

(b) the agreement has not been set aside under section 323;

unless the assessor is satisfied:

(c) the agreement does not comply in a material respect with any disclosure requirements of Division 3; or

(d) Division 5 precludes the law practice concerned from recovering the amount of the costs; or

(e) the parties otherwise agree.

(2) The costs assessor is not required to initiate an examination of the matters referred to in subsection (1)(c) and (d).

340 Costs fixed by other legislation

An assessment of costs fixed by a provision of an Act or statutory instrument must be made in accordance with the provision.

341 Criteria for costs assessment

(1) In conducting an assessment of legal costs, the costs assessor must consider:

(a) whether or not it was reasonable to carry out the work to which the legal costs relate; and

(b) whether or not the work was carried out in a reasonable way; and

(c) the fairness and reasonableness of the amount of legal costs in relation to the work except to the extent that section 339 or 340 applies to any disputed costs.

(2) In considering what is a fair and reasonable amount of legal costs, the assessor may have regard to any or all of the following matters:

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;

(b) any disclosures made by the law practice under Division 3;

(c) any relevant advertisement as to:

(i) the law practice's costs; or

(ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;

(d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(e) the retainer and whether the work done was within the scope of the retainer;

(f) the complexity, novelty or difficulty of the matter;

(g) the quality of the work done;

(h) the place where, and circumstances in which, the legal services were provided;

(i) the time within which the work was required to be done;

(j) any other relevant matter.

(3) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

342 Legal costs subject to consumer dispute not subject to assessment

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a consumer dispute may not be the subject of a costs assessment under this Division.

343 Contracting out of Division by sophisticated client

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

Subdivision 4 Determinations

344 Determination of costs assessment

(1) A costs assessor must determine an application for a costs assessment relating to a bill by:

(a) confirming the bill; or

(b) if the assessor is satisfied the disputed costs are unfair or unreasonable – by substituting for the amount of the costs an amount that, in the assessor's opinion, is a fair and reasonable amount.

(1A) A costs assessor must determine an application for a costs assessment relating to legal costs that have been paid without a bill by:

(a) confirming the amount of the costs paid; or

(b) if the assessor is satisfied the disputed costs are unfair or unreasonable – by substituting for the amount of the costs an amount that, in the assessor's opinion, is a fair and reasonable amount.

(2) Any amount substituted for the amount of the costs may include an allowance for any fee paid or payable for the application by the applicant.

(3) A costs assessor may not determine that any part of a bill that is not the subject of an application is unfair or unreasonable.

345 Certificate of determination

(1) On making a determination of costs, a costs assessor must issue to each party a certificate that specifies the determination.

(2) A costs assessor may issue more than one certificate in relation to an application for costs assessment.

(3) The certificates may be issued at the same time or at different stages of the assessment process.

(4) However, a certificate must not specify the costs of the costs assessment as defined in section 346.

(5) If the amount of costs has been paid, the amount (if any) by which the amount paid exceeds the amount specified in a certificate may be recovered as a debt in a court of competent jurisdiction.

(6) If the amount of costs has not been paid:

(a) the certificate is, on the filing of the certificate in a court of competent jurisdiction taken to be a judgment of the court for the amount of unpaid costs; and

(b) the rate of any interest payable in relation to the amount of costs is the rate of interest in the court.

(7) If the costs of the costs assessor are payable by a party to the assessment as mentioned in section 350, the assessor may refuse to issue a certificate relating to the determination until the costs of the assessor have been paid.

(8) Subsection (7) does not apply:

(a) in relation to a certificate issued before the completion of the assessment process under subsection (3); or

(b) in circumstances prescribed by the regulations.

346 Determination of costs of costs assessment

(1) This section applies if a costs assessor determines under section 344 an application for a costs assessment.

(2) The assessor must, subject to this section, determine the costs of the costs assessment.

(3) The assessor may refer to the Supreme Court a question of law relating to the costs of the costs assessment.

(4) The Court may make the order it considers appropriate concerning the costs of the costs assessment.

(5) On making a determination under subsection (2), an assessor may issue to each party a certificate specifying the costs of the costs assessment.

(6) If the application for a costs assessment has been dealt with by more than one costs assessor, a certificate issued can specify the costs of another costs assessor.

(7) The certificate is, on the filing of the certificate in a court of competent jurisdiction, taken to be a judgment of the court for the amount of unpaid costs.

(8) In this section:

costs of the costs assessment means the costs incurred by the costs assessor (including the costs related to the assessor's remuneration) in the course of a costs assessment.

347 Reasons for determination

(1) A costs assessor must ensure a certificate issued under section 345 or 346 specifying the assessor's determination is accompanied by:

(a) a statement of the reasons for the costs assessor's determination; and

(b) other supplementary information required by regulation.

(2) The statement of reasons must be given in accordance with the regulations

348 Correction of error in determination

(1) At any time after making a determination, a costs assessor may, for correcting an inadvertent error in the determination:

(a) make a new determination in substitution for the previous determination; and

(b) issue a certificate under section 345 or 346 specifying the new determination.

(2) The certificate replaces any certificate specifying the previous determination of the costs assessor that has already been issued by the assessor.

(3) On the filing of the replacement certificate in a court of competent jurisdiction, any judgment that is taken to have been effected by the filing of the previously issued certificate is varied accordingly.

349 Determination final

A costs assessor's determination of an application is binding on all parties to the application and no appeal or other assessment lies in relation to the determination, except as provided by this Division.

350 Recovery of costs of costs assessment

(1) This section applies if the costs of a costs assessment have been determined under section 346.

(2) Subject to subsection (3), the costs assessor may:

(a) require any party to the costs assessment to pay the costs of the costs assessment; or

(b) determine that the costs of the costs assessment must be shared between the parties to the costs assessment in the way the assessor considers appropriate.

(3) The law practice to which the costs that are the subject of the costs assessment are payable, or were paid, must pay the costs of the costs assessment if:

(a) the assessor is satisfied the law practice failed to comply with Division 3; or

(b) on the assessment the legal costs are reduced by 15% or more.

(4) The assessor may refer to the Supreme Court a question of law relating to the recovery of the costs of the costs assessment.

(5) The Court may make the order it considers appropriate concerning the recovery of the costs of the costs assessment.

Subdivision 5 Review of determinations

351 Definitions

In this Subdivision:

determination, of a costs assessor, includes an order or determination of a costs assessor made under section 323.

reviewer, for the review of a determination of a costs assessor or a costs assessor's determination of the costs of a costs assessment, means:

(a) if the costs assessor is the Master or is appointed by the Law Society – the Supreme Court; or

(b) if the costs assessor (other than the Master) is appointed by the Chief Justice – the Master or a Registrar; or

(b) if the costs assessor is appointed by the Chief Magistrate – a Judicial Registrar under the *Local Court Act*.

352 Application by party for review of determination

(1) An application to a reviewer for a review of a determination of a costs assessor may be made:

(a) for a determination under section 323 – by a party to the costs agreement; or

(b) for a determination under section 344 or 346 – by a party to the costs assessment.

(2) The application must:

(a) unless the reviewer allows further time – be made within 28 days after:

(i) for a determination under section 323 – the determination is made; or

(ii) for a determination under section 344 – the issue of the certificate under section 345 specifying the determination; or

(iii) for a determination under section 346 – the issue of the certificate under that section specifying the determination; and

(b) be made in accordance with the regulations (if any); and

(c) be accompanied by the fee prescribed by the regulations.

(3) The reviewer may waive or postpone payment of the fee either wholly or in part if satisfied the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or applicant's dependants.

(4) The reviewer may refund the fee paid under this section either wholly or in part if satisfied it is appropriate because the application is not proceeded with.

(5) The applicant must ensure notice of the application is given to the other parties to the assessment at least 7 days before the application is made or as prescribed by the regulations.

353 Reviewer may review determination of costs of costs assessment

(1) The reviewer may, within 30 days after the issue of a certificate under section 346 specifying the costs of a costs assessment determined by a costs assessor, decide to review that determination.

(2) The reviewer must ensure notice of the reviewer's decision is given to the parties to the proposed review at least 7 days before conducting the review or as prescribed by the regulations.

354 Conduct of review

(1) On the review of a determination of a costs assessor the reviewer may:

(a) affirm the assessor's determination; or

(b) set aside the assessor's determination and substitute the determination in relation to the costs assessment, in the reviewer's opinion, should have been made by the assessor who made the determination the subject of the review.

(2) For subsection (1), the reviewer:

(a) has, in relation to the application for assessment, all the functions of a costs assessor under this Part; and

(b) must determine the application, subject to this Subdivision and the regulations, in the way a costs assessor would be required to determine an application for a costs assessment.

(3) However, the assessment must be conducted on the evidence that was received by the costs assessor who made the determination the subject of the assessment.

(4) In addition, unless the reviewer decides otherwise, the reviewer must not:

(a) receive submissions from the parties to the assessment; or

(b) receive any fresh evidence or evidence in addition to or in substitution for the evidence received by the costs assessor.

(5) The reviewer may decide the amount of fair and reasonable costs is the amount agreed to by the parties to the review if during the course of the review the parties notify the reviewer they have agreed on the amount of the costs.

355 Relevant documents to be produced

(1) The reviewer may, by written notice, require a costs assessor, a law practice or another person (such as an applicant or an associate of a law practice) to produce to the reviewer any document in his or her possession relating to an assessment of costs by a costs assessor.

(2) If a person fails, without reasonable excuse, to comply with a notice under this section, the reviewer may decline to deal with an application for review or may continue to deal with it on the basis of the information provided.

(3) A costs assessor must retain in the assessor's possession any document relating to a costs assessment (other than a document that is returned to a party to the assessment) until whichever of the following happens first:

(a) the period of 12 months has elapsed since the issue of a certificate under section 345 specifying the determination of the costs assessor;

(b) the assessor receives a notice under subsection (1) in relation to the document.

(4) A law practice or associate of a law practice must retain in his or her possession any document relating to a costs assessment that is returned to the practice or associate by the costs assessor until whichever of the following happens first:

(a) the period of 12 months has elapsed since the issue of a certificate under section 345 specifying the determination of the assessor;

(b) the practice or associate receives a notice under subsection (1) in relation to the document.

(5) A contravention of this section by an Australian legal practitioner is capable of being professional misconduct.

356 Effect of review on costs assessor's determination

(1) This section applies if:

(a) under section 352, a party applies for a review of a determination of a costs assessor; or

(b) under section 353, the reviewer decides to review a costs assessor's determination of the costs of a costs assessment.

(2) On the making of the application or decision, the operation of the determination is suspended.

(3) The reviewer may end the suspension:

(a) if the reviewer affirms the determination of the costs assessor; or

(b) in the other circumstances the reviewer considers appropriate.

357 Certificate as to determination

(1) On making a determination in relation to an application for review of a costs assessment under this Subdivision, the reviewer must issue each party with a certificate specifying the determination.

(2) However, the certificate may not specify the costs of the review as defined in section 358.

Note for subsection (2)

Section 358 requires the reviewer to issue a separate certificate specifying the costs of the review. That section also makes provision for the effect of such a certificate.

(3) If the reviewer sets aside the determination of the costs assessor, the following provisions apply:

(a) if the amount of costs has already been paid, the amount (if any) by which the amount paid exceeds the amount specified in the reviewer's determination may be recovered as a debt in a court of competent jurisdiction;

(b) if the amount of the costs has not been paid:

(i) a certificate is, on the filing of the certificate in a court of competent jurisdiction taken to be a judgment of that court for the amount of unpaid costs; and

(ii) the rate of any interest payable for that amount of costs is the rate of interest in the court;

(c) if the assessor issued a certificate in relation to the assessor's determination under section 345 or 346:

(i) the certificate ceases to have effect; and

(ii) any judgment that is taken to have been effected in relation to the certificate also ceases to have effect; and

(iii) any enforcement action taken in relation to the judgment must be reversed.

(4) If the reviewer sets aside the costs assessor's determination, any amount substituted by the reviewer may include an allowance for:

(a) any fee paid or payable for the application for review by the applicant; or

(b) any amount paid or payable for the costs of the assessor by a party to the assessment.

(5) If the costs of the review are payable by a person as required by section 358, the reviewer must advise the parties that the certificate will be available to the parties on payment of the costs of the review.

(6) Subsection (5) does not apply in the circumstances prescribed by the regulations.

358 Recovery of costs of review

(1) A reviewer who conducts a review of a costs assessor's determination under this Subdivision must determine the costs of the review.

(2) The reviewer may, subject to this section, determine by whom and to what extent the costs must be paid.

(3) The reviewer must require the applicant party to pay the costs of the review if the reviewer:

(a) conducts the review on an application under section 352; and

(b) affirms the determination of the costs assessor.

(4) The reviewer must require the applicant party to pay the costs of the review if:

(a) the reviewer conducts the review on an application under section 352; and

(b) the reviewer sets aside the determination of the costs assessor; and

(c) the reviewer makes a determination in favour of the applicant party; and

(d) the reviewer's determination increases or decreases the total costs payable (as assessed by the assessor) by an amount that is less than 15% (or another percentage prescribed by the regulations) of the total costs payable as assessed by the assessor.

(5) Subject to subsections (3) and (4), the reviewer may:

(a) require any party to the assessment that is reviewed to pay the costs of the review; or

(b) determine that the costs of the review must be shared between the parties in the way the reviewer considers appropriate.

(6) The reviewer must issue to each party, a certificate specifying the reviewer's determination under this section.

(7) The certificate is, on filing of the certificate in a court of competent jurisdiction taken to be a judgment of the court for the amount of unpaid costs of the review.

(8) The costs of the review must be paid to the reviewer.

(9) In this section:

costs, of a review under this Subdivision, means the costs incurred by the reviewer in the course of the review.

359 Reasons for determination

(1) The reviewer must ensure a certificate issued under section 357 or 358 specifying the reviewer's determination is accompanied by:

(a) a statement of the reasons for the reviewer's determination; and

(b) the supplementary information required by regulation.

(2) The statement of reasons must be given in accordance with the regulations.

360 Correction of error in determination

(1) At any time after making a determination on a review of a costs assessor's determination under this Subdivision, the reviewer may, for correcting an inadvertent error in the determination:

(a) make a new determination in substitution for the previous determination; and

(b) issue a certificate under section 357 or 358 specifying the new determination.

(2) The certificate replaces any certificate specifying the previous determination of the reviewer that has already been issued by the reviewer.

(3) On the filing of the replacement certificate in a court of competent jurisdiction, any judgment that is taken to have been effected by the filing of the previously issued certificate is varied accordingly.

361 Appeal against determination or decision

(1) A reviewer's determination of an application for review of a costs assessor's determination is binding on all parties to the assessment the subject of a review

(2) However, Subdivision 6 applies in relation to a determination or decision of a reviewer under this Subdivision as if references to a costs assessor were references to the reviewer.

Subdivision 6 Appeals

362 Appeal against decision of costs assessor as to matter of law

(1) A party to an application for a costs assessment who is dissatisfied with a decision of a costs assessor as to a matter of law arising in the proceedings to determine the application may, in accordance with the rules of the Supreme Court, appeal to the Court against the decision.

(2) After deciding the question the subject of the appeal, the Court may, unless it affirms the costs assessor's decision:

(a) make the determination in relation to the application as, in its opinion, should have been made by the assessor; or

(b) remit its decision on the question to the assessor and order the assessor to re-determine the application.

(3) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

363 Appeal against determination of costs assessor by leave

(1) A party to an application for a costs assessment relating to a bill may, in accordance with the rules of the Supreme Court, seek leave of the Court to appeal to the Court against the determination of the application made by a costs assessor.

(2) A party to an application for a costs assessment relating to costs payable as a result of an order made by a court or tribunal may, in accordance with the rules of the court or tribunal, seek leave of the court or tribunal to appeal to the court or tribunal against the determination of the application made by a costs assessor.

(3) The Supreme Court or court or tribunal may, in accordance with its rules, grant leave to appeal and may hear and decide the appeal.

(4) An appeal must be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

(5) After deciding the questions the subject of the appeal, the Supreme Court or court or tribunal may, unless it affirms the costs assessor's determination, make the determination in relation to the application as, in its opinion, should have been made by the assessor.

364 Effect of appeal on application

(1) If a party to an application for a costs assessment has appealed against a determination or decision of a costs assessor, either the costs assessor or the court or tribunal to which the appeal is made may suspend, until the appeal is decided, the operation of the determination or decision.

(2) The costs assessor or the court or tribunal may end a suspension made by the assessor.

(3) The court or tribunal may end a suspension made by the court or tribunal.

365 Assessor can be party to appeal

A costs assessor can be made a party to any appeal against a determination or decision of the assessor only by the Supreme Court.

Division 9 Costs assessors

366 Costs assessors

(1) The Chief Justice, Chief Magistrate or Law Society may appoint persons to be costs assessors for this Act.

(2) A costs assessor may exercise the powers and perform the functions conferred on costs assessors under this Act or any other Act in relation to the costs for providing legal services.

(3) However, a costs assessor's powers and functions may be limited by the regulations or the instrument of appointment.

Example for subsection (3)

The Chief Magistrate may, by an instrument of appointment, limit a costs assessor's powers and functions to legal costs relating to a proceeding within the jurisdictional limit of the Local Court or a court or tribunal constituted by a magistrate.

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

(5) A costs assessor holds office for the period (not exceeding 3 years) as may be specified in the instrument of appointment of the assessor, but is eligible (if otherwise qualified) for re-appointment.

(6) A costs assessor may, with the consent of the Judge or magistrate who appointed the assessor, continue in office after the expiry of the assessor's term of office for making a determination in relation to, or otherwise completing, any application for costs assessment that was referred to the assessor before the expiry of the assessor's term of office.

(7) A costs assessor is entitled to be paid the remuneration (including travelling and allowances) the Attorney-General from time to time determines for costs assessors.

(8) A costs assessor is not an officer of the Supreme Court when acting as a costs assessor.

(9) Proceedings relating to anything done or omitted to be done by the Chief Justice or Chief Magistrate in relation to the appointment or removal of a costs assessor (including conditions of appointment and any other incidental matters) may only be started against the Territory.

367 Vacancy in office of cost assessor

(1) A costs assessor vacates office if the 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) is prevented from performing functions because of mental illness; or

(e) is convicted in the Territory of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence so punishable; or

(f) resigns office by written notice given to the Attorney-General; or

(g) ceases to be eligible to be a costs assessor; or

(h) is removed from office under subsection (2).

(2) A costs assessor may be removed from office by the Judge or magistrate who appointed the assessor.

368 Confidentiality

(1) A costs assessor is guilty of an offence if the assessor:

(a) discloses information acquired in connection with the exercise of the assessor's functions (***protected information***) to someone else; or

(b) does something that discloses protected information to someone else and is reckless about whether:

(i) the information is protected information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to the disclosure of information:

(a) in connection with the exercise of the functions or the administration or execution of this Act; or

(b) for any legal proceedings arising out of this Act or of any report of any such proceedings; or

(c) for 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.

Division 10 Miscellaneous matters

369 Protection from liability

(1) This section applies to a person who is or has been a costs assessor.

(2) The person is not civilly or criminally liable for an act done or omitted to be done in good faith for the administration of this Part.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

370 Referral for disciplinary action

(1) If, on a costs assessment or review, the costs assessor considers the legal costs charged by a law practice are grossly excessive, the assessor must refer the matter to the Law Society.

(2) If the costs assessor considers a costs assessment raises another matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the assessor must refer the matter to the Society.

(3) On a reference under subsection (1) or (2), the Society must consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

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

The regulations may provide that specified provisions of this Part:

(a) do not apply to incorporated legal practices or multi-disciplinary partnerships or both of them; or

(b) apply to them with specified modifications.

372 Imputed acts, omission or knowledge

For this Part:

(a) anything done or omitted by, to or in relation to:

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for section 319(4) or for any provision of this Part prescribed for this section);

in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and

(b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if:

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for section 319(4) or for any provision of this Part prescribed for this section);

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

Part 3.4 Professional indemnity insurance

373 Definition

In this Part:

approved, for professional indemnity insurance, means a policy of professional indemnity insurance provided under an agreement or arrangement mentioned in section 378.

374 Purpose

The purpose of this Part is to ensure each Australian legal practitioner engaged in legal practice in this jurisdiction has approved professional indemnity insurance.

375 Exemptions

(1) The regulations may exempt an Australian legal practitioner or class of legal practitioner from the requirement to be insured under this Act.

(2) The Law Society may, subject to the regulations and legal profession rules, exempt an Australian legal practitioner or class of legal practitioner from the requirement to be insured under this Act on the grounds the Society considers sufficient.

376 Law practice required to insure

(1) Before starting to engage in legal practice in this jurisdiction, a law practice must obtain approved professional indemnity insurance.

(2) At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain approved professional indemnity insurance.

(3) The insurance must cover civil liability of:

(a) the law practice in relation to its legal practice; and

(b) each Australian legal practitioner who is or was a principal or employee of the law practice in relation to its legal practice.

377 Professional indemnity insurance requirements

Professional indemnity insurance cover must comply with the requirements prescribed by the regulations.

378 Professional indemnity insurance scheme

(1) The Law Society may enter into an agreement or arrangement with an insurer or another person, whether carrying on business in this jurisdiction or not, for the operation of a scheme to provide professional indemnity insurance to law practices.

(2) Professional indemnity insurance provided under the agreement or arrangement must be in accordance with terms and conditions approved by the Society either generally or in relation to specific matters.

379 Giving information to Law Society for insurance

(1) For providing professional indemnity insurance, the chief executive officer of the Law Society may, by written notice, require a law practice to give the chief executive officer or an insurer or other person with whom an agreement or arrangement is entered under section 378 specified information within a specified reasonable time about:

(a) the number of people the law practice employs or formerly employed; and

(b) the duties performed by each of those people; and

(c) the gross income received by the law practice from fees in a specified period; and

(d) any claims made against the law practice in relation to any alleged civil liability arising from:

(i) the practice or former practice of the law practice; or

(ii) the administration of any trust or deceased estate of which the law practice is, or formerly was, a trustee, executor or administrator; or

(e) anything else prescribed by the regulations or legal profession rules.

(2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, fails to comply with the requirement, the practitioner or practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) If a law practice that is a law firm or multi-disciplinary partnership fails to comply with the requirement, each principal of the practice is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (2) or (3) if the practitioner, practice or principal has a reasonable excuse.

(5) The chief executive officer of the Society is guilty of an offence if the chief executive officer:

(a) discloses information given under subsection (1) (***protected information***) to someone else; or

(b) does something that discloses protected information to someone else and is reckless about whether:

(i) the information is protected information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(6) Subsection (5) does not apply to the disclosure of information:

(a) necessary for arranging professional indemnity insurance to law practices; or

(b) to an insurer or other person with whom an agreement or arrangement is entered under section 378; or

(c) with the prior consent in writing of the law practice; or

(d) to a court or tribunal in the course of legal proceedings; or

(e) under an order of a court or tribunal under another Act or law; or

(f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law.

380 Continuing obligation for professional indemnity insurance

An Australian legal practitioner is guilty of an offence if the practitioner:

(a) is a principal or employee of a law practice; and

(b) becomes aware that the practitioner will not be covered by approved professional indemnity insurance; and

(c) fails to give the Law Society written notice of that fact in the approved form as soon as practicable after becoming aware of that fact.

Maximum penalty: 500 penalty units.

Part 3.5 Fidelity cover

Division 1 Preliminary matters

381 Purpose

The purpose of this Part is to establish and maintain a fund to provide a source of compensation for defaults by law practices arising from or constituted by acts or omissions of associates.

382 Definitions

In this Part:

allow, a claim, includes compromise or settle the claim.

capping and sufficiency provisions means:

(a) for this jurisdiction – sections 418 and 419; or

(b) for another jurisdiction – the provisions of the corresponding law of that jurisdiction that correspond to those sections.

claim means a claim under this Part.

claimant means a person who makes a claim under this Part.

concerted interstate default means a default of a law practice that arises from an act or omission:

(a) that was committed jointly by 2 or more associates of the practice; or

(b) parts of which were committed by different associates of the practice or different combinations of associates of the practice;

if this jurisdiction is the relevant jurisdiction for at least one of the associates and another jurisdiction is the relevant jurisdiction for at least one of the associates.

default, in relation to a law practice, means:

(a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, if the failure arises from an act or omission of an associate that involves dishonesty; or

(b) a fraudulent dealing with trust property that was received by the practice in the course of legal practice by the practice, where the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty.

dishonesty includes fraud.

pecuniary loss, in relation to a default, means:

(a) the amount of trust money, or the value of trust property, that is not paid or delivered; or

(b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing.

relevant jurisdiction, see section 396.

383 Time of default

(1) This section applies for the purpose of determining which jurisdiction's law applies in relation to a default.

(2) The default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.

(3) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed or on such other day as is decided in accordance with the regulations.

384 Application of this Part

This Part does not apply to a default of a law practice consisting of a barrister.

Division 2 Fidelity Fund

385 Establishment of Fidelity Fund

The Funds Management Committee must establish and maintain a Legal Practitioners Fidelity Fund.

386 Financial management of Fidelity Fund

The Funds Management Committee must manage the Fidelity Fund in a way that, as far as practicable, ensures it is sufficient to meet ascertained and contingent liabilities for defaults to which this Part applies without needing to impose a levy under Division 3.

387 Directions about prudential management of Fidelity Fund

(1) Subject to section 386, the Attorney-General may give the Funds Management Committee a direction about the prudential management of the Fidelity Fund.

(2) Without limiting subsection (1), a direction may be made about the following:

(a) investment of amounts surplus to its immediate requirements;

(b) the acquisition, holding or disposal of real or personal property.

(3) The Committee must comply with the direction.

388 Determinations about funding from Fidelity Fund

(1) The Attorney-General may determine the payment of an amount from the Fidelity Fund for funding:

(a) for the Law Society, Admission Board, Disciplinary Tribunal, Funds Management Committee and Statutory Supervisor (***regulatory authorities***) for their costs and expenses of administering this Act; or

(b) for complying community legal centres; or

(c) for a public purpose.

(2) In making a determination, the Attorney-General must have regard to:

(a) a recommendation made by the Funds Management Committee; and

(b) the sufficiency of the Fidelity Fund to meet ascertained and contingent liabilities for defaults to which this Part applies without a levy being imposed under Division 3.

(3) In addition, a determination for funding for regulatory authorities may be made only in accordance with the regulations.

(4) Also, determinations for the Law Society for a financial year must not be less than the total amount paid in the previous financial year for the grant or renewal of local practising certificates.

(5) For subsection (2)(a), the Committee must at least once in each financial year, and may at other times the Committee considers appropriate, make a recommendation to the Attorney-General about the payment of amounts from the Fidelity Fund for funding regulatory authorities.

(6) The Attorney-General must give the Committee written notice of a determination.

(7) The Committee must comply with the determination.

(8) In this section:

community includes a part of the community.

public purpose means any of the following purposes:

(a) to advance the education of the community in relation to the law;

(b) to advance the collection, assessment and dissemination to the community of information relating to the law;

(c) to improve the access of the community to legal services;

(d) to improve the quality, standard and effectiveness of legal services available to the community;

(e) to protect any members of the community using or seeking to use legal services.

389 Payments into and out of Fidelity Fund

(1) The Fidelity Fund comprises the following:

(a) contributions and levies paid under this Act;

(b) fees paid under this Act to the Funds Management Committee;

(c) fines paid under this Act to the Funds Management Committee;

(d) interest on trust accounts paid under this Act to the Funds Management Committee;

(e) other amounts lawfully paid to the Funds Management Committee;

(f) interest accruing from investment of the Fund.

(2) The following must be paid out of the Fund:

(a) amounts of claims allowed under this Part;

(b) amounts determined under section 388;

(c) other amounts that may lawfully paid out of the Fund.

390 Insurance

(1) The Funds Management Committee may arrange with an insurer for the insurance of the Fidelity Fund.

(2) Without limiting subsection (1), the Committee may arrange for the insurance of the 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 must be paid into the 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 relation to anything done or omitted to be done in good faith for arranging for the insurance of the Fund.

(5) In this section:

protected person means:

(a) the Committee or a member of the Committee; or

(b) a person acting at the direction of the Committee.

391 Borrowing

The Funds Management Committee cannot borrow money for the purposes of the Fidelity Fund.

Division 3 Contributions and levies

392 Deciding annual contribution

(1) Before 31 May in each year, the Funds Management Committee must decide the amount of contribution each local legal practitioner who is a member of a class of legal practitioner prescribed by the regulations is required to pay for the Fidelity Fund for the period of 12 months starting on the next following 1 July.

(2) The amount of the contribution must not exceed the amount prescribed by the regulations.

(3) In deciding the amount, the Committee must have regard to the advice of an actuary engaged by the Committee to advise it on the appropriate provision to be made for ascertained and contingent liabilities of the Fund.

(4) As soon as practicable after making the decision, the Committee must give notice of the amount:

(a) by *Gazette* notice; and

(b) written notice to the Law Society.

393 Payment of annual contributions

(1) A local legal practitioner who is a member of a class of practitioner mentioned in section 392(1) must, before 1 July in each year, pay to the Funds Management Committee the contribution prescribed by the regulations for the Fidelity Fund for the period of 12 months beginning on that date.

(2) If a legal practitioner applies for a practising certificate for a period of less than 12 months, the practitioner must, in relation to the period, pay to the Committee a contribution that bears to the prescribed contribution the same proportion as the period bears to a year.

(3) If an interstate legal practitioner gives notice of starting to engage in legal practice in this jurisdiction, the practitioner must, for the period the practice is established, pay to the Committee a contribution that bears to the prescribed contribution the same proportion as the period bears to a year.

(4) If a lawyer is registered as a locally-registered foreign lawyer the lawyer must, for the period of registration, pay to the Committee a contribution that bears to the prescribed contribution the same proportion as the period bears to a year.

394 Imposition of levy

(1) If the Funds Management Committee considers the Fidelity Fund is not sufficient to satisfy ascertained and contingent liabilities, the Committee may impose a levy for payment into the Fund by a date decided by it.

(2) The amount of the levy must not exceed the amount prescribed by the regulations.

(3) The levy must be paid to the Committee by each local legal practitioner who at that date mentioned in subsection (1) is a member of a class of practitioner prescribed by the regulations.

(4) As soon as practicable after making the decision, the Committee must give notice of the amount of the levy and the date on which it must be paid:

(a) by *Gazette* notice; and

(b) written notice to the Law Society.

395 Provisions about payment of contribution or levy

(1) Subsections (2) and (3) apply if:

(a) a legal practitioner is eligible to be a member of more than one class of legal practitioner mentioned in section 392(1) or 394(3); and

(b) the amount of the contribution or levy payable by members of each of the classes is different; and

(c) the legal practitioner wishes to claim membership of one of the classes other than the one for which members must pay the highest contribution or levy.

(2) The legal practitioner must give the Funds Management Committee a statutory declaration specifying the class to which the legal practitioner claims membership.

(3) If the legal practitioner does not give the Committee a statutory declaration under subsection (2) when paying a contribution or levy:

(a) the practitioner is taken to be a member of the class to which the practitioner is eligible to be a member and for which members must pay the highest contribution or levy; and

(b) the practitioner must pay that contribution or levy.

(4) The Committee may, in a special case, allow a legal practitioner further time in which to pay a contribution or levy or part of it.

(5) If a legal practitioner does not pay the amount of a contribution or levy payable by the practitioner by the date it is required to be paid or, if the Committee allows the practitioner further time to pay under subsection (4), within the further time allowed:

(a) the amount of the unpaid contribution or levy is a debt owing to the Committee by the practitioner; and

(b) the Committee must, as soon as practicable, give written notice to the Law Society of the practitioner's failure.

Division 4 Defaults to which this Part applies

396 Relevant jurisdiction

(1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be decided under this section.

(2) In the case of a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the relevant jurisdiction for the associate is:

(a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default – the jurisdiction under whose law that trust account was maintained; or

(b) in any other case – the associate's home jurisdiction.

(3) In the case of a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is:

(a) if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default – the jurisdiction under whose law that trust account was maintained; or

(b) in any other case – the associate's home jurisdiction.

(4) In the case of a default involving trust property received in Australia, or received outside Australia and brought to Australia, the relevant jurisdiction for the associate is the associate's home jurisdiction.

Note for subsection (4)

Section 423 provides that the Law Society may treat the default as consisting of 2 or more defaults for determining the liability of the Fidelity Fund.

397 Defaults to which this Part applies

(1) This Part applies to a default of a law practice arising from or constituted by an act or omission of one or more associates of the practice, where this jurisdiction is the relevant jurisdiction for the only associate or one or more of associates involved.

(2) It is immaterial where the default occurs.

(3) It is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this or any other jurisdiction or of the Commonwealth or that proceedings have not been commenced or concluded in relation to a crime or other offence of that kind.

398 Defaults relating to financial services or investments

(1) This Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with:

(a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or

(b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(2) Without limiting subsection (1), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with a managed investment scheme, or mortgage financing, undertaken by the practice.

(3) Without limiting subsections (1) and (2), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for investment purposes, whether on its own account or as agent, unless:

(a) the money or property was entrusted to or held by the practice:

(i) in the ordinary course of legal practice; and

(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

(b) the investment is or is to be made:

(i) in the ordinary course of legal practice; and

(ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

(4) In this section:

Australian financial services licence, see Chapter 7 of the Corporations Act.

authorised representative, see Chapter 7 of the Corporations Act.

financial service, see Chapter 7 of the Corporations Act.

financial services business, see Chapter 7 of the Corporations Act.

Division 5 Claims about defaults

399 Claims about defaults

(1) A person who suffers pecuniary loss because of a default to which this Part applies may make a claim against the Fidelity Fund to the Law Society about the default.

(2) A claim must be made in the approved form.

(3) The Society 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 Society must investigate a claim made to it, including the default to which it relates, and may do so in any way it considers appropriate.

400 Time limit for making claims

(1) Subject to section 402, a claim does not lie against the Fidelity Fund unless the prospective claimant notifies the Law Society of the default concerned:

(a) within 6 months after the prospective claimant becomes aware of the default; or

(b) within a further period allowed by the Society; or

(c) if the Supreme Court allows further time after the Society refuses to do so – within the period allowed.

(2) The Court or Society may allow a further period if satisfied it would be appropriate to do so in a particular case having regard to matters the Court or Society considers relevant.

401 Advertisements

(1) If the Law Society considers there has been, or may have been, a default by a law practice, it may publish either or both of the following:

(a) a notice that seeks information about the default;

(b) a notice that invites claims about the default and fixes a final date after which claims relating to the default cannot be made.

(2) The final date fixed by the notice must be a date that is:

(a) at least 3 months later than the date of the first or only publication of the notice; and

(b) not more than 12 months after the date of that first or only publication.

(3) The notice must be published on the Society's Internet site.

(4) The Society may give information to persons making inquiries in response to a notice published under this section.

(5) Apart from extending the period during which claims can be made under this Part (if relevant), publication of a notice under this section does not confer any entitlements in relation to any claim or the default to which it relates or provide any grounds affecting the determination of any claim.

(6) The publication in good faith of a notice under this section, or the provision of information in good faith under this section, does not subject a protected person to any liability (including liability in defamation).

(7) In this section:

protected person means:

(a) the Law Society or a member of the Society; or

(b) the proprietor, editor or publisher of the newspaper; or

(c) an Internet service provider or Internet content host; or

(d) a member of staff of or a person acting at the direction of any person or entity referred to in this definition.

402 Time limit for making claims following advertisement

(1) This section applies if the Law Society publishes a notice under section 401 fixing a final date after which claims relating to a default cannot be made.

(2) A claim may be made:

(a) up to and including the final date fixed under the notice; or

(b) within a further period allowed by the Society; or

(c) if the Supreme Court allows further time after the Society refuses to do so – within the period allowed;

even though the claim would have been barred under section 400 had the notice not been published.

403 Claims not affected by certain matters

(1) A claim may be made about a law practice's default despite a change in the status of the practice or the associate concerned after the occurrence of the act or omission giving rise to or constituting the default.

(2) A claim that has been made is not affected by a later change in the status of the practice or associate.

(3) For this section, a change in status includes:

(a) for a partnership – a change in the membership or staffing or the dissolution of the practice; and

(b) for an incorporated legal practice – a change in the directorship or staffing or the winding-up or dissolution of the practice; and

(c) for an associate who was an Australian legal practitioner – the fact that the associate has ceased to practise or to hold an Australian practising certificate; and

(d) for an individual – the death of the associate.

404 Advance payments

(1) The Law Society may, at its absolute discretion, make payments to a claimant in advance of the determination of a claim if satisfied:

(a) the claim is likely to be allowed; and

(b) payment is warranted to alleviate hardship.

(2) Any payments made in advance must be taken into account when the claim is determined.

(3) Payments under this section must be made by the Funds Management Committee from the Fidelity Fund.

(4) If the claim is disallowed, the amounts paid under this section are recoverable by the Committee as a debt due to the Fund.

(5) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the Committee as a debt due to the Fund.

Division 6 Determination of claims

405 Law Society may determine claim

(1) The Law Society may determine a claim by wholly or partly allowing or disallowing it.

(2) The Society may disallow a claim to the extent the claim does not relate to a default for which the Fidelity Fund is liable.

(3) The Society may wholly or partly disallow a claim, or reduce a claim, to the extent:

(a) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) the negligence of the claimant contributed to the loss; or

(c) the conduct of the transaction with the law practice in relation to which the claim is made was illegal and the claimant knew or ought reasonably to have known of that illegality; or

(d) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or

(e) the claimant has unreasonably refused to disclose information or documents to or cooperate with:

(i) the Society; or

(ii) any other authority (including, for example, an investigative or prosecuting authority);

in the investigation of the claim.

(4) Subsections (2) and (3) do not limit the Society's power to disallow a claim on any other ground.

(5) Without limiting subsection (2) or (3), the Society may reduce the amount otherwise payable on a claim to the extent the Society considers appropriate:

(a) if satisfied the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) if satisfied the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or

(c) if satisfied the claimant has unreasonably hindered the investigation of the claim.

(6) The Society must, in allowing a claim, specify the amount payable.

406 Maximum amount allowable

(1) The amount payable in relation to a default must not exceed the pecuniary loss resulting from the default.

(2) This section does not apply to costs or interest payable under section 407 or 408.

407 Costs

(1) If the Law Society wholly or partly allows a claim, the Society must order payment of the claimant's reasonable legal costs involved in making and proving the claim unless the Society considers special circumstances exist warranting a reduction in the amount of costs or a determination that no amount should be paid for costs.

(2) If the Society wholly disallows a claim, the Society may order payment of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim if the Society considers it is appropriate to make the order.

(3) The costs are payable from the Fidelity Fund.

408 Interest

(1) In determining the amount of pecuniary loss resulting from a default, the Law Society must add interest on the amount payable (excluding interest) unless the Society considers special circumstances exist warranting a reduction in the amount of interest or warranting a determination that no amount should be paid by way of interest.

(2) The interest must be calculated from the date on which the claim was made to the date the Society notifies the claimant that the claim has been allowed at the rate specified in or determined under the regulations.

(3) To the extent regulations are not in force for subsection (2), interest must be calculated at the rate of 5%.

(4) The interest is payable from the Fidelity Fund.

409 Reduction of claim because of other benefits

(1) A person is not entitled to recover from the Fidelity Fund any amount equal to amounts or to the value of other benefits:

(a) that have already been paid to or received by the person; or

(b) that have already been determined and are payable to or receivable by the person; or

(c) that (in the Law Society's opinion) are likely to be paid to or received by the person; or

(d) that (in the Society's opinion) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person;

from other sources in relation to the pecuniary loss to which a claim relates.

(2) The Society may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied payment is warranted to alleviate hardship, but nothing in this subsection affects section 411.

410 Subrogation

(1) On payment of a claim from the Fidelity Fund, the Law Society is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.

(2) Without limiting subsection (1), that subsection extends to a right or remedy against:

(a) the associate in relation to whom the claim is made; or

(b) the person authorised to administer the estate of the associate in relation to whom the claim is made and who is deceased or an insolvent under administration.

(3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in relation to the default, the claim would not be disallowable on any of the grounds set out in section 405(3).

(4) The Society may exercise its rights and remedies under this section in its own name or in the name of the claimant.

(5) If the Society brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.

(6) The Society may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.

(7) The Society must pay into the Fund any money recovered in exercising its rights and remedies under this section.

411 Repayment of certain amounts

(1) If a claimant:

(a) receives a payment from the Fidelity Fund in relation to the claim; and

(b) receives or recovers from another source or sources a payment on account of the pecuniary loss; and

(c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources;

the amount of the surplus is a debt payable by the claimant to the Fund.

(2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the Fund in relation to the claim.

412 Notice of delay in making decision

(1) If the Law Society considers a claim is not likely to be determined within 12 months after it was made, the Society must give written notice to the claimant that the claim is not likely to be determined within that period.

(2) The notice must contain a brief statement of reasons for the delay.

413 Notice of decision

(1) The Law Society must, as soon as practicable, give written notice to the claimant about any decision it makes about the claim.

(2) The notice must include an information notice for:

(a) a decision of the Society to wholly or partly disallow a claim; or

(b) a decision of the Society to reduce the amount allowed in relation to a claim.

414 Appeal against decision on claim

(1) A claimant may appeal to the Supreme Court against a decision of the Law Society:

(a) to wholly or partly disallow a claim; or

(b) to reduce the amount allowed in relation to a claim.

(2) However, an appeal does not lie against a decision of the Society to limit the amount payable, or to decline to pay an amount, under the capping and sufficiency provisions of this jurisdiction.

(3) An appeal must be started by filing notice of appeal within 28 days after receiving the information notice for the decision.

(4) The notice of appeal must state fully the grounds of appeal.

(5) On an appeal:

(a) the appellant must establish that the whole or part of the amount sought to be recovered from the Fidelity Fund is not reasonably available from other sources, unless the Society waives that requirement; and

(b) the Court may, on application by the Society, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.

(6) The Court may review the merits of the Society's decision.

(7) The Court may:

(a) affirm the decision; or

(b) if satisfied the reasons for varying or setting aside the Society's decision are sufficiently cogent to warrant doing so:

(i) vary the decision; or

(ii) set aside the decision and make a decision in substitution for the decision set aside; or

(iii) set aside the decision and remit the matter for reconsideration by the Society in accordance with any directions or recommendations of the Court.

(8) Also, the Court may make the other orders it considers appropriate.

(9) However, an order for costs must not be made on an appeal under this section unless the Court is satisfied an order for costs should be made in the interests of justice.

415 Appeal against failure to determine claim

(1) A claimant may appeal to the Supreme Court against a failure of the Law Society to determine a claim after 12 months after the claim was made.

(2) An appeal against a failure to determine a claim must be started by filing notice of appeal at any time after the period of 12 months after the claim was made and while the failure continues.

(3) The notice of appeal must state fully the grounds of appeal.

(4) On an appeal:

(a) the appellant must establish that the whole or part of the amount sought to be recovered from the Fidelity Fund is not reasonably available from other sources, unless the Society waives that requirement; and

(b) the Court may, on application by the Society, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.

(5) The Court may decide the appeal:

(a) by:

(i) giving directions to the Society for the expeditious determination of the matter; and

(ii) if the Court is satisfied there has been unreasonable delay – ordering that interest be paid at a specified rate that is higher than the rate applicable under section 408, until further order or the determination for the claim; and

(iii) if the Court is satisfied there has not been unreasonable delay – ordering that, if delay continues in circumstances of a specified kind, interest be paid for a specified period at a specified rate that is higher than the rate applicable under section 408, until further order or the determination for the claim; or

(b) by deciding not to give directions or make orders under paragraph (a).

(6) However, an order for costs must not be made on an appeal under this section unless the Court is satisfied an order for costs should be made in the interests of justice.

416 Court proceedings

In any proceedings brought in a court under section 410 or 414:

(a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person in relation to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceedings; and

(b) any defence that would have been available to the practitioner or other person is available to the Law Society.

Division 7 Payments from Fidelity Fund for defaults

417 Payments for defaults

(1) The Fidelity Fund must be applied by the Funds Management Committee for compensating claimants in relation to claims allowed under this Part for defaults to which this Part applies.

(2) An amount payable from the Fund in relation to a claim is payable to the claimant or to another person at the claimant's direction.

418 Caps on payments

(1) The regulations may fix either or both of the following:

(a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the Fidelity Fund in relation to individual claims or classes of individual claims;

(b) the maximum aggregate amount, or the method of calculating maximum aggregate amount, that may be paid from the Fund in relation to all claims made in relation to individual law practices or classes of law practices.

(2) Amounts must not be paid from the Fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).

(3) Payments from the Fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.

(4) Despite subsection (2), the Funds Management Committee may authorise payment of a larger amount if satisfied it would be reasonable to do so after taking into account:

(a) the position of the Fund and the circumstances of the particular case; and

(b) the advice of the Law Society.

(5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the Committee to consider payment of a larger amount.

419 Sufficiency of Fidelity Fund

(1) If the Funds Management Committee is of the opinion that the Fidelity Fund is likely to be insufficient to meet the Fund's ascertained and contingent liabilities, the Committee may do any or all of the following:

(a) postpone all payments relating to all or any class of claims out of the Fund;

(b) impose a levy under section 394;

(c) make partial payments of the amounts of one or more allowed claims out of the Fund with payment of the balance being a charge on the Fund;

(d) make partial payments of the amounts of 2 or more allowed claims out of the Fund on a pro rata basis, with payment of the balance ceasing to be a liability of the Fund.

(2) In deciding whether to do any or all of the things mentioned in subsection (1), the Committee must:

(a) consult with and take advice from the Law Society; and

(b) have regard to hardship if relevant information is known to the Committee; and

(c) endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.

(3) If the Committee declares a decision is made under subsection (1)(d):

(a) the balance specified in the declaration ceases to be a liability of the Fund; and

(b) the Committee may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance and the balance or that part of the balance again becomes a liability of the Fund.

(4) A decision of the Committee made under this section is final and not subject to appeal or review.

Division 8 Claims by law practices or associates

420 Claims by law practices or associates about defaults

(1) This section applies to a default of a law practice arising from or constituted by an act or omission of an associate of the practice.

(2) A claim may be made under section 399 by another associate of the law practice if the associate suffers pecuniary loss because of the default.

(3) A claim may be made under section 399 by the law practice if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

421 Claims by law practices or associates about notional defaults

(1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by one or more other associates.

(2) The default, to the extent that it was avoided, remedied or reduced, is referred to in this section as a notional default.

(3) This Part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

Division 9 Defaults involving interstate elements

422 Concerted interstate defaults

(1) The Law Society may treat a concerted interstate default as if the default consisted of 2 or more separate defaults:

(a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and

(b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.

(2) The Society may treat a claim about a concerted interstate default as if the claim consisted of:

(a) one or more claims made under this Part; and

(b) one or more claims made under a corresponding law or laws.

(3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute:

(a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the Society and the corresponding authority or authorities involved.

(4) Subsection (3) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Fidelity Fund after the claim has been assessed.

423 Defaults involving interstate elements where committed by one associate only

(1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, where the default involves more than one of the cases referred to in section 396(2) to (4).

(2) The Law Society may treat the default to which this section applies as if the default consisted of 2 or more separate defaults:

(a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction; and

(b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions.

(3) The Society may treat a claim about the default to which this section applies as if the claim consisted of:

(a) one or more claims made under this Part; and

(b) one or more claims made under a corresponding law or laws.

(4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute:

(a) in equal shares in respect of the default and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the Society and the corresponding authority or authorities involved.

(5) Subsection (4) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Fidelity Fund after the claim has been assessed.

Division 10 Inter-jurisdictional provisions

424 Fidelity protocols

(1) The regulations may authorise the Law Society and the Funds Management Committee to enter into arrangements (***fidelity protocols***) with corresponding authorities for or with respect to matters to which this Part relates.

(2) Without limiting subsection (1), the regulations may authorise the making of a fidelity protocol that provides that the Society or Committee is taken to have:

(a) requested a corresponding authority to act as agent of the Society or Committee in specified classes of cases; or

(b) agreed to act as agent of a corresponding authority in specified classes of cases.

(3) The regulations may:

(a) provide for the amendment, revocation or replacement of a fidelity protocol; or

(b) provide that a fidelity protocol does or specified classes of fidelity protocols do not have effect in this jurisdiction unless approved in accordance with the regulations.

425 Forwarding of claims

(1) If a claim is made to the Law Society about a default that appears to be a default to which a corresponding law applies, the Society must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.

(2) If a claim is made to a corresponding authority about a default that appears to be a default to which this Part applies and the claim or a copy of it is forwarded under a corresponding law to the Society by the corresponding authority, the claim is taken:

(a) to have been made under this Part; and

(b) to have been so made when the claim was received by the corresponding authority.

426 Investigation of defaults to which this Part applies

(1) This section applies if a default appears to be a default to which this Part applies and to have:

(a) occurred solely in another jurisdiction; or

(b) occurred in more than one jurisdiction; or

(c) occurred in circumstances in which it cannot be decided precisely in which jurisdiction the default occurred.

(2) The Law Society may request a corresponding authority or corresponding authorities to act as agent or agents for the Society, for processing or investigating a claim about the default or aspects of the claim.

427 Investigation of defaults to which corresponding law applies

(1) This section applies if a default appears to be a default to which a corresponding law applies and to have:

(a) occurred solely in this jurisdiction; or

(b) occurred in more than one jurisdiction (including this jurisdiction); or

(c) occurred in circumstances in which it cannot be decided precisely in which jurisdiction the default occurred.

(2) The Law Society may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for processing or investigating a claim about the default or aspects of the claim.

(3) If the Society agrees to act as agent of a corresponding authority under subsection (2), the Society may exercise any of its powers or functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this Part.

428 Investigation of concerted interstate defaults and other defaults involving interstate elements

(1) This section applies if either of the following defaults appear to have occurred:

(a) a concerted interstate default;

(b) a default to which section 423 applies.

(2) The Law Society may request a corresponding authority or corresponding authorities to act as agent or agents for the Society, for processing or investigating a claim about the default or aspects of the claim.

(3) The Society may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for processing or investigating a claim about the default or aspects of the claim.

(4) If the Society agrees to act as agent of a corresponding authority under subsection (3), the Society may exercise any of its powers or functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made entirely under this Part.

429 Recommendations by Law Society to corresponding authorities

If the Law Society is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the Society may make recommendations about the decision the corresponding authority might make about the claim.

430 Recommendations to and decisions by Law Society after receiving recommendations from corresponding authority

(1) If a corresponding authority makes recommendations about the decision the Law Society might make about a claim in relation to which the corresponding authority was acting as its agent, the Society may:

(a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or

(b) disregard the recommendations.

(2) A corresponding authority cannot, as agent of the Society, make a decision about the claim under Division 5.

431 Request to another jurisdiction to investigate aspects of claim

(1) The Law Society may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the Society and to provide a report on the result of the investigation.

(2) A report on the result of the investigation received from:

(a) the corresponding authority; or

(b) a person or entity authorised by the corresponding authority to conduct the investigation;

may be used and taken into consideration by the Society in the course of dealing with the claim under this Part.

432 Request from another jurisdiction to investigate aspects of claim

(1) This section applies in relation to a request received by the Law Society from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.

(2) The Society may conduct the investigation.

(3) The provisions of this Part relating to the investigation of a claim apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.

(4) The Society must provide a report on the result of the investigation to the corresponding authority.

433 Cooperation with other authorities

(1) When dealing with a claim under this Part involving a law practice or an Australian legal practitioner, the Law Society may consult and cooperate with another person or body who or which has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.

(2) For subsection (1), the Society and the other person or body may exchange information concerning the claim.

Division 11 Miscellaneous matters

434 Interstate legal practitioner becoming authorised to withdraw from local trust account

(1) An interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account must:

(a) give notice to the Law Society of the authorisation in accordance with the regulations; and

(b) make contributions to the Fidelity Fund in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may determine or provide for the determination of any or all of the following:

(a) the way in which the notice must be made and the information or material that must be included in or to accompany the notice;

(b) the amount of the contributions, their frequency and the way in which they must be made.

435 Application of Part to incorporated legal practices

(1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act relating to the Fidelity Fund, do not apply to incorporated legal practices or apply to them with specified modifications.

(2) For the application of the provisions of this Part, and any other provisions of this Act relating to the Fund, to an incorporated legal practice, a reference in those provisions to a default of a law practice extends to a default of an incorporated legal practice, but only if it occurs in connection with the provision of legal services.

(3) Nothing in this section affects any obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice to comply with the provisions of this Act relating to the Fund.

(4) An incorporated legal practice is required to make payments to or on account of the Fund under this Act as if it were an Australian lawyer applying for or holding a local practising certificate.

(5) The incorporated legal practice must not engage in legal practice in this jurisdiction if any payment is not made by the due date and while the practice remains in default of subsection (4).

(6) The Law Society may suspend the local practising certificate of a legal practitioner director of the practice if any payment is not made by the due date.

(7) The amounts payable to the Fund by an incorporated legal practice may be determined by reference to the total number of Australian legal practitioners employed by the practice and other relevant matters.

436 Application of Part to multi-disciplinary partnerships

(1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act relating to the Fidelity Fund, do not apply to multi-disciplinary partnerships or apply to them with specified modifications.

(2) For the application of the provisions of this Part, and any other provisions of this Act relating to the Fund, to a multi-disciplinary partnership, a reference in those provisions to a default of a law practice extends to a default of a multi-disciplinary partnership or a partner or employee of a multi-disciplinary partnership, whether or not any person involved is an Australian legal practitioner, but only if it occurs in connection with the provision of legal services.

(3) Nothing in this section affects any obligation of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership to comply with the provisions of this Act relating to the Fund.

(4) The amounts payable to the Fund by the legal practitioner partners of a multi-disciplinary partnership may be determined by reference to the total number of Australian legal practitioners employed by the partnership and other relevant matters.

437 Application of Part to Australian lawyers whose practising certificates have lapsed

(1) This section applies if:

(a) an Australian lawyer is not an Australian legal practitioner because the lawyer's Australian practising certificate has lapsed; and

(b) the lawyer was a sole practitioner immediately before the certificate lapsed.

(2) However, this section does not apply if:

(a) the certificate has been suspended or cancelled under this Act or a corresponding law; or

(b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted.

(3) For the other provisions of this Part, the practising certificate is taken not to have lapsed and accordingly the lawyer is taken to continue to be an Australian legal practitioner.

(4) Subsection (3) ceases to apply on whichever of the following first occurs:

(a) if a manager or receiver is appointed under Chapter 5 for the law practice;

(b) when the period of 6 months after the practising certificate actually lapsed expires;

(c) if the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.

Part 3.6 Mortgage practices and managed investment schemes

Division 1 Preliminary matters

438 Definitions

In this Part:

application date means 1 December 2002.

ASIC exemption means an exemption from the Corporations Act given by ASIC under that Act.

associate, of a legal practitioner, see section 439.

borrower means a person who borrows from a lender or contributor money that is secured by a mortgage.

client, of a legal practitioner, means a person who:

(a) receives the legal practitioner's advice about investment in a regulated mortgage or managed investment scheme; or

(b) gives the legal practitioner instructions to use money for a regulated mortgage or managed investment scheme.

contributor means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a legal practitioner.

contributory mortgage means a mortgage to secure money lent by 2 or more contributors as tenants in common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for or on behalf of those contributors.

financial institution means:

(a) an ADI; or

(b) a trustee company as defined in the *Companies (Trustees and Personal Representatives) Act*; or

(c) a corporation or other body prescribed, or of a class prescribed, by the regulations.

legal practitioner means an Australian legal practitioner.

lender means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

member, of a managed investment scheme, see the Corporations Act.

regulated mortgage means a mortgage (including a contributory mortgage) other than:

(a) a mortgage under which the lender is a financial institution; or

(b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the legal practitioner who acts for the lender or contributors or by:

(i) an associate of the legal practitioner; or

(ii) an agent of the legal practitioner; or

(iii) a person engaged by the legal practitioner for the purpose of introducing the borrower to the lender or contributors; or

(c) a mortgage prescribed, or of a class prescribed, by the regulations as exempt from this definition.

responsible entity, see the Corporations Act.

run-out mortgage means a regulated mortgage created before the application date that is not:

(a) a Territory regulated mortgage; or

(b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

Territory regulated mortgage, see section 440.

Territory regulated mortgage practice means a legal practitioner's practice in relation to which a nomination made under section 442 is in force.

439 Associate of a legal practitioner

(1) A reference to an associate of a legal practitioner is a reference to:

(a) a partner of the legal practitioner, whether or not the partner is a legal practitioner; or

(b) an employee or agent of the legal practitioner; or

(c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the legal practitioner or a person mentioned in paragraph (a), (b) or (e) has a beneficial interest; or

(d) a co-trustee of the legal practitioner; or

(e) a person who bears a prescribed relationship to the legal practitioner or to a person mentioned in paragraphs (a) to (d); or

(f) a corporation that (if the legal practitioner or a person mentioned in paragraphs (a) to (e) were, or is, a corporation) would be, or is, a subsidiary of the legal practitioner or person as defined in the Corporations Act; or

(g) a person prescribed by the regulations as an associate of the legal practitioner.

(2) For subsection (1)(e), a person bears a prescribed relationship to a legal practitioner or other person if the relationship is that of:

(a) a spouse; or

(b) a de facto partner; or

(c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise; or

(d) a kind prescribed by the regulations.

440 Territory regulated mortgage

A regulated mortgage is a Territory regulated mortgage, in relation to a legal practitioner, if:

(a) the legal practitioner's practice is a Territory regulated mortgage practice; and

(b) the regulated mortgage does not form part of a managed investment scheme or, if it does form part of a managed investment scheme, the managed investment scheme is not required to be operated by a responsible entity under the Corporations Act (as modified by any ASIC exemption or the regulations under that Act).

Division 2 Conduct of mortgage practices

441 Conduct of mortgage practices

(1) A legal practitioner must not, in the practitioner's capacity as legal practitioner for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage unless:

(a) the mortgage is a Territory regulated mortgage; or

(b) the mortgage is a run-out mortgage; or

(c) the mortgage forms part of a managed investment scheme operated by a responsible entity.

(2) A legal practitioner must not, in the practitioner's capacity as legal practitioner for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage except under:

(a) the Corporations Act, or that Act as modified by any ASIC exemption or the regulations under that Act; and

(b) this Act.

(3) A legal practitioner must not, in the practitioner's capacity as legal practitioner for a lender or contributor, negotiate the making of or act in relation to a regulated mortgage that forms part of a managed investment scheme unless the legal practitioner complies with any ASIC exemption that applies to managed investment schemes that:

(a) have more than 20 members; and

(b) are operated under the supervision of the Law Society under that exemption.

(4) Subsection (3) applies even if the regulated mortgage forms part of a managed investment scheme that has no more than 20 members.

(5) Subsection (3) does not apply if the managed investment scheme is operated by a responsible entity.

(6) A legal practitioner who knows an associate has contravened a requirement mentioned in subsection (1), (2) or (3) must give written notice to the Society of that fact within 21 days after becoming aware of the contravention.

442 Nomination of practice as Territory mortgage practice

(1) This section applies if a legal practitioner who, in the practitioner's capacity as legal practitioner for a lender or contributor:

(a) negotiates the making of, or acts in relation to, a regulated mortgage; or

(b) proposes to do so.

(2) The legal practitioner may, by written notice given to the Law Society, nominate the practitioner's practice as a Territory regulated mortgage practice.

(3) The nomination may, with the Society's approval, be made for a legal practitioner by another legal practitioner (for example, by a legal practitioner on behalf of members of a firm of legal practitioners).

(4) The nomination of the practice takes effect on the date the notice is given to the Society.

(5) The nomination ceases to be in force, in relation to a legal practitioner, if:

(a) the practitioner revokes the nomination by written notice given to the Society; or

(b) the practitioner ceases to be an Australian legal practitioner; or

(c) the Society, by written notice given to the practitioner, rejects the nomination of the practitioner's practice.

(6) The nomination must include the information required by regulation.

443 Requirement to notify Law Society of Territory regulated mortgages

(1) A legal practitioner is guilty of an offence if the practitioner:

(a) in the practitioner's capacity as legal practitioner for a lender or contributor, negotiates the making of or acts in relation to a Territory regulated mortgage; and

(b) fails to give the Law Society written notice of that fact as required by the regulations.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

444 Legal practitioner to have fidelity cover in relation to regulated mortgages

(1) A legal practitioner who, in the practitioner's capacity as legal practitioner for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage must ensure an approved policy of fidelity insurance is in force in relation to the practitioner for the purpose of compensating persons who suffer pecuniary loss because of any dishonest failure to pay money payable under the mortgage.

(2) A policy of fidelity insurance is an approved policy of fidelity insurance if:

(a) the Law Society is satisfied the terms of the policy comply with agreed national standards for fidelity insurance for legal practitioners; and

(b) the policy is not to expire before the expiration of the local practising certificate or interstate practising certificate of the legal practitioner to whom the policy relates; and

(c) the insurer and the terms of the policy have been approved by the Attorney-General by written order given to the Society; and

(d) any conditions imposed by the order are complied with.

(3) A legal practitioner is guilty of an offence if:

(a) the practitioner, in the practitioner's capacity as legal practitioner for a lender or contributor, negotiates the making of or acts in relation to a regulated mortgage; and

(b) an approved policy of fidelity insurance is not in force in relation to the practitioner under this section.

Maximum penalty: 200 penalty units.

(4) A contravention of this section does not limit the operation of section 445.

(5) This section does not apply in relation to any regulated mortgage forming part of a managed investment scheme operated by a responsible entity.

445 Limited claim against Fidelity Fund in relation to regulated mortgage

(1) A lender or contributor under a regulated mortgage to which section 444 applies is not entitled to apply for compensation from the Fidelity Fund for pecuniary loss he or she suffers because of a dishonest failure by the legal practitioner acting for the lender or contributor to pay money payable under the mortgage.

(2) Subsection (1) does not apply if the legal practitioner acting for the lender or contributor contravenes section 444.

(3) A claim against the Fund under subsection (1):

(a) must be dealt with by the Funds Management Committee as if the legal practitioner had taken out and maintained an approved policy of fidelity insurance under section 444; and

(b) is subject to the same restrictions, including the amount of compensation payable, as would have applied under that approved policy of fidelity insurance.

446 Notice of insurance arrangements for regulated mortgage

(1) If a client entrusts money to a legal practitioner and the money, or part of the money, is proposed to be advanced to a borrower for a regulated mortgage, the practitioner must, within 7 days after the money is entrusted to the practitioner, give the client written notice:

(a) advising the client of the effect of section 445; and

(b) including details of the policy of fidelity insurance mentioned in section 444.

(2) The legal practitioner must not advance any of the money to a borrower for a regulated mortgage unless:

(a) the client has been given the notice mentioned in subsection (1); and

(b) after having been given the notice, the client has given the practitioner specific written authority to advance the money for the mortgage.

(3) A contravention of this section does not limit the operation of section 445.

(4) This section does not apply in relation to a regulated mortgage forming part of a managed investment scheme operated by a responsible entity.

447 Failure to obtain fidelity insurance for regulated mortgage

(1) The Law Society must not grant or renew a practising certificate to an Australian lawyer who is or will be required to comply with section 444 unless it is satisfied:

(a) there is, or will be, in force in relation to the lawyer an approved policy of fidelity insurance under that section; and

(b) the policy is, or will be, in force in relation to the lawyer during the currency of the lawyer's practising certificate.

(2) The Society must suspend the local practising certificate of a legal practitioner who is required to comply with section 444 if it is not satisfied:

(a) there is in force in relation to the practitioner an approved policy of fidelity insurance under that section; and

(b) the policy is in force in relation to the practitioner during the currency of the practitioner's practising certificate.

(3) If an interstate legal practitioner is required to comply with section 444 and the Society is not satisfied there is in force in relation to the practitioner an approved policy of fidelity insurance under that section, the Society must:

(a) suspend that practitioner's entitlement under Part 2.3 to practise in the Territory while the failure continues; and

(b) ask the corresponding authority in the jurisdiction in which the practitioner has his or her sole or principal place of legal practice to suspend the practitioner's interstate practising certificate until the Society notifies the corresponding authority the practitioner is complying with section 444.

Division 3 Managed investment schemes

448 Involvement of legal practitioners in managed investment schemes

(1) This Part does not prevent a legal practitioner from:

(a) carrying out any legal services in connection with a managed investment scheme operated by a responsible entity; or

(b) having an interest in such a managed investment scheme or in the responsible entity for such a scheme.

(2) However, if a client entrusts, or proposes to entrust, money to a legal practitioner to be invested in a managed investment scheme operated by a responsible entity and the practitioner has a prescribed interest in the scheme, the practitioner must give the client written notice advising the client:

(a) the practitioner has an interest in the scheme; and

(b) the operation of the scheme does not form part of the practitioner's practice; and

(c) there is no claim against the Fidelity Fund for a pecuniary loss arising from an investment in the scheme.

(3) The notice must include the other matters required by regulation.

(4) The legal practitioner must not advance the money entrusted to the practitioner to the responsible entity for the scheme or to another person unless the client has been given the notice.

(5) A legal practitioner who knows an associate has contravened a requirement mentioned in this section must give written notice to the Law Society of that fact within 21 days after becoming aware of the contravention.

(6) A contravention of this section does not limit the operation of section 449.

(7) For this section, a legal practitioner has a prescribed interest in a managed investment scheme if:

(a) the practitioner, or an associate of the practitioner, is a director of or concerned in the management of the responsible entity for the scheme; or

(b) the practitioner, or an associate of the practitioner, is a shareholder in the responsible entity for the scheme; or

(c) the practitioner, or an associate of the practitioner, is taken to be an agent of the responsible entity under Chapter 5C of the Corporations Act; or

(d) the practitioner, or an associate of the practitioner, receives any pecuniary benefit from the scheme or the responsible entity for the scheme if a client of the practitioner invests in the scheme; or

(e) the practitioner, or an associate of the practitioner, has an interest of a kind prescribed by the regulations or legal practitioners rules in the scheme or the responsible entity for the scheme.

449 Claims against Fidelity Fund relating to managed investment schemes connected with legal practitioners

A person who entrusts money to a legal practitioner to be invested in a managed investment scheme operated by a responsible entity is not entitled to make a claim against the Fidelity Fund for the purpose of obtaining compensation for any pecuniary loss arising from that investment.

450 Transfer of mortgages to responsible entity

(1) A legal practitioner who, in the practitioner's capacity as legal practitioner for a lender or contributor, is responsible for the administration of a regulated mortgage must not transfer the mortgage to a responsible entity for a managed investment scheme unless the lender or contributor has given the practitioner written authority to transfer the mortgage to the entity.

(2) For this section, a legal practitioner transfers a regulated mortgage to a responsible entity when the practitioner does anything that results in:

(a) a responsible entity for a managed investment scheme becoming the holder or custodian of the mortgage; or

(b) any advances of money made in relation to the mortgage, or the property that is charged or encumbered by the mortgage, becoming scheme property (as defined in the Corporations Act) of a managed investment scheme.

451 Regulations relating to managed investment schemes

Without limiting section 460, the regulations may include provisions for the following:

(a) ensuring the operation of a managed investment scheme by a responsible entity is kept separate from a legal practitioner's practice;

(b) ensuring clients of a legal practitioner are aware that the operation of such a managed investment scheme does not form part of the practitioner's practice.

Division 4 Transitional arrangements for pre-existing mortgages

452 Fidelity insurance for pre-existing regulated mortgage

(1) Section 444 does not apply in relation to a regulated mortgage that was created before the application date.

(2) Despite subsection (1), section 444 applies in relation to a regulated mortgage created before the application date if:

(a) whether before or after the application date, a client entrusts money to the legal practitioner to be advanced to a borrower for the regulated mortgage; and

(b) that money is advanced or proposed to be advanced to the borrower on or after the application date.

(3) If subsection (2) applies:

(a) the legal practitioner must take out and maintain an approved policy of fidelity insurance under section 444 in relation to the advance of that money and comply with section 446(1) in relation to that advance; and

(b) section 445(1) applies to any claim for compensation for pecuniary loss suffered in relation to that advance.

(4) If the money mentioned in subsection (2) is received by the legal practitioner before the application date, the 7 days mentioned in section 446(1) is taken to be 7 days after the application date.

453 Prohibited conduct in relation to run-out mortgage

A legal practitioner must not, in acting for a lender or contributor:

(a) advance to a borrower for a run-out mortgage any money entrusted to the practitioner; or

(b) do any work for the purpose of extending the term of a run-out mortgage; or

(c) accept any money from a client for the purpose of advancing the money to a borrower for a run-out mortgage; or

(d) do anything in contravention of the regulations or the professional conduct rules relating to run-out mortgages.

454 Substitution of lender or contributor under run-out mortgage

(1) Despite section 453, a legal practitioner may receive money from a client and do any work that is necessary solely for substituting a lender or contributor under a run-out mortgage.

(2) Section 444 does not apply in relation to anything done under subsection (1) and the legal practitioner is not required to obtain fidelity insurance for compensating the substitute lender or contributor for any pecuniary loss in relation to the substitution.

(3) If a client entrusts, or proposes to entrust, money to a legal practitioner for the purpose of substituting a lender or contributor under a run-out mortgage, the practitioner must give the client written notice:

(a) of the effect of section 455; and

(b) that the practitioner is not required to have fidelity insurance in relation to the substitution under the run-out mortgage.

(4) The legal practitioner must not advance money received for subsection (1) to a borrower for a run-out mortgage unless the practitioner has given the client notice under subsection (3).

455 Limited claims against Fidelity Fund by substitute lender

(1) A person who becomes a lender or contributor under a run-out mortgage after the application date is not entitled to apply for compensation from the Fidelity Fund for pecuniary loss suffered in relation to the mortgage.

(2) Subsection (1) does not apply if the legal practitioner who acts for the person fails to give the client notice under section 454.

Division 5 Miscellaneous matters

456 Law Society may require information about mortgage practices

(1) The Law Society may, by written notice, require a legal practitioner to give information to it about any of the following:

(a) whether the practitioner, an associate of the practitioner or a person engaged by the practitioner negotiates the making of or acts in relation to regulated mortgages or has done so in the past;

(b) details of regulated mortgages that continue to have effect;

(c) whether the practitioner proposes:

(i) to nominate the practitioner's practice as a Territory regulated mortgage practice; or

(ii) to transfer responsibility for any regulated mortgage; or

(iii) to take no further action in relation to any regulated mortgage;

(d) the other information relating to regulated mortgages required by regulation to be provided.

457 Indemnity insurance

This Part does not affect the terms of an approved policy of professional indemnity insurance.

458 Law Society to disseminate information

The Law Society has the function of disseminating information for the purpose of increasing public awareness about the obligations of legal practitioners under this Part.

459 Secrecy provisions not affected

This Act or any other law of the Territory does not prohibit the disclosure of information to ASIC or to a regulatory authority of a State or Territory concerning the conduct of legal practitioners in relation to regulated mortgages.

460 Regulations relating to Part

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

(a) regulated mortgages, including run-out mortgages;

(b) the involvement of legal practitioners in managed investment schemes.

(2) In particular, the regulations may make provision for or with respect to the following:

(a) the negotiation of the making of or acting in relation to regulated mortgages by legal practitioners;

(b) the way in which the Law Society is to be given any notice or other information under this Part.

Chapter 4 Complaints and discipline

Part 4.1 Preliminary matters

461 Purposes of Chapter

(1) The purposes of this Chapter are as follows:

(a) to provide a nationally consistent scheme for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;

(b) to promote and enforce the professional standards, competence and honesty of the legal profession;

(c) to provide a means of redress for complaints about lawyers;

(d) to enable lay persons to participate in complaints and disciplinary processes involving lawyers to ensure community interests and perspectives are recognised;

(e) to give complainants, lawyers and other participants in the system immunity from civil liability for communications made by them in good faith in connection with the complaints and disciplinary system.

(2) The purposes of this Chapter relating to lay persons and the clients of law practices are as follows:

(a) to give every person the right to complain about the conduct of lawyers;

(b) to ensure information is readily available to lay persons about the means of redress that are available under the scheme;

(c) to give clients of law practices access to sufficient advice and assistance in order to make complaints in accordance with their rights and responsibilities under this Chapter;

(d) to promote transparency and openness for lay persons at all levels of the operation of the scheme, subject to the need to preserve confidentiality in appropriate circumstances;

(e) to provide an opportunity for mediation of consumer disputes relating to legal services;

(f) to provide complainants with a reasonable opportunity to comment on statements of the lawyer against whom the complaint is made before the complaint is disposed of;

(g) to ensure complainants receive adequate notice of the start and status of the disciplinary process at relevant stages of the process, including notice of the dismissal of complaints and the reasons for the dismissal;

(h) to give complainants the right to seek an independent review of decisions of the Law Society to dismiss complaints or reprimand Australian legal practitioners.

(3) The purposes of this Chapter relating to the providers of legal services are as follows:

(a) to ensure information is readily available to lawyers about the means of redress that are available under the scheme;

(b) to ensure the rules of natural justice (being rules for procedural fairness) are applied to any disciplinary proceedings taken against lawyers;

(c) to ensure lawyers are aware of the standards of honesty, competence and diligence expected of them.

(4) The Statutory Supervisor must keep under review the provisions and operation of this Chapter for:

(a) ascertaining whether the scheme established by this Chapter meets the purposes of this Chapter; and

(b) identifying modifications that may ensure those purposes are better met.

(5) However, subsection (4) does not affect the making or carrying out of other arrangements for reviewing the provisions or operation of the provisions of this Act or of this Act generally.

462 Definitions

In this Chapter:

complaint means a complaint under this Chapter.

conduct means conduct whether consisting of an act or omission.

disciplinary application means an application made to the Disciplinary Tribunal under section 515.

official complaint means a complaint made under this Chapter by the Law Society or Statutory Supervisor.

463 Application of Chapter to lawyers, former lawyers and former practitioners

(1) This Chapter applies (with the necessary modifications) to Australian lawyers and former Australian lawyers in relation to conduct occurring while they were Australian lawyers, but not Australian legal practitioners, in the same way as it applies to Australian legal practitioners and former Australian legal practitioners.

(2) This Chapter applies (with the necessary modifications) to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way as it applies to persons who are Australian legal practitioners.

Part 4.2 Key concepts

464 Unsatisfactory professional conduct

For this Act:

unsatisfactory professional conduct includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

465 Professional misconduct

(1) For this Act:

professional misconduct includes:

(a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

(2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice, regard may be had to the suitability matters that would be considered if the practitioner were an applicant:

(a) for admission to the legal profession under this Act; or

(b) for the grant or renewal of a local practising certificate.

466 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

(1) Without limiting section 464 or 465, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct:

(a) conduct consisting of a contravention of this Act;

(b) charging of excessive legal costs in connection with the practice of law;

(c) conduct in respect of which there is a conviction for:

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;

(e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;

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

(g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

(2) Also, without limiting section 464 or 465, the following acts or omissions are capable of constituting unsatisfactory professional conduct or professional misconduct:

(a) a failure by an Australian legal practitioner to comply with any requirement made by the Law Society or investigator, or a person authorised by the Society or investigator, in the exercise of powers conferred by Part 6.4;

(b) a contravention by an Australian legal practitioner of any condition imposed by the Society or investigator in the exercise of powers conferred by Part 6.4;

(c) a failure by a legal practitioner director of an incorporated legal practice to ensure the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:

(i) any requirement made by the Society or investigator, or a person authorised by the Society or investigator, in the exercise of powers conferred by Part 6.4;

(ii) any condition imposed by the Society or investigator in the exercise of powers conferred by Part 6.4.

Part 4.3 Application of this Chapter

467 Practitioners to whom this Chapter applies

(1) This Chapter applies to an Australian legal practitioner in respect of conduct to which this Chapter applies and so applies:

(a) whether or not the practitioner is a local lawyer; and

(b) whether or not the practitioner holds a local practising certificate; and

(c) whether or not the practitioner holds an interstate practising certificate; and

(d) whether or not the practitioner resides or has an office in this jurisdiction; and

(e) whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

(2) However, this Chapter does not apply to the following people:

(a) a judicial officer;

(b) a justice of the High Court;

(c) a judge of a court created by a Commonwealth Act;

(d) a judge of a court, or a judicial member of a tribunal, of a State or another Territory.

(3) A provision of this Act or any other Act that protects a person from any action, liability, claim or demand in relation to any act or omission of the person does not affect the application of this Chapter to the person in relation to the act or omission.

(4) For this Chapter, conduct of an Australian legal practitioner in the exercise of a function as an arbitrator is conduct happening in connection with the practice of law.

(5) However, conduct in relation to any justiciable aspect of decision making by an arbitrator is not conduct happening in connection with the practice of law for this Chapter.

(6) For this Chapter, conduct of an Australian legal practitioner is not conduct happening in connection with the practice of law to the extent that it is conduct engaged in the exercise of an executive or administrative function under an Act as:

(a) a government employee or statutory office holder; or

(b) a council or a member, officer or employee of a council.

(7) In this section:

council means a council constituted under the *Local Government Act*.

government agency means:

(a) an Agency; or

(b) a government department (however described) of another jurisdiction or of the Commonwealth;

and includes an entity prescribed by the regulations.

government employee means a person employed in a government agency.

judicial officer means:

(a) a Judge; or

(b) the Master; or

(c) a magistrate.

468 Conduct to which this Chapter applies – generally

(1) Subject to subsection (3), this Chapter applies to conduct of an Australian legal practitioner occurring in this jurisdiction.

(2) This Chapter also applies to an Australian legal practitioner's conduct occurring outside this jurisdiction, but only:

(a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either:

(i) the regulatory authority of each other jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or

(ii) the complainant and the practitioner consent to its being dealt with under this Act; or

(b) if it occurs in Australia but wholly outside this jurisdiction and the practitioner is a local lawyer or local legal practitioner, and either:

(i) the regulatory authority of each jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or

(ii) the complainant and the practitioner consent to its being dealt with under this Act; or

(c) if:

(i) it occurs wholly or partly outside Australia; and

(ii) the practitioner is a local lawyer or a local legal practitioner.

(3) This Chapter does not apply to conduct occurring in this jurisdiction if:

(a) the Law Society consents to its being dealt with under a corresponding law; or

(b) the complainant and the Australian legal practitioner consent to its being dealt with under a corresponding law.

(4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.

(5) The Society may give consent for subsection (3)(a), and may do so conditionally or unconditionally.

469 Conduct to which this Chapter applies – insolvency, serious offences and tax offences

(1) This Chapter applies to the following conduct of a local legal practitioner whether occurring in Australia or elsewhere:

(a) conduct of the practitioner in relation to which there is a conviction for:

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(b) conduct of the practitioner as or in becoming an insolvent under administration;

(c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.

(2) This section has effect despite section 468.

Part 4.4 Complaints about Australian legal practitioners

470 Complaints

(1) A complaint may be made under this Chapter about an Australian legal practitioner's conduct to which this Chapter applies.

(2) A complaint may be made under this Chapter about the conduct of an Australian legal practitioner occurring outside this jurisdiction.

(3) However, the complaint must not be dealt with under this Chapter unless this Chapter is or becomes applicable to it.

(4) A complaint that is duly made must be dealt with under this Chapter.

471 Making of complaints

(1) A complaint about the conduct of an Australian legal practitioner may be made by:

(a) a client of the practitioner; or

(b) the Law Society; or

(c) the Statutory Supervisor; or

(d) any other person.

(2) A complaint must be in writing.

(3) A complaint must:

(a) identify the complainant; and

(b) if possible, identify the Australian legal practitioner about whom the complaint is made; and

(c) describe the alleged conduct the subject of the complaint.

(4) This section does not affect any other right of a person to complain about the conduct of an Australian legal practitioner.

472 To whom complaint made

(1) A complaint must be made to the Law Society unless it is made by the Society.

(2) The Society must, as soon as practicable after receiving a complaint, give written notice to the complainant of its receipt.

473 Complaints made over 3 years after conduct concerned

(1) A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.

(2) However, a complaint cannot be dealt with (other than to dismiss it or refer it to mediation) if the complaint is made more than 3 years after the conduct is alleged to have occurred, unless the Law Society decides:

(a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or

(b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

474 Further information and verification

The Law Society may require a complainant to do either or both of the following:

(a) to give further information about the complaint;

(b) to verify the complaint, or any further information, by statutory declaration.

475 Practitioner to be notified of complaint

(1) The Law Society must ensure the Australian legal practitioner about whom the complaint is made is given:

(a) a copy of the complaint; and

(b) unless the Society advises the practitioner that the Society has dismissed or intends to dismiss the complaint, a written notice:

(i) informing the practitioner of the practitioner's right to make submissions to the Society; and

(ii) specifying the period within which submissions must be made.

(2) Subsection (1) does not apply if the complaint is dismissed under section 478.

(3) Subsection (1) does not apply if the Society is of the opinion that the giving of the notice will or is likely to:

(a) prejudice the investigation of the complaint; or

(b) prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned; or

(c) place the complainant or another person at risk of intimidation or harassment; or

(d) prejudice pending court proceedings.

(4) If subsection (3) applies, the Society:

(a) may postpone giving the practitioner a copy of the complaint and notice about making submissions, until it is satisfied it is appropriate to do so; or

(b) may inform the practitioner of:

(i) the general nature of the complaint; and

(ii) the practitioner's right to make submissions to the Society, specifying the period within which submissions must be made, if satisfied the practitioner has sufficient information to make submissions.

(5) The notice must also inform the practitioner of any action already taken by the Society in relation to the complaint.

(6) The notice must also inform the practitioner of the practitioner's right to make submissions to the Society, unless it advises the practitioner that it has dismissed or intends to dismiss the complaint.

(7) Nothing in this section requires the Society to give written notice under this section to the practitioner until it has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint, and properly prepare the notice.

476 Submissions by practitioner

(1) The Australian legal practitioner about whom a complaint is made may, within a period specified by the Law Society, make submissions to it about the complaint or its subject matter or both.

(2) The Society may at its discretion extend the period in which submissions may be made.

(3) The Society must consider the submissions made within the permitted period before deciding what action is to be taken in relation to the complaint.

477 Preliminary assessment

(1) If the Law Society is deciding whether or not to dismiss a complaint under section 478, the Society may conduct a preliminary assessment of the complaint for assessing the substance of the complaint.

(2) The Society may, in writing, appoint a suitably qualified person as an investigator to conduct the preliminary assessment of the complaint as its agent.

(3) The appointment may be made generally (to apply for all complaints or for all complaints of a specified class) or for a specified complaint.

(4) The investigator is not bound by rules of evidence and may inform himself or herself on any matter in the way the investigator considers appropriate.

(5) Chapter 6, except Part 6.3, applies to a preliminary assessment under this section as if:

(a) the assessment were a complaint investigation; and

(b) the investigator conducting the assessment were an investigator conducting a complaint investigation.

(6) The investigator may terminate the preliminary assessment at any time and may make any recommendations the investigator considers appropriate.

(7) Any evidence or information obtained by the Society or investigator in the course of conducting the preliminary assessment may be used by the Society or investigator in relation to any later investigation or consideration of the complaint.

478 Summary dismissal of complaints

(1) The Law Society may dismiss a complaint if:

(a) further information is not given, or the complaint or further information is not verified, as required by the Society under section 474; or

(b) the complaint is vexatious, misconceived, frivolous or lacking in substance; or

(c) the complaint was made more than 3 years after the conduct complained of is alleged to have occurred, unless a decision is made under section 473 in relation to the complaint; or

(d) the conduct complained about has been the subject of a previous complaint that has been dismissed; or

(e) the conduct complained about is the subject of another complaint; or

(f) it is not in the public interest to deal with the complaint having regard to the fact that the name of the Australian legal practitioner to whom the complaint relates has already been removed from an Australian roll in which the practitioner was enrolled; or

(g) the Society is satisfied it is otherwise in the public interest to dismiss the complaint; or

(h) the complaint is not one the Society has power to deal with.

(2) The Society may dismiss a complaint under this section without completing an investigation if, having considered the complaint, it forms the view the complaint requires no further investigation.

479 Withdrawal of complaints

(1) A complaint may, subject to this section, be withdrawn by the complainant.

(2) Withdrawal of a complaint may be effected by oral or written communication to the Law Society or an officer or other representative of the Society.

(3) If a complaint is withdrawn orally and the complaint was made by a person other than the Society, the Society must:

(a) make a written record of the withdrawal; and

(b) give the complainant a copy of the record, or send a copy of it addressed to the complainant at the complainant's address last known to the Society;

unless the complainant has previously provided the Society with written confirmation of the withdrawal.

(4) A complaint may be withdrawn even though the Society has started or completed an investigation of the complaint, but cannot be withdrawn if proceedings in relation to the complaint have been started in the Disciplinary Tribunal.

(5) If a complaint is made by a person other than the Society, a further complaint about the matter that is the subject of the withdrawn complaint cannot be made unless the Society is satisfied it is appropriate to do so in the circumstances.

(6) If a complaint is properly withdrawn, no further action must be taken under this Chapter in relation to it, unless the Society is satisfied investigation or further investigation of it is justified in the particular circumstances.

(7) Withdrawal of a complaint does not prevent:

(a) the Society making a complaint or further complaint about the matter that is the subject of the withdrawn complaint (whether or not after investigation or further investigation referred to in subsection (6)); or

(b) action being taken on any other complaint duly made in relation to that matter.

(8) This section extends to the withdrawal of a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

Part 4.5 Mediation

480 Consumer dispute

A consumer dispute is a dispute between a person and an Australian legal practitioner about conduct of the practitioner to the extent the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct.

481 Mediation of complaint involving consumer dispute solely

(1) This section applies to a complaint that involves a consumer dispute but does not involve an issue of unsatisfactory professional conduct or professional misconduct.

(2) If the Law Society considers the whole or part of the matter the subject of the complaint is capable of resolution by mediation, the Society may suggest to the complainant and the Australian legal practitioner to whom the complaint relates that they enter into a process of mediation.

(3) If the complainant and the practitioner agree to enter into a process of mediation in connection with the complaint:

(a) the Society may refer the complaint to mediation by a prescribed mediator; and

(b) no further action is required on the complaint to the extent it is referred to mediation, except as provided by section 485.

482 Mediation of hybrid complaint

(1) This section applies to a complaint that involves both a consumer dispute and an issue of unsatisfactory professional conduct or professional misconduct.

(2) If the Law Society considers the whole or part of the consumer dispute is capable of resolution by mediation, the Society may suggest to the complainant and the Australian legal practitioner to whom the complaint relates that they enter into a process of mediation.

(3) If the complainant and the practitioner agree to enter into a process of mediation in connection with the consumer dispute:

(a) the Society may refer the complaint to mediation by a prescribed mediator; and

(b) so far as it involves an issue of unsatisfactory professional conduct or professional misconduct, the complaint must continue to be dealt with under this Chapter after or during the mediation or attempt at mediation; and

(c) no further action is required on the consumer dispute to the extent it is referred to mediation, except:

(i) as provided by section 485; and

(ii) so far as the consumer dispute is relevant to deciding the complaint.

483 Compulsory mediation of consumer dispute

(1) Despite any other provision of this Part, the Law Society may, by written notice, require the complainant and the Australian legal practitioner concerned to enter into a process of mediation under this Part in connection with a consumer dispute that comprises or is involved in a complaint.

(2) After the notice is given:

(a) the Society may refer the complaint to mediation by a prescribed mediator; and

(b) if and so far as it involves an issue of unsatisfactory professional conduct or professional misconduct, the complaint must continue to be dealt with under this Part after or during the mediation or attempt at mediation; and

(c) no further action is required on the consumer dispute to the extent it is referred to mediation, except:

(i) as provided by section 485; and

(ii) so far as the consumer dispute is relevant to deciding the complaint.

484 Nature of mediation

Mediation of a consumer dispute is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, including the giving of informal advice designed to ensure:

(a) the parties are fully aware of their rights and obligations; and

(b) there is full and open communication between the parties concerning the dispute.

485 Facilitation of mediation

If the complainant and the Australian legal practitioner concerned agree to enter into a process of mediation under this Part in connection with a complaint, the Law Society may facilitate the mediation to the extent it considers appropriate.

486 List of mediators

The Law Society must keep a list of prescribed mediators.

487 Confidentiality of mediation process

(1) The following are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence:

(a) evidence of anything said or admitted during a mediation or attempted mediation under this Part of the whole or a part of the matter that is subject of a complaint;

(b) a document prepared for the mediation or attempted mediation.

(2) Subsection (1) does not apply to an agreement reached during mediation.

Part 4.6 Investigation of complaints

488 Complaints to be investigated

(1) The Law Society must investigate each complaint under this Part.

(2) This section does not apply to the following complaints:

(a) a complaint that is dismissed or withdrawn under this Chapter (to the extent it is dismissed or withdrawn);

(b) a complaint to the extent it is a consumer dispute after it has been referred to mediation under this Chapter;

(c) a complaint that is a separate complaint under section 494 and that under subsection (7) of that section need not be the subject of a separate or further investigation;

(d) a complaint that is a modified complaint under section 495 and that under subsection (4) of that section need not be the subject of a separate or further investigation;

(e) a complaint to which section 497 applies.

489 Consultation and cooperation on complaints

(1) The Law Society may consult and cooperate with the corresponding authority of another jurisdiction when dealing with a complaint against an interstate legal practitioner under this Act or a corresponding law.

(2) For subsection (1), the Society and corresponding authority may exchange information concerning the complaint.

490 Monitoring by Statutory Supervisor of conduct of investigation

(1) The Statutory Supervisor must monitor investigations by the Law Society into complaints.

(2) For subsection (1), the Supervisor and Society must enter into an arrangement about provision by the Society of assistance required by the Supervisor relating to complaints generally and particular complaints.

(3) The Society must report to the Supervisor on the progress of the investigation if required to do so by the Supervisor.

491 Appointment of investigator

(1) The Law Society may, in writing, appoint a suitably qualified person as an investigator to investigate a complaint as agent of the Society.

(2) An appointment under subsection (1) may be made generally (to apply for all complaints or for all complaints of a specified class) or for a specified complaint.

492 Application of Chapter 6

Chapter 6 applies to an investigation under this Part.

493 Application for cost assessment

(1) The Law Society may at its discretion, for investigating a complaint, apply under Part 3.3, Division 8, for an assessment of costs claimed by an Australian legal practitioner.

(2) The application may be made outside the 12-month period mentioned in section 332.

(3) In exercising the discretion, the Society must:

(a) consider whether the client was aware of the client's right to apply for a costs assessment of the costs within the 12-month period; and

(b) if the client was so aware, consider whether the application may cause significant injustice to the practitioner.

(4) Subject to this section, Part 3.3, Division 8 applies to the application as if the Society were a client of the practitioner.

494 Conduct that may be investigated

(1) An investigation may extend to conduct of the Australian legal practitioner concerned revealed during the investigation if:

(a) the conduct is related to the subject matter of the complaint and involves the complainant but is not within an allegation contained in the complaint; or

(b) the conduct is not related to the subject matter of the complaint but involves the complainant; or

(c) the conduct is related to the subject matter of the complaint but does not involve the complainant; or

(d) the conduct is not related to the subject matter of the complaint and does not involve the complainant.

(2) The Australian legal practitioner must:

(a) be informed in writing of the extended investigation as soon as practicable after the investigation is extended; and

(b) be given a reasonable opportunity to make submissions regarding the additional matters.

(3) Subsection (2) does not apply if, under section 475, notice of the complaint was not given to the Australian legal practitioner.

(4) Matters arising in connection with subsection (1)(a) may be made the subject of a separate complaint under section 470 or of modification of a complaint under section 495.

(5) Matters arising in connection with subsection (1)(b), (c) or (d) may be made the subject of a separate complaint under section 470.

(6) The making of the separate complaint or modification of the complaint as mentioned in subsection (4) or (5) need not occur until the extended investigation has been completed.

(7) If matters arising in connection with subsection (1)(a) to (d) are made the subject of a separate complaint under section 470, the separate complaint need not be the subject of a separate or further investigation if the Law Society investigating the original complaint is satisfied the matter has already been sufficiently investigated during the investigation of the original complaint.

495 Modified complaints

(1) During or after completion of the investigation of a complaint, the Law Society may modify the complaint by doing either or both of the following:

(a) omitting or altering any allegations or details in the complaint;

(b) adding additional allegations or details to the complaint.

(2) A modification of a complaint:

(a) must be made by instrument; and

(b) must relate to the subject matter of the original complaint; and

(c) may be made even though the conduct to which the modification relates occurred more than 3 years before the date of the modification.

(3) Before taking action under subsection (1), the Society must consult with the original complainant (except if the Society is the complainant).

(4) A modified complaint need not be the subject of a separate or further investigation if the Society is satisfied the matter has already been sufficiently investigated during the investigation of the original complaint.

(5) Sections 475, 476 and 479 apply (with the necessary modifications) to a modification of a complaint under this section in the same way as they apply to a complaint made under section 470.

Part 4.7 Decisions of Law Society

496 Decision after investigation

(1) After completing an investigation of a complaint against an Australian legal practitioner, the Law Society must:

(a) start proceedings in the Disciplinary Tribunal under this Chapter; or

(b) dismiss the complaint under this Chapter; or

(c) take action under section 499.

(2) Unless section 499 applies, the Society must start proceedings in the Tribunal in relation to a complaint against an Australian legal practitioner if satisfied there is a reasonable likelihood the practitioner will be found by the Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct.

(3) Nothing in this section affects section 479.

497 Decision without investigation

(1) Subsection (2) applies to a complaint against an Australian legal practitioner, if the Law Society is satisfied action should be taken under this section having regard to:

(a) the nature of the subject matter of the complaint; and

(b) the reasonable likelihood that the Disciplinary Tribunal will find the practitioner has engaged in unsatisfactory professional conduct or professional misconduct.

(2) The Society may start proceedings in the Tribunal under this Chapter in relation to the complaint without the need to start or complete an investigation.

498 Dismissal of complaint

After completing an investigation of a complaint against an Australian legal practitioner, the Law Society may dismiss the complaint if satisfied:

(a) it is frivolous or vexatious; or

(b) there is no reasonable likelihood that the practitioner will be found guilty by the Disciplinary Tribunal of either unsatisfactory professional conduct or professional misconduct; or

(c) it is in the public interest to do so.

499 Summary conclusion of complaint procedure by fine or reprimand

(1) This section applies if the Law Society:

(a) completes an investigation of a complaint against an Australian legal practitioner; and

(b) is satisfied there is a reasonable likelihood that the practitioner would be found guilty by the Disciplinary Tribunal of unsatisfactory professional conduct (but not professional misconduct); and

(c) is satisfied the practitioner is generally competent and diligent and that no other material complaints have been made against the practitioner.

(2) The Society may do any or all of the following:

(a) publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;

(b) impose a fine on the practitioner of a specified amount.

(3) The maximum fine that may be imposed is 50 penalty units.

(4) A fine must be paid in the way and within the period specified by the Society.

(5) If action is taken under subsection (2), no further action can be taken under this Chapter in relation to the complaint.

(6) The Society must give the practitioner an information notice for a decision to take action under subsection (2).

500 Record of decision

The Law Society must keep a record of its decision, together with reasons for the decision, for each complaint dealt with under this Part.

501 Reasons to be provided to complainant and practitioner

(1) If a complaint has been made about an Australian legal practitioner, the complainant and the practitioner are entitled to receive a statement of reasons from the Law Society in relation to:

(a) its decision to dismiss the complaint; or

(b) its decision to start proceedings in the Disciplinary Tribunal in relation to the complaint; or

(c) its decision to omit, from the allegations in an application made to the Tribunal in relation to the complaint, matter that was originally part of the complaint.

(2) The Society must give a complainant an information notice for a decision to dismiss the complaint.

Part 4.8 Immediate suspension of local practising certificate

502 Immediate suspension of local practising certificate

(1) This section applies if the Law Society considers it necessary in the public interest to immediately suspend a local practising certificate on the ground of the seriousness of the conduct in relation to which a complaint has been made in relation to the holder of the certificate.

(2) The Society may immediately suspend the practising certificate.

(3) The suspension operates until the earliest of the following:

(a) the complaint is withdrawn or dismissed;

(b) the suspension is revoked;

(c) the subject matter of the complaint is finally dealt with by the Disciplinary Tribunal;

(d) the suspension is successfully appealed.

(4) The Society must give written notice of the suspension to the holder of the practising certificate.

(5) The notice must:

(a) include an information notice about the suspension; and

(b) indicate the period of operation of the suspension as provided by subsection (4); and

(c) specify that the holder may make representations about the suspension.

(6) The suspension takes effect on the day the notice is given to the holder.

(7) The holder may make written representations to the Society about the suspension.

(8) The Society must consider the representations.

(9) The Society may revoke the suspension at any time.

(10) A decision to revoke a suspension need not be in response to any written representations made by the holder.

503 Other powers to suspend not affected

Nothing in this Part affects any other power under this Act to suspend a local practising certificate and any such power may be exercised despite the existence of a power to suspend the practising certificate under this Part.

Part 4.9 General procedural matters

504 Rules of procedural fairness

The rules of procedural fairness, to the extent they are not inconsistent with the provisions of this Act, apply in relation to the investigation of complaints and the Law Society's procedures under this Chapter.

505 Duty to deal with complaints efficiently and expeditiously

It is the duty of the Law Society to deal with complaints as efficiently and expeditiously as is practicable.

Part 4.10 Appeals against Law Society decisions

Division 1 Appeals to Disciplinary Tribunal

506 Appeals

(1) An aggrieved person may appeal to the Disciplinary Tribunal against a decision of the Law Society to:

(a) dismiss a complaint made about an Australian legal practitioner under section 498; or

(b) take action against an Australian legal practitioner under section 499(2).

(2) An aggrieved person is:

(a) for an appeal mentioned in subsection (1)(a) – the complainant; or

(b) for an appeal mentioned in subsection (1)(b) – the Australian legal practitioner.

(3) The appeal must be started by filing notice of appeal with the Tribunal within 28 days after receiving the information notice for the decision.

(4) The notice of appeal must state the grounds of appeal.

507 Hearing procedures

(1) The Disciplinary Tribunal must hear the appeal by way of rehearing.

(2) The Tribunal is bound by the rules of evidence in conducting the hearing.

508 Parties

(1) The parties to the hearing are:

(a) the complainant; and

(b) the Australian legal practitioner against whom the complaint has been made; and

(c) the Law Society.

(2) The parties are entitled to appear at the hearing.

(3) A party may appear at the hearing personally or be represented by an Australian legal practitioner or (with the leave of the Disciplinary Tribunal) by another person.

509 Hearing closed to public

(1) The hearing of the appeal must be open to the public, except if the Disciplinary Tribunal directs that the hearing or a part of the hearing be closed to the public.

(2) The Tribunal must not direct that a hearing or a part of a hearing be closed to the public unless satisfied it is desirable to do so in the public interest for reasons connected with:

(a) the subject matter of the hearing; or

(b) the nature of the evidence to be given.

510 Appeal may be withdrawn or discontinued

The appellant may:

(a) withdraw the appeal at any time before the Disciplinary Tribunal starts the hearing; or

(b) discontinue the appeal at any time during the hearing.

511 Decision on appeal

(1) On hearing the appeal, the Disciplinary Tribunal must:

(a) if the appellant is the complainant:

(i) affirm the Law Society's decision; or

(ii) set aside the decision and direct the Society to start disciplinary proceedings in the Tribunal in relation to the whole or part of the complaint; or

(iii) set aside the decision and take action that the Society could take under section 499(2); or

(b) if the appellant is the Australian legal practitioner:

(i) affirm the Society's decision; or

(ii) set aside the decision; or

(iii) set aside the decision and direct the Society to start disciplinary proceedings in the Tribunal in relation to the whole or part of the complaint; or

(iv) set aside the decision and take action that the Society could take under section 499(2).

(2) If the Tribunal makes a decision mentioned in subsection (1)(a)(ii) or (b)(iii), the Society must make a disciplinary application under Part 4.11 in accordance with the decision within 28 days after the decision is made.

(3) If the Tribunal makes a decision mentioned in subsection (1)(a)(iii) or (b)(i) or (iv), it must give the practitioner an information notice for the decision.

(4) The Tribunal must give written notice to the parties of its decision on the appeal.

512 Costs of appeal

The Disciplinary Tribunal may make the order as to costs of the appeal it considers appropriate.

Division 2 Appeals to Supreme Court

513 Appeals

(1) An aggrieved person may appeal to the Supreme Court against:

(a) a decision of the Law Society under section 502 to suspend a local practising certificate; or

(b) a decision of the Disciplinary Tribunal for which an information notice is required to be given to an Australian legal practitioner under section 511(3).

(2) An aggrieved person is:

(a) for an appeal mentioned in subsection (1)(a) – the holder of the practising certificate; or

(b) for an appeal mentioned in subsection (1)(b) – the Australian legal practitioner.

(3) The appeal must be started by filing notice of appeal within 28 days after:

(a) if the person receives an information notice for the decision – the day the person receives the notice; or

(b) if paragraph (a) does not apply – the day the person becomes aware of the decision.

(4) The notice of appeal must state fully the grounds of appeal.

514 Decision on appeal

On hearing the appeal, the Supreme Court may make the order it considers appropriate.

Part 4.11 Proceedings in Disciplinary Tribunal for disciplinary applications

515 Starting proceedings

(1) Proceedings may be started in the Disciplinary Tribunal in relation to the whole or part of a complaint against an Australian legal practitioner by an application (a ***disciplinary application***) made by the Law Society under this Chapter.

(2) The application may contain one or more allegations of unsatisfactory professional conduct or professional misconduct.

(3) An allegation in the application must relate to the subject matter of the complaint but need not be an allegation made in the original complaint or have been the subject of separate or further investigation under this Chapter.

516 Time for starting proceedings

(1) A disciplinary application may be made to the Disciplinary Tribunal at any time within 6 months after the Law Society decides that proceedings be started in the Tribunal in relation to the complaint concerned.

(2) Despite subsection (1), the Tribunal may, on written application by the Society, extend the time for making a disciplinary application.

(3) In exercising the power to extend the time for making a disciplinary application, the Tribunal must have regard to all the circumstances of the case.

(4) Without limiting subsection (3), the Tribunal must 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 legal practitioner concerned by reason that 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 Society's explanation for the delay in making the application.

(5) The time for making a disciplinary disciplinary application may be extended under subsection (2) although that time has expired.

(6) For subsection (1), a decision that proceedings be started is made when the Society decides there is a reasonable likelihood that the legal practitioner concerned will be found by the Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct as mentioned in section 496(2) or 497(1).

(7) An official record or notice of a decision mentioned in subsection (6) specifying the date the decision was made is evidence the decision was made and of the date the decision was made.

517 Hearings

The Disciplinary Tribunal must conduct a hearing into each allegation particularised in a disciplinary application.

518 Joinder

The Disciplinary 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 Australian legal practitioners.

519 Variation of disciplinary application

(1) The Disciplinary Tribunal may, on the application of the person who made the disciplinary application or on its own initiative, vary the application to omit allegations or to include additional allegations, if satisfied 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 the disciplinary application, the Tribunal must have regard to whether varying the application will affect the fairness of the proceedings.

(3) The inclusion of an additional allegation is not precluded on any 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.

520 Nature of allegations

(1) A disciplinary application for a complaint cannot be challenged on the ground that the allegations contained in it 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 application as made or were included by way of variation.

521 Rules of evidence

The Disciplinary Tribunal is bound by the rules of evidence in conducting a hearing under this Part.

522 Parties

(1) The parties to proceedings in the Disciplinary Tribunal in relation to a complaint are:

(a) the Australian legal practitioner against whom the complaint has been made; and

(b) the Law Society.

(2) The parties are entitled to appear at the hearing for the complaint.

(3) The complainant is entitled to appear at the hearing in relation to:

(a) those aspects of the hearing that relate to a request by the complainant for a compensation order; and

(b) other aspects of the hearing, but only if the Tribunal grants leave to the complainant to appear in relation to them.

(4) The Tribunal may grant leave to any other person to appear at the hearing if satisfied it is appropriate for that person to appear at the hearing.

(5) A person who is entitled to appear at the hearing or who is granted leave to appear at the hearing may appear personally or be represented by an Australian legal practitioner or (with the leave of the Tribunal) by any other person.

523 Public hearings

(1) A hearing under this Part must be open to the public, except if the Disciplinary Tribunal directs that the hearing or a part of the hearing be closed to the public.

(2) The Tribunal must not direct that a hearing or a part of a hearing be closed to the public unless satisfied it is desirable to do so in the public interest for reasons connected with:

(a) the subject matter of the hearing; or

(b) the nature of the evidence to be given.

524 Power to disregard procedural lapses

(1) The Disciplinary Tribunal may order that a failure by the Law Society to observe a procedural requirement in relation to a complaint must be disregarded if satisfied the parties to the hearing have not been prejudiced by the failure.

(2) This section applies to a failure occurring before proceedings were started in the Tribunal in relation to the complaint as well as to a failure occurring afterwards.

525 Decisions of Disciplinary Tribunal

(1) This section applies if, after completing a hearing under this Part in relation to a complaint against an Australian legal practitioner, the Disciplinary Tribunal is satisfied the practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

(2) The Tribunal may make the order it considers appropriate, including any one or more of the orders specified in this section.

(3) The Tribunal may make the following orders under this subsection:

(a) an order recommending that the name of the practitioner be removed from the local roll;

(b) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;

(c) an order that a local practising certificate not be granted to the practitioner before the end of a specified period;

(d) an order that:

(i) specified conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and

(ii) the conditions be imposed for a specified period; and

(iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;

(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

(4) The Tribunal may make the following orders under this subsection:

(a) an order recommending that the name of the practitioner be removed from an interstate roll;

(b) an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;

(c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;

(d) an order recommending that:

(i) specified conditions be imposed on the practitioner's interstate practising certificate; and

(ii) the conditions be imposed for a specified period; and

(iii) the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed.

(5) The Tribunal may make the following orders under this subsection:

(a) an order that the practitioner pay a fine of a specified amount, not exceeding:

(i) for unsatisfactory professional conduct – 100 penalty units; or

(ii) for professional misconduct – 1 000 penalty units;

(b) an order that the practitioner undertake and complete a specified course of further legal education;

(c) an order that the practitioner undertake a specified period of practice under specified supervision;

(d) an order that the practitioner do or refrain from doing something in connection with the practice of law;

(e) an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;

(f) an order that the practitioner's practice be managed for a specified period in a specified way or subject to specified conditions;

(g) an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;

(h) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;

(i) an order that the practitioner not apply for a local practising certificate before the end of a specified period.

(6) The Tribunal may make ancillary or other orders, including an order for payment by the practitioner of expenses associated with orders under subsection (4), as assessed or reviewed in or in accordance with the order or as agreed.

(7) If the practitioner against whom the complaint is made is the supervising legal practitioner for a complying community legal centre, or a practitioner employed by a complying community legal centre, the Tribunal may make an order that any of the following persons must not operate or be involved in the management of a complying community legal centre for the period specified in the order:

(a) a person who is on the board of management (however described) of a complying community legal centre;

(b) a person who is involved in the management of a complying community legal centre.

(8) The Tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.

526 Interlocutory and interim orders

(1) The Disciplinary Tribunal may make interlocutory or interim orders as it considers appropriate before making its final decision about a complaint against an Australian legal practitioner.

(2) Without limiting subsection (1), orders of the kinds referred to in section 525 may be made as interlocutory or interim orders.

527 Consent orders

(1) The Disciplinary Tribunal may, with the consent of the Australian legal practitioner concerned contained in a written instrument, make orders under this Part without conducting or completing a hearing in relation to the complaint.

(2) Consent may be given before or after the proceedings were started in the Tribunal in relation to the complaint.

(3) If consent is given before the proceedings were started, the requirement to conduct an investigation of the complaint (whether started 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 practitioner unless the practitioner and the Law Society have agreed on the terms of an instrument of consent.

(5) Without limiting what may be included in the instrument of consent, the instrument:

(a) must contain an agreed statement of facts, including as to the grounds of complaint; and

(b) may contain undertakings on the part of the practitioner.

(6) The instrument of consent must be filed with the Tribunal.

(7) This section does not affect the procedures for the start of proceedings in the Tribunal if consent was given before the proceedings are started.

(8) If consent was given before the start of proceedings, the proceedings must nevertheless be started for the complaint in the same way as if the consent had not yet been given.

(9) The Tribunal must be constituted in the same way as for the conduct of a hearing into the complaint.

(10) In deciding whether to make orders under this Part under an instrument of consent, the Tribunal may:

(a) make the inquiries of the parties as it considers appropriate; and

(b) despite any consent, conduct or complete a hearing in relation to the complaint if it considers it to be in the public interest to do so.

528 Compliance with decisions and orders

(1) Persons and bodies having relevant powers or functions under this Act must:

(a) give effect to the following orders:

(i) any order of the Disciplinary Tribunal made under section 525(2);

(ii) any interlocutory or interim order of the Tribunal made under section 526(1) so far as it is an order of the kind referred to in section 525(2) or otherwise needs to be, or is capable of being, given effect to in this jurisdiction; and

(b) enforce the following orders (to the extent they relate to the practitioner's practice of law in this jurisdiction):

(i) any order of the Tribunal made under section 525(4);

(ii) any interlocutory or interim order of the Tribunal made under section 526(1) so far as it is an order of the kind referred to in section 525(4) or otherwise needs to be, or is capable of being, enforced in this jurisdiction.

(2) The Law Society must ensure persons and bodies having relevant powers or functions under a corresponding law of another jurisdiction are notified of the making and contents of:

(a) the following orders:

(i) an order of the Tribunal made under section 525(3) in relation to that corresponding law;

(ii) any interlocutory or interim order of the Tribunal made under section 526(1) so far as it is an order of the kind referred to in section 525(3) or otherwise needs to be, or is capable of being, given effect to in the other jurisdiction; and

(b) the following orders (to the extent that they relate to the practitioner's practice of law in the other jurisdiction):

(i) an order of the Tribunal made under section 525(4);

(ii) any interlocutory or interim order of the Tribunal made under section 526(1) so far as it is an order of the kind referred to in section 525(4) or otherwise needs to be, or is capable of being, enforced in the other jurisdiction.

(3) If the Tribunal makes an order recommending that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll, the Supreme Court may order the removal of the name from the roll.

(4) If the Tribunal makes an order that an Australian legal practitioner pay a fine:

(a) a copy of the order may be filed in a court of competent jurisdiction; and

(b) on being filed, the order may be enforced as if it were an order of the court.

529 Costs

(1) The Disciplinary Tribunal must make an order requiring an Australian legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Law Society and the complainant), unless the Tribunal is satisfied exceptional circumstances exist.

(2) The Tribunal may make an order requiring an Australian legal practitioner whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Society and the complainant), if satisfied:

(a) the sole or principal reason why the proceedings were started in the Tribunal was a failure of the practitioner to cooperate with the Society; or

(b) there is some other reason warranting the making of an order in the particular circumstances.

(3) The Tribunal may make an order requiring the Society to pay costs, but may do so only if satisfied the Australian legal practitioner concerned is not guilty of unsatisfactory professional conduct or professional misconduct and the Tribunal considers that special circumstances warrant the making of the order.

(4) The Tribunal may make an order requiring an Australian legal practitioner in relation to whom proceedings are pending before the Tribunal to pay costs on a interlocutory or interim basis.

(5) An order for costs:

(a) may be for a specified amount; or

(b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.

(6) An order for costs may specify the terms on which costs must be paid.

530 Notice of decision

The Disciplinary Tribunal must give written notice of its decision under this Part to:

(a) the parties to disciplinary proceedings before it; and

(b) if the complainant appeared at the hearing for the complaint as entitled under section 522(3) – the complainant.

531 Early termination of proceedings

(1) Proceedings before the Disciplinary Tribunal for 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 this section if it is satisfied continuation of the proceedings is not warranted in the public interest.

532 Other remedies not affected

Nothing in this Part affects any other remedy available to a complainant.

533 Appeal against Disciplinary Tribunal orders

(1) The following persons may appeal against a decision of the Disciplinary Tribunal to make an order under section 525:

(a) the Law Society;

(b) the Australian legal practitioner or other person against whom the order is made;

(c) if the complainant appeared at the hearing for the complaint as entitled under section 522(3) – the complainant.

(2) However, subsection (1)(b) does not apply if the order is made against the practitioner with the practitioner's consent.

(3) The appeal must be started by filing notice of appeal within 28 days after receipt of notice of the decision.

(3A) However, if notice of the decision is received before the commencement of the *Legal Profession Amendment (Complaints and Discipline) Act 2008*, the appeal must be started by filing notice of appeal within 28 days after the commencement of that Act.

(4) The notice of appeal must state fully the grounds of appeal.

(5) On hearing the appeal, the Supreme Court may make the order it considers appropriate.

Part 4.12 Compensation

534 Compensation orders

(1) A compensation order is an order, made in relation to a complaint against an Australian legal practitioner, to compensate the complainant for loss suffered because of conduct that is the subject of the complaint.

(2) A compensation order consists of one or more of the following:

(a) an order that the practitioner cannot recover or must repay the whole or a specified part of the amount charged to the complainant by the practitioner in relation to specified legal services;

(b) an order discharging a lien possessed by the practitioner in relation to a specified document or class of documents;

(c) an order that the practitioner pay to the complainant, by way of monetary compensation for the loss, a specified amount.

535 Prerequisites to making of compensation orders

(1) A compensation order must not be made unless:

(a) the complainant and the Australian legal practitioner agree to it being made; or

(b) the person or body making it is satisfied:

(i) the complainant has suffered loss because of the conduct concerned; and

(ii) it is in the interests of justice that the order be made.

(2) Also, a compensation order must not be made in relation to any loss for which the complainant has received or is entitled to receive:

(a) compensation received or receivable under an order that has been made by a court; or

(b) compensation paid or payable from a Fidelity Fund of any jurisdiction, if a relevant claim for payment from the Fund has been made or determined.

(3) In addition, a compensation order under section 534(2)(c) requiring payment of an amount exceeding $10 000 by way of monetary compensation must not be made unless the complainant and the practitioner both consent to the order.

536 Making of compensation orders

(1) The Law Society may make a compensation order before starting proceedings in the Disciplinary Tribunal in relation to a complaint, if satisfied the Australian legal practitioner against whom the complaint is made is likely to be found guilty of unsatisfactory professional conduct or professional misconduct.

(2) The Tribunal may make a compensation order if it has found an Australian legal practitioner guilty of unsatisfactory professional conduct or professional misconduct in relation to the complaint.

537 Effect of compensation order

(1) A compensation order under section 534(2)(a) preventing recovery of an amount is effective even if proceedings to recover the amount (or any part of it) have been started by or on behalf of the Australian legal practitioner.

(2) Also, a compensation order under section 534(2)(a) requiring repayment of an amount is effective even if a court has ordered payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the practitioner.

538 Enforcement of compensation orders

A copy of a compensation order may be filed in the Local Court and the order (so far as it relates to any amount payable under the order) may be enforced as if it were an order of that Court.

539 Other remedies not affected

(1) The recovery of compensation awarded under this Part does not affect any other remedy available to a complainant.

(2) However, any compensation so awarded must be taken into account in any other proceedings by or on behalf of the complainant in relation to the same loss.

Part 4.13 Publicising disciplinary action

540 Disciplinary action

Disciplinary action is:

(a) the making of an order by a court or tribunal for or following a finding of professional misconduct by an Australian legal practitioner under this Act or under a corresponding law; or

(b) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of professional misconduct by an Australian legal practitioner:

(i) removal of the name of the practitioner from an Australian roll;

(ii) the suspension or cancellation of the Australian practising certificate of the practitioner;

(iii) the refusal to grant or renew an Australian practising certificate to the practitioner;

(iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager of the practitioner's practice.

541 Register of Disciplinary Action

(1) There is to be a register (the ***Register of Disciplinary Action***) of:

(a) disciplinary action taken under this Act against Australian legal practitioners; and

(b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred.

(2) The Register must include:

(a) the full name of the person against whom the disciplinary action was taken; and

(b) the person's business address or former business address; and

(c) the person's home jurisdiction or most recent home jurisdiction; and

(d) particulars of the disciplinary action taken; and

(e) other particulars prescribed by the regulations.

(3) The Register may be kept in a form decided or identified by the Law Society and may form part of other registers.

(4) The Register must be made available for public inspection on:

(a) the Society's Internet site; or

(b) an Internet site identified on the Society's Internet site.

(5) Information recorded in the Register may be provided to members of the public in any other way approved by the Society.

(6) The Society may correct any error in or omission from the Register.

(7) The requirement to keep the Register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the Register.

542 Other ways of publicising disciplinary action

(1) The Law Society may publicise disciplinary action taken against an Australian legal practitioner in any way it considers appropriate.

(2) This section does not affect the provisions of this Part relating to the Register.

543 Quashing of disciplinary action

(1) If disciplinary action is quashed on appeal, any reference to that disciplinary action must be removed from the Register.

(2) If disciplinary action is quashed on appeal after the action was publicised by the Law Society under section 542, the result of the appeal must be publicised with equal prominence by the Society.

544 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 an Australian legal practitioner; or

(b) exercising the powers or functions of the Law Society under this Part; or

(c) keeping, publishing or enabling access to the Register.

(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; or

(ii) otherwise publicised by the Society under this Part;

or matter purporting to contain information of that kind if 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 Territory; or

(b) the Law Society; or

(c) a person responsible for keeping the whole or any part of the Register; or

(d) an Internet service provider or Internet content host; or

(e) a person acting at the direction of the Territory or any person or body referred to in this definition.

545 Disciplinary action taken because of infirmity, injury or illness

(1) Disciplinary action taken against a person must not be recorded in the Register or otherwise publicised under this Part if the action was taken because of the person's material inability to properly to engage in legal practice.

(2) Subsection (1) does not apply if 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.

(3) However, if the disciplinary action involves a matter mentioned in subsection (2), the reason for the disciplinary action and any other information relating to the inability must not:

(a) be recorded in the Register; or

(b) be otherwise publicised under this Part without the person's consent.

546 Division subject to secrecy and non-disclosure orders

(1) The provisions of this Part are subject to any confidentiality or secrecy provisions of this Act.

(2) The provisions of this Part are subject to any order, so far as it prohibits or restricts the disclosure of information, made by:

(a) the Disciplinary Tribunal in relation to disciplinary action taken under this Chapter; or

(b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Chapter; or

(c) a court or tribunal of this or another jurisdiction.

(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:

(a) must be recorded in the Register as required by this Part; and

(b) may be otherwise publicised under this Part.

Part 4.14 Inter-jurisdictional provisions

547 Cross-border protocols

(1) The Law Society may enter into arrangements (***cross-border protocols***) with corresponding authorities for or in relation to investigating and dealing with conduct that appears to have occurred in more than one jurisdiction.

(2) In particular, a cross-border protocol may provide for any of the following:

(a) providing principles to assist in deciding if conduct occurs, either generally or in specified classes of cases;

(b) giving and receiving consent for conduct occurring in a jurisdiction to be dealt with under a law of another jurisdiction;

(c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this Part.

(3) A cross-border protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

548 Request to another jurisdiction to investigate complaint

(1) The Law Society may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the Society and to provide a report on the result of the investigation.

(2) A report on the result of the investigation received from:

(a) the corresponding authority; or

(b) a person or body authorised by the corresponding authority to conduct the investigation;

may be used and taken into consideration by the Society and Disciplinary Tribunal in the course of dealing with the complaint under this Chapter.

549 Request from another jurisdiction to investigate complaint

(1) This section applies in relation to a request received by the Law Society from a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with under a corresponding law.

(2) The Society may conduct the investigation or authorise another authority to conduct it.

(3) The provisions of this Chapter relating to the investigation of a complaint apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the complaint that is the subject of the request.

(4) The Society must provide a report on the result of the investigation to the corresponding authority.

550 Sharing of information with corresponding authorities

The Law Society may enter into arrangements with a corresponding authority for providing information to the authority about:

(a) complaints and investigations under this Chapter; and

(b) any action taken in relation to any complaints made or investigations conducted, including decisions of the Disciplinary Tribunal under this Chapter.

551 Cooperation with corresponding authorities

(1) When dealing with a complaint or conducting an investigation, the Law Society may consult and cooperate with another person or body (whether in Australia or a foreign country) who or which has or may have relevant information or powers in relation to the person against whom the complaint was made or the person under investigation.

(2) For subsection (1), the Society and the other person or body may exchange information concerning the complaint or investigation.

552 Compliance with orders made under corresponding laws

(1) Persons and bodies having relevant powers or functions under this Act must:

(a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and

(b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.

(2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed from the roll of lawyers under this Act, the Supreme Court must order the removal of the name from the roll.

(3) If a corresponding disciplinary body makes an order that an Australian legal practitioner pay a fine:

(a) a copy of the order may be filed in a court of competent jurisdiction; and

(b) on being filed, the order may be enforced as if it were an order of the court.

553 Other powers or functions not affected

Nothing in this Part affects any powers or functions that a person or body has apart from this Part.

Part 4.15 Miscellaneous matters

554 Jurisdiction of Supreme Court

The inherent jurisdiction and powers of the Supreme Court in relation to the control and discipline of local lawyers are not affected by anything in this Chapter and extend to:

(a) local legal practitioners; and

(b) interstate legal practitioners engaged in legal practice in this jurisdiction.

555 Information about complaints procedure

(1) The Law Society must ensure information appropriate to the interests and needs of lay persons and relating to the scheme established by this Chapter, including information about:

(a) the complaints system, including the way of making complaints; and

(b) the procedure for dealing with complaints;

is readily available to members of the public.

(2) The Society may provide assistance to members of the public in making complaints.

(3) The Society must ensure information appropriate to the interests and needs of legal practitioners and relating to the scheme established by this Chapter, including information about:

(a) the operation of the scheme; and

(b) the procedures adopted in relation to the scheme;

is readily available to legal practitioners.

556 Contravention of orders

A person who contravenes an order of the Disciplinary Tribunal under this Act or an order of a corresponding disciplinary body under a corresponding law is not entitled to apply for the grant or renewal of a local practising certificate while the contravention continues.

557 Performance criteria

(1) The Law Society must develop performance criteria relating to the handling of complaints under this Chapter.

(2) The Society must include the relevant criteria in its annual report prepared under section 648, together with an assessment of its performance against the criteria in the period to which the report relates.

558 Reports to Attorney-General

(1) The Law Society must submit to the Attorney-General, at the times and in relation to the periods required by the Attorney-General, reports on the handling of complaints.

(2) A report must deal with matters specified by the Attorney-General and other matters the Society considers appropriate to include in the report.

(3) The obligations under this section are in addition to any obligations to provide an annual or other report under another law.

559 Effect of other proceedings

A complaint may be made and dealt with even though the Australian legal practitioner concerned is the subject of proposed or current criminal or civil proceedings relating to the subject matter of the complaint.

560 Protection from liability

(1) This section applies in relation to an act done or omitted to be done by:

(a) the Law Society or a member of the Society; or

(b) a committee or subcommittee of the Society or a member of a committee or subcommittee; or

(c) any person involved in the conduct of an investigation under this Chapter; or

(d) a mediator to whom a matter is referred under this Chapter; or

(e) any member of the staff of any of the above.

(2) The person is not civilly or criminally liable for the act if it is done or omitted to be done in good faith for the administration of this Chapter.

561 Non-compellability of certain witnesses

A person mentioned in section 560 is not compellable in any legal proceedings (including proceedings before the Disciplinary Tribunal) to give evidence or produce documents in relation to any matter in which the person was involved in the course of the administration of this Chapter.

562 Undertakings by Law Society and Statutory Supervisor regarding privileged or confidential information

(1) The Law Society or Statutory Supervisor may give undertakings regarding non-disclosure of information obtained under or for this Chapter from or about a client of an Australian legal practitioner if the information is the subject of client legal privilege or any duty of confidentiality.

(2) An undertaking cannot be inconsistent with any duty of the Society or Supervisor under this Act or any other Act to disclose information.

(3) This section has effect whether or not the client has waived the client legal privilege or the benefit of the duty of confidentiality.

563 Confidentiality of client communications

Subject to section 564, an Australian legal practitioner must comply with a requirement under this Chapter to answer a question or to produce information or a document, despite any duty of confidentiality in relation to a communication between the practitioner and a client.

564 Claims of privilege

If, in any investigation or proceedings under this Chapter, a person properly claims privilege in relation to any information:

(a) the Law Society or Disciplinary Tribunal may require the person to disclose the information; and

(b) if any information adverse to the interests of the person is then disclosed, no question or answer relating to the information may be used in or in connection with any procedures or proceedings other than:

(i) those relating to the complaint concerned; or

(ii) those resulting from a report or disclosure under section 704.

565 Waiver of privilege or duty of confidentiality

(1) If a client of an Australian legal practitioner makes a complaint about the practitioner, the complainant is taken to have waived client legal privilege, or the benefit of any duty of confidentiality, to enable the practitioner to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint.

(2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

Chapter 5 External intervention

Part 5.1 Preliminary matters

566 Purposes of Chapter

(1) The purpose of this Chapter is to ensure an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers to protect the interests of:

(a) the general public; and

(b) clients; and

(c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients.

(2) It is intended that interventions occur consistently with:

(a) similar interventions in other jurisdictions, especially if a law practice operates in this jurisdiction and one or more other jurisdictions; and

(b) other provisions of this Act.

567 Interpretation

(1) In this Chapter:

external intervener means a supervisor, manager or receiver under this Chapter.

external intervention means the appointment of, and the exercise of the powers and functions of, a supervisor, manager or receiver under this Chapter.

regulated property, in relation to a law practice, means the following:

(a) trust money or trust property received, receivable or held by the practice;

(b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);

(c) documents or records of any description relating to anything referred to in paragraph (a) or (b);

(d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which any records referred to in paragraph (c) may be produced or reproduced in visible form.

(2) Other expressions used in this Chapter have the same meaning as in Part 3.1.

568 Application of Chapter to barristers

(1) This Chapter, other than Parts 5.3 and 5.5, applies in relation to the law practice of a barrister.

(2) The powers of the manager for a law practice of a barrister include power to reallocate or return briefs.

569 Application of Chapter to Australian-registered foreign lawyers

This Chapter applies, with any necessary adaptations, to Australian-registered foreign lawyers and former Australian-registered foreign lawyers in the same way as it applies to law practices.

570 Application of Chapter to other persons

This Chapter applies, with any necessary adaptations, to:

(a) a former law practice or former Australian legal practitioner; and

(b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of the practitioner's estate; and

(c) the administrator, or receiver, or receiver and manager, or official manager, of the property of an incorporated legal practice; and

(d) the liquidator of an incorporated legal practice that is being or has been wound up;

in the same way as it applies to law practices.

Part 5.2 Initiation of external intervention

571 Circumstances warranting external intervention

External intervention may take place in relation to a law practice in any of the following circumstances:

(a) where a legal practitioner associate involved in the practice:

(i) has died; or

(ii) ceases to be an Australian legal practitioner; or

(iii) has become an insolvent under administration; or

(iv) is in prison;

(b) in the case of a firm – where the partnership has been wound up or dissolved;

(c) in the case of an incorporated legal practice – where the corporation concerned:

(i) ceases to be an incorporated legal practice; or

(ii) is being or has been wound up; or

(iii) has been deregistered or dissolved;

(d) in any case – where the Law Society forms a belief on reasonable grounds that the practice or an associate of the practice:

(i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or

(ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or

(iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or

(iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or

(v) is in breach of the regulations or legal profession rules with the result that the record-keeping for the practice's trust account is inadequate; or

(vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or

(vii) is the subject of a complaint relating to trust money or trust property received by the practice; or

(viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Act; or

(ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding-up the affairs of the practice;

(e) where any other proper cause exists in relation to the practice.

572 Decision regarding external intervention

(1) This section applies when the Law Society becomes aware that one or more of the circumstances referred to in section 571 exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it considers appropriate, external intervention is warranted.

(2) The Society may decide:

(a) to appoint a supervisor of trust money of the law practice, if the Society is of the opinion:

(i) that external intervention is required because of issues relating to the practice's trust accounts; and

(ii) that it is not appropriate that the provision of legal services by the practice be wound up and terminated because of those issues; or

(b) to appoint a manager for the law practice, if the Society is of the opinion:

(i) that external intervention is required because of issues relating to the practice's trust records; or

(ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

(c) to appoint a receiver for the law practice, if the Society is of the opinion:

(i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(ii) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.

(3) The Society may, from time to time, make further decisions in relation to the law practice and for that purpose may revoke a previous decision with effect from a date or event specified by the Society.

(4) A further decision may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original decision was made and whether or not any further circumstances have come into existence in relation to the law practice after the original decision was made.

(5) An appointment of an external intervener for a law practice may be made in respect of the practice generally or may be limited in any way the Society considers appropriate, including, for example, to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject matter.

Part 5.3 Supervisors of trust money

573 Appointment of supervisor of trust money

(1) This section applies if the Law Society decides to appoint a supervisor of trust money of a law practice.

(2) The Society may, by instrument in writing, appoint a person as supervisor of trust money.

(3) The appointee must be either:

(a) an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be an employee of the Society.

(4) The instrument of appointment must:

(a) identify the practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and

(c) specify the term of the appointment; and

(d) specify any conditions imposed by the Society when the appointment is made; and

(e) specify any fees payable by way of remuneration to the supervisor specifically for carrying out the supervisor's duties in relation to the external intervention; and

(f) provide for the legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.

(5) The instrument of appointment may specify any reporting requirements to be observed by the supervisor.

574 Notice of appointment

(1) As soon as possible after an appointment of a supervisor of trust money of a law practice is made, the Law Society must serve a notice of the appointment on:

(a) the practice; and

(b) any other person authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is maintained; and

(e) any person whom the Society reasonably believes should be served with the notice.

(2) The notice must:

(a) identify the law practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and

(c) specify the term of the appointment; and

(d) specify any reporting requirements to be observed by the supervisor; and

(e) specify any conditions imposed by the Society when the appointment is made; and

(f) include a statement that the law practice may appeal against the appointment of the supervisor under section 606; and

(g) contain or be accompanied by other information or material prescribed by the regulations.

575 Effect of service of notice of appointment

(1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and while the appointment is in force, the ADI must ensure no funds are withdrawn or transferred from a trust account of the practice unless:

(a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the supervisor or a nominee of the supervisor; or

(b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or Internet banking facilities; or

(c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.

(2) A person is guilty of an offence if:

(a) the person is given notice of the appointment of a supervisor of trust money of a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

(ii) signs any cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 100 penalty units.

(3) Subsection (2) does not apply to the supervisor or an ADI.

(4) A supervisor of trust money may, for subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or Internet banking facilities.

(5) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in any court of competent jurisdiction and any amount recovered is to be paid into a trust account of the law practice.

576 Role of supervisor of trust money

(1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money, including powers:

(a) to receive trust money entrusted to the practice; and

(b) to open and close trust accounts.

(2) For exercising or performing powers or duties under subsection (1), the supervisor may exercise any or all of the following powers:

(a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;

(b) to require the practice or an associate or former associate of the practice or any other person who has or had control of documents relating to trust money received by the practice to give the supervisor either or both of the following:

(i) access to the files and documents the supervisor reasonably requires;

(ii) information relating to the trust money the supervisor reasonably requires;

(c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;

(d) to take possession of any relevant material and retain it for as long as may be necessary;

(e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

(f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.

(3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the Law Society and:

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give the receipt to the occupier; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(4) If the supervisor is refused access to the premises or the premises are unoccupied, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.

(5) This section applies to trust money held by the practice before the supervisor is appointed, as well as to trust money received afterwards.

(6) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the practice.

577 Records of and dealing with trust money of law practice under supervision

(1) A supervisor of trust money of a law practice must maintain the records of the supervisor's dealings with the trust money:

(a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and

(b) separately from the affairs of any other law practice for which he or she is supervisor; and

(c) in the manner prescribed by the regulations.

(2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with trust money in the same way as a law practice must deal with trust money.

578 Termination of supervisor's appointment

(1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances:

(a) the term of the appointment comes to an end;

(b) the appointment is set aside under section 606;

(c) the appointment of a manager for the practice takes effect;

(d) the appointment of a receiver for the practice takes effect;

(e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;

(f) a decision of the Law Society that the appointment be terminated has taken effect.

(2) The Society may decide in writing that the appointment be terminated immediately or with effect from a specified date.

(3) The Society must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 5.4 Managers

579 Appointment of manager

(1) This section applies if the Law Society decides to appoint a manager for a law practice.

(2) The Society may, by instrument in writing, appoint a person as manager.

(3) The appointee must be an Australian legal practitioner who holds an unrestricted practising certificate, and may (but need not) be an employee of the Society.

(4) The instrument of appointment must:

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) specify the term of the appointment; and

(d) specify any conditions imposed by the Society when the appointment is made; and

(e) specify any fees payable by way of remuneration to the manager specifically for carrying out the manager's duties in relation to the external intervention; and

(f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.

(5) The instrument of appointment may specify any reporting requirements to be observed by the manager.

580 Notice of appointment

(1) As soon as possible after an appointment of a manager for a law practice is made, the Law Society must serve a notice of the appointment on:

(a) the practice; and

(b) any other person authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is maintained; and

(e) any person whom the Society reasonably believes should be served with the notice.

(2) The notice must:

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) specify the term of the appointment; and

(d) specify any reporting requirements to be observed by the manager; and

(e) specify any conditions imposed by the Society when the appointment is made; and

(f) include a statement that the law practice may appeal against the appointment of the manager under section 606; and

(g) contain or be accompanied by other information or material prescribed by the regulations.

581 Effect of service of notice of appointment

(1) A person is guilty of an offence if:

(a) the person is given notice of the appointment of a manager for a law practice; and

(b) the person is a legal practitioner associate of the practice who is specified or referred to in the notice; and

(c) the person participates in the affairs of the practice except under the direct supervision of the manager.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1)(a) and (b).

(3) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure no funds are withdrawn or transferred from a trust account of the practice unless:

(a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by:

(i) the manager; or

(ii) a receiver appointed for the practice; or

(iii) a nominee of the manager or receiver; or

(b) the withdrawal or transfer is made by means of electronic or Internet banking facilities, by;

(i) the manager; or

(ii) a receiver appointed for the practice; or

(iii) a nominee of the manager or receiver; or

(c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by:

(i) the manager; or

(ii) a receiver appointed for the practice; or

(iii) a nominee of the manager or receiver.

(4) A person is guilty of an offence if:-

(a) the person is given notice of the appointment of a manager for a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

(ii) signs any cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 500 penalty units.

(5) Strict liability applies to subsection (4)(a).

(6) Subsection (4) does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the practice.

(7) A manager may, for subsection (3)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or Internet banking facilities.

(8) Any money that is withdrawn or transferred in contravention of subsection (3) may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the practice or another trust account nominated by the manager or receiver.

582 Role of manager

(1) A manager for a law practice may carry on the practice and may do all things that the practice or a legal practitioner associate of the practice might lawfully have done, including but not limited to the following:

(a) transacting any urgent business of the practice;

(b) transacting, with the approval of any or all of the existing clients of the practice, any business on their behalf, including:

(i) commencing, continuing, defending or settling any proceedings; and

(ii) receiving, retaining and disposing of property;

(c) accepting instructions from new clients and transacting any business on their behalf, including:

(i) commencing, continuing, defending or settling any proceedings; and

(ii) receiving, retaining and disposing of regulated property;

(d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;

(e) entering into, executing or performing any agreement;

(f) dealing with trust money under this Act;

(g) winding-up the affairs of the practice.

(2) For exercising powers under subsection (1), the manager may exercise any or all of the following powers:

(a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;

(b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the manager either or both of the following:

(i) access to the files and documents the manager reasonably requires;

(ii) information relating to client matters the manager reasonably requires;

(c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the manager's appointment;

(d) to take possession of any relevant material and retain it for as long as may be necessary;

(e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

(f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.

(3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the Law Society and:

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give the receipt to the occupier; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(4) If the manager is refused access to the premises or the premises are unoccupied, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.

583 Records and accounts of law practice under management and dealings with trust money

(1) The manager for a law practice must maintain the records and accounts of the practice that he or she manages:

(a) separately from the management of the affairs of the practice before his or her appointment as manager; and

(b) separately from the affairs of any other law practice for which he or she is manager; and

(c) in the manner prescribed by the regulations.

(2) Subject to subsection (1), the manager for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

584 Deceased estates

(1) It is the duty of the manager for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

(2) The manager is not, in the exercise or performance of powers and duties as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.

(3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and duties are not affected by the death.

585 Termination of manager's appointment

(1) The appointment of a manager for a law practice terminates in the following circumstances:

(a) the term of the appointment comes to an end;

(b) the appointment is set aside under section 606;

(c) the appointment of a receiver for the practice takes effect, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and duties of a manager;

(d) the manager has wound up the affairs of the practice;

(e) a decision of the Law Society that the appointment be terminated has taken effect.

(2) The Society may decide in writing that the appointment be terminated immediately or with effect from a specified date.

(3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (b) or (d), the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to:

(a) another external intervener appointed for the practice; or

(b) the practice, if another external intervener is not appointed for the practice.

(4) The former manager need not transfer regulated property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the Society.

(5) The Society must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 5.5 Receivers

586 Appointment of receiver

(1) This section applies if the Law Society decides to appoint a receiver for a law practice.

(2) The Society may, by instrument in writing, appoint a person as receiver.

(3) The appointee must be:

(a) an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be an employee of the Society.

(4) The instrument of appointment must:

(a) identify the law practice and the receiver; and

(b) indicate that the external intervention is by way of appointment of a receiver; and

(c) specify any conditions imposed by the Society when the appointment is made; and

(d) specify any fees payable by way of remuneration to the receiver specifically for carrying out duties in relation to the external intervention; and

(e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.

(5) The instrument of appointment may:

(a) specify the term (if any) of the appointment; and

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

587 Notice of appointment

(1) As soon as possible after an appointment of a receiver for a law practice is made, the Law Society must serve a notice of the appointment on:

(a) the practice; and

(b) any person authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is maintained; and

(e) any person who the Supreme Court directs should be served with the notice; and

(f) any person whom the Society reasonably believes should be served with the notice.

(2) The notice must:

(a) identify the law practice and the receiver; and

(b) indicate that the external intervention is by way of appointment of a receiver; and

(c) specify the term (if any) of the appointment; and

(d) indicate the extent to which the receiver has the powers of a manager for the practice; and

(e) specify any reporting requirements to be observed by the receiver; and

(f) specify any conditions imposed by the Society when the appointment is made; and

(g) include a statement that the law practice may appeal against the appointment of the receiver under section 606; and

(h) contain or be accompanied by other information or material prescribed by the regulations.

588 Effect of service of notice of appointment

(1) A person is guilty of an offence if:

(a) the person is given notice of the appointment of a receiver for a law practice; and

(b) the person is a legal practitioner associate of the practice who is specified or referred to in the notice; and

(c) the person participates in the affairs of the practice.

Maximum penalty: 500 penalty units.

(2) Strict liability applies to subsection (1)(a) and (b).

(3) After service on an ADI of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure no funds are withdrawn or transferred from a trust account of the practice unless:

(a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by:

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager; or

(b) the withdrawal or transfer is made by means of electronic or Internet banking facilities by:

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager; or

(c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by:

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager.

(4) A person is guilty of an offence if:

(a) the person is given notice of the appointment of a receiver for a law practice; and

(b) while the appointment is in force, the person does any of the following:

(i) deals with any of the practice's trust money;

(ii) signs any cheque or other instrument drawn on a trust account of the practice;

(iii) authorises the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty: 500 penalty units.

(5) Strict liability applies to subsection (4)(a).

(6) Subsection (4) does not apply to an ADI or the receiver or manager for the practice.

(7) A receiver may, for subsection (3)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or Internet banking facilities.

(8) Any money that is withdrawn or transferred in contravention of subsection (3) may be recovered from the ADI concerned by the receiver or a manager for the practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another trust account nominated by the receiver or manager.

589 Role of receiver

(1) The role of a receiver for a law practice is:

(a) to be the receiver of regulated property of the practice; and

(b) to wind up and terminate the affairs of the practice.

(2) For winding-up the affairs of the law practice and in the interests of the practice's clients, the Law Society may, by instrument in writing, authorise:

(a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) an Australian legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include one or more Australian legal practitioners who hold unrestricted practising certificates, specified in the instrument to carry on the legal practice on behalf of the receiver.

(3) Subject to any directions given by the Society by instrument in writing, the person authorised to carry on the legal practice engaged in by a law practice has all the powers of a manager under this Chapter and is taken have been appointed as manager for the law practice.

(4) The Society may, by instrument in writing, terminate an authorisation to carry on a legal practice granted under this section.

(5) For exercising powers under this section, the receiver may exercise any or all of the following powers:

(a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;

(b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver:

(i) access to the files and documents the receiver reasonably requires; and

(ii) information relating to client matters the receiver reasonably requires;

(c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the receiver's appointment;

(d) to take possession of any relevant material and retain it for as long as may be necessary;

(e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;

(f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the receiver's appointment.

(6) If the receiver takes anything from the premises, the receiver must issue a receipt in a form approved by the Society and:

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give the receipt to the occupier; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.

590 Records and accounts of law practice under receivership and dealings with trust money

(1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages:

(a) separately from the management of the affairs of the practice before his or her appointment as receiver; and

(b) separately from the affairs of any other law practice that the receiver is managing; and

(c) in the manner prescribed by the regulations.

(2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

591 Power of receiver to take possession of regulated property

(1) A receiver for a law practice may take possession of regulated property of the practice.

(2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.

(3) If a person contravenes subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.

(4) If, on application made by the receiver, the Court is satisfied an order made under subsection (3) has not been complied with, the Court may order the seizure of any regulated property of the law practice that is located on the premises specified in the order and make the further orders it considers appropriate.

(5) An order under subsection (4) operates to authorise:

(a) any police officer; or

(b) the receiver or a person authorised by the receiver, together with any police officer;

to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

(6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

592 Power of receiver to take delivery of regulated property

(1) If a receiver for a law practice believes on reasonable grounds that another person is under an obligation, or will later be under an obligation, to deliver regulated property to the practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.

(2) A person is guilty of an offence if:

(a) the person has notice that a receiver has been appointed for a law practice; and

(b) the person has possession or control of regulated property of the practice; and

(c) the person is given notice under subsection (1) in relation to the property or otherwise has notice that the person is under an obligation to deliver the property to the receiver for the practice; and

(d) the person fails to deliver the property to the receiver.

Maximum penalty: 100 penalty units.

(3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

593 Power of receiver to deal with regulated property

(1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the practice.

(2) The receiver may deal with the regulated property in any way in which the law practice might lawfully have dealt with the property.

594 Power of receiver to require documents or information

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

(a) a person who is an associate or former associate of the practice; or

(b) a person who has or has had control of documents relating to the affairs of the practice; or

(c) a person who has information relating to regulated property of the practice or property that the receiver believes on reasonable grounds to be regulated property of the practice;

to give the receiver either or both of the following within the time specified in the notice:

(d) access to the documents relating to the affairs of the practice the receiver reasonably requires;

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

(2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Maximum penalty: 100 penalty units.

(3) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground that compliance with the requirement may tend to incriminate the person.

(4) If, before complying with the requirement, the person objects to the receiver on the ground that compliance may tend to incriminate the person, the information given or the information in the documents to which access is given is inadmissible in evidence against the person in any proceedings for an offence, other than:

(a) an offence against this Act; or

(b) any other offence relating to the keeping of trust accounts or the receipt of trust money; or

(c) an offence relating to the falsity of the answer; or

(d) proceedings taken by the receiver for the recovery of regulated property.

595 Examinations

(1) The Supreme Court may, on the application of a receiver for a law practice, make an order directing that an associate or former associate of the practice or any other person appear before the Court for examination on oath in relation to the regulated property of the practice.

(2) On an examination of a person under this section, the person must answer all questions that the Court allows to be put to the person.

Maximum penalty: 100 penalty units.

(3) The person is not excused from answering a question on the ground that the answer might tend to incriminate the person.

(4) If, before answering the question, the person objects on the ground that it may tend to incriminate the person, the answer is not admissible in evidence against the person in any proceedings for an offence, other than:

(a) an offence against this Act; or

(b) an offence relating to the falsity of the answer.

596 Lien for costs on regulated property

(1) This section applies if:

(a) a receiver has been appointed for a law practice; and

(b) the practice or a legal practitioner associate of the practice claims a lien for legal costs on regulated property of the practice.

(2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the practice or associate to give the receiver within a specified period of not less than one month:

(a) particulars sufficient to identify the regulated property; and

(b) a detailed bill of costs.

(3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.

(4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

597 Regulated property not to be attached

Regulated property of a law practice for which a receiver has been appointed (including regulated property held by the receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

598 Receiver may recover money paid away in bets

If any money of or under the control of a law practice has been stolen or embezzled and later paid to a person as or by way of a bet, the receiver for the practice may recover the amount so paid from the person in a court of competent jurisdiction.

599 Recovery of regulated property if there has been breach of trust etc.

(1) This section applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been taken by, paid to, or transferred to, a person (the ***transferee***) in breach of trust, improperly or unlawfully and the transferee:

(a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or

(b) did not provide to the practice or any other person any or any adequate consideration for the taking, payment or transfer; or

(c) because of the taking, payment or transfer, became indebted or otherwise liable to the practice or to a client of the practice in the amount of the payment or in another amount.

(2) The receiver is entitled to recover from the transferee:

(a) if subsection (1)(a) applies – the amount of the payment or the value of the regulated property taken or transferred; or

(b) if subsection (1)(b) applies – the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or

(c) if subsection (1)(c) applies – the amount of the debt or liability;

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

(3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been paid in breach of trust, improperly or unlawfully to a person (the ***prospective plaintiff***) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party:

(a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or

(b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.

(4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person (the ***debtor***), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.

(5) A person authorised by the Law Society to do so may give a certificate with respect to all or any of the following facts:

(a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt and the identity of the person from whom it was received;

(b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person by whom it was taken or to whom it was paid or transferred;

(c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the practice and the truth or falsity of those entries;

(d) the money and securities held by the practice at the specified time.

(6) If the receiver brings a proceeding under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

600 Improperly destroying property etc.

(1) A person is guilty of an offence if:

(a) the person does any of the following (the ***action***) in relation to regulated property of a law practice:

(i) destroys it;

(ii) conceals it;

(iii) moves it from one place to another;

(iv) delivers it into the possession, or places under the control, of another person; and

(b) a receiver has been appointed, or is likely to be appointed, for the practice; and

(c) the person does the action with intent to defeat the operation of this Part.

Maximum penalty: 500 penalty units or imprisonment for 6 months.

(2) Subsection (1) applies whether the person does the action before or after the appointment of a receiver for the law practice.

601 Deceased estates

(1) It is the duty of the receiver for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

(2) The receiver is not, in the exercise or performance of powers and duties as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.

(3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and duties are not affected by the death.

602 Termination of receiver's appointment

(1) The appointment by the Law Society of a receiver for a law practice terminates in the following circumstances:

(a) the term (if any) of the appointment comes to an end;

(b) the appointment is set aside under section 606;

(c) a decision of the Society that the appointment be terminated has taken effect.

(2) The Society may decide in writing that the appointment be terminated, and the termination takes effect immediately or with effect from a specified date.

(3) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to:

(a) another external intervener appointed for the practice within the period of 14 days beginning with the day after the date of the termination; or

(b) the practice, if another external intervener is not appointed for the practice within that period and if paragraph (c) does not apply; or

(c) another person in accordance with arrangements approved by the Society, if it is not practicable to transfer and deliver the regulated property to the practice.

(4) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (3) unless the expenses of receivership have been paid by the Society.

(5) The Society must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 5.6 General matters

603 Conditions on appointment of external intervener

(1) An appointment of an external intervener is subject to:

(a) any conditions imposed by the Law Society; and

(b) any conditions imposed by or under the regulations.

(2) The Society may impose conditions:

(a) when the appointment is made; or

(b) during the term of the appointment.

(3) The Society may revoke or vary conditions imposed under subsection (2).

604 Status of acts of external intervener

(1) An act done or omitted to be done by an external intervener for a law practice is, for:

(a) any proceeding; or

(b) any transaction that relies on that act or omission;

taken to have been done or omitted to be done by the practice.

(2) Nothing in this section subjects an associate of the law practice to any personal liability.

605 Eligibility for re-appointment or authorisation

A person who has been appointed as an external intervener for a law practice is eligible for re-appointment as an external intervener for the practice, whether the later appointment is made in respect of the same type of external intervention or is of a different type.

606 Appeal against appointment

(1) The following persons may appeal against the appointment of an external intervener for a law practice:

(a) the practice;

(b) an associate of the practice;

(c) any person authorised to operate a trust account of the practice;

(d) any other person whose interests may be adversely affected by the appointment.

(2) The appeal must be started by filing notice of appeal within 7 days after notice of the appointment is served on:

(a) the person who proposes to appeal; or

(b) the law practice, if a notice is not required to be served on the person who proposes to appeal.

(3) The notice of appeal must state fully the grounds of appeal.

(4) On hearing the appeal, the Supreme Court may make the order it considers appropriate.

(5) The appointment of an external intervener is not stayed by the starting of an appeal, and the external intervener may accordingly continue to exercise powers and functions as external intervener during the currency of the appeal except to the extent (if any) the Court otherwise directs.

607 Directions of Supreme Court

The Supreme Court may, on application by:

(a) an external intervener for a law practice, or

(b) a principal of the practice; or

(c) any other person affected by the external intervention;

give directions in relation to any matter affecting the intervention or the intervener's powers, duties or functions under this Act.

608 Manager and receiver appointed for law practice

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

609 Requirement for ADI to disclose information

(1) An ADI is guilty of an offence if:

(a) an external intervener for a law practice requests the ADI to disclose to the intervener:

(i) whether or not the practice, or a specified associate of the practice, maintains or has maintained an account at the ADI during a specified period; or

(ii) details identifying every account so maintained; and

(b) the ADI fails to comply with the request.

Maximum penalty: 200 penalty units.

(2) An ADI is guilty of an offence if:

(a) a trust account is kept with the ADI by a law practice or associate of a law practice; and

(b) an external intervener for the practice requests the ADI:

(i) to produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such accounts or money deposited in any such account; or

(ii) to give the intervener full details of any transactions relating to any such account or money; and

(c) the ADI fails to comply with the request.

Maximum penalty: 200 penalty units.

(3) An offence against subsection (1) or (2) is an offence of strict liability.

(4) However, an obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.

(5) A request under this section may be general or limited to particular kinds of accounts.

(6) This section applies despite any privacy legislation or duty of confidence to the contrary.

(7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details under this section.

610 Fees, legal costs and expenses

(1) An external intervener is entitled to be paid:

(a) fees by way of remuneration; and

(b) the legal costs and the expenses incurred in relation to the external intervention;

in accordance with the instrument of appointment.

(2) An account of the external intervener for fees, costs and expenses may, on the application of the Law Society, be taxed or assessed.

(3) The fees, costs and expenses are payable by and recoverable from the law practice.

(4) Fees, costs and expenses not paid to the external intervener by the law practice are payable from the Fidelity Fund.

(5) The Society may recover any unpaid fees, costs and expenses from the law practice.

(6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the Fund must be paid to the Fund.

611 Reports by external intervener

(1) An external intervener must provide written reports in accordance with any reporting requirements to be observed by the intervener as specified in the instrument of appointment.

(2) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide:

(a) written reports as required from time to time by the Law Society; and

(b) a written report to the Society at the termination of the appointment.

(3) An external intervener must also keep the Society informed of the progress of the external intervention, including reports to the Society about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.

(4) Nothing in this section affects any other reporting obligations that may exist in respect of the law practice concerned.

612 Report to Law Society of disciplinary matters

(1) Subsection (2) applies if an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.

(2) The external intervener must, unless the matter is or has already been the subject of a complaint under Chapter 4, refer the matter to the Law Society to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

613 Confidentiality

(1) An external intervener is guilty of an offence if the external intervener:

(a) discloses information obtained as a result of the external intervener's appointment (***protected information***) to someone else; or

(b) does something that discloses protected information to someone else and is reckless about whether:

(i) the information is protected information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to the disclosure of information:

(a) necessary for exercising or performing the external intervener's powers or functions; or

(b) to any court, tribunal or other person acting judicially; or

(c) to a regulatory authority of any jurisdiction; or

(d) to any officer of or Australian legal practitioner instructed by:

(i) a regulatory authority of any jurisdiction; or

(ii) the Commonwealth or a State or Territory of the Commonwealth; or

(iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth;

in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination; or

(e) a member of the police force of any jurisdiction if the Law Society or external intervener believes on reasonable grounds the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice; or

(f) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice; or

(g) a client or former client of the law practice concerned if the information relates to the client or former client; or

(h) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener; or

(i) any other external examiner carrying out an external examination of the trust records of the law practice concerned.

614 Provisions relating to requirements under this Part

(1) This section applies to a requirement imposed on a person under this Chapter to give an external intervener access to documents or information.

(2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.

(3) The external intervener imposing the requirement may:

(a) inspect any document provided pursuant to the requirement; and

(b) make copies of the document or any part of the document; and

(c) retain the document for a period the intervener thinks necessary for the external intervention in relation to which it was produced.

(4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.

(5) A contravention of the requirement by an Australian lawyer is capable of constituting unsatisfactory professional conduct or professional misconduct.

(6) The Law Society:

(a) may on its own initiative; or

(b) must if directed to do so by the Statutory Supervisor;

suspend a local practitioner's practising certificate while the practitioner's contravention of the requirement continues.

615 Obstruction of external intervener

(1) A person must not obstruct an external intervener exercising a power under this Act.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.

(3) In this section:

obstruct includes hinder, delay and resist.

616 Protection from liability

No liability attaches to the Law Society or a person appointed as an external intervener for a law practice for any act or omission by the intervener done in good faith and in the exercise or performance, or purported exercise or performance, of the intervener's powers or duties under this Act.

Chapter 6 Investigatory powers

Part 6.1 Preliminary matters

617 Purpose of Chapter

The purpose of this Chapter is to provide powers that are exercisable in connection with:

(a) the conduct of audits under Part 2.6, Division 2 in relation to incorporated legal practices (***ILP compliance audits***); and

(b) the investigation of the affairs of law practices under Part 3.1, Division 3, Subdivision 1 (***trust account investigations***); and

(c) the external examination of the trust records of law practices under Part 3.1, Division 3, Subdivision 2 (***trust account examinations***); and

(d) the investigation of complaints under Chapter 4 (***complaint investigations***).

618 Definitions

In this Chapter:

complaint investigation, see section 617(d).

ILP compliance audit, see section 617(a).

investigator means:

(a) in relation to an audit under Part 2.6, Division 2 – the Law Society or a person authorised by the Society in connection with the audit; or

(b) an investigator under Part 3.1, Division 3, Subdivision 1; or

(c) an external examiner under Part 3.1, Division 3, Subdivision 2; or

(d) an investigator under Chapter 4.

trust account examination, see section 617(c).

trust account investigation, see section 617(b).

Part 6.2 Requirements relating to documents, information and other assistance

619 Application of Part

This Part applies to:

(a) trust account investigations; and

(b) trust account examinations; and

(c) complaint investigations; and

(d) ILP compliance audits.

620 Requirements for trust account investigations and examinations and ILP compliance audits

(1) For carrying out a trust account investigation, trust account examination or ILP compliance audit in relation to a law practice, an investigator may, on production of evidence of the investigator's appointment, require the practice or an associate or former associate of the practice or any other person (including, for example, an ADI, auditor or liquidator) who has or has had control of documents relating to the affairs of the practice to give the investigator either or both of the following:

(a) access to the documents relating to the affairs of the practice the investigator reasonably requires;

(b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if the requirement so specifies).

(2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) A person who is subject to a requirement under subsection (1) is not entitled to charge the investigator for giving the access or information.

621 Requirements for investigations under Chapter 4

(1) For carrying out a complaint investigation in relation to an Australian lawyer, an investigator may, by notice served on the lawyer, require the lawyer to do any one or more of the following:

(a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);

(b) to produce, at a specified time and specified place, any specified document (or a copy of the document);

(c) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);

(d) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.

(2) For carrying out a complaint investigation in relation to an Australian lawyer, the investigator may, on production of evidence of the investigator's appointment, require an associate or former associate of a law practice of which the lawyer is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the lawyer) who has or has had control of documents relating to the affairs of the lawyer to give the investigator either or both of the following:

(a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;

(b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if the requirement so states).

(3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(4) A requirement imposed on a person under subsection (1) or (2) must be given by written notice to the person and must specify a reasonable time for compliance.

622 Provisions relating to requirements under this Part

(1) This section applies to a requirement imposed on a person under this Part.

(2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.

(3) The investigator imposing the requirement may:

(a) inspect any document provided pursuant to the requirement; and

(b) make copies of the document or any part of the document; and

(c) retain the document for a period the investigator thinks necessary for the investigation in relation to which it was produced.

(4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.

(5) The Law Society:

(a) may on its own initiative; or

(b) must, if directed by the Statutory Supervisor;

suspend a local practitioner's practising certificate while the practitioner's contravention of the requirement continues.

(6) If a document:

(a) is not in writing; or

(b) is not written in the English language; or

(c) is not decipherable on sight;

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

(7) The Society may retain any copy of a document or part of a document made by an investigator under this Part and provided to the Society under this Part.

Part 6.3 Entry and search of premises

623 Application of Part

(1) This Part applies to:

(a) trust account investigations; and

(b) complaint investigations.

(2) However, this Part does not apply to:

(a) trust account examinations; or

(b) ILP compliance audits.

624 Investigator's power to enter premises

(1) For carrying out an investigation, an investigator may enter and remain on premises to exercise the powers in section 626.

(2) For a trust account investigation:

(a) the investigator may enter premises, other than residential premises, without the need for consent or a search warrant; and

(b) the investigator may only enter residential premises as follows:

(i) the investigator may enter the premises at any time with the consent of the occupier;

(ii) the investigator may enter the premises under the authority of a search warrant issued under this Part;

(iii) the investigator may enter the premises at any time without the consent of the occupier and without a warrant, but only if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material.

(3) For a complaint investigation, the investigator may only enter premises as follows:

(a) the investigator may enter the premises at any time with the consent of the occupier;

(b) the investigator may enter the premises under the authority of a search warrant issued under this Part.

(4) The investigator must not exercise the power in subsection (2)(b)(iii) unless the Law Society in the particular case has authorised the investigator (orally or in writing) to do so.

(5) An investigator is guilty of an offence if:

(a) when exercising a power under this section, a person apparently in charge of the premises or another person on the premises asks the investigator to produce evidence of the investigator's appointment; and

(b) the investigator does not produce such evidence.

Maximum penalty for subsection (5): 20 penalty units.

625 Search warrants

(1) For carrying out an investigation, an investigator may apply to a magistrate for a search warrant.

(2) The magistrate may issue a search warrant to an investigator only if satisfied there are reasonable grounds to suspect that relevant material is located at the premises.

(3) A search warrant authorises an investigator:

(a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and

(b) to exercise the powers in section 626.

(4) A search warrant may be executed by the investigator to whom it is issued or by another investigator.

(5) An investigator is guilty of an offence if:

(a) when executing a warrant, a person apparently in charge of the premises or another person on the premises asks the investigator to produce the warrant; and

(b) the investigator does not produce the warrant.

Maximum penalty: 20 penalty units.

626 Powers of investigator while on premises

(1) An investigator who enters premises under this Part may exercise any or all of the following powers:

(a) search the premises and examine anything on the premises;

(b) search for any information, document or other material relating to the matter to which the investigation relates;

(c) operate equipment or facilities on the premises for a purpose relevant to the investigation;

(d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;

(e) make copies of any relevant material or any part of any relevant material;

(f) seize and take away any relevant material or any part of any relevant material;

(g) use (free of charge) photocopying equipment on the premises to copy any relevant material;

(h) in relation to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material:

(i) inspect and gain access to a computer or equipment; or

(ii) download or otherwise obtain any documents or information; or

(iii) make copies of any documents or information held in it; or

(iv) seize and take away any computer or equipment or any part of it;

(i) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;

(j) request any person who is on the premises to do any of the following:

(i) to state the person's full name, date of birth and address;

(ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;

(iii) to produce relevant material;

(iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;

(v) to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;

(vi) to give other assistance the investigator reasonably requires to carry out the investigation;

(k) do anything else reasonably necessary to obtain information or evidence for the investigation.

(2) Any documents, information or anything else obtained by the investigator may be used for the investigation.

(3) If the investigator takes anything from the premises, the investigator must issue a receipt in a form approved by the Law Society and:

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give the receipt to the occupier; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(4) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.

Part 6.4 Additional powers in relation to incorporated legal practices

627 Application of Part

(1) This Part applies to the following investigations and audits conducted in relation to incorporated legal practices:

(a) trust account investigations;

(b) complaint investigations;

(c) ILP compliance audits.

(2) This Part is additional to the other provisions of this Chapter.

628 Investigative powers relating to investigations and audits

An investigator conducting an investigation or audit to which this Part applies may exercise the powers under this Part.

629 Examination of persons

(1) The investigator has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by Part 3, Division 2 of the *Australian Securities and Investments Commission Act 2001* (Cth).

(2) Part 3, Division 2 of the *Australian Securities and Investments Commission Act 2001* (Cth) applies (with the necessary modifications) to the exercise of those powers with the following modifications (and any other necessary modifications):

(a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the Law Society or investigator;

(b) a reference to a matter that is being or is to be investigated under Part 3, Division 1 of that Act is taken to be a reference to a matter that is being or is to be investigated, examined or audited by the investigator;

(c) a reference in section 19 of that Act to a person is taken to be a reference to an Australian legal practitioner or an incorporated legal practice;

(d) a reference to a prescribed form is taken to be a reference to a form approved by the Society.

(3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the *Australian Securities and Investments Commission Act 2001* (Cth) do not apply in relation to the exercise of the powers conferred by this section.

630 Inspection of books

(1) The investigator has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30(1), 34 and 37 to 39 of the *Australian Securities and Investments Commission Act 2001* (Cth).

(2) Those provisions apply to the exercise of those powers with the following modifications (and any other necessary modifications):

(a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the Law Society or investigator;

(b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;

(c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;

(d) a reference to a member or staff member is taken to be a reference to the Society or a person authorised by the Society who is an officer or employee of the Society;

(e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies.

631 Power to hold hearings

(1) The Law Society or investigator may hold hearings for an investigation, examination or audit to which this Part applies.

(2) Sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the *Australian Securities and Investments Commission Act 2001* (Cth) apply to a hearing with the following modifications (and any other modifications):

(a) a reference to Australian Securities and Investments Commission (however expressed) is taken to be a reference to the Society or the investigator;

(b) a reference to a member or staff member is taken to be a reference to the Society or a person authorised by the Society who is an officer or employee of the Society;

(c) a reference to a prescribed form is taken to be a reference to a form approved by the Society.

Part 6.5 Miscellaneous matters

632 Obstruction of investigator

(1) A person must not obstruct an investigator exercising a power under this Act.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) A person requested to do anything under section 626(1)(j) must comply with the request.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the practitioner, practice or principal has a reasonable excuse.

(4) In this section:

obstruct includes hinder, delay and resist.

633 Obligation of Australian lawyers

(1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.

(2) An Australian lawyer must not mislead an investigator or the Law Society in the exercise of:

(a) any power or function under this Chapter; or

(b) any power or function under a provision of a corresponding law that corresponds to this Chapter.

(3) An Australian lawyer who is subject to a requirement under section 621, or under a provision of a corresponding law that correspond to that section, must not, without reasonable excuse, fail to comply with the requirement.

634 Permitted disclosure of confidential information

(1) The Law Society or an investigator may disclose information obtained in the course of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit to any of the following:

(a) any court, tribunal or other person acting judicially;

(b) the Society or any other body regulating legal practitioners in any jurisdiction;

(c) any officer of, or Australian legal practitioner instructed by:

(i) the Society or any other body regulating legal practitioners in any jurisdiction; or

(ii) the Commonwealth or a State or Territory of the Commonwealth; or

(iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth;

in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation, examination or audit;

(d) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission);

(e) a police officer if the Society or investigator is reasonably satisfied the information relates to an offence that may have been committed by:

(i) if a law practice is the subject of the investigation, examination or audit – the law practice or an associate or former associate of the law practice; or

(ii) if an Australian lawyer is the subject of the investigation, examination or audit – the lawyer or an associate or former associate of the law practice of which the lawyer is or was an associate;

(f) if the subject of the investigation, examination or audit is or was:

(i) a law practice – a principal of the law practice; or

(ii) an incorporated legal practice – a director or shareholder in the practice; or

(iii) an Australian lawyer – the lawyer or a principal of the law practice of which the lawyer is or was an associate;

(g) if the subject of the investigation, examination or audit is or was:

(i) a law practice – a client or former client of the practice; or

(ii) an Australian lawyer – a client or former client of the law practice of which the lawyer is or was an associate;

but only if the information relates to the client or former client;

(h) if the subject of the investigation, examination or audit is or was:

(i) a law practice – a supervisor, manager or receiver appointed in relation to the law practice; or

(ii) an Australian lawyer – a supervisor, manager or receiver appointed in relation to the law practice of which the lawyer is or was an associate;

or an Australian legal practitioner or accountant employed by the supervisor, manager or receiver;

(i) an investigator carrying out another investigation, examination or audit in relation to the law practice or Australian lawyer who is or was the subject of the investigation, examination or audit.

(2) No liability (including liability in defamation) is incurred by a protected person in relation to anything done or omitted to be done in good faith for the purpose of disclosing information under this section.

(3) In this section:

protected person means:

(a) the Law Society or a member of the Council;

(b) an investigator; or

(c) a person acting at the direction of any person or entity mentioned in this definition.

Chapter 7 Regulatory authorities

Part 7.1 Law Society Northern Territory

Division 1 Establishment, status and constitution of Law Society

635 Establishment

(1) There is established the Law Society Northern Territory.

(2) The Society:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property; and

(d) is capable, in its corporate name, of suing and being sued.

636 Status

The Law Society does not represent the Territory.

637 Members constituting Law Society

The Law Society consists of the persons who:

(a) are enrolled on an Australian roll; and

(b) hold a local practising certificate or interstate practising certificate or, under the *Law Officers Act*, are taken to hold a local practising certificate; and

(c) under its constitution, are admitted and continue as members.

Division 2 Management of Law Society

638 Council of Law Society

(1) There is established the Council of the Law Society Northern Territory.

(2) The Council consists of the persons elected as members under the Society's constitution.

639 Council's function

(1) The Council's function is to manage the Law Society's affairs.

(2) Without limiting subsection (1), the Council is responsible for the way in which the Society exercises its powers and performs its functions.

640 Chief executive officer

(1) There is to be a chief executive officer of the Law Society.

(2) The Council must appoint a person as the chief executive officer.

641 Chief executive officer's function

The chief executive officer is, subject to the directions of the Council, responsible for the day-to-day management of the Law Society's affairs.

Division 3 Financial matters

642 Financial management

(1) The Law Society may manage its financial affairs in the way it considers appropriate.

(2) Subsection (1) has effect subject to:

(a) requirements of the regulations; and

(b) Part 5 of the *Associations Act* as applied by section 645(1).

643 Budget

The Council must in each financial year:

(a) adopt for the next financial year a budget for all funds of the Law Society; and

(b) approve all amendments to the budget.

Division 4 General matters

644 Constitution

(1) The Law Society must have a written constitution.

(2) The constitution must provide for the following matters:

(a) classes of membership;

(b) management of the Society's affairs by the Council;

(c) election of members of the Council;

(d) the powers, functions and proceedings of the Council;

(e) membership fees and levies;

(f) the funds and accounts of the Council.

(3) The constitution may also provide for other matters the Council considers desirable.

(4) Subsections (2) and (3) have effect subject to this Part.

(5) The Society must file a copy of the constitution with the Commissioner for Consumer Affairs within one month after the commencement date.

645 Relationship with *Associations Act*

(1) The following provisions of the *Associations Act* apply (with the necessary modifications and modifications prescribed by the regulations) to the Law Society as if it were an incorporated association under that Act:

(a) Parts 2, 4 (other than sections 27, 29 and 30), 5, 10 and 12 (other than section 110);

(b) sections 23 to 25;

(c) definitions necessary to give effect to the provisions mentioned in paragraphs (a) and (b);

(d) regulations made for the provisions mentioned in paragraphs (a), (b) and (c).

(2) Without limiting subsection (1), a reference in that Act to the public officer of an incorporated association is taken to be a reference to the chief executive officer of the Society.

646 Relationship with other Acts

(1) For the *Information Act*, the Law Society is a public sector organisation.

(2) To avoid doubt, a reference in that Act to a public sector organisation includes a reference to the Council.

(3) For the *Ombudsman Act*:

(a) the Society is a public authority; and

(b) the Attorney-General is the responsible Minister for the Society; and

(c) the chief executive officer of the Society is its principal officer.

647 Delegations

(1) The Law Society may delegate any of its powers and functions to the Council or an employee of the Society.

(2) The Council may delegate any of its powers and functions to an employee of the Society.

(3) The chief executive officer may delegate any of the chief executive officer's powers and functions to an employee of the Society.

(4) Subsection (3) has effect subject to the Council's directions.

(5) A delegation under this section must be in writing.

648 Annual report

(1) The Law Society must prepare a report on its operations under this Act for each financial year.

(2) Within 3 months after the end of the year to which the report relates, the Society must:

(a) give a copy of the report to the Attorney-General; and

(b) ensure a copy of the report is available for inspection by the public:

(i) at the Society's office during office hours; and

(ii) on the Internet and in other ways the Society decides.

Part 7.2 Admission board

649 Definitions

In this Part:

appointed member, of the Admission Board, see section 651(1)(b).

chairperson, of the Admission Board, means the member who, under section 651(4), is chairperson of the Board.

650 Establishment

There is established the Legal Practitioners Admission Board of the Northern Territory.

651 Membership

(1) The Admission Board consists of:

(a) the Master; and

(b) not more than 6 legal practitioners appointed by the Chief Justice (each an ***appointed member***).

(2) At least 2 of the appointed members must be a local lawyer.

(3) One of the appointed members must be appointed on the nomination of the Attorney-General.

(4) The Master is the chairperson of the Board.

652 Duration of appointment

(1) An appointed member of the Admission Board holds office for the period:

(a) starting on the date of appointment or, if the instrument of appointment states a later date, the later date; and

(b) ending on the next following 30 September.

(2) An appointed member of the Board is eligible for re-appointment.

653 Removal from office of appointed member

(1) The Supreme Court may remove an appointed member of the Admission Board from office on any of the grounds mentioned in subsection (2) on its own initiative or on application of any of the following:

(a) the chairperson of the Board;

(b) the Law Society;

(c) the Statutory Supervisor.

(2) The grounds are:

(a) the member's inability, inefficiency, misbehaviour or physical or mental incapacity; or

(b) the member becomes an insolvent under administration; or

(c) the member ceases to be a legal practitioner; or

(d) the member ceases to hold the qualification for which the member was appointed under section 651 and there is no other member of the Board holding that qualification; or

(e) the member is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board.

654 Secretary

The Chief Justice may appoint a person to be secretary to the Admission Board.

655 Meetings

(1) At a meeting of the Admission Board, 3 members constitute a quorum.

(2) The Master presides at all meetings at which the Master is present.

(3) In the absence of the Master from a meeting, the members present at the meeting must elect a member to preside at the meeting.

(4) The Board must hold meetings at the times and places the Master directs or the Board decides.

(5) The Board must keep records of its meetings.

656 Delegations

(1) The Admission Board may delegate any of its powers and functions to:

(a) the chairperson; or

(b) the secretary; or

(c) a committee of the Board comprising 2 or members.

(2) The delegation must be in writing.

657 Protection from liability

(1) This section applies a person who is or has been a member of the Admission Board.

(2) The person is not civilly or criminally liable for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

Part 7.3 Legal practitioners funds management committee

658 Definitions

In this Part:

appointed member, of the Funds Management Committee, means a member appointed under section 661(1)(c), (d) or (e).

chairperson, of the Funds Management Committee, means the member who, under section 661(2), is chairperson of the Committee.

659 Establishment

(1) There is established the Legal Practitioners Funds Management Committee.

(2) The Funds Management Committee:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property; and

(d) is capable, in its corporate name, of suing and being sued.

660 Status

(1) The Funds Management Committee represents the Territory.

(2) The Committee is not an Agency or part of an Agency.

661 Membership

(1) The Funds Management Committee consists of:

(a) the chief executive officer of the Law Society; and

(b) the person who, under the Society's constitution, holds or acts in the office of President of the Council of the Society or a nominee of the President; and

(c) a person appointed by the Chief Executive Officer, as defined in the *Public Sector Employment and Management Act*, of the Agency in which this Act is administered; and

(d) a person appointed by the Chief Executive Officer, as defined in the *Public Sector Employment and Management Act*, of the Agency in which the *Financial Management Act* is administered; and

(e) a person appointed by the Attorney-General as representing the interests of consumers of legal services.

(2) The member mentioned in subsection (1)(c) is the chairperson of the Committee.

662 Duration of appointment

(1) An appointed member of the Funds Management Committee holds office for 2 years starting on the date of appointment or, if the instrument of appointment states a later date, the later date.

(2) An appointed member of the Board is eligible for re-appointment.

663 Resignation and removal from office of appointed member

(1) An appointed member of the Funds Management Committee may resign office by writing signed by or for the member and given to the Attorney-General.

(2) The Attorney-General may at any time terminate the appointment of an appointed member of the Committee.

(3) Subsection (2) does not limit the power to terminate the appointment of an appointed member of the Committee mentioned in section 661 (1)(c) or (d) by the Chief Executive Officer who appointed the member.

Note for subsection (3)

Under section 44(1) of the Interpretation Act, the power to appoint a person to an office or position includes the power to terminate the appointment.

664 Meetings

(1) At a meeting of the Funds Management Committee, 3 members constitute a quorum.

(2) The chairperson presides at all meetings at which the chairperson is present.

(3) In the absence of the chairperson from a meeting, the members present at the meeting must elect a member to preside at the meeting.

(4) The Committee must hold meetings at the times and places the chairperson directs or the Committee decides.

(5) However, the Committee must meet at least once every 3 months.

(6) The Committee must keep records of its meetings.

665 Financial management

(1) The Funds Management Committee may manage its financial affairs in the way it considers appropriate.

(2) Subsection (1) has effect subject to:

(a) section 386; and

(b) requirements of the regulations.

(3) Without limiting subsection (2), the regulations may provide for the following:

(a) the keeping of accounting records and preparation of statements of account;

(b) the audit of the Fidelity Fund;

(c) the qualifications of the auditor;

(d) the auditor's powers and functions.

666 Delegations

(1) The Funds Management Committee may delegate any of its powers and functions to any person.

(2) The delegation must be in writing.

667 Protection from liability

(1) This section applies a person who is or has been a member of the Funds Management Committee.

(2) The person is not civilly or criminally liable for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Committee in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(4) Subsections (2) and (3) do not affect any liability the Territory would, apart from that subsection, have for the act or omission.

Part 7.4 Legal practitioners disciplinary tribunal

668 Definition

In this Part:

chairperson, of the Disciplinary Tribunal, means the member who, under section 671(1), is chairperson of the Tribunal.

669 Establishment

There is established the Legal Practitioners Disciplinary Tribunal.

670 Membership

(1) The Disciplinary Tribunal consists of the following members:

(a) a person who:

(i) is a magistrate or Judge or a retired magistrate or Judge; or

(ii) has practised as a legal practitioner in Australia or New Zealand for at least 7 years and who is entitled to be issued a local practising certificate;

(b) 3 persons who are not Australian lawyers;

(c) 5 Australian lawyers nominated by the Law Society (of whom at least 2 must, at the time of their nomination, be local counsel);

(d) 3 Australian lawyers who are not nominated by the Society.

(2) The Attorney-General must appoint the members of the Tribunal.

(3) In this section:

local counsel means a legal practitioner who holds a current local practising certificate to practise as or in the manner of a barrister.

671 Chairperson and deputy chairperson

(1) The member mentioned in section 670(1)(a) is the chairperson of the Disciplinary Tribunal.

(2) The Attorney-General must appoint one of the members mentioned in section 670(1)(c) or (d) to be the deputy chairperson of the Tribunal.

(3) The deputy chairperson may exercise the powers and perform the functions of the chairperson if the chairperson is absent or unable for another reason to exercise powers or perform functions.

672 Duration of appointment

(1) A member of the Disciplinary Tribunal holds office for 3 years or the lesser period specified in the instrument of appointment.

(2) A member of the Tribunal is eligible for re-appointment.

673 Resignation and removal of member

(1) A member of the Disciplinary Tribunal may resign office by signed writing given to the Attorney-General.

(2) The Attorney-General may at any time terminate the appointment of a member of the Tribunal.

674 Constitution of Disciplinary Tribunal for hearings

(1) As soon as practicable after proceedings for an appeal under section 506 or a disciplinary application are started under Chapter 4, the chairperson must select at least 3 but not more than 5 members to constitute the Disciplinary Tribunal to hear and decide the proceedings.

(2) The members selected to constitute the Tribunal:

(a) may include the chairperson; and

(b) must include:

(i) a member mentioned in section 670(1)(b); and

(ii) a member mentioned in section 670(1)(c) or (d).

675 Presiding member

(1) The presiding member for a hearing of the Disciplinary Tribunal is:

(a) if the chairperson is a member of the Tribunal – the chairperson; or

(b) otherwise – the member appointed by the chairperson.

(2) However, if the member appointed under subsection (1)(b) is not present at any proceedings, the members present must elect one of their number who is a legal practitioner to preside at the proceedings.

676 Change in composition

(1) If one of the members (other than the presiding member) constituting the Disciplinary Tribunal for a hearing vacates office or becomes incapable of sitting for any reason before the hearing is completed or a decision has been made for the hearing, the hearing may be continued and completed by the remaining members.

(2) If the presiding member or more than one member vacates office or becomes incapable of sitting before the Tribunal has completed the hearing or made a decision for the hearing, the hearing is terminated and a new hearing may be started before the Tribunal constituted under section 674.

(3) In a new hearing the Tribunal may have regard to the record of the proceeding before the Tribunal as previously constituted, including the record of any evidence taken in the proceeding.

677 Protection from liability

(1) This section applies a person who is or has been a member of the Disciplinary Tribunal.

(2) The person is not civilly or criminally liable for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

677A Practice and procedure

(1) The chairperson, after consulting with the other members of the Disciplinary Tribunal, may make rules for the practice and procedure of the Tribunal.

(2) The rules may provide for the giving of a notice to a person to appear at a hearing of the Tribunal to give evidence or produce a document or other thing.

(3) The chairperson may issue practice directions relating to the practice and procedure of the Tribunal.

(4) The Chief Executive Officer of the Agency administering this Act may appoint a person to be the registrar of the Tribunal.

Part 7.5 Statutory Supervisor

678 Office established

(1) There is to be a Statutory Supervisor.

(2) The Solicitor-General holds office as the Supervisor unless an appointment is made under section 679.

679 Appointment

(1) The Attorney-General may, by *Gazette* notice, appoint a person to be the Statutory Supervisor.

(2) If the person appointed to be the Supervisor is not a public sector employee, the Supervisor holds office for the period (not exceeding 5 years) specified in the instrument of appointment and is eligible for re-appointment.

680 Resignation

The Statutory Supervisor may resign office by written notice given to the Attorney-General.

681 Delegations

(1) The Statutory Supervisor may delegate any of the Supervisor's powers and functions to any person or body.

(2) The delegation must be in writing.

682 Protection from liability

(1) This section applies to a person who is or has been the Statutory Supervisor.

(2) The person is not civilly or criminally liable for an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

Part 7.6 Application of Corporations Act

683 Excluded matters for Corporations Act

(1) This section applies to the following bodies:

(a) the Law Society;

(b) the Funds Management Committee.

(2) The bodies, their employees and the members of the Committee are declared to be excluded matters for section 5F of the Corporations Act in relation to:

(a) Chapter 7 of that Act; and

(b) provisions of the Corporations legislation that are specified by regulation.

(3) Subsection (2) has effect for the Society and its employees only in relation to:

(a) the Committee; and

(b) its activities for Part 3.4 or the regulations made for that Part; and

(c) their other activities specified by regulation.

(4) Subsection (2) has effect for the employees and members of the Committee only in relation to their activities for the Committee.

Part 7.7 General matters

684 Definition

In this Part:

regulatory authority means:

(a) the Law Society; or

(b) the Admission Board; or

(c) the Funds Management Committee; or

(d) the Disciplinary Tribunal; or

(e) the Statutory Supervisor.

685 Functions

A regulatory authority has the functions conferred on it under this Act or any other Act.

686 Powers

A regulatory authority may do everything necessary and convenient to be done for the performance of its functions.

687 Evidentiary provisions

(1) A court, judge or person acting judicially must take judicial notice of the common seal of the Law Society or Funds Management Committee affixed to a document and must presume that it was properly affixed.

(2) A signature purporting to be the signature of each of the following persons is evidence of the signature it purports to be:

(a) the chief executive officer of the Law Society;

(b) the Master;

(c) the chairperson of the Funds Management Committee;

(d) the chairperson of the Disciplinary Tribunal;

(e) the Statutory Supervisor.

Chapter 8 Legal profession rules and regulations

Part 8.1 Legal profession rules

Division 1 Preliminary matters

688 Purpose

The purpose of this Part is to promote the maintenance of high standards of professional conduct by Australian legal practitioners and Australian-registered foreign lawyers by providing for the making and enforcement of rules of professional conduct that apply to them when they practise in this jurisdiction.

Division 2 Rules for Australian legal practitioners and locally-registered foreign lawyers

689 Rules for Australian legal practitioners

The Law Society may make legal profession rules about legal practice in this jurisdiction engaged in by Australian legal practitioners.

690 Rules for foreign lawyers

The Law Society may make legal profession rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

691 Subject matter of legal profession rules

(1) Legal profession rules for Australian legal practitioners or Australian-registered foreign lawyers may make provision for or with respect to any aspect of legal practice, including standards of conduct expected of practitioners or lawyers to whom the rules apply.

(2) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

(3) Legal profession rules may regulate advertising by legal practitioners, including regulating advertising it considers:

(a) is false, misleading or deceptive; or

(b) may bring the administration of justice into disrepute; or

(c) may encourage persons to engage in legal proceedings that lack merit.

Division 3 Rules for incorporated legal practices and multi-disciplinary partnerships

692 Rule-making power

(1) The Law Society may make legal profession rules for or with respect to the following matters:

(a) the provision of legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, and in particular the provision of legal services by:

(i) officers or employees of incorporated legal practices; or

(ii) partners or employees of multi-disciplinary partnerships;

(b) the provision of services that are not legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, but only if the provision of those services by:

(i) officers or employees of incorporated legal practices; or

(ii) partners or employees of multi-disciplinary partnerships;

may give rise to a conflict of interest relating to the provision of legal services.

(2) Legal profession rules may be made for or with respect to professional obligations relating to legal services provided by or in connection with incorporated legal practices or multi-disciplinary partnerships.

(3) However, the legal profession rules cannot:

(a) regulate any services that an incorporated legal practice may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services).

(4) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

Division 4 General matters

693 Rule-making procedures

(1) Before making legal profession rules, the Law Society must:

(a) arrange for consultation with and invite submissions from:

(i) the Chief Justice of the Supreme Court; and

(ii) the President of the Northern Territory Bar Association Incorporated; and

(iii) persons who, in the opinion of the Society, would have an interest in the rules; and

(iv) persons, or a class of persons, prescribed by the regulations; and

(b) give notice in a newspaper circulating in the Territory that rules are to be made and members of the public are invited to make written submissions to the Society about the rules.

(2) Without limiting the power of the Legislative Assembly under section 63(9) of the *Interpretation Act*, the Attorney-General may, by *Gazette* notice, disallow rules within 12 months after the rules are made.

(3) If rules disallowed by the Attorney-General amended or repealed rules in force immediately before the disallowed rules came into effect, the disallowance revives the amended or repealed rules from the date of the disallowance as if the disallowed rules had not been made.

(4) To avoid doubt, this section does not affect a power the Society or other professional body may otherwise have to make rules or issue directions or guidelines relating to the professional conduct of legal practitioners.

694 Binding nature of legal profession rules

Legal profession rules are binding on Australian lawyers, Australian-registered foreign lawyers, law practices and complying community legal centres to which they apply.

695 Legal profession rules inconsistent with Act or regulations

Legal profession rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

Part 8.2 Regulations

696 Regulation-making power

(1) The Administrator may make regulations under this Act.

(2) The regulations may:

(a) prescribe fees payable under this Act; or

(b) provide for the fees the Law Society may charge for the services it provides.

Chapter 9 Miscellaneous matters

697 Contravention of certain provisions not offence

Section 69A of the *Summary Offences Act* does not apply to a provision of this Act that, apart from this section, it would otherwise apply.

698 Liability of principals

(1) If a law practice contravenes, whether by act or omission, any provision of this Act imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that:

(a) the practice contravened the provision without the knowledge actual, imputed or constructive of the principal; or

(b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or

(c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.

(2) Subsection (1) does not affect the liability of the law practice for the contravention.

(3) A contravention of a requirement imposed on a law practice by this Act is capable of constituting unsatisfactory professional conduct or professional misconduct by a principal of the practice.

699 Associates who are disqualified or convicted persons

(1) A law practice must not have a lay associate whom any principal or other legal practitioner associate of the practice knows to be:

(a) a disqualified person; or

(b) a person who has been convicted of a serious offence;

unless the lay associate is approved by the Law Society under subsection (2).

(2) The Society may, on application, approve a lay associate for this section.

(3) An approval under this section may be subject to specified conditions.

(4) If the Society refuses an application mentioned in subsection (2) or imposes a condition on the approval:

(a) the Society must give the applicant an information notice for the decision to refuse the application or impose the condition; and

(b) the applicant may appeal to the Supreme Court against the decision within 28 days after the notice is given to the applicant.

(5) On hearing the appeal, the Court may make the order it considers appropriate.

(6) A person is guilty of an offence if:

(a) the person is:

(i) a disqualified person; or

(ii) a person who has been convicted of a serious offence; and

(b) the person seeks to become a lay associate of a law practice; and

(c) the person has not informed the practice of the disqualification or conviction.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(7) Proceedings for an offence against subsection (6) may only be brought within 6 months after discovery of the offence by the law practice.

(8) This section does not apply in circumstances prescribed by the regulations.

700 Injunctions

(1) This section applies if a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:

(a) a contravention of this Act; or

(b) attempting to contravene this Act; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or

(f) conspiring with others to contravene this Act.

(2) On the application of the Law Society, the Supreme Court may grant an injunction on the terms the Court considers appropriate restraining the first-mentioned person from engaging in the conduct and, if the Court considers it is desirable to do so, requiring that person to do anything.

(3) The Statutory Supervisor may by notice filed in the Court intervene in the proceeding for an application for an injunction under subsection (2).

(4) If an application for an injunction under subsection (2) has been made, the Court may, if the Court decides it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied this section applies.

(5) If the Court considers it is desirable to do so, the Court may grant an interim injunction pending decision of an application under subsection (2).

(6) The Court may discharge or vary an injunction granted under subsection (2) or (4).

(7) The Court's power to grant an injunction restraining a person from engaging in conduct may be exercised whether or not:

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) the person has previously refused or failed to do that act or thing; and

(c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(8) The Court must not require the Society or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

701 Disclosure of information by local regulatory authorities

(1) A local regulatory authority may disclose information to another local regulatory authority about any matter relating to or arising under this Act or a corresponding law.

(2) A local regulatory authority may disclose information to an interstate regulatory authority about any matter relating to or arising under this Act or a corresponding law.

(3) In this section:

interstate regulatory authority means:

(a) an authority having powers or functions under a corresponding law; or

(b) a person or body prescribed, or of a class prescribed, by the regulations.

local regulatory authority means:

(a) an authority having powers or functions under this Act; or

(b) a person or body prescribed, or of a class prescribed, by the regulations.

702 Confidentiality of personal information

(1) This section applies if a relevant person obtains personal information in the course of exercising powers or performing functions under this Act or any other Act.

(2) The relevant person is guilty of an offence if the person:

(a) discloses the information to someone else; or

(b) does something that discloses the information to someone else and is reckless about whether:

(i) the information is personal information; or

(ii) doing the thing would result in the information being disclosed.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not apply to the disclosure of information:

(a) to the extent the disclosure is reasonably required to exercise powers or perform functions under this Act or any other Act; or

(b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act or any other Act; or

(c) with the prior consent in writing of the person to whom the information relates; or

(d) to a court or tribunal in the course of legal proceedings; or

(e) under an order of a court or tribunal under another Act or law; or

(f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.

(4) Subsection (2) extends to the disclosure of information that was disclosed under a corresponding law to a local regulatory authority or a relevant person.

(5) In this section:

local regulatory authority means:

(a) an authority having powers or functions under this Act; or

(b) a person or body prescribed, or of a class prescribed, by the regulations.

personal information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion, but does not include information or an opinion of a kind prescribed by the regulations.

relevant person means:

(a) a local regulatory authority; or

(b) a member or former member of a local regulatory authority; or

(c) a person currently or previously employed by or acting at the direction of a local regulatory authority.

703 Client legal privilege or duty of confidence does not affect validity of or compliance with certain requirements

(1) This section applies to a requirement under:

(a) section 256 to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or

(b) section 594 to give access to documents or information; or

(c) section 622 to produce documents, provide information or otherwise assist in, or cooperate with, an investigation.

(2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground of client legal privilege or another duty of confidence.

704 Duty to report suspected offences

(1) This section applies if the Law Society suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law.

(2) The Society must:

(a) report the suspected offence to the Commissioner of Police or other appropriate prosecuting authority; and

(b) make available to the Commissioner or authority the information and documents relevant to the suspected offence in its possession or under its control.

(3) The obligation under subsection (2)(b) to make available the information and documents continues while the Society holds the relevant suspicion.

705 Payment of fines

(1) On payment of a fine imposed under this Act by the Law Society or Disciplinary Tribunal, the Society or Tribunal must pay the amount of the fine to the Funds Management Committee.

(2) The Committee must pay the amount of the fine into the Fidelity Fund.

706 Approved forms

An entity having a power or function under this Act may approve forms for use in connection with the power or function.

Chapter 10 Repeals and transitional matters for Legal Profession Act 2006

Part 10.1 Repeals

707 Repeal of legal practitioner legislation

The Acts specified in the Schedule are repealed.

708 Repeal of other legislation

The *Law Society Public Purposes Trust Act 1988* (Act No. 20 of 1988) is repealed.

Part 10.2 Transitional matters

Division 1 Preliminary matters

709 Definitions

In this Part:

commencement date means the date on which section 707 commences.

repealed Act means the *Legal Practitioners Act* as in force immediately before the commencement date.

Division 2 Reservation of legal work and legal titles

710 Her Majesty's counsel

(1) This section applies to a legal practitioner who, immediately before the commencement date, held appointment under the repealed Act as one of Her Majesty's Counsel.

(2) Despite the repeal of the repealed Act:

(a) the practitioner continues to hold the appointment; and

(b) is entitled to use, as appropriate, the titles:

(i) Her Majesty's Counsel and Queen's Counsel; or

(ii) His Majesty's Counsel and King's Counsel.

Division 3 Admission of local lawyers

711 Local roll

The Roll of Legal Practitioners kept under the Rules made under the repealed Act immediately before the commencement date is taken to be, or to form part of, the local roll.

712 Existing legal practitioners

If a person was admitted as a legal practitioner under the repealed Act before the commencement date, the person is taken to have been admitted as a local lawyer under this Act on the day the person was admitted under the repealed Act.

713 Applications for admission

(1) An application for admission as a legal practitioner that was pending immediately before the commencement date is taken to be an application for admission as a legal practitioner under this Act.

(2) The applicant may be admitted as a legal practitioner under this Act if the applicant could have been admitted as a legal practitioner under the repealed Act and the admission requirements of this Act are taken to have been satisfied in relation to the applicant.

714 References to legal practitioner

In an Act or document, a reference to a legal practitioner may, if the context permits, be taken to be a reference to an Australian legal practitioner or local legal practitioner as the case requires.

Division 4 Legal practice by Australian legal practitioners

715 Practising certificates

(1) A practising certificate issued under the repealed Act and in force immediately before the commencement date is taken to be a local practising certificate.

(2) Despite section 48, the practising certificate expires on the date it would have expired had this Act not been enacted.

(3) The fee for renewal of the certificate is 75% of the fee prescribed by the regulations for the renewal of a local practising certificate for a financial year.

(4) A condition or restriction applying to the practising certificate immediately before the commencement date continues to apply to the certificate on and after that date.

716 Applications for practising certificate

(1) An application for a practising certificate under the repealed Act that was pending immediately before the commencement date is taken to be an application for a local practising certificate.

(2) Despite Part 2.3, the applicant may be granted a local practising certificate if the applicant could have been issued a practising certificate as a legal practitioner under the repealed Act.

717 Supervised legal practice

A period of employment as a government lawyer or by a complying community legal centre under the supervision of a supervising legal practitioner before the commencement date must be taken into account for working out periods of supervised legal practice under section 73.

Division 5 Incorporated legal practices and multi-disciplinary partnerships

718 Incorporated legal practices

(1) An incorporated legal practice providing legal services under the repealed Act immediately before the commencement date is not required to comply with section 122.

(2) Section 130 does not apply in relation to any matter for which services are first provided before the commencement of that section.

(3) A disqualification imposed under section 35AZE of the repealed Act is taken to have been imposed under section 140.

719 Multi-disciplinary partnerships

(1) An Australian legal practitioner providing legal services as a member of a multi-disciplinary partnership under the repealed Act immediately before the commencement date is not required to comply with section 153.

(2) Section 159 does not apply in relation to any matter for which services are first provided before the commencement of that section.

Division 6 Practising companies

720 Definitions

In this Division:

former repealing Act means the *Legal Practitioners Amendment (Incorporated Legal Practices and Multi-disciplinary Partnerships) Act 2003*.

practising company means a practising company continued in existence under section 17 of the former repealing Act.

repealed incorporation Act means the *Legal Practitioners (Incorporation) Act*, and statutory instruments made under that Act, as in force immediately before the commencement of the former repealing Act.

721 Repealed incorporation Act ceases to apply

On the commencement date, the repealed incorporation Act ceases to apply to a practising company.

722 Alteration of constitution

A practising company may alter its constitution only with the written approval of the Law Society.

723 Practising company is law firm

For this Act, a practising company is a law firm being a partnership consisting of its directors.

724 Directors to guarantee debts of company

The directors of a practising company are taken to guarantee (jointly and severally) the debts of the company.

725 Records

For giving effect to sections 721 to 723, the Chief Justice and the Law Society may make the arrangements that are necessary and convenient relating to the records of approvals given under the repealed incorporation Act.

726 Practising company becoming incorporated legal practice

(1) On a practising company giving notice of its intention to engage in legal practice under section 122:

(a) this Part ceases to apply to it; and

(b) it becomes an incorporated legal practice.

(2) Subsection (1) does not affect a right, privilege, obligation or liability acquired, accrued or incurred before the commencement date or any investigation, legal proceeding or remedy in relation to such a right, privilege, obligation or liability.

Division 7 Legal practice by foreign lawyers

727 Foreign lawyers

(1) Registration as a locally-registered foreign lawyer granted under the repealed Act and in force immediately before the commencement date, or expressed to take effect on or after the commencement date, is taken to have been granted under this Act.

(2) Notice seeking registration as a foreign lawyer under the repealed Act that was pending immediately before the commencement date is taken to be an application for registration as a locally-registered foreign lawyer under this Act.

(3) Subsection (1) does not permit a person registered as a foreign lawyer under the repealed Act immediately before the commencement date to continue to provide any services that are not permitted to be provided under Part 2.7.

Division 8 Trust money and trust accounts

728 Definitions

In this Division:

former trust account provisions means the provisions of Part VII of the repealed Act in force immediately before the commencement date.

payment date, see section 729.

729 Payment date

(1) The payment date is the date that is 6 months after the commencement date.

(2) However, if the Statutory Supervisor considers it is necessary or convenient for the transition from the repealed Act to this Act, the Supervisor may, by *Gazette* notice, fix a later date as the payment date.

730 Continuing application of former trust account provisions

(1) Subject to subsection (2), for the period starting on the commencement date and ending on 30 June 2007 or a later date prescribed by the regulations:

(a) Part 3.1 does not apply to law practices; and

(b) the former trust account provisions continue to apply to legal practitioners as if the repealed Act had not been repealed.

(2) If, under the former trust account provisions, an audit of a legal practitioner's records would have been required to be conducted after 30 June 2007 had the repealed Act not been repealed, the former trust account provisions continue to apply in relation to the legal practitioner as if the repealed Act had not been repealed.

731 When offence not committed

An offence is not committed under the provisions of Part 3.1 or the regulations made for that Part for anything done or omitted to be done in good faith during the period of 3 months after the commencement date if:

(a) it was done for the purpose of attempting to comply with any of the provisions; or

(b) it was done in substantial conformity with the requirements of the repealed Act.

732 Return of statutory deposits

(1) This section applies if, on the commencement date, the Legal Practitioners' Trust Committee holds an amount on deposit under Part VII, Division 7, of the repealed Act for a legal practitioner.

(2) The Committee must pay the amount to the legal practitioner before the payment date.

(3) However, if the amount or part of it is repaid under the former trust account provisions, subsection (2) applies only in relation to the amount held by the Committee.

733 Interest on investment income

On the payment date, the Legal Practitioners' Trust Committee must pay all investment income as defined in section 84A of the repealed Act into the Fidelity Fund.

Division 9 Costs disclosure and assessment

734 Definition

In this Division:

former costs provisions means the provisions of Part X of the repealed Act as in force immediately before the commencement date.

735 Continuing application of former costs provisions

(1) The former costs provisions continue to apply to a matter if the client first instructed the law practice in the matter before the commencement date.

(2) Part 3.3 applies to a matter if the client first instructs the law practice on or after the commencement date.

(3) However, if a law practice is retained by another law practice on behalf of a client on or after the commencement date in relation to a matter in which the other law practice was retained by the client before the commencement date, the former costs provisions continue to apply to the matter.

(4) In addition, subsection (2) has effect subject to section 737.

736 Taxation of costs

A taxation of costs started under the former costs provisions before the commencement date but not completed by that date must be completed under those provisions as if the repealed Act had not been repealed.

737 Compliance with former costs provisions sufficient

For the period starting on the commencement date and ending on 31 December 2007, compliance with the former costs provisions by a legal practitioner is taken to be compliance with Part 3.3.

Division 10 Professional indemnity insurance

738 Existing professional indemnity insurance

Professional indemnity insurance maintained by a legal practitioner under the repealed Act and in force immediately before the commencement date is taken to be approved professional indemnity insurance under Part 3.4.

739 Exemptions

An exemption granted by the Law Society under the regulations made under section 35B of the repealed Act is taken to have been granted under section 375(2).

Division 11 Fidelity cover

740 Definitions

In this Division:

new fund means the Legal Practitioners Fidelity Fund established under this Act.

old fund means the Legal Practitioners' Fidelity Fund of the Northern Territory established under the repealed Act.

741 Fidelity Fund

The old fund is taken to be the new fund.

742 Amounts payable to and from old fund before commencement date

(1) This section applies to an amount that was payable into, or was payable from, the old fund immediately before the commencement date.

(2) If the amount is payable into the old fund and is received after the commencement date, the amount must be paid into the new fund.

(3) If the amount was payable from the old fund before the commencement date but was not paid before that date, it may be paid from the new fund.

(4) If an amount becomes payable in relation to a default happening before the commencement date, the amount may be paid from the new fund after that date.

(5) In this section:

default has the meaning applicable at the time the act or omission constituting the default happened.

743 Determination for funding for Law Society

A determination for funding for regulatory authorities under section 388 may include funding for costs and expenses incurred by the Law Society in administering the repealed Act.

Division 12 Complaints and discipline

744 Pending investigations into professional conduct

(1) This section applies if:

(a) before the commencement date:

(i) a complaint had been made to the Law Society under section 46 of the repealed Act in relation to the professional conduct of a legal practitioner or former legal practitioner; or

(ii) the Attorney-General had directed the Society to investigate the professional conduct of a practitioner or former legal practitioner; and

(b) immediately before the commencement date, an investigation into the conduct had not started.

(2) Chapter 4 applies (with the necessary modifications) in relation to the conduct as if a complaint were made under Division 4 of that Part about the conduct.

(3) However, disciplinary action may not be taken against a person under this Act in relation to the conduct that is more onerous than the disciplinary action that could have been taken against the person under the repealed Act in relation to the conduct.

745 Investigations into professional conduct

(1) This section applies if:

(a) before the commencement date, the Law Society had started an investigation under section 46B of the repealed Act in relation to the professional conduct of a legal practitioner or former legal practitioner; and

(b) immediately before the commencement date, the investigation had not been completed.

(2) The investigation must be completed under the repealed Act as if it had not been repealed.

(3) If a person would have been entitled to appeal against a decision of the Society on the investigation under section 49 of the repealed Act had that Act not been repealed, the person may appeal to the Supreme Court against the decision of the Society under section 513 as if it were a decision to take action under section 499(2).

746 Pending hearings and inquiries

(1) This section applies if:

(a) before the commencement date:

(i) an appeal was lodged under section 49 of the repealed Act; or

(ii) a charge was laid under section 50 of the repealed Act; and

(b) immediately before the commencement date, the Legal Practitioners Complaints Committee had not completed its hearing into the appeal or inquiry into the charge.

(2) The appeal or charge must be completed under the repealed Act as if it had not been repealed.

(3) For this section, the Committee constituted under the repealed Act for the appeal or inquiry continues in existence.

(4) The decision of the Committee on the hearing or charge may be enforced as if it were an order of the Disciplinary Tribunal.

(5) If a person would have been entitled to appeal against the decision under section 51B of the repealed Act had that Act not been repealed, the person may appeal to the Supreme Court against the decision under section 533 as if it were a decision of the Tribunal to make an order under section 525.

747 New complaints about old conduct

(1) This section applies to conduct that:

(a) happened or is alleged to have happened before the commencement date; and

(b) could have been, but was not, the subject of a complaint under the repealed Act.

(2) A complaint about the conduct may be made and dealt with under this Act even if the conduct could not be the subject of a complaint under this Act if it had happened after the commencement date.

(3) Chapter 4 applies (with the necessary modifications) in relation to the conduct.

(4) However, disciplinary action may not be taken against a person under this Act in relation to the conduct that is more onerous than the disciplinary action that could have been taken against the person under the repealed Act in relation to the conduct.

Division 13 External intervention

748 Application of Chapter 5 for existing Part VIIIA managers

Chapter 5 applies on and after the commencement date in relation to a manager appointed under Part VIIIA of the repealed Act as if the receiver had been appointed under Part 5.4.

749 Continued application of Part IX to application for appointment of receiver

Part IX of the repealed Act continues to apply to an application for the appointment of a receiver made under that Part that was pending immediately before the commencement date.

750 Application of Chapter 5 for existing Part IX receivers

Chapter 5 applies on and after the commencement date in relation to a receiver appointed under Part IX of the repealed Act (whether the appointment is made before or after that date) as if the receiver had been appointed under Part 5.5.

Division 14 Regulatory authorities

751 Law Society

(1) The Law Society Northern Territory established by section 635(1) is taken to be a continuation of, and the same legal entity as, the Law Society Northern Territory constituted under the repealed Act.

(2) The Law Society's constitution as in force immediately before the commencement date is the Law Society's constitution under section 644.

(3) An elected member of the council of the Law Society holding office immediately before the commencement date continues to hold office until the member's term of office ends under the constitution.

(4) A member of the Law Society immediately before the commencement date continues to be a member of the Society until the member's membership ends under the constitution.

752 Admission Board

(1) A legal practitioner appointed as a member of the Legal Practitioners Admission Board and holding office immediately before the commencement date is taken to be an appointed member of the Admission Board under Part 7.2.

(2) Subject to section 653, the member holds office until the appointment would have ended under the repealed Act as if it had not been repealed.

753 Legal Practitioners' Fidelity Fund Committee

The Legal Practitioners Funds Management Committee is taken to be a continuation of, and the same legal entity as, the Legal Practitioners' Fidelity Fund Committee constituted under the repealed Act.

754 Legal Practitioners' Trusts Committee

(1) The Legal Practitioners' Trusts Committee continues in existence for Division 8.

Note for subsection (1)

Under Division 8, the Committee has functions relating to the former trust account provisions under that Division.

(2) Subsection (1) applies as if Part VII, Division 7, of the repealed Act had not been repealed.

(3) The Committee ceases to exist on the day after the payment date under Division 8.

(4) On that day, the assets and liabilities of the Committee vest in the Legal Practitioners Funds Management Committee.

Division 15 Admission rules and legal professional conduct rules

755 Admission rules

The *Legal Practitioners Admission Rules* (Subordinate Legislation No. 58 of 2003) as in force immediately before the commencement date are taken to be the admission rules under this Act.

756 Professional conduct rules

The *Rules of Professional Conduct and Practice* (Subordinate Legislation No. 7 of 2002) as in force immediately before the commencement date are taken to be legal profession rules under this Act.

Division 16 Law Society public purposes trust

757 Winding-up of trust

(1) On the winding-up of the Trust, the Law Society may pay the amount comprising the balance of the Trust Fund to the Funds Management Committee for payment into the Fidelity Fund.

(2) In this section:

Trust means the trust established by the Trust Deed in the Schedule to the *Law Society Public Purposes Trust Act*.

Trust Fund means the Trust Fund as defined in the Trust Deed.

Division 17 Miscellaneous matters

758 General saving and transitional provision

(1) If anything of a kind required or permitted to be done under a provision of this Act was done under a corresponding provision of the repealed Act and still had effect immediately before the commencement date, the thing continues in effect on and after that date as if:

(a) this Act had been in force when it was done; and

(b) it had been done under this Act.

(2) If subsection (1) applies in relation to the signing, lodgment, issue or publication of a written instrument, a reference in the instrument to a provision of the repealed Act must, for that subsection, be read as a reference to the corresponding provision of this Act.

(3) Without limiting subsections (1) and (2), if a provision of the repealed Act that corresponds to a provision of this Act would, but for its repeal, have applied in relation to anything done or being done or in existence before the commencement date, the provision of this Act applies (with the necessary modifications) in relation to the thing.

(4) This section does not have effect to the extent that:

(a) other provision is made by this Part; or

(b) the context or subject matter otherwise indicates or requires.

(5) In addition, this section has effect subject to transitional regulations made under section 761.

759 Continued application of repealed Act

If a provision of the repealed Act continues to apply under this Part, the following provisions also continue to apply in relation to the provision:

(a) other provisions of the repealed Act necessary to give effect to the continued provision;

(b) subordinate legislation made under the repealed Act for the continued provision as in force immediately before the commencement date.

760 Interpretation Act not affected

Unless the contrary intention appears, this Part does not limit Part III of the *Interpretation Act*.

Schedule Acts repealed

section 707

Legal Practitioners Ordinance 1974	Ordinance No. 18, 1974
Legal Practitioners Ordinance 1977	Ordinance No. 19, 1977
Legal Practitioners Ordinance 1978	Ordinance No. 12, 1978
Legal Practitioners Amendment Act 1981	Act No. 56, 1981
Legal Practitioners Amendment Act 1982	Act No. 52, 1982
Legal Practitioners Amendment Act (No. 2) 1982	Act No. 91, 1982
Legal Practitioners Amendment Act 1983	Act No. 32, 1983
Legal Practitioners Amendment Act 1987	Act No. 36, 1987
Legal Practitioners Amendment Act 1990	Act No. 38, 1990
Legal Practitioners Amendment Act (No. 2) 1990	Act No. 43, 1990
Legal Practitioners Amendment Act 1993	Act No. 42, 1993
Legal Practitioners Amendment Act 1995	Act No. 10, 1995
Legal Practitioners Amendment Act 1999	Act No. 30, 1999
Legal Practitioners Amendment Act 2000	Act No. 29, 2000
Legal Practitioners Amendment Act 2001	Act No. 61, 2001
Legal Practitioners Amendment (Mortgage Practices) Act 2002	Act No. 44, 2002
Legal Practitioners Amendment (Community Legal Centres) Act 2002	Act No. 45, 2002
Legal Practitioners Amendment (Costs and Advertising) Act 2003	Act No. 18, 2003
Legal Practitioners Amendment (Incorporated Legal Practices and Multi-Disciplinary Partnerships) Act 2003	Act No. 51, 2003
Legal Practitioners Amendment Act 2005	Act No. 16, 2005

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Legal Profession Act 2006* (Act No. 38, 2006)**

Assent date	18 December 2006
Commenced	s 708: 1 July 2007; rem: 31 March 2007 (*Gaz* G13, 28 March 2007, p 3)

***Justice Legislation Amendment Act 2007* (Act No. 5, 2007)**

Assent date	24 April 2007
Commenced	s 37 (except amd of Criminal Code and *Legal Profession Act 2006*): 1 May 2007 (s 2(1), s 2 *Victims of Crime Assistance Act 2006* (Act No. 15, 2006) and *Gaz* G17, 26 April 2007, p 7); rem: 24 April 2007

***Justice Legislation Amendment Act (No. 2) 2007* (Act No. 32, 2007)**

Assent date	12 December 2007
Commenced	8 January 2008 (*Gaz* S2, 8 January 2008)

***Statute Law Revision Act 2008* (Act No. 6, 2008)**

Assent date	11 March 2008
Commenced	11 March 2008

***Legal Profession Amendment (Complaints and Discipline) Act 2008* (Act No. 19, 2008)**

Assent date	24 June 2008
Commenced	24 June 2008

***Local Government (Consequential Amendments) Act 2008* (Act No. 28, 2008)**

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

***Ombudsman Act 2009* (Act No. 5, 2009)**

Assent date	12 March 2009
Commenced	1 July 2009 (*Gaz* G21, 27 May 2009, p 5)

Justice Legislation Amendment Act 2009 **(Act No. 12, 2009)**

Assent date	26 May 2009
Commenced	24 June 2009 (*Gaz* G25, 24 June 2009, p 2)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 **(Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 **(Act No. 23, 2012)**

Assent date	21 November 2012
Commenced	1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

3 CORRECTIVE REGULATION

Legal Profession Regulations **(SL No. 9, 2007)**

Notified	18 April 2007
Commenced	18 April 2007

Schedule 4 specifies provisions containing minor errors and how the provisions are to be read pending formal amendment. Corrections to ss 4, 74, 75(3), 90(1) and 645 hdg are not listed in the List of Amendments.

4 LIST OF AMENDMENTS

s 4	amd No. 32, 2007, s 14; No. 6, 2008, s 3; No. 19, 2008, s 8
s 11	amd No. 12, 2009, s 7
s 43	amd No. 40, 2010, s 118
ss 74 – 75	amd No. 6, 2008, s 3
s 90	amd No. 6, 2008, s 3
s 323	amd No. 32, 2007, s 15
s 326	amd No. 32, 2007, s 16
s 344	amd No. 32, 2007, s 17
s 345	amd No. 32, 2007, s 18
s 346	sub No. 32, 2007, s 19
s 350	sub No. 32, 2007, s 20
s 351	amd No. 32, 2007, s 21
s 352	amd No. 32, 2007, s 22
s 353	amd No. 32, 2007, s 23
s 358	amd No. 32, 2007, s 24
s 361	amd No. 32, 2007, s 25
s 366	amd No. 32, 2007, s 26
s 467	amd No. 28, 2008, s 3
s 530	amd No. 19, 2008, s 3
s 533	amd No. 19, 2008, s 4
s 565	amd No. 23, 2012, s 32
s 595	amd No. 40, 2010, s 118
s 645	amd No. 6, 2008, s 3
s 646	amd No. 5, 2009, s 179
s 658	amd No. 5, 2007, s 37
s 647	amd No. 19, 2008, s 5
s 676A	ins No. 32, 2007, s 27 rep No. 19, 2008, s 6

s 677A	ins No. 19, 2008, s 7
s 703	amd No. 23, 2012, s 32
s 761	exp No. 38, 2006, s 761(4)
s 762	exp No. 38, 2006, s 762(4)