

Legal profession—model laws project

Model Provisions

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General note

This Bill contains the following categories of provisions:

- Provisions identified as core provisions requiring textual uniformity are intended to be enacted in each jurisdiction in a form that is textually uniform to the maximum extent possible. Provisions in this category are generally marked **CU** (“Core Uniform”).
- Provisions identified as core provisions not requiring textual uniformity are intended to have counterparts in the legislation of each jurisdiction, though not necessarily with textual uniformity. Provisions in this category are generally marked **CNU** (“Core Not Uniform”).
- Provisions identified as not being core provisions are optional. Provisions in this category are generally marked **NC** (“Not Core”).

The draft provisions set out in this Bill of the second and third categories are presented by way of example only. Some non-core provisions are identified throughout the Bill as provisions that, if adopted, need to be textually uniform.

Part 1 Preliminary

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

101 Citation [CNU]

This Act may be cited as the *Legal Profession Act 2004*.

102 Commencement [CNU]

Note. Appropriate local provisions to be inserted.

103 Purposes [NC]

The purposes of this Act are as follows:

- (a) to provide for the regulation of legal practice 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 facilitate the regulation of legal practice on a national basis across State and Territory borders.

104 Definitions [NC; except CU, where defined terms are used in CU Model Provisions]

In this Act:

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

admission rules means rules relating to the admission of [lawyers] and associated matters made under Part 3 (Admission of local lawyers) [or under other specified legislation].

admission to the legal profession means admission 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;

under this Act or a corresponding law, but does not include the grant or issue of a practising certificate under this Act or a corresponding law; and ***admitted to the legal profession*** has a corresponding meaning.

amend includes:

- (a) in relation to a practising certificate:
 - (i) impose a condition on the certificate; and
 - (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; and
 - (ii) impose a condition on the registration; and
 - (iii) amend or revoke a condition already imposed on the registration.

[appropriate authority]

Note. This expression is used in the Model Provisions, but is not intended for use in the legislation enacted by the various jurisdictions. It is intended that each jurisdiction will identify and name the person or other authority that is relevant to the function involved in the context of each reference.

It is important to note that in some contexts there may be more than one such authority. In such a case it may be necessary to use a defined term like "relevant regulatory authority".

It may be that a jurisdiction will choose to use the expression "appropriate authority", but it will need to be defined to identify the authority or authorities intended.

approved form—see section 1708 (Approved forms).

associate—see section 107 (Terms relating to associates and principals of law practices).

Australian lawyer—see section 105 (Terms relating to lawyers).

Australian legal practitioner—see section 106 (Terms relating to legal practitioners).

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

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

compliance certificate—see section 311 (Compliance certificates).

conditions means conditions, limitations or restrictions.

contravene includes fail to comply with.

conviction—see section 111 (References to convictions for offences).

corresponding authority means:

- (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***):
 - (i) a person or body having corresponding powers or functions under a corresponding law; and
 - (ii) without limiting subparagraph (i), 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 regardless of whether they relate to interstate lawyers or interstate legal practitioners generally or are limited to any particular class of interstate lawyers or interstate legal practitioners.

corresponding disciplinary body means:

- (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.

corresponding foreign law means the following:

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

corresponding law means the following:

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

Disciplinary Tribunal means [each jurisdiction to specify].

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 of any part of the document; and
- (g) any part of such a copy, reproduction or duplicate.

Note. This definition is based on the definition in Part 1 of the Dictionary to the uniform Evidence Act and on section 8 of Part 2 of that Dictionary. It may not be needed in this form in some jurisdictions.

engage in legal practice includes practise law.

Fidelity Fund means the fund established under Part 8 (Fidelity cover).

financial year means a year ending on 30 June.

foreign country means:

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

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

home jurisdiction—see section 108 (Home jurisdiction).

incorporated legal practice has the same meaning as in Part 13 (Incorporated legal practices and multi-disciplinary partnerships).

information notice—see section 110 (Information notices).

insolvent under administration means:

- (a) a person who is an undischarged bankrupt within the meaning of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country); or
- (b) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country) 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* of the Commonwealth (or the corresponding provisions of the law of a foreign country) 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* of the Commonwealth (or the corresponding provisions of the law of a foreign country) if the debt agreement has not ended or has not been terminated.

Note. This definition contains the core minimum to be included in the legislation adopted by jurisdictions. Some jurisdictions may wish to use a broader definition for some or all purposes.

interstate lawyer—see section 105 (Terms relating to lawyers).

interstate legal practitioner—see section 106 (Terms relating to legal practitioners).

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.

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.

lay associate—see section 107 (Terms relating to associates and principals of law practices).

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

legal practitioner associate—see section 107 (Terms relating to associates and principals of law practices).

legal practitioner director, in relation to an incorporated legal practice, has the meaning given in Part 13 (Incorporated legal practices and multi-disciplinary partnerships).

legal practitioner partner, in relation to a multi-disciplinary partnership, has the meaning given in Part 13 (Incorporated legal practices and multi-disciplinary partnerships).

legal profession rules means rules relating to legal practice made under this Act.

Note. In some jurisdictions rules may be made under other legislation.

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

local lawyer—see section 105 (Terms relating to lawyers).

local legal practitioner—see section 106 (Terms relating to legal practitioners).

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

local roll means the roll of lawyers maintained under this Act.

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.

managed investment scheme has the same meaning as in Chapter 5C of the *Corporations Act 2001* of the Commonwealth.

modifications includes modifications by way of alteration, omission, addition or 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) any instrument of a kind that is 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 the purposes of, or under, the loan;

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

multi-disciplinary partnership has the meaning given in Part 13 (Incorporated legal practices and multi-disciplinary partnerships).

practical legal training means:

- (a) legal training by participation in course work; or
- (b) legal training under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise;

or a combination of both.

principal—see section 107 (Terms relating to associates and principals of law practices).

professional misconduct—see section 1105 (Professional misconduct).

regulatory authority means:

- (a) in relation to this jurisdiction—[to be specified]; or
- (b) in relation to another jurisdiction, means:
 - (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 determined in accordance with the regulations.

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 an insolvent under administration; or
- (b) his or her conviction for a serious offence or a 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.

suitability matter—see section 109 (Suitability matters).

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

- (a) as an employee of 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 referred to 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 [a legal profession rule].

tax offence means any offence under the *Taxation Administration Act 1953* of the Commonwealth, whether committed in or outside this jurisdiction.

this jurisdiction means this [State or Territory].

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.

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.

unrestricted practising certificate means an Australian practising certificate that:

- (a) is not subject to a condition under section 430 (Statutory condition regarding practice [as solicitor]) or a similar condition under a corresponding law; and
- (b) is not subject to a condition that restricts the holder of the certificate to practise as or in the manner of a barrister; and
- (c) is not subject to any other condition (other than a condition requiring the holder of the certificate to undertake and complete one or more courses of continuing legal education or a condition of a kind prescribed by the regulations); and
- (d) in the case of an interstate practising certificate—is not subject to a condition similar to a condition under section 430 and whose holder would not be subject to a condition under that section if the holder were to apply for and be granted a local practising certificate.

unsatisfactory professional conduct—see section 1104 (Unsatisfactory professional conduct).

Note. Some jurisdictions may need to include definitions along the following lines:

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.

solicitor means:

- (a) a local legal practitioner who holds a current local practising certificate to practise as a solicitor and barrister [*or* as a solicitor, *or* as a barrister and 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.

105 Terms relating to lawyers [CU]

For the purposes of 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.

106 Terms relating to legal practitioners [CU]

For the purposes of 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.

107 Terms relating to associates and principals of law practices [CU]

- (1) For the purposes of 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
 - 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 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) [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 the purposes of 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 means an associate of the practice who is not an Australian legal practitioner.
- (3) For the purposes of 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).

108 Home jurisdiction [CU]

- (1) This section has effect for the purposes of 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 his or her 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 can be determined under neither subparagraph (i) nor subparagraph (ii)—the jurisdiction determined in accordance with criteria specified or referred to in the regulations.

109 Suitability matters [CNU]

- (1) Each of the following is a suitability matter in relation to a natural person:
 - (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;

Note. The rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed.

 - (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 other specified legislation] 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; or
 - (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;
 - (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 physical or mental infirmity.
- Note.** Some jurisdictions may not include infirmity as a criterion.
- (2) A matter is a suitability matter even if it happened before the commencement of this section.

110 Information notices [CNU]

For the purposes of this Act, an information notice is a written notice to a person about a decision stating:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person in respect of whom the decision is made may appeal against [or seek a review of] the decision to the [court or tribunal] within [number to be specified] days of the notice.

Note. Information notices may be able to be used for other provisions where they are not currently used. Also, this section may need adjustment to cover appeal rights that may be different under various provisions.

111 References to convictions for offences [CNU]

- (1) A reference in this Act to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.
- (2) Without limiting subsection (1), a reference in this Act to the quashing of conviction for an offence includes a reference to the quashing of:
 - (a) a finding of guilt in relation to the offence; or
 - (b) the acceptance of a guilty plea in relation to the offence.
- (3) However, a reference in this Act to the quashing of a conviction for an offence does not include a reference to the quashing of a conviction where:
 - (a) a finding of guilt in relation to the offence; or
 - (b) the acceptance of a guilty plea in relation to the offence;remains unaffected.

Part 2 Reservation of legal work and legal titles

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

201 Purposes [NC]

The purposes of this Part are as follows:

- (a) to protect the public interest in the proper administration of justice by ensuring that legal work is carried out only by those who are properly qualified to do so;
- (b) to protect consumers by ensuring that persons carrying out legal work are entitled to do so.

202 Prohibition on engaging in legal practice when not entitled [CU]

- (1) A person must not engage in legal practice in this jurisdiction [for fee or reward] unless the person is an Australian legal practitioner.

Penalty:

Note 1. The element relating to fee or reward is optional in jurisdictions.

Note 2. Here and elsewhere, different penalties may be provided for bodies corporate and natural persons.

- (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 13 (Incorporated legal practices and multi-disciplinary partnerships);
 - (c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 14 (Legal practice: foreign lawyers);
 - (d) legal practice of a kind prescribed by the regulations.

Note. Each jurisdiction may include further specific exceptions to the prohibition on engaging in legal practice. Examples of exceptions are:

- (a) Preparing or assisting in the preparation of a will in the course of a person's employment with the Public Trustee or a private trustee company - eg section 54 (2) (da) of the *Legal Profession Act 1993* (Tas).
- (b) Providing legal services as an employee to the employer or a related entity if the person is acting in the ordinary course of his or her employment and

receives no fee or reward for so acting other than his or her ordinary remuneration as an employee - eg section 48E of the *Legal Profession Act 1987* (NSW).

- (c) Completing a contract as a real estate agent - eg section 315 of the *Legal Practice Act 1996* (Vic).
- (3) Subsection (1) has effect subject to any law of this jurisdiction or of the Commonwealth that authorises a person to engage in legal practice, and does not apply to engaging in legal practice of the following kinds:
- (a) legal practice engaged in by an incorporated legal practice in accordance with Part 13 (Incorporated legal practices and multi-disciplinary partnerships);
- (b) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 14 (Legal practice: foreign lawyers).

Note. Each jurisdiction may include further exceptions to the prohibition on engaging in legal practice. Examples of exceptions are:

- (a) Preparing or assisting in the preparation of a will in the course of a person's employment with the Public Trustee or a private trustee company - eg section 54 (2) (da) of the *Legal Profession Act 1993* (Tas).
- (b) Providing legal services as an employee to the employer or a related entity if the person is acting in the ordinary course of his or her employment and receives no fee or reward for so acting other than his or her ordinary remuneration as an employee - eg section 48E of the *Legal Profession Act 1987* (NSW).
- (c) Completing a contract as a real estate agent - eg section 315 of the *Legal Practice Act 1996* (Vic).
- (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).

203 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled [CU]

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

Penalty:

- (2) A director, officer, employee or agent of a body corporate must not represent or advertise that the body corporate is entitled to engage in legal practice unless the body corporate is an incorporated legal practice.

Penalty:

- (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 202 (2) (Prohibition on engaging in legal practice when not entitled).
- (4) A reference in this section to a person:
- (a) representing or advertising that the person is entitled to engage in legal practice; or
 - (b) representing or advertising that a body corporate is entitled to engage in legal practice;

includes a reference to the person doing anything that states or implies that the person or the body corporate is entitled to engage in legal practice.

204 Presumptions about taking or using name, title or description specified in regulations [NC]

- (1) The regulations may specify:
- (a) a name, title or description as a name, title or description the taking or use of which by a person could imply that the person is entitled to engage in legal practice, or in a particular kind of legal practice; and
 - (b) the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use that name, title or description.
- (2) For the purposes of section 203 (1) (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled), the taking or using of a name, title or description specified in the regulations 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 that they are entitled to engage in legal practice.
- (3) For the purposes of section 203 (2), the taking or using of a name, title or description specified in the regulations 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 that the person

represented that the body corporate is entitled to engage in legal practice.

Note. This section may be considered optional for adoption by jurisdictions, but could assist regulatory agencies in the prosecution of persons under the preceding sections.

205 Professional discipline [CU]

- (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 Part 11 (Complaints and discipline), and the person may be punished for an offence under this Part as well as being dealt with under Part 11 in relation to the same matter.

Note. Inclusion in this Part of provisions about student advocates is a matter for each jurisdiction.

Part 3 Admission of local lawyers

Introductory note 1. This Part contains:

- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Introductory note 2. In the interests of national practice, the primary objectives of the proposed scheme for admission of lawyers are:

- legislative or administrative recognition of nationally agreed minimum standards for academic and practical legal training (currently LACC recommendations/principles) before admission
- legislative or administrative recognition of academic courses and practical legal training approved in another jurisdiction
- automatic removal from the roll of lawyers if removed from the roll in another jurisdiction.

Admission in one jurisdiction is sufficient to form the basis for the grant of a practising certificate in that or another jurisdiction, subject to compliance with other legislative requirements. Practising certificates are dealt with in Part 4 of the Model Provisions.

Division 1 Preliminary

301 Purposes [NC]

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.

302 Definitions [NC]

Note. Jurisdictions might define expressions for the purposes of the Part. It may be appropriate to define or identify the certifying body. This could be done by defining the term “certifying body”, or by replacing that term entirely with the name of the body concerned.

Division 2 Admission to the legal profession

303 Admission [CNU]

Note. Each jurisdiction would enact provisions for the admission of lawyers (however described). The Supreme Court would continue to be the admitting authority, but it would be a matter for each jurisdiction as to the existence, nature and role of a certifying body. The following is an example of provisions that might be adopted:

- (1) A person may apply to the Supreme Court to be admitted as a [lawyer].
- (2) The Supreme Court may admit the person as a [lawyer] if satisfied that the person:
 - (a) is eligible for admission to the legal profession; and
 - (b) is a fit and proper person to be admitted to the legal profession.

Note. Alternative formulations of subsection (2) are as follows:

- (2A) The Supreme Court may, after considering a recommendation of the certifying body, admit the person as a [lawyer] if satisfied that the person:
 - (a) is eligible for admission to the legal profession;
and
 - (b) is a fit and proper person to be admitted to the legal profession;and for this purpose the Supreme Court may rely on the recommendation of the certifying body.
- (2B) The Supreme Court may admit the person as a [lawyer] if the certifying body certifies that it is satisfied that the person:
 - (a) is eligible for admission to the legal profession;
and
 - (b) is a fit and proper person to be admitted to the legal profession.
- (3) A recommendation of the certifying body may be contained in a compliance certificate.
- (4) The Supreme Court may refuse:
 - (a) to consider the application if it is not made in accordance with the admission rules; or

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

Note. Subsections (3) and (4) may not be necessary.

304 Conditions [NC]

Note. It would be a matter for each jurisdiction to determine whether provision should be made for conditional admission. The following is an example of provisions that might be adopted, and ancillary provisions may be needed.

- (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.
- (2) The Supreme Court may order the removal of a person's name from the local roll for a contravention of a condition.
- (3) Without limiting subsection (2), a contravention of a condition is capable of constituting unsatisfactory professional conduct or professional misconduct.

305 Roll of persons admitted to the legal profession [NC]

Note. Each jurisdiction would enact provisions establishing or identifying a roll of admitted persons. The following is an example of provisions that might be adopted:

- (1) The Supreme Court is to maintain a roll of persons admitted to the legal profession under this Act (referred to in this Act as the *local roll*).

Note. It may be advisable to include among the transitional provisions a section identifying and continuing the existing roll.
- (2) When a person is admitted under this Act, the person's name must be entered on the local roll in accordance with the admission rules.
- (3) A person admitted under this Act must sign the local roll.
- (4) The admission of a person under this Act is effective from the time the person signs the local roll.
- (5) The [registrar or other appropriate officer] must forward to the [appropriate authority] 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.

Note 1. Jurisdictions in which the roll is a court document may not need a specific provision to this effect.

Note 2. Transitional provisions may be needed to treat an existing roll as the local roll for the purposes of this section, and to cover persons who are already enrolled. It is noted that persons already enrolled may not have their dates of birth recorded

in an existing roll, and for this reason the recording of dates of birth may be appropriate for new enrolments only.

306 Local lawyer is officer of Supreme Court [CNU]

Note. Each jurisdiction would enact a provision providing that an enrolled lawyer becomes an officer of the Supreme Court. Similar provisions are contained elsewhere in this Bill for interstate lawyers who obtain a practising certificate in this jurisdiction. The following is an example of a provision that might be adopted:

A person becomes an officer of the Supreme Court on being admitted to the legal profession under this Act.

Division 3 Eligibility and suitability for admission

307 Eligibility for admission [CNU]

Note. Each jurisdiction would enact provisions to deal with eligibility requirements for admission, including minimum age requirements, and academic and practical legal training requirements.

There would be provision for:

- legislative or administrative recognition of nationally agreed minimum standards for academic requirements (currently the Priestly 11 subjects and subject contents)
- legislative or administrative recognition of nationally agreed minimum standards for practical legal training (currently LACC national minimum competency standards).

The requirements should be readily accessible, perhaps by publication on the Supreme Court's website or another appropriate website.

The requirements should be flexible, and capable of change over time, subject to appropriate transitional arrangements.

Academic and practical legal training qualifications obtained in other jurisdictions that apply at least the same minimum requirements as this jurisdiction would be recognised in this jurisdiction. Academic and practical legal training qualifications obtained overseas would be assessed against the local minimum academic and practical legal training requirements.

The following is an example of provisions that might be adopted:

- (1) A person is eligible for admission to the legal profession under this Act only if the person is a natural person aged 18 years or over and:
 - (a) the person has attained:
 - (i) approved academic qualifications; or
 - (ii) corresponding academic qualifications; and
 - (b) the person has satisfactorily completed:
 - (i) approved practical legal training requirements; or
 - (ii) corresponding practical legal training requirements.
- (2) In this section:

approved academic qualifications means academic qualifications that are approved, under the admission rules, for admission to the legal profession in this jurisdiction.

approved practical legal training requirements means legal training requirements that are approved, under the admission rules, for admission to the legal profession in this jurisdiction.

corresponding academic qualifications means academic qualifications that would qualify the person for admission to the legal profession in another jurisdiction if the certifying body is satisfied that substantially the same minimum criteria apply for the approval of academic qualifications for admission in the other jurisdiction as apply in this jurisdiction.

corresponding practical legal training requirements means legal training requirements that would qualify the person for admission to the legal profession in another jurisdiction if the certifying body is satisfied that substantially the same minimum criteria apply for the approval of legal training requirements for admission in the other jurisdiction as apply in this jurisdiction.

Note. Jurisdictions may wish to consider whether they wish to exclude legal training under a corresponding law through articles of clerkship. The alternative would be to accept the certification of the corresponding certifying body that the person has completed articles that would qualify the person for admission under the corresponding law.

- (3) The admission 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 in accordance with the admission rules).

308 Suitability for admission [CNU (1); NC (2)]

Note. Each jurisdiction would enact provisions to deal with suitability requirements for admission. To be admitted, a person must be a fit and proper person to be admitted (in addition to being eligible to be admitted in terms of academic and practical legal training qualifications dealt with above). The following is an example of provisions that might be adopted (involving the use of the definition of "suitability matter" in Part 1):

- (1) The Supreme Court or certifying body 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 Supreme Court or certifying body 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.

309 Early consideration of suitability [NC]

Note. It would be a matter for each jurisdiction to determine whether provision should be made for pre-determination of suitability for admission. The following is an example of provisions that might be adopted (the provisions could be divided into a number of sections, as indicated by headings). The provisions do not, but could, authorise the certifying body *of its own motion* to determine suitability in advance or to refer the question of suitability to the Supreme Court for determination, in either case without application.

(1) In this section:

applicant for admission means an applicant for admission to the legal profession under this Act.

prospective applicant for admission means a person who is undertaking or is eligible to undertake or has completed a course of legal studies but who is not an applicant for admission.

relevant person means:

- (a) an applicant for admission; or
- (b) a prospective applicant for admission; or
- (c) another person who has a sufficient interest in applying for a declaration under this section.

(2) A relevant person may apply to the certifying body for a declaration that a matter disclosed (including, for example, a suitability matter) either in:

- (a) the application for the declaration; or
- (b) an undecided application for admission to the legal profession under this Act;

will not, without more, adversely affect an assessment by the body as to whether the person is a fit and proper person to be admitted.

(3) The certifying body is to consider each application under this section and, subject to subsections (4)–(6), make the declaration sought or refuse to do so.

(4) **Referral of application for declaration to Supreme Court**

The certifying body may refer to the Supreme Court any application under this section if, in the opinion of the body, it would be appropriate for the Court to consider the application having regard to the seriousness of matters disclosed by or ascertained about the applicant.

- (5) The Supreme Court has the same powers as the certifying body to deal with an application and its decision on an application is taken to be a decision of the body.
- (6) On a referral under this section, the Supreme Court may make an order or declaration as it thinks fit.
- (7) **Appeals**
If a declaration sought under this section is refused by the certifying body, the applicant may appeal to the Supreme Court against the refusal of the declaration.
- (8) An appeal under this section is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the certifying body may be given on the appeal.
- (9) On an appeal under this section, the Supreme Court may make an order or declaration as it thinks fit.
- (10) **Binding effect of declaration**
A declaration made under subsection (3), or an order or declaration under subsection (6) or (9), is binding on the certifying body unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

Division 4 Powers and functions of certifying body

Note. It would be a matter for each jurisdiction to determine whether provision should be made for the role of a certifying body. The following is an example of provisions that might be adopted:

310 Certifying body to advise on application for admission [NC]

The role of the certifying body is to advise the Supreme Court whether or not the certifying body 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.

Note. The certifying body may have other functions, including those conferred by the admission rules.

311 Compliance certificates [NC]

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- (1) If, after considering an application for admission to the legal profession under this Act, the certifying body 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;

the certifying body must, within the time specified in or determined in accordance with the admission rules, advise the Supreme Court to that effect by filing with the registrar a certificate in the approved form (a *compliance certificate*).
 - (2) If the certifying body refuses to give a compliance certificate for the applicant, the certifying body must, within the time specified in or determined in accordance with the admission rules, give the registrar and the applicant an information notice about the refusal.

312 Consideration of applicant's eligibility and suitability [NC]

- (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 certifying body may, by notice to the applicant, require:
 - (a) the applicant to give it specified documents or information; or
 - (b) the applicant to co-operate with any inquiries by the body that it considers appropriate.
- (2) An applicant's failure to comply with a notice under subsection (1) 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 certifying body may refer a matter to the Supreme Court for directions.

Note. The power of the certifying body to obtain police or medical reports is a matter for each jurisdiction.

Division 5 Miscellaneous

Note. Jurisdictions might enact miscellaneous provisions in connection with the admission to the legal profession. The following is an example of provisions that might be adopted:

313 Supreme Court's jurisdiction [NC]

The Supreme Court's jurisdiction and powers under this Part are exercisable by the Full Court of the Supreme Court [or, where permitted by the admission rules, a single Judge of the Court].

Note. This section may not be required in some jurisdictions, and may need adjustment in others.

314 Certifying body is respondent to applications under this Part [NC]

The certifying body is taken to be a respondent to every application under this Part not made by it.

315 Admission rules [NC]

- (1) The [appropriate authority] may make rules for the admission of persons to the legal profession under this Act.
- (2) Without limiting subsection (1), a rule may be made about any of the following:
 - (a) the procedure for admission, including:
 - (i) how an application is to 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 or affirmation of office to be taken or made 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 [(including any specified bodies)];
 - (h) the procedure to be adopted in the conduct of inquiries under this Part.
- (3) A rule may prescribe fees and costs payable under the rule and may also provide for the refund or remission of fees.
- (4) Without limiting subsection (1), a rule may provide for abridging, in specified circumstances, any period of practical legal training required by the rules.

Note. Other provisions may be needed for the rules. For example, their status as legislative instruments; consent to their making; requirements for publication, tabling and disallowance. Also, some jurisdictions may need provisions with respect to supervised work and articles of clerkship.

316 Savings and transitional provisions [NC]

Note. A number of savings and transitional provisions will no doubt be needed, and will probably be located in another part of the Bill. These could cover existing admissions, existing seniority, existing conditions as well as the imposition of new conditions. A provision along the following lines may be necessary in a jurisdiction (in addition to other provisions and provisions dealing with practising certificates):

A person who was enrolled [*or another term may be necessary*] immediately before the commencement of this section as [a legal practitioner, barrister, solicitor, etc] is taken to have been admitted to the legal profession and enrolled under this Part on that commencement.

Part 4 Legal practice: Australian legal practitioners

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Division 1 Preliminary

401 Purposes [NC]

The purposes of this Part are as follows:

- (a) to facilitate the national practice of law by ensuring that 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 issue of local practising certificates.

Division 2 Legal practice in this jurisdiction by Australian legal practitioners

402 Entitlement of holder of Australian practising certificate to practise in this jurisdiction [CU]

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

Division 3 Local practising certificates generally

403 Local practising certificates [CNU (1); NC (2)]

- (1) Practising certificates may be granted under this Part.
- (2) The [appropriate authority] may determine the categories of local practising certificates.

Note. Local legislation could specify all or some the categories, eg barristers; solicitors; restricted; conditional. Some jurisdictions may not adopt this subsection.

Note. Local legislation could also include provisions preventing an Australian lawyer from holding at the same time current local practising certificates of more than one category, with a contravention being capable of constituting unsatisfactory professional conduct or professional misconduct.

404 Suitability to hold local practising certificate [CNU]

Note. Each jurisdiction would need to have the power to refuse to issue or renew a practising certificate on the ground that the applicant is not a fit and proper person to hold a certificate, but (as for Part 3) the form of the provisions, their location in primary or subordinate legislation and the degree of specification of detail would be a matter for each jurisdiction.

- (1) The [appropriate authority] 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;
 - (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 [if relevant]; or
 - (ii) whether the person has contravened a requirement of this Act or the regulations, or imposed by the [appropriate authority], 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 or the regulations;
 - (f) other matters the authority thinks appropriate.
- (2) 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 (1), if the

[appropriate authority] considers that the circumstances warrant the determination.

- (3) If a matter was:
- (a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and
 - (b) determined by a Supreme Court or certifying body not to be sufficient for refusing admission;

the matter cannot be taken into account as a ground for refusing to grant or renew or for suspending or cancelling a local practising certificate, but the matter may be taken into account when considering other matters in relation to the person concerned.

Note. Section 410 (Grant or renewal of local practising certificate) provides that a local practising certificate must not be granted unless the [appropriate authority] is satisfied that the applicant is a fit and proper person to hold the certificate, and must not be renewed if it is satisfied that the applicant is not a fit and proper person to continue to hold the certificate.

405 Duration of local practising certificate [CU (1) & (2); NC (3)]

- (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 determined by the following 1 July, the certificate:
 - (a) continues in force on and from that 1 July until the [appropriate authority] 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.

Note. Transitional provisions will be necessary in jurisdictions moving to this timing.

406 Professional indemnity insurance [CNU]

Note. Jurisdictions will need provisions requiring practitioners to have professional indemnity insurance. Attention is drawn to sections 45 and 46 of the *Legal Profession Act 2003* (Qld).

407 Local legal practitioner is officer of Supreme Court [CU]

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

Division 4 Grant or renewal of local practising certificates

408 Application for grant or renewal of local practising certificate [CU]

- (1) An Australian lawyer may apply to the [appropriate authority] for the grant or renewal of a local practising certificate if eligible to do so.
- (2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate [if the lawyer complies with any regulation relating to eligibility for the practising certificate] and if:
 - (a) where the lawyer is not an Australian legal practitioner at the time of making the application:
 - (i) the lawyer's place of residence in Australia is this jurisdiction; or
 - (ii) the lawyer reasonably expects to be engaged in legal practice principally from this jurisdiction during the currency of the certificate applied for; or
 - (iii) the lawyer does not have a place of residence in Australia; or
 - (b) where the lawyer is an Australian legal practitioner at the time of making the application:
 - (i) the jurisdiction in which the lawyer engages in legal practice 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 principally in this jurisdiction during the currency of the certificate applied for; or
 - (iv) the lawyer's place of residence in Australia is this jurisdiction; or
 - (v) the lawyer does not have a place of residence in Australia.

- (3) For the purposes of subsection (2) (b), the jurisdiction in which an Australian lawyer engages in legal practice 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 must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.
- (5) An Australian legal practitioner who engages in legal practice principally in this jurisdiction during a financial year and intends to engage in legal practice in the following year must apply for the grant or renewal of a local practising certificate in respect of the following financial year.
- (6) Subsection (5) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that:
 - (a) the practitioner reasonably expected to engage in legal practice principally in this jurisdiction under an arrangement that is of a temporary nature; or
 - (b) the practitioner reasonably expected to engage in legal practice principally in another jurisdiction during the currency of the interstate practising certificate.
- (7) Subsection (5) does not apply to a local legal practitioner who applied for the grant of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice principally in the other jurisdiction during the currency of the interstate practising certificate.
- (8) The exemption provided by subsection (6) (a) ceases to operate at the end of the period prescribed by the regulations for the purposes of this subsection.
- (9) Contravention of this section by an Australian lawyer is capable of constituting unsatisfactory professional conduct or professional misconduct.

409 Manner of application and fees [NC]

- (1) An application for the grant or renewal of a local practising certificate must be:
 - (a) made in the approved form; and
 - (b) accompanied by the [required fees].

Note. How the fees are set is a matter for each jurisdiction. These could include the costs of obtaining suitability reports, if available.

- (2) Different fees may be set for local practising certificates according to different factors determined by the [appropriate authority] [or, as prescribed by the regulations].
- (3) The approved form 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 approved form may indicate that particular kinds of matters previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

Note. Alternatively, rules could require or waive disclosure.

410 Timing of application for renewal of local practising certificate [NC]

- (1) An application for the renewal of a local practising certificate must be made within the period prescribed by the regulations.
- (2) That period must be within the currency of the local practising certificate being sought to be renewed.
- (3) The [appropriate authority] must reject and not further consider an application made after that period, unless the [appropriate authority] accepts the application under subsection (4).
- (4) The [appropriate authority] 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 that the delay was caused by reasons beyond the control of the applicant or that other special circumstances exist warranting acceptance of the application.
- (5) In the case of 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 [appropriate

authority] 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.

Note. Adoption of this section is a matter for each jurisdiction.

411 Grant or renewal of local practising certificate [NC]

- (1) The [appropriate authority] 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) The authority may refuse:
 - (a) to consider an application if:
 - (i) it is not made in accordance with this Act or the [rules]; 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 [rules] in relation to the application.
- (3) The authority must not grant a local practising certificate unless it is satisfied that 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.
- (4) The authority must not renew a local practising certificate if it is satisfied that 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.
- (5) The authority must not grant or renew a local practising certificate if the authority considers the applicant's circumstances have changed since the application was made and the applicant would (having regard to information that has come to the authority's attention) not have been eligible to make the application when the application is being considered.
- (6) If the authority grants or renews a local practising certificate, the authority must, as soon as practicable, give the applicant:

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- (a) for the grant of a certificate—a local practising certificate; or
 - (b) for the renewal of a certificate—a new local practising certificate [or a notice of renewal].
- (7) If the authority:
- (a) refuses to grant or renew a local practising certificate; or
 - (b) imposes a condition on the certificate and the applicant does not agree to the condition;
- the authority must, as soon as practicable, give the applicant an information notice.

Division 5 Amendment, suspension or cancellation of local practising certificates

412 Application of this Division [NC]

This Division does not apply in relation to matters referred to in Division 6 (Special powers in relation to local practising certificates—show cause events).

413 Grounds for amending, suspending or cancelling local practising certificate [NC]

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) 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 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.

414 Amending, suspending or cancelling local practising certificate [NC]

- (1) If the [appropriate authority] believes a ground exists to amend, suspend or cancel a local practising certificate (the *proposed action*), the authority must give the holder a notice (the *show cause notice*) that:

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- (a) states the proposed action and:
 - (i) if the proposed action is to amend the certificate—states the proposed amendment; and
 - (ii) if the proposed action is to suspend the certificate—states the proposed suspension period; and
 - (b) states the grounds for proposing to take the proposed action; and
 - (c) outlines the facts and circumstances that form the basis for the authority's belief; and
 - (d) invites the holder to make written representations to the authority, within a specified time of not less 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 [appropriate authority] still believes a ground exists to take the proposed action, the authority may:
- (a) if the show cause notice stated the proposed action was to amend the practising certificate—amend the certificate in the way stated or in a less onerous way the authority considers appropriate because of the representations; or
 - (b) if the show cause notice stated 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 authority considers appropriate because of the representations; or
 - (c) if the show cause notice stated the proposed action was to cancel the practising certificate:
 - (i) cancel the certificate; or
 - (ii) suspend the certificate for a period.
- (3) If the [appropriate authority] decides to amend, suspend or cancel the practising certificate, the authority must give the holder an information notice about the decision.

Note. Jurisdictional legislation may provide that certain kinds of conditions do not attract the show-cause procedure (eg conditions under section 427 (3) (c) (Conditions imposed by [appropriate authority]) concerning trust accounts).

415 Operation of amendment, suspension or cancellation of local practising certificate [NC]

(1) Application of section

This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 414 (Amending, suspending or cancelling local practising certificate).

- (2) **Action to take effect on giving of notice or specified date**
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) **Grant of stay**
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 respect of which the stay is in force.
- (4) **Quashing of conviction**
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.

416 Other ways of amending or cancelling local practising certificate [NC]

- (1) This section applies if:
- (a) the holder of a local practising certificate requests the [appropriate authority] to amend or cancel the certificate and the authority proposes to give effect to the request; or
 - (b) the [appropriate authority] proposes to amend a local practising certificate only:
 - (i) for a formal or clerical reason; or

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- (ii) in another way that does not adversely affect the holder's interests; or
 - (c) the [appropriate authority] considers cancellation of a local practising certificate is appropriate because the holder's name has been removed from the local roll.
 - (2) The [appropriate authority] may amend or cancel the practising certificate as referred to in subsection (1) by written notice given to the holder, and section 414 (Amending, suspending or cancelling local practising certificate) does not apply in that case.

417 Relationship of this Division with Part 11 [NC]

Nothing in this Division prevents the [appropriate authority] from making a complaint under Part 11 (Complaints and discipline) about a matter to which this Division relates.

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

Note. The expression "show cause event" is defined in section 104. Some jurisdictions may not adopt the show cause procedure for insolvency.

418 Applicant for local practising certificate—show cause event [CNU]

- (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 provide to the [appropriate authority] 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 hold a local practising certificate.
- (3) However, the person need not provide a statement under subsection (2) if the person has previously provided to the [appropriate authority] a statement under this section, or a notice and statement under section

419 (Holder of local practising certificate—show cause event), 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.

- (4) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

419 Holder of local practising certificate—show cause event [CNU]

- (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 [appropriate authority] 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) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (4) If a written statement is provided after the 28 days mentioned in subsection (2) (b), the [appropriate authority] may accept the statement and take it into consideration.

420 Refusal, amendment, suspension or cancellation of local practising certificate—failure to show cause [CNU]

- (1) The [appropriate authority] 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 418 (Applicant for local practising certificate—show cause event) or 419 (Holder of local practising certificate—show cause event) to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
 - (b) has provided a written statement in accordance with section 418 or 419 but the authority does not consider that the applicant or holder has shown in the statement that, despite the show cause

event concerned, he or she is a fit and proper person to hold a local practising certificate.

- (2) For the purposes of this section only, a written statement accepted by the [appropriate authority] under section 419 (4) is taken to have been provided in accordance with section 419.
- (3) The [appropriate authority] must give the applicant or holder an information notice about the decision to refuse to grant or renew, or to amend, suspend or cancel, the certificate.

421 Restriction on making further applications [NC]

- (1) This section applies if the [appropriate authority] decides under section 420 (Refusal, amendment, suspension or cancellation of local practising certificate—failure to show cause) to refuse to grant or renew a local practising certificate to a person or to cancel a person's local practising certificate.
- (2) The authority may also decide that 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 authority makes a decision under subsection (2), the authority must include the decision in the information notice required under section 420 (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.

422 Relationship of this Division with Parts 11 and 15 [NC]

- (1) The [appropriate authority] has and may exercise powers under Division 6 (Investigation of complaints) of Part 11, and Part 15 (Investigatory powers), in relation to a matter under this Division, as if the matter were the subject of a complaint under Part 11.
- (2) Accordingly, the provisions of Division 6 of Part 11, and Part 15, apply in relation to a matter under this Division, and as so apply with any necessary modifications.
- (3) Nothing in this Division prevents the [appropriate authority] from making a complaint under Part 11 about a matter to which this Division relates.

Division 7 Further provisions relating to local practising certificates

423 Immediate suspension of local practising certificate [NC]

- (1) This section applies, despite Divisions 5 and 6, if the [appropriate authority] 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 that the holder:
 - (i) has become an insolvent under administration; or
 - (ii) has been convicted of a serious offence or a tax offence;

whether or not any action has been taken or commenced under Division 5 or 6 in relation to the holder.

- (2) The authority 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 authority informs the holder of the authority's decision by notice under section 414 (Amending, suspending or cancelling local practising certificate);
 - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The notice under this section must:
 - (a) include an information notice about the suspension; and
 - (b) state that the practitioner may make written representations to the authority about the suspension.
- (4) The holder may make written representations to the authority about the suspension, and the authority must consider the representations.
- (5) The authority may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

424 Surrender and cancellation of local practising certificate [NC]

- (1) The holder of a local practising certificate may surrender the certificate to the [appropriate authority].
- (2) The authority may cancel the certificate.

425 Return of local practising certificate [NC]

- (1) This section applies if a local practising certificate granted to an Australian legal practitioner:
 - (a) is amended, suspended or cancelled by the [appropriate authority]; or
 - (b) is replaced by another certificate.
- (2) The [appropriate authority] may give the practitioner a notice requiring the practitioner to return the certificate to the authority 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, unless the practitioner has a reasonable excuse.
Penalty:
- (4) The authority must return the practising certificate to the practitioner as soon as practicable:
 - (a) if the certificate is amended—after amending it; or
 - (b) if the certificate is suspended and is still current at the end of the suspension period—at the end of the suspension period.

Note. Aspects of this process may need to be made consistent with conditions imposed as part of the disciplinary process.

Division 8 Conditions on local practising certificates

426 Conditions generally [NC]

- (1) A local practising certificate is subject to:
 - (a) any conditions imposed by the [appropriate authority]; and
 - (b) any statutory conditions imposed by this or any other Act; and
 - (c) any conditions imposed by or under the legal profession rules [or the regulations]; and

Note. Inclusion of this paragraph is a matter for each jurisdiction.

 - (d) any conditions imposed or varied by the Disciplinary Tribunal under section 428 (Imposition or variation of conditions pending criminal proceedings); and
 - (e) any conditions imposed under Part 11 (Complaints and discipline) or under provisions of a corresponding law that correspond to Part 11.

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- (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 is to be amended by the [appropriate authority], or a new certificate is to be issued by the authority, to reflect on its face the imposition, variation or revocation.

427 Conditions imposed by [appropriate authority] [NC]

- (1) The [appropriate authority] may impose conditions on a local practising certificate:
- (a) when it is granted; 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; or
 - (ii) an academic or training course; or
 - (iii) a period of supervised legal practice;
- Note.** Continuing legal education may not be mandated in some jurisdictions.
- (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) 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 [appropriate authority] must not impose a condition requiring the holder to undertake and complete an academic or training course unless:
- (a) the authority is satisfied, having regard to the holder's previous academic studies, legal training, experience or conduct, that clients of the holder may be at risk of harm if the condition is not imposed; 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. A class of holders might comprise newly qualified lawyers, or lawyers returning to legal practice after suspension or an extended break.

- (6) The [appropriate authority] may vary or revoke conditions imposed under this section.
- (7) If the [appropriate authority] 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 authority.
- (8) This section has effect subject to section 414 (Amending, suspending or cancelling local practising certificate) in relation to the imposition of a condition on a local practising certificate during its currency.

Note. Some jurisdictions may adopt different or more restricted arrangements for conditions that may be imposed.

428 Imposition or variation of conditions pending criminal proceedings [NC]

- (1) If a local legal practitioner has been charged with an offence but the charge has not been determined, the [appropriate authority] may apply to the Disciplinary Tribunal for an order under this section.
- (2) On an application under subsection (1), the Disciplinary 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; or
- (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 Disciplinary 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 Disciplinary Tribunal, on application by any party, may vary or revoke an order under this section at any time.

Note 1. Jurisdictions may decide to limit this section to specified offences (eg, by the use of a definition of "relevant offence"). As an alternative, the regulatory

authority may be able to exercise this power in relation to charges under the provisions relating to immediate suspension of a local practising certificate.

Note 2. Jurisdictions adopting this section (which is optional) may need to consider the disclosure regime that should apply when a practitioner is charged with (as distinct from convicted of) an offence that is not serious.

429 Statutory condition regarding conditions imposed on interstate admission [CNU]

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.

Note. Contravention of a condition imposed on admission locally is dealt with in section 304 (Conditions).

430 Statutory condition regarding practice [as solicitor] [CNU]

(1) It is a statutory condition of a local practising certificate [for a solicitor] 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 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, worked out under relevant regulations, 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, worked out under relevant regulations, after the day the holder's first practising certificate was granted.

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

Note. This section is a core provision in terms of its effect, but may need change in jurisdictions that do not have separate practising certificates for solicitors. For jurisdictions with a fused profession, there may need to be a provision that excludes this statutory condition in the case of a practitioner who practises as or in the manner of a barrister.

431 Statutory condition regarding notification of offence [NC]

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- (1) It is a statutory condition of a local practising certificate that the holder of the certificate:
 - (a) must notify the [appropriate authority] that the holder has been:
 - (i) 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
 - (ii) charged with a serious offence; and
 - (b) must do so within 7 days of the event and by a written notice.
 - (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be sent or delivered.
 - (3) This section does not apply to an offence to which Division 6 (Special powers in relation to local practising certificates—show cause events) applies.

432 Conditions imposed by legal profession rules [NC]

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.

Note. Inclusion of this section is a matter for each jurisdiction.

433 Compliance with conditions [NC]

- (1) The holder of a current local practising certificate must not contravene (in this jurisdiction or elsewhere) a condition to which the certificate is subject.
- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

Division 9 Interstate legal practitioners

434 Requirement for professional indemnity insurance [CNU]

Note. Jurisdictions may include provisions requiring professional indemnity insurance cover for legal practice in this jurisdiction by interstate legal practitioners. A contravention of such a requirement would be capable of constituting unsatisfactory professional conduct or professional misconduct. Attention is drawn to section 67 of the *Legal Profession Act 2003* (Qld).

435 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction [CU]

- (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 [appropriate authority] under section 436 (Additional conditions on practice of interstate legal practitioners); 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 his or her 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 appropriate authority, 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.
- (5) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

Note. This section may need adjustment in some jurisdictions.

436 Additional conditions on practice of interstate legal practitioners [CU]

- (1) The [appropriate authority] 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.

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- (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.

Note. Inclusion of this subsection is a matter for each jurisdiction.

- (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 about the decision to impose a condition.

437 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction [CNU]

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

- (a) if the practitioner completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in this or another jurisdiction—the practitioner has undertaken a period or periods equivalent to 18 months' supervised legal practice, worked out under relevant regulations, after the day the practitioner's first practising certificate was granted; or
- (b) if the practitioner completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—the practitioner has undertaken a period or periods equivalent to 2 years' supervised legal practice, worked out under relevant regulations, after the day the practitioner's first practising certificate was granted.

438 Interstate legal practitioner is officer of Supreme Court [CU]

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 Supreme Court in respect of those duties and obligations.

Division 10 Miscellaneous

439 Protocols [NC]

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- (1) The [appropriate authority] may enter into arrangements (referred to in this Part as **protocols**) with regulatory authorities of other jurisdictions about determining:
 - (a) the jurisdiction from 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 the purposes of this Act, and to the extent that the protocols are relevant, a matter referred to in subsection (1) (a), (b) or (c) is to be determined in accordance with the protocols.
 - (3) The [appropriate authority] may enter into arrangements that amend, revoke or replace a protocol.
 - (4) A protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

440 Consideration and investigation of applicants or holders [NC]

- (1) To help it consider whether or not to grant, renew, suspend or cancel a local practising certificate, or impose conditions on a local practising certificate, the [appropriate authority] may, by notice to the applicant, require:
 - (a) the applicant to give it specified documents or information; or
 - (b) the applicant to co-operate with any inquiries by the authority that it considers appropriate.
- (2) An applicant's failure to comply with 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 authority.

Note. The power of the [appropriate authority] to obtain police or medical reports is a matter for each jurisdiction.

441 Register of local practising certificates [NC]

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- (1) The [appropriate authority] must keep a register of the names of Australian lawyers to whom it grants local practising certificates.
 - (2) The register must:
 - (a) state the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice; and
 - (b) include other particulars prescribed by the regulations.
 - (3) The register may be kept in the way the authority decides.
 - (4) The register must be available for inspection, without charge, at the authority's office during normal business hours.

442 Supreme Court orders about conditions [NC]

- (1) The [appropriate authority] may apply to the Supreme Court for an order that an Australian lawyer not contravene a condition imposed under this Part.
- (2) The Supreme Court may make any order it considers appropriate on the application.

443 Appeals or review [NC]

- (1) A person may appeal to the [review body] against:
 - (a) a decision of the [appropriate authority]:
 - (i) to refuse to grant or renew a local practising certificate; or
 - (ii) to amend, suspend or cancel a local practising certificate; or
 - (b) a decision of the [appropriate authority] under section 421 (Restriction on making further applications) that the person is not entitled to apply for the grant of a local practising certificate for a specified period.
- (2) The [review body] may make any order it considers appropriate on the appeal.

Note. It may be appropriate for the Disciplinary Tribunal to be the review body, especially for action taken under Division 6 (Special powers in relation to local practising certificates—show cause events). This would apply a measure of consistency.

444 Government lawyers [CNU]

Note 1. There are at present considerably different approaches to this issue in different jurisdictions. Each jurisdiction will need to determine how government lawyers are to be dealt with as regards the need for practising certificates and other matters, including professional discipline. Some jurisdictions may make their own arrangements for the application to government lawyers

of legal profession rules and disciplinary processes. Attention is specifically drawn to section 9 of the *Legal Profession Act 2003* (Qld) and related provisions. The draft set out below is given merely as one approach.

Note 2. Jurisdictions that do not exempt government lawyers should recognise the exemptions by jurisdictions that do exempt.

- (1) In this section:

government agency means a government department of this or any other jurisdiction or of the Commonwealth, and includes a body or organisation (or a class of bodies or organisations) prescribed by the regulations.

government employee means a person employed in a government agency.

- (2) A government employee 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 respect of the performance of his or her official duties or functions as a government employee.

Note. Some jurisdictions may not wish to exclude government lawyers from legal profession rules and professional discipline but may apply other processes in connection with them.

- (3) Contributions and levies are not payable to the Fidelity Fund by or in respect of a government employee in his or her capacity as a government employee.
- (4) Without affecting subsections (2) and (3), nothing in this section prevents a government employee from being granted or holding a local practising certificate.

Note. Jurisdictions that exempt government lawyers request other jurisdictions to recognise these exemptions.

445 Fees [NC]

- (1) The [appropriate authority] may charge fees for the services that it provides [under this Part].
- (2) The fees must be reasonable having regard to the funding that the [[appropriate authority] receives under this Act and] the cost to the

authority of performing its functions under this Act [or under other specified legislation].

- (3) The fees set by [the appropriate authority] may be included in ... [Qld - an administration rule].
- (4) Despite subsection (1), the appropriate authority may not charge a fee for a service provided to another [entity] that has functions under this Act [or under other specified legislation], except so far as the other [entity] has arranged, on a commercial basis, for the appropriate authority to perform a service that is the responsibility of the other [entity].

446 Refund of fees [NC]

- (1) The regulations may provide for the refund of a portion of a fee paid in respect of a local practising certificate 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 is to be made; and
 - (b) the amount of the refund or the manner in which the amount of the refund is to be determined.

447 Savings and transitional provisions [CNU]

Note. A number of savings and transitional provisions will no doubt be needed, and will probably be located in another Part of the Bill (see Part 17). These will need to cover (according to the requirements of the current legislation of a jurisdiction): deeming an existing practising certificate to have been granted under the new Act; determining the period for which an existing certificate is in force under the new Act; giving a period of grace for practitioners to apply for a certificate where none was previously required.

Part 5 Suitability reports

Note. The power to obtain police or medical reports in relation to applicants for admission, applicants for the grant or renewal of practising certificates, and the holders of practising certificates, is a matter for each jurisdiction.

Part 6 Inter-jurisdictional provisions regarding admission and practising certificates

Introductory note. This Part contains:

- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Division 1 Preliminary

601 Purpose [NC]

The purpose of this Part is to provide a nationally consistent scheme for the notification 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.

602 Definitions [NC]

In this Part:

certifying body has the same meaning as in Part 3.

603 Other requirements not affected [NC]

This Part does not affect any powers or duties under Part 11 (Complaints and discipline).

Division 2 Notifications to be given by local authorities to interstate authorities

604 Official notification to other jurisdictions of applications for admission and associated matters [NC]

- (1) This section applies if an application for admission to the legal profession is made under this Act.
- (2) The certifying body 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 commenced in relation to the application [or a suitability report is sought or obtained];
Note. Suitability reports are optional for inclusion in the proposed legislation.
 - (d) the refusal of the Supreme Court to admit the applicant to the legal profession under this Act.
- (3) The notice must state the applicant's name and address as last known to the certifying body and may contain other relevant information.

605 Official notification to other jurisdictions of removals from local roll [CNU]

- (1) This section applies if a local lawyer's name is removed from the local roll, except where the removal occurs under section 610 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).
- (2) The 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 state:
 - (a) the practitioner's name and address as last known to the registrar; and
 - (b) the date the practitioner's name was removed from the roll; and
 - (c) the reason for removing the practitioner's name;and may contain other relevant information.

606 [Appropriate authority] to notify other jurisdictions of certain matters [NC]

- (1) This section applies if:
 - (a) the [appropriate authority] 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 practitioner successfully appeals against the action taken.
- (2) The authority 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 state:
 - (a) the practitioner's name and address as last known to the authority; and
 - (b) particulars of:
 - (i) the action taken and the reasons for it; or
 - (ii) the result of the appeal;and may contain other relevant information.
- (4) The [appropriate authority] may give corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

Division 3 Notifications to be given by lawyers to local authorities

607 Lawyer to give notice of removal in another jurisdiction [CNU]

- (1) If a local lawyer's name has been removed from an interstate roll, the practitioner must, as soon as practicable, give the [registrar] a written notice of the removal.
Penalty:
- (2) If a local legal practitioner's name has been removed from an interstate roll, the practitioner must, as soon as practicable, give the [appropriate authority] a written notice of the removal.
Penalty:
- (3) This section does not apply where the name has been removed from an interstate roll under a provision that corresponds to section 610 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).

608 Lawyer to give notice of removal in foreign country [CNU]

- (1) If a local lawyer's name has been removed from a foreign roll, the practitioner must, as soon as practicable, give the [appropriate authority] a written notice of the removal.

Penalty:

- (2) If a local legal practitioner's name has been removed from a foreign roll, the practitioner must, as soon as practicable, give the [appropriate authority] a written notice of the removal.

Penalty:

609 Provisions relating to requirement to notify [CNU]

- (1) A notice to be given under this Division by a local lawyer or local legal practitioner must:
- (a) state his or her name and address; and
 - (b) identify the roll from which his or her name has been removed; and
 - (c) state the date of the removal; and
 - (d) be accompanied by a copy of any official notification provided to him or her in connection with the removal.
- (2) A failure of a local lawyer or local legal practitioner to comply with this Division is capable of constituting unsatisfactory professional conduct or professional misconduct.

Division 4 Taking of action by local authorities in response to notifications received

Note 1. Procedural aspects and drafting of these provisions may vary among jurisdictions.

Note 2. The term "peremptory" is used in this Division to make it clear that the removal of a name is to be effected without further consideration - it is one step short of "automatic".

610 Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction [CNU]

- (1) This section applies if the registrar is satisfied that:
- (a) a local lawyer's name has been removed from an interstate roll; and

- (b) no order referred to in section 612 (1) (a) (Order for non-removal of name or non-cancellation of local practising certificate) is, at the time of that 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 is, on his or her application to the registrar or on the registrar's own initiative, to be restored to the local roll if the name is restored to the interstate roll.
- (6) Nothing in this section prevents the former local lawyer from afterwards applying for admission under Part 3 (Admission of local lawyers).

611 Peremptory cancellation of local practising certificate following removal of name from interstate roll [NC]

- (1) This section applies if:
 - (a) a person's name is removed from an interstate roll; and
 - (b) he or she is the holder of a local practising certificate; and
 - (c) no order referred to in section 612 (1) (b) (Order for non-removal of name or non-cancellation of local practising certificate) is, at the time of that removal, in force in relation to it.
- (2) The [appropriate authority] must cancel the local practising certificate as soon as practicable after receiving official written notification of the removal.
- (3) The authority may, but need not, give the person notice of the date on which the authority proposes to cancel the local practising certificate.
- (4) The authority 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) Nothing in this section prevents the former local lawyer from afterwards applying for a local practising certificate.

612 Order for non-removal of name or non-cancellation of local practising certificate [CNU]

- (1) If an Australian lawyer reasonably expects that his or her name will be removed from an interstate roll, the practitioner may apply to the Supreme Court for:
 - (a) an order that his or her name not be removed from the local roll under section 610 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction); or
 - (b) an order that his or her local practising certificate not be cancelled under section 611 (Peremptory cancellation of local practising certificate following removal of name from interstate roll);or both.
- (2) The Supreme Court may make the order or orders applied for if satisfied that:
 - (a) the lawyer's name is likely to be removed from the interstate roll; and
 - (b) the reason for its removal from the interstate roll 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 Supreme Court considers appropriate and remains in force for the period specified in it.
- (4) The Supreme Court may revoke an order made under this section, and either or both of sections 610 and 611 (as relevant) then apply as if the practitioner'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 practitioner under other provisions of this Act.

613 Show cause procedure for removal of lawyer's name from local roll following removal in foreign country [CNU]

- (1) This section applies if a local lawyer's name has been removed from a foreign roll and the name has not been restored.

- (2) The [appropriate authority] may serve on the lawyer a notice stating that the authority will apply to the Supreme Court for an order that the practitioner's name be removed from the local roll unless the practitioner shows cause to the authority why his or her name should not be removed.
- (3) If the lawyer does not satisfy the [appropriate authority] that his or her name should not be removed from the local roll, the authority may apply to the Supreme 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 [appropriate authority] must afford the practitioner a reasonable opportunity to show cause why his or her name should not be removed.
- (5) The Supreme 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 Supreme Court at a hearing in respect of an application under this section.

614 Local authority may give information to other local authorities [CNU]

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 furnish the information to other authorities of this jurisdiction that have powers or duties under this Act.

Note. It is anticipated that court registries would, on being notified of the removal of a lawyer from a roll, advise their local appropriate authorities under this section. See section 1705 (Disclosure of information by local regulatory authorities).

Part 7 Trust money and trust accounts

Introductory note 1. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Introductory note 2. Some jurisdictions may include additional provisions that permit certain other persons to hold certain kinds of trust money (eg “approved clerks”, as in the current Victorian legislation).

Introductory note 3. Some jurisdictions may provide that this Part does not apply to barristers.

Division 1 Preliminary

701 Purposes [NC]

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 or on whose behalf 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 [appropriate authority] can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

702 Definitions [CU]

(1) In this Part:

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.

approved ADI means an ADI approved under section 738 (Approval of ADIs) by the [appropriate authority].

controlled money means trust money received by a law practice with 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. See section 714 (6) (Controlled money), which prevents pooling of controlled money.

controlled money account means an account maintained by a law practice with an approved ADI for the holding of controlled money received by the practice.

external examination means an external examination under Subdivision 2 of Division 3 of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under Subdivision 2 of Division 3.

general trust account means an account maintained by a law practice with an approved ADI for the holding of trust money received by the practice, other than controlled money or transit money.

investigation means an investigation under Subdivision 1 of Division 3 of the affairs of a law practice.

investigator means a person holding an appointment as an investigator under Subdivision 1 of Division 3.

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 received in the course of or in connection with the provision of legal services by a law practice for or on behalf of another person, and includes:

- (a) money received on account of legal costs in advance of providing the services; and

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- (b) controlled money; and
 - (c) transit money; and
 - (d) money controlled by a law practice (or by an associate, alone or with another associate), pursuant to a power to deal with money for or on behalf of another person that is:
 - (i) exercisable by the practice (or by an associate alone or with another associate); or
 - (ii) exercisable jointly and severally with the person or a nominee or nominees of the person;

but does not include money to which section 703 applies.

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) duplicate deposit slips;
 - (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 or the regulations;
 - (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.

703 Money involved in financial services or investments [CNU]

- (1) Money that is entrusted to or held by a law 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);
- is not trust money for the purposes of this Act.
- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice for or in connection with:
- (a) a managed investment scheme; or
 - (b) mortgage financing;
- undertaken by the practice is not trust money for the purposes of 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 the purposes of this Act, 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, authorised representative, financial service and *financial services business* have the same meanings as in Chapter 7 of the *Corporations Act 2001* of the Commonwealth.

704 Determinations about status of money [CU]

- (1) This section applies to money received by a law practice if the [appropriate authority] considers that there is doubt or a dispute as to whether the money is trust money.
- (2) The [appropriate authority] may determine that the money is or is not trust money.
- (3) The [appropriate authority] 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 the purposes of 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 the purposes of this Act.
- (6) This section has effect subject to a decision of a court or administrative review body made in relation to the money concerned.

705 Application of Part to law practices and trust money [CU]

- (1) **Trust money received in this jurisdiction**

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.

Note. It is intended that a law practice that receives trust money in this jurisdiction, that does not have an office in this jurisdiction, but that has an office in another jurisdiction, must deal with the money in accordance with the corresponding law of the other jurisdiction.

- (2) **Trust money received in another jurisdiction**

This Part applies to the following law practices in respect of trust money received by them in another jurisdiction:

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- (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 in accordance with the corresponding law of another jurisdiction.

(3) **Exclusions**

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) **Meaning of having an office in a jurisdiction**

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. Section 1413 (Trust money and trust accounts) applies this Part to Australian-registered foreign lawyers.

706 Protocols for determining where trust money is received [CU]

- (1) The [appropriate authority] may enter into arrangements (referred to in this Part as *protocols*) with corresponding authorities about any or all of the following:
 - (a) determining the jurisdiction where a law practice receives trust money;
 - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.
- (2) For the purposes of this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the protocols.
- (3) The [appropriate authority] may enter into arrangements that amend, revoke or replace a protocol.
- (4) A protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

707 When money is received [CU]

- (1) For the purposes of 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; or
 - (c) the practice is given a power enabling the practice to deal with it whether alone or with an associate; or
 - (d) an associate is given a power enabling the associate to deal with it, on behalf of the practice, whether alone or with another associate.
- (2) For the purposes of 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 other 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.

708 Discharge by legal practitioner associate of liability of law practice [CU]

- (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 741 (Statutory deposits);
 - (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 the purposes of 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 that the associate is prevented by the regulations from taking any action referred to in that subsection.

709 Liability of principals of law practice [CU]

In the case of a law practice that is a partnership:

- (a) a provision of this Part or the regulations made for the purposes of 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; and
- (b) references in this Part and the regulations made for the purposes of this Part to a law practice accordingly include references to the principals of the law practice.

710 Former practices, principals and associates [CU]

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.

Division 2 Trust accounts and trust money

711 Maintenance of general trust account [CU]

- (1) A law practice that receives trust money to which this Part applies must maintain a general trust account in this jurisdiction.
Penalty:
- (2) A law practice that is required to maintain a general trust account in this jurisdiction must establish and maintain the account in accordance with the regulations.
Penalty:
- (3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives only controlled money or transit money (or both), except where it is received in the form of cash.
- (4) 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 period or during different periods.

- (5) 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 prescribed circumstances.

712 Certain trust money to be deposited in general trust account [CU]

- (1) As soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless:
- (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 to be dealt with under a power to receive or disburse money for or on behalf of another person exercisable jointly and severally with the other person or a nominee of the other person.

Penalty:

- (2) A law practice that has received money that is the subject of a written direction mentioned in subsection (1) (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.

Penalty:

- (3) The law practice must keep a written direction mentioned in subsection (1) (a) for the period prescribed by the regulations.

Penalty:

- (4) Paragraphs (a) to (d) of subsection (1) do not apply to cash.
- (5) A person is an *appropriate person* for the purposes of this section if the person is legally entitled to give the law practice directions in respect of dealings with the trust money.

713 Holding, disbursing and accounting for trust money [CU]

- (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.

Penalty:

- (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.

Penalty:

714 Controlled money [CU]

- (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.

Penalty:

- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.

Penalty:

- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subsection (1) must not disburse the money 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.

Penalty:

- (4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the regulations.

Penalty:

- (5) The law practice must keep a written direction mentioned in this section for the period prescribed by the regulations.

Penalty:

- (6) The law practice must ensure that 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 that the regulations otherwise permit.

Penalty:

- (7) Subsection (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

715 Transit money [CU]

- (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.

Penalty:

- (2) The law practice must account for the money as required by the regulations.

Penalty:

716 Trust money subject to specific powers [CU]

- (1) A law practice that exercises a power to deal with trust money must deal with the money only in accordance with the power relating to the money.

Penalty:

- (2) The law practice must account for the money as required by the regulations.

Penalty:

717 Protection of trust money [CU]

- (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.

718 Intermixing money [CU]

A law practice must not, otherwise than as allowed by the regulations, mix trust money with other money.

Penalty:

719 Dealing with trust money: legal costs and unclaimed money [CU]

- (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 practitioner;
 - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the procedure prescribed in the regulations is complied with;
 - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under [*insert relevant unclaimed money legislation of the jurisdiction, eg, section 138 of Legal Practitioners Act (NT)*].
- (2) Subsection (1) applies despite any other provision of this Part but has effect subject to Part 10 (Costs disclosure and review).

720 Deficiency in trust account [CU]

- (1) An Australian legal practitioner is guilty of an offence if he or she, without reasonable excuse, causes:
- (a) a deficiency in any trust account or trust ledger account; or
 - (b) a failure to pay or deliver any trust money.
- Penalty:
- (2) A reference in subsection (1) to an account includes a reference to an account of the practitioner or of the law practice of which the practitioner is an associate.
- (3) In this section:
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.

721 Reporting certain irregularities and suspected irregularities [CU]

- (1) As soon as practicable after a legal practitioner associate of a law practice becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, the associate must give written notice of the irregularity to:
- (a) the [appropriate authority]; and
 - (b) if a corresponding authority is responsible for the regulation of the accounts concerned—the corresponding authority.

Penalty:

- (2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to:
- (a) the [appropriate authority]; and
 - (b) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money concerned—the corresponding authority.

Penalty:

- (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.

Note. Section 1707 (Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements) contains a similar provision in respect of legal professional privilege and duties of confidence. That section is not a core provision.

- (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).

722 Keeping trust records [CU]

- (1) A law practice must keep in permanent form trust records in relation to trust money received by the practice.

Penalty:

- (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 in accordance with the regulations.

Penalty:

723 False names [CU]

- (1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.

Penalty:

- (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 that the practice's trust records record all names by which the person is known.

Penalty:

Division 3 Investigations and external examinations

Subdivision 1 Investigations

724 Appointment of investigators [NC]

- (1) The [appropriate authority] may, in writing, 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.

725 Investigations [NC]

- (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 accounts and associated matters.
- (2) The principal purposes of an investigation are to ascertain whether the law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud or defalcation, but this subsection does not limit the scope of the investigation or the powers of the investigator.

726 Application of Part 15 [NC]

Part 15 (Investigatory powers) applies to an investigation under this Subdivision.

727 Investigator's report [NC]

- (1) As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the [appropriate authority].
- (2) The investigator must not disclose information in the report or acquired in carrying out the investigation except:
 - (a) to the practice that or person who is a subject of the investigation or report; or

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- (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
 - (c) as provided in section 1519 (Permitted disclosure of confidential information).

Penalty:

728 When costs of investigation are debt [NC]

- (1) The [appropriate authority] may decide that the whole or part of the costs of carrying out an investigation is payable to the authority and may specify the amount payable.
- (2) The amount specified by the appropriate authority is a debt owing to the authority by the law practice whose affairs are under investigation, if:
 - (a) the investigator states in his or her report that there is evidence a breach of this Act or the regulations has been committed or that fraud or defalcation has been detected; and
 - (b) the authority is satisfied the breach is wilful or of a substantial nature.
- (3) The [appropriate authority] must, before seeking to recover the amount payable, give the law practice an information notice about the authority's decision and the amount specified as being payable.

Note. Jurisdictional legislation could provide a right of appeal or review about decisions under this section.

Subdivision 2 External examinations

Note. The scheme would require the making of external examinations of the trust records of legal practitioners. It would be a matter of jurisdictional variation whether examinations are to be organised by practitioners or by the [appropriate authority]. Details of arrangements regarding external examinations could be dealt with by regulations. As indicated in the introductory note to this Part, the provisions of this Subdivision are given by way of example.

729 Designation of external examiners [NC]

- (1) The [appropriate authority] may, in writing, designate persons (referred to in this Subdivision as *designated persons*) as being eligible to be appointed as external examiners.
- (2) Only designated persons may be appointed as external examiners.
- (3) An employee or agent of the [appropriate authority] may be a designated person.

- (4) The [appropriate authority] may revoke a person's designation under this section.

730 Appointment of external examiners by law practices [NC]

- (1) A law practice may, and must if required to do so by the regulations, appoint an external examiner to examine the practice's trust records.
- (2) A law practice contravenes this section if, being required by the regulations to do so, it does not appoint an external examiner as required by the regulations.

Penalty:

- (3) The [appropriate authority] must ensure each legal practitioner's trust records are externally examined as required by the regulations.

731 Appointment of external examiners by [appropriate authority] [NC]

- (1) If the [appropriate authority] is satisfied a law practice has not had the practice's trust records externally examined as required by the regulations, the authority may appoint an external examiner to examine the practice's trust records.
- (2) If the regulations do not require a law practice to have trust records externally examined, the [appropriate authority] may appoint an external examiner to examine the practice's trust records [at least annually].

732 Designation and appointment of associates as external examiners [NC]

- (1) The [appropriate authority] may designate an associate of a law practice under this Subdivision only if the authority is satisfied that 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.

733 Final examination of trust records [NC]

- (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:

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- (a) in respect of the period since an external examination was last conducted; and
 - (b) in respect of each period thereafter, comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

Penalty:

- (3) The law practice must lodge with the [appropriate authority]:
 - (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 prescribed form within 60 days of ceasing to hold trust money.

Penalty:

- (4) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.
- (5) Nothing in this section affects any other requirements under this Part.

734 Examination of affairs in connection with examination of trust records [NC]

- (1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for the purposes of 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 Part 15 (Investigatory powers) to *trust records* includes a reference to the affairs of a law practice that may be examined under this section for the purposes of and in connection with an examination of the practice's trust records.

735 Carrying out examination [NC]

- (1) Part 15 (Investigatory powers) applies to an external examination under this Subdivision.

- (2) Subject to Part 15, an external examination of trust records is to be carried out in accordance with the regulations.
- (3) Without limiting subsection (2), the regulations may provide for 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.

736 External examiner's report [NC]

- (1) As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the [appropriate authority].
- (2) The examiner must not disclose information in the report or acquired in carrying out the examination, unless permitted to do so under subsection (3) or under section 1519 (Permitted disclosure of confidential information).

Penalty:
- (3) The examiner may disclose information in the report or acquired in carrying out the examination:
 - (a) as is necessary for properly conducting the examination and making the report of the examination; or
 - (b) to an investigator or a supervisor, manager or receiver appointed under this Act; or
 - (c) to the law practice concerned or an associate of the law practice.

737 Law practice liable for costs of examination [NC]

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.
- (2) If the [appropriate authority] appointed the external examiner to carry out the examination, the [appropriate authority] 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 [appropriate authority] must, before seeking to recover the amount payable, give the law practice an information notice about the authority's decision and the amount specified as being payable.

Note. Jurisdictional legislation could provide a right of appeal or review about decisions under this section.

Division 4 Provisions relating to ADIs and statutory deposits

738 Approval of ADIs [NC]

- (1) The [appropriate authority] may approve ADIs at which trust accounts to hold trust money may be maintained.
- (2) The [appropriate authority] may impose conditions, of the kinds prescribed by the regulations, on an approval under this section, when the approval is given or during the currency of the approval, and may amend or revoke any conditions imposed.
- (3) The [appropriate authority] may revoke an approval given under this section.

739 ADI not subject to certain obligations and liabilities [NC]

- (1) 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.
- (2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

740 Reports, records and information [NC]

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the [appropriate authority] as soon as practicable after becoming aware of the deficiency.
Penalty:
- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the [appropriate authority] as soon as practicable after forming the suspicion.

Penalty:

- (3) An ADI must furnish to the [appropriate authority] reports about trust accounts in accordance with the regulations.

Penalty:

- (4) An ADI at which a trust account is maintained must without charge:
- (a) produce for inspection or copying by an investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; and
 - (b) provide the investigator or external examiner with full details of any transactions relating to the trust account or trust money;
- on demand by the investigator or external examiner and on production to the ADI of evidence of the appointment of the investigator or engagement of the external examiner in relation to the law practice concerned.

Penalty:

- (5) Subsections (1)–(4) apply despite any duty of confidence to the contrary.
- (6) 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 in accordance with subsection (1); or
 - (b) making or furnishing a report in accordance with subsection (2) or (3); or
 - (c) producing records or providing details in accordance with subsection (4).

741 Statutory deposits [NC]

- (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 [appropriate authority].
- (2) Without limiting subsection (1), the regulations may provide for the following:
- (a) the type of account to be maintained by the [appropriate authority];
 - (b) the amount of the payments to be made;
 - (c) the person entitled to interest on the money in the account.

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- (3) For the purposes of subsection (2) (c), the regulations may require the ADI to pay interest to the [appropriate authority].
 - (4) This section applies despite any other provision of this Part.

Division 5 Miscellaneous

742 Restrictions on receipt of trust money [NC]

- (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.
Penalty:
- (2) A law practice must not permit an associate of the law practice who is not an Australian legal practitioner holding an Australian practising certificate authorising the receipt of trust money to receive trust money.
Penalty:
- (3) Subsection (1) does not apply in the case of the receipt of money by a principal if the principal as soon as practicable after receipt:
 - (a) pays the money into a trust account in Australia; or
 - (b) gives the money to an Australian legal practitioner who is authorised to receive trust money and that other practitioner accepts the money.
- (4) Subsection (2) does not apply in the case of the receipt of money by an associate if the associate as soon as practicable after receipt:
 - (a) pays the money into a trust account in Australia; or
 - (b) gives the money to an Australian legal practitioner who is authorised to receive trust money and that practitioner accepts the money.
- (5) 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 1311 (Incorporated legal practice without legal practitioner director) in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or

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- (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 1311;
- 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.

Penalty:

743 Application of Part to incorporated legal practices and multi-disciplinary partnerships [NC]

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to trust money and trust accounts, do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to trust money and trust accounts, to an incorporated legal practice or multi-disciplinary partnership:
- (a) the obligations and rights of an Australian legal practitioner under those provisions extend to an incorporated legal practice or multi-disciplinary partnership, but only in connection with legal services provided by the practice or partnership; and
 - (b) money received by an Australian legal practitioner on behalf of another person in the course of practising as an Australian legal practitioner includes money received by any officer or employee of the incorporated legal practice or multi-disciplinary partnership on behalf of another person in the course of providing legal services.

744 Legal profession rules [NC]

Legal profession rules may make provision for or with respect to requiring a law practice to notify a client that money entrusted to the practice is not, or is no longer, trust money and that accordingly the money may not be money to which Part 8 (Fidelity cover) or a corresponding law applies.

745 Regulations [NC]

- (1) The regulations may make provision for or with respect to:
 - (a) requiring legal practitioners to notify the [appropriate authority] of details about trust accounts, including details about trust account balances; or
 - (b) providing exemptions, or the giving of exemptions, from all or any specified requirements of this Part in relation to trust money that is regulated by a corresponding law; or
 - (c) the creation and exercise of liens over trust money.
- (2) The regulations may provide for any of the following:
 - (a) penalties for offences against the regulations not exceeding [amount or value to be specified] for a natural person and [amount or value to be specified] for a body corporate;
 - (b) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Part or the regulations;
 - (c) the service of an infringement notice, in respect of payment of a prescribed amount, on a person alleged to have committed an offence referred to in paragraph (b) and the particulars to be included in the notice.

Note. The inclusion of provisions for infringement notices is an enforcement matter to be determined in each jurisdiction.

Part 8 Fidelity cover

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Jurisdictional variation may occur as to immunities associated with fidelity cover.

Note. Some jurisdictions may provide that this Part does not apply to barristers.

Division 1 Preliminary

801 Purpose [NC]

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 acts or omissions of associates.

802 Definitions [NC; except CU as marked]

In this Part:

capping and sufficiency provisions of:

- (a) this jurisdiction—means section 830 (Caps on payments) and section 831 (Sufficiency of Fidelity Fund); or
- (b) another jurisdiction—means 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;

where 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 or an associate of the practice in the course of legal practice by the practice or an associate, where 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 or an associate of the practice in the course of legal practice by the practice or an associate, where the fraudulent dealing is constituted by or arises from an act or omission of an associate that involves dishonesty.

[CU]

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.

[CU]

relevant jurisdiction—see section 807 (Meaning of “relevant jurisdiction”).

803 Time of default [CU]

- (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 determined in accordance with the regulations.

Division 2 Fidelity Fund

804 Establishment of Fidelity Fund [CNU]

The [appropriate authority] must establish and maintain a Legal Practitioners Fidelity Fund.

Note. The manner of the establishment of the Fidelity Fund may vary among jurisdictions. For example, it could be established directly by the legislation. There would also be provisions for the other matters relevant for each jurisdiction, such as funding sources, contributions and levies (including caps on levies), interest, sufficiency of the Fund, supplementation of the Fund, payments from the Fund, and the management of the Fund. As these matters will vary between jurisdictions and existing regimes may be retained, examples are not included in this draft, except for the following provisions.

805 Insurance [CNU]

- (1) The [appropriate authority] may arrange with an insurer for the insurance of the Fidelity Fund.
- (2) Without limiting subsection (1), the [appropriate authority] may arrange for the insurance of the Fidelity Fund against particular claims or particular classes of claims.
- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the Fidelity Fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.
- (4) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the Fidelity Fund.
- (5) In this section:
protected person means:
 - (a) the [appropriate authority] or a member of the [appropriate authority]; or
Note. There may be more than one [appropriate authority].
 - (b) a person acting at the direction of any person or entity referred to in this definition.

806 Borrowing [CNU]

The [appropriate authority] cannot borrow money for the purposes of the Fidelity Fund.

Division 3 Defaults to which this Part applies

807 Meaning of “relevant jurisdiction” [CU]

- (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 a default of the practice is to be determined under this section.

Note. The concept of an associate’s “relevant jurisdiction” is used to determine the jurisdiction whose Fidelity Fund is liable for a default of a law practice arising from an act or omission committed by the associate. The relevant jurisdiction for an associate is in some cases the associate’s home jurisdiction.

- (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. Section 835 (Defaults involving interstate elements where committed by one associate only) provides that the [appropriate authority] may treat the default as consisting of 2 or more defaults for the purpose of determining the liability of the Fidelity Fund.

808 Defaults to which this Part applies [CU]

- (1) This Part applies to a default of a law practice arising from 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 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.

809 Defaults relating to financial services or investments [CNU]

- (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 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) a managed investment scheme; or
 - (b) 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:

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- (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, authorised representative, financial service and *financial services business* have the same meanings as in Chapter 7 of the *Corporations Act 2001* of the Commonwealth.

Division 4 Claims about defaults

810 Claims about defaults [CNU]

- (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 [appropriate authority] about the default.
- (2) A claim is to be made in writing in a form approved by the [appropriate authority].
- (3) The [appropriate authority] 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.

811 Time limit for making claims [CNU]

- (1) Subject to section 813 (Time limit for making claims following advertisement), a claim does not lie against the Fidelity Fund unless the prospective claimant notifies the [appropriate authority] of the default concerned:

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- (a) within the period of 6 months after the prospective claimant becomes aware of the default; or
 - (b) within a further period allowed by the [appropriate authority]; or
 - (c) if the Supreme Court allows further time after the [appropriate authority] refuses to do so—within a period allowed by the Supreme Court.
- (2) The Supreme Court or [appropriate authority] may allow a further period referred to in subsection (1) if satisfied that:
- (a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Fidelity Fund; and
 - (b) it would be appropriate to do so in a particular case having regard to matters the Supreme Court or [appropriate authority] considers relevant.

Note. There may be jurisdictional differences as to whether the Supreme Court is the relevant body.

812 Advertisements [CNU]

- (1) If the [appropriate authority] considers that 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 a 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) A notice must be published:
- (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction where the law practice:
 - (i) has an office; or
 - (ii) at any relevant time had an office;if known to the [appropriate authority]; and
 - (c) on the internet site (if any) of the [appropriate authority].

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- (4) The [appropriate authority] may provide 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 (where 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) Neither the publication in good faith of a notice under this section, nor the provision of information in good faith under this section, subjects a protected person to any liability (including liability in defamation).
 - (7) In this section:
protected person means:
 - (a) the [appropriate authority] or a member of the [appropriate authority]; or
 - (b) the proprietor, editor or publisher of the newspaper; or
 - (c) an internet service provider or internet content host; or
 - (d) a person acting at the direction of any person or entity referred to in this definition.

813 Time limit for making claims following advertisement [CNU]

- (1) This section applies if the [appropriate authority] publishes a notice under section 812 (Advertisements) 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 [appropriate authority]; or
 - (c) if the Supreme Court allows further time after the [appropriate authority] refuses to do so—within a period allowed by the Supreme Court;

even though it would have been barred under section 811 (Time limit for making claims) had the notice not been published.

814 Claims not affected by certain matters [CNU]

- (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 from which the default arose.

- (2) A claim that has been made is not affected by a later change in the status of the practice or associate.
- (3) For the purposes of this section, a change in status includes:
 - (a) a change in the membership or staffing or the dissolution of the practice (in the case of a partnership); and
 - (b) a change in the directorship or staffing or the winding up or dissolution of the practice (in the case of an incorporated legal practice); and
 - (c) the fact that the associate has ceased to practise or to hold an Australian practising certificate (in the case of an associate who was an Australian legal practitioner); and
 - (d) the death of the associate (in the case of a natural person).

815 Investigation of claims [CNU]

The [appropriate authority] may investigate a claim made to it, including the default to which it relates, in any manner it considers appropriate.

816 Advance payments [CNU]

- (1) The [appropriate authority] may, at its absolute discretion, make payments to a claimant in advance of the determination of a claim if satisfied that:
 - (a) the claim is likely to be allowed; and
 - (b) payment is warranted to alleviate hardship.
- (2) Any payments made in advance are to be taken into account when the claim is determined.
- (3) Payments under this section are to be made from the Fidelity Fund.
- (4) If the claim is disallowed, the amounts paid under this section are recoverable by the [appropriate authority] as a debt due to the Fidelity 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 [appropriate authority] as a debt due to the Fidelity Fund.

Division 5 Determination of claims

817 Determination of claims [CNU]

- (1) The [appropriate authority] may determine a claim by wholly or partly allowing or disallowing it.
- (2) The [appropriate authority] may disallow a claim to the extent that the claim does not relate to a default for which the Fidelity Fund is liable.
- (3) The [appropriate authority] may wholly or partly disallow a claim, or reduce a claim, to the extent that:
 - (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;
 - (e) the claimant has unreasonably refused to disclose information or documents to or co-operate with:
 - (i) the [appropriate authority]; 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 [appropriate authority's] power to disallow a claim on any other ground.
- (5) Without limiting subsection (2) or (3), the [appropriate authority] may reduce the amount otherwise payable on a claim to the extent the authority considers appropriate:
 - (a) if satisfied that 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 that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
 - (c) if satisfied that the claimant has unreasonably hindered the investigation of the claim.

- (6) The [appropriate authority] must, in allowing a claim, specify the amount payable.

818 Maximum amount allowable [CNU]

- (1) The amount payable in respect of a default must not exceed the pecuniary loss resulting from the default.
- (2) This section does not apply to costs payable under section 819 (Costs) or to interest payable under section 820 (Interest).

819 Costs [CNU]

- (1) If the [appropriate authority] wholly or partly allows a claim, the authority must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the authority considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs.
- (2) If the [appropriate authority] wholly disallows a claim, the authority may order payment of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, where the authority considers it is appropriate to make the order.
- (3) The costs are payable from the Fidelity Fund.

820 Interest [CNU]

- (1) In determining the amount of pecuniary loss resulting from a default, the [appropriate authority] is to add interest on the amount payable (excluding interest), unless the authority considers that 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 is to be calculated from the date on which the claim was made, to the date the [appropriate authority] notifies the claimant that the claim has been allowed, at the rate specified in or determined under the regulations.
- (3) To the extent that regulations are not in force for the purposes of subsection (2), interest is to be calculated at the rate of 5%.
- (4) The interest is payable from the Fidelity Fund.

821 Reduction of claim because of other benefits [CNU]

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- (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 opinion of the [appropriate authority]) are likely to be paid to or received by the person; or
 - (d) that (in the opinion of the [appropriate authority]) 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 respect of the pecuniary loss to which a claim relates.
 - (2) The [appropriate authority] may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1) (c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 823 (Repayment of certain amounts).

822 Subrogation [CNU]

- (1) On payment of a claim from the Fidelity Fund, the [appropriate authority] 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 respect of whom the claim is made; or
 - (b) the person authorised to administer the estate of the associate in respect of 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 respect of the default, the claim would be not disallowed on any of the grounds set out in section 817 (3).
- (4) The [appropriate authority] may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the [appropriate authority] 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 [appropriate authority] may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.
- (7) The [appropriate authority] must pay into the Fidelity Fund any money recovered in exercising its rights and remedies under this section.

823 Repayment of certain amounts [CNU]

- (1) If a claimant:
 - (a) receives a payment from the Fidelity Fund in respect of the claim; and
 - (b) receives or recovers from another source 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 Fidelity Fund in respect of the claim.

824 Notification of delay in making decision [CNU]

- (1) If the [appropriate authority] considers that a claim is not likely to be determined within 12 months after the claim was made, the [appropriate authority] must notify the claimant in writing that the claim is not likely to be determined within that period.
- (2) The notification must contain a brief statement of reasons for the delay.

825 Notification of decision [CNU]

- (1) The [appropriate authority] must, as soon as practicable, notify the claimant in writing about any decision it makes about the claim.
- (2) The notification must include an information notice about:
 - (a) a decision of the [appropriate authority] to wholly or partly disallow a claim; or
 - (b) a decision of the [appropriate authority] to reduce the amount allowed in respect of a claim.

826 Appeal against [or review of] decision on claim [CNU]

Note. Provision is to be made for appeal or review, whether by a court or an administrative tribunal. An appeal could be a full appeal or in the nature of a judicial review. Provisions could be included that relate to the following:

- (1) A claimant may appeal to the Supreme Court against:
 - (a) a decision of the [appropriate authority] to wholly or partly disallow a claim; or
 - (b) a decision of the [appropriate authority] to reduce the amount allowed in respect of a claim;but an appeal does not lie against a decision of the [appropriate authority] to limit the amount payable, or to decline to pay an amount, under the capping and sufficiency provisions of this jurisdiction.
- (2) An appeal against a decision must be lodged within 30 days of receiving the information notice about the decision.
- (3) On an appeal under this section:
 - (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 [appropriate authority] waives that requirement; and
 - (b) the Supreme Court may, on application by the [appropriate authority], stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The Supreme Court may review the merits of the [appropriate authority's] decision.

Note. This would not be relevant if the appeal is of a limited nature.
- (5) The Supreme Court may:
 - (a) affirm the decision; or
 - (b) if satisfied that the reasons for varying or setting aside the [appropriate authority'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 [appropriate authority] in accordance with any directions or recommendations of the Court;

and may make other orders as it thinks fit.

- (6) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

827 Appeal against failure to determine claim [CNU]

- (1) A claimant may appeal to the Supreme Court against a failure of the [appropriate authority] to determine a claim after 12 months after the claim was made.
- (2) An appeal against a failure to determine a claim may be made at any time after the period of 12 months after the claim was made and while the failure continues.
- (3) On an appeal under this section:
- (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 [appropriate authority] waives that requirement; and
 - (b) the Supreme Court may, on application by the [appropriate authority], stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The Supreme Court may determine the appeal:
- (a) by:
 - (i) giving directions to the [appropriate authority] for the expeditious determination of the matter; and
 - (ii) if the Court is satisfied that there has been unreasonable delay—ordering that interest be paid at a specified rate that is higher than the rate applicable under section 820 (Interest), until further order or the determination of the claim; and
 - (iii) if the Court is satisfied that 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 820 (Interest), until further order or the determination of the claim; or
 - (b) by deciding not to give directions or make orders under paragraph (a).

- (5) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

828 Court proceedings [CNU]

In any proceedings brought in a court under section 822 (Subrogation) or section 826 (Appeal against [or review of] decision on claim):

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person with respect 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 [appropriate authority].

Division 6 Payments from Fidelity Fund for defaults

829 Payments for defaults [CNU]

- (1) The Fidelity Fund is to be applied by the [appropriate authority] for the purpose of compensating claimants in respect of claims allowed under this Part in respect of defaults to which this Part applies.
- (2) An amount payable from the Fidelity Fund in respect of a claim is payable to the claimant or to another person at the claimant's direction.

830 Caps on payments [CNU]

- (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 respect of 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 Fidelity Fund in respect of all claims made in relation to individual law practices or classes of law practices.
- (2) Amounts must not be paid from the Fidelity Fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).

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- (3) Payments from the Fidelity 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 [appropriate authority] may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the Fidelity Fund and the circumstances of the particular case.
 - (5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the [appropriate authority] to consider payment of a larger amount.

831 Sufficiency of Fidelity Fund [CNU]

- (1) If the [appropriate authority] is of the opinion that the Fidelity Fund is likely to be insufficient to meet the Fund's ascertained and contingent liabilities, the authority 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 [relevant provisions, if applicable];
 - (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 [appropriate authority]:
 - (a) must have regard to hardship where relevant information is known to the authority; and
 - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the [appropriate authority] declares that a decision is made under subsection (1) (d):
 - (a) the balance specified in the declaration ceases to be a liability of the Fidelity Fund; and
 - (b) the authority 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 [appropriate authority] made under this section is final and not subject to appeal or review.

Note. There may also be jurisdictional variations regarding this subsection.

Division 7 Claims by law practices or associates

832 Claims by law practices or associates about defaults [CNU]

- (1) This section applies to a default of a law practice arising from an act or omission of an associate of the practice.
- (2) A claim may be made under section 810 (Claims about defaults) 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 810 by the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

833 Claims by law practices or associates about notional defaults [CNU]

- (1) This section applies if a default of a law practice arising from 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 8 Defaults involving interstate elements

834 Concerted interstate defaults [CU]

- (1) The [appropriate authority] may treat a concerted interstate default as if the default consisted of 2 or more separate defaults:

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- (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 [appropriate authority] 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 [appropriate authority] 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.

835 Defaults involving interstate elements where committed by one associate only [CU]

- (1) This section applies to a default of a law practice that arises from 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 807 (2)–(4) (Meaning of “relevant jurisdiction”), the [appropriate authority] may treat the default as consisting of 2 or more defaults for the purpose of determining the liability of the Fidelity Fund.
- (2) The [appropriate authority] 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

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- (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 [appropriate authority] 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 [appropriate authority] 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 9 Inter-jurisdictional provisions

836 Protocols [CNU]

- (1) The regulations may authorise the [appropriate authority] to enter into arrangements (referred to in this Part as *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 protocol that provides that the [appropriate authority] is taken to have:
 - (a) requested a corresponding authority to act as agent of the [appropriate authority] 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 protocols; and

- (b) provide that protocols or specified classes of protocols do not have effect in this jurisdiction unless approved by or in accordance with the regulations.

837 Forwarding of claims [CNU]

- (1) If a claim is made to the [appropriate authority] about a default that appears to be a default to which a corresponding law applies, the [appropriate authority] 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 [appropriate authority] 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.

838 Investigation of defaults to which this Part applies [CNU]

- (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 determined precisely in which jurisdiction the default occurred.
- (2) The [appropriate authority] may request a corresponding authority or corresponding authorities to act as agent or agents for the [appropriate authority], for the purpose of processing or investigating a claim about the default or aspects of the claim.

839 Investigation of defaults to which a corresponding law applies [CNU]

- (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 determined precisely in which jurisdiction the default occurred.
- (2) The [appropriate authority] may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) If the [appropriate authority] agrees to act as agent of a corresponding authority under subsection (2), the [appropriate authority] 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.

840 Investigation of concerted interstate defaults and other defaults involving interstate elements [CNU]

- (1) This section applies if:
 - (a) a concerted interstate default; or

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- (b) a default to which section 835 (Defaults involving interstate elements where committed by one associate only; applies appears to have occurred.
- (2) The [appropriate authority] may request a corresponding authority or corresponding authorities to act as agent or agents for the [appropriate authority], for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) The [appropriate authority] may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (4) If the [appropriate authority] agrees to act as agent of a corresponding authority under subsection (3), the [appropriate authority] 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.

841 Recommendations by [appropriate authority] to corresponding authorities [CNU]

If the [appropriate authority] is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the [appropriate authority] may make recommendations about the decision the corresponding authority might make about the claim.

842 Recommendations to and decisions by [appropriate authority] after receiving recommendations from corresponding authorities [CNU]

- (1) If a corresponding authority makes recommendations about the decision the [appropriate authority] might make about a claim in relation to which the corresponding authority was acting as agent of the [appropriate authority], the [appropriate authority] 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 [appropriate authority], make a decision about the claim under Division 5 (Determination of claims).

843 Request to another jurisdiction to investigate aspects of claim [CNU]

- (1) The [appropriate authority] may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the [appropriate authority] 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 [appropriate authority] in the course of dealing with the claim under this Part.

844 Request from another jurisdiction to investigate aspects of claim [CNU]

- (1) This section applies in relation to a request received by the [appropriate authority] from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.
- (2) The [appropriate authority] 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 [appropriate authority] must provide a report on the result of the investigation to the corresponding authority.

845 Co-operation with other authorities [CNU]

- (1) When dealing with a claim under this Part involving a law practice or an Australian legal practitioner, the [appropriate authority] may consult and co-operate 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 the purposes of subsection (1), the [appropriate authority] and the other person or body may exchange information concerning the claim.

Division 10 Miscellaneous

846 **Interstate legal practitioner becoming authorised to withdraw from local trust account [NC]**

- (1) This section applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account.
- (2) The regulations may do either or both of the following:
 - (a) require the practitioner to notify the [appropriate authority] of the authorisation in accordance with the regulations;
 - (b) require the practitioner to make contributions to the Fidelity Fund in accordance with the regulations.
- (3) Without limiting subsection (2), the regulations may determine or provide for the determination of any or all of the following:
 - (a) the manner in which the notification is to be made and the information or material that is to be included in or to accompany the notification;
 - (b) the amount of the contributions, their frequency and the manner in which they are to be made.
- (4) A contravention of a requirement under this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

Note. A jurisdiction could provide that an interstate legal practitioner who is authorised to withdraw money from a local trust account is required to contribute to the Fidelity Fund in the same way as local legal practitioners.

847 **Application of Part to incorporated legal practices [NC]**

Note. The provisions of this section will need to be adapted for each jurisdiction. In particular, the enacted legislation could set out the modifications necessary for the Fidelity Fund provisions instead of this being dealt with by regulations.

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, do not apply to incorporated legal practices or apply to them with specified modifications.

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- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity 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 or any legal profession rule relating to the Fidelity Fund.

Note. Jurisdictions may need to provide for contributions to the Fidelity Fund. In some jurisdictions contributions in respect of a firm are payable by principals and based on the number of practitioners in the firm, and in some jurisdictions contributions are payable by the individual practitioners. The intention is that, for practitioners in an incorporated legal practice, contributions will be made in as much as possible the same way as if they were not in the practice. An example of provisions is as follows:

- (4) An incorporated legal practice is required to make payments to or on account of the Fidelity 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 [appropriate authority] 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 Fidelity 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.

848 Application of Part to multi-disciplinary partnerships [NC]

Note. The provisions of this section will need to be adapted for each jurisdiction. In particular, the enacted legislation could set out the modifications necessary for the Fidelity Fund provisions instead of this being dealt with by regulations.

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, do not apply to multi-disciplinary partnerships or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity 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 or any legal profession rule relating to the Fidelity Fund.

Note. Jurisdictions may need to provide for contributions to the Fidelity Fund. In some jurisdictions contributions in respect of a firm are payable by principals and based on the number of practitioners in the firm, and in some jurisdictions contributions are payable by the individual practitioners. The intention is that, for practitioners in an incorporated legal practice, contributions will be made in as much as possible the same way as if they were not in the practice. An example of provisions is as follows:

- (4) The amounts payable to the Fidelity 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.

849 Application of Part to Australian lawyers whose practising certificates have lapsed [NC]

- (1) This section applies if an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed, but does not apply where:
- (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.
- (2) For the purposes of 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.
- (3) Subsection (2) ceases to apply:
- (a) when the period of 6 months after the practising certificate actually lapsed expires; or

- (b) if the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law;

whichever first occurs.

850 Savings and transitional provisions [NC]

Note. These provisions would include: continuation of existing funds or payment of money in old funds to the new fund; old claims; new claims arising in respect of matters occurring before the commencement of the new provisions.

Part 9 Professional indemnity insurance

Note. Development will continue of a scheme relating to professional indemnity insurance that will facilitate interstate practice. In the interim, there will be jurisdictional variation relating to insurance requirements.

Part 10 Costs disclosure and review

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

With respect to Division 7 (Costs review, sections 1034-1046), each jurisdiction is to determine the system or combination of systems to achieve the outcomes set out in that Division, whether by an administrative or legislative mechanism. Each jurisdiction must ensure the following general principles are met:

- It is a core requirement that there is a clear mechanism for costs review, either based on a taxation or assessment model, which may include mediation for some or all claims.
- It is a core requirement that the categories of person who may seek a review of costs are specified and are consistent with the categories identified in sections 1034, 1035 and 1036. Additional categories may be specified.
- It is a core requirement that a clear mechanism is established to determine which party is liable to pay for the costs review. While jurisdictional variation is permissible, it will be highly desirable for jurisdictions to take an approach to the test for liability that is consistent with the test set out in section 1043.
- The criteria for costs review set out in section 1041 must be textually uniform.
- It is a core requirement that there will be a right of appeal to the Court.
- Jurisdictions may wish to provide for a system of intermediate review.
- It is a core requirement that regulatory authorities must be statutorily obliged to deal with disciplinary or other issues that arise from a costs review. There must be a mandatory statutory requirement on a costs reviewer to refer to the regulatory authority overcharging on costs and failure to comply with disclosure requirements if the reviewer forms the opinion that the breach was or breaches were grossly excessive. In all other circumstances a costs reviewer must have the discretion to refer to the regulatory authority.

Accordingly, all provisions contained in Division 7 should be regarded as core provisions (with 1034 (6) and section 1041 being textually uniform), other than sections 1037, 1040, 1042 and 1046, which are not core.

Division 1 Preliminary

1001 Purposes [NC]

The purposes of this Part are as follows:

- (a) to provide for law practices to make disclosures to clients regarding legal costs;
- (b) to regulate the making of costs agreements in respect of legal services, including conditional costs agreements;
- (c) to regulate the billing of costs for legal services;

- (d) to provide a mechanism for the review of legal costs and the setting aside of certain costs agreements.

1002 Definitions [CU; except NC as marked]

In this Part:

business day means a day other than a Saturday, a Sunday or a public holiday [*insert reference to local public holidays legislation*].

client means a person to or for whom legal services are provided, and includes a prospective client.

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 those costs relate, as referred to in section 1023, but does not include a costs agreement to the extent to which section 1025 (1) (Contingency fees are prohibited) applies. [NC]

costs agreement means an agreement about the payment of legal costs.

costs determination means [*insert reference to costs determination mechanisms in local jurisdiction*]. [NC]

Note. Costs determinations are determinations of standard fees for non-contentious or non-litigious matters (eg: practitioner remuneration orders made under section 111 of the *Legal Practice Act 1996* (Vic)).

costs review means a review of legal costs under Division 7.

costs reviewer means [*insert appropriate person or body in local jurisdiction*].

disbursements includes outlays. [NC]

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 reviewed under Division 7. [NC]

litigious matter means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal.

Note. A matter is a litigious matter when proceedings are initiated or at any stage when proceedings are reasonably likely.

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

scale of costs means [*insert reference to Court scales of cost (if any) in local jurisdiction*].

uplift fee means a premium payable on the legal costs (excluding disbursements) otherwise payable under a costs agreement on the

successful outcome of the matter to which those costs relate, as referred to in section 1024. [NC]

Note. This definition will be omitted if section 1024 is omitted.

Division 2 Application of this Part

1003 Application of Part—first instructions rule [CU]

This Part applies to a matter if the client first instructs the law practice in relation to the matter in this jurisdiction.

1004 Part also applies by agreement or at client's election [CU]

- (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 determine 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 signs an agreement under subsection (2) (a) in respect of the matter; or
 - (ii) the client gives a notification under subsection (2) (b) in respect of the matter.
- (2) For the purposes of subsection (1) (c), the client may:
 - (a) sign 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) A notification has no effect for the purposes of 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.

1005 Displacement of Part [CU]

- (1) This section applies if this Part applies to a matter by the operation of section 1003 or 1004.
- (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 signs under the corresponding law of the other jurisdiction a written 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) 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 notification under section 1004.

1006 How and where does a client first instruct a law practice? [CU]

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the client first provides instructions to the law practice in relation to the matter at an office of the law practice in that jurisdiction, whether in person or by post, telephone, fax, e-mail or other form of communication.

1007 When does a matter have a substantial connection with this jurisdiction? [CU]

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does not have a

substantial connection with this jurisdiction for the purposes of this Part.

1008 What happens when different laws apply to a matter? [CU]

- (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 sign a written agreement with the law practice that the cost review provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 7 (Costs review) accordingly applies in respect of those legal costs; or
 - (b) if the client signs a written agreement with the law practice that the cost review provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 7 accordingly does not apply in respect of those legal costs.
- (5) This section has effect despite any other provisions of this Part.

Division 3 Costs disclosure

1009 Disclosure of costs to clients [CU; except NC (1) (b) (ii) & (iii)]

- (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 costs determination or scale of costs 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 1016 of any substantial change to the matters disclosed under this section; and
- (c) an estimate of the total legal costs, if reasonably practicable; and
- (d) if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
- (e) details of the intervals (if any) at which the client will be billed; and
- (f) the rate of interest (if any) that the law practice charges on overdue legal costs; and
- (g) 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
- (h) the client's right to progress reports in accordance with section 1018; and
- (i) details of the person whom the client may contact to discuss the legal costs; and
- (j) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
 - (i) costs review under Division 7;
 - (ii) the setting aside of a costs agreement under section 1028 (Setting aside costs agreements);
 - (iii) [each jurisdiction is to specify other avenues available under its laws]; and
- (k) any time limits that apply to the taking of any action referred to in paragraph (j); and
- (l) that the law of this jurisdiction applies to legal costs in relation to the matter; and
- (m) information about the client's right:

- (i) to sign under a corresponding law a written 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) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

Note. The client's right to sign an agreement or give a notification as mentioned in paragraph (m) will be under provisions of the law of the other jurisdiction that correspond to section 1004 (Part also applies by agreement or at client's election).

- (2) For the purposes of subsection (1) (g), 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 a conditional costs agreement.

1010 Disclosure if another law practice is to be retained [CU]

- (1) If a law practice intends to retain another law practice on behalf of the client, the first law practice must disclose to the client the details specified in section 1009 (1) (a), (c), (d) and (e) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 1009.
- (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 1009, 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.

Note. An example of the operation of this section is where 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.

1011 How and when must disclosure be made? [CU]

- (1) Disclosure under section 1009 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.

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- (2) Disclosure under section 1010 (1) must be made in writing before the other law practice is retained except in urgent circumstances, in which case it may be made orally before the law practice is retained and confirmed in writing as soon as practicable afterwards.

1012 Exceptions to requirement for disclosure [CU]

- (1) Disclosure under section 1009 or 1010 (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 \$750 or the prescribed amount (whichever is higher);
 - (b) if:
 - (i) the client has received one or more disclosures under section 1009 or 1010 (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 foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (iii) a financial services licensee (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (iv) 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;
- Note.** For instance, disclosure would not be required where the law practice acts in the matter on a pro bono basis.
- (f) in any circumstances prescribed by the regulations.

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- (2) Despite subsection (1) (a), if a law practice becomes aware that the total legal costs are likely to exceed \$750 or the prescribed amount (whichever is higher), the law practice must disclose the matters in section 1009 or 1010 (as the case requires) to the client as soon as practicable.
 - (3) A law practice must ensure that 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 in accordance with section 1018; or
 - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 1009; or
 - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

1013 Additional disclosure—settlement of litigious matters [CU]

- (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.

1014 Additional disclosure—uplift fees [NC]

If a costs agreement involves an uplift fee, the law practice must disclose to the client in writing, before entering the agreement:

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- (a) that the law practice has a reasonable belief that there is a significant risk that the matter will not have a successful outcome; and
 - (b) the law practice's usual fees, the uplift fee (expressed as a percentage of those fees) and reasons why the uplift fee is warranted.

Note 1. This section will be omitted if section 1024 is omitted.

Note 2. This section is subject to review in jurisdictions (eg NSW) that provide that practitioners can only make claims if there is a reasonable prospect of success.

1015 Form of disclosure [CU]

- (1) Written disclosures 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.

1016 Ongoing obligation to disclose [CU]

A law practice must notify the client in writing of any substantial change to anything included in a disclosure under this Division as soon as practicable after the law practice becomes aware of that change.

Note. Some jurisdictions may provide for the legal profession rules to impose further or more specific ongoing disclosure requirements.

1017 Effect of failure to disclose [CU]

- (1) If a law practice does not disclose to a client anything required by this Division to be disclosed, the client need not pay the legal costs unless they have been reviewed under Division 7.

Note. Under section 1043, the costs of a review in these circumstances are generally payable by the law practice.
- (2) In addition, if the client has entered a costs agreement with the law practice, the client may apply under section 1028 for the costs agreement to be set aside.
- (3) A law practice that does not disclose to a client anything required by this Division to be disclosed may not maintain proceedings for the

recovery of legal costs unless the costs have been reviewed under Division 7.

- (4) 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.

Note. Some jurisdictions may include further provisions regarding the effect of failure to disclose on the recovery of legal costs; for example, providing for a discount on scale fees, or for minimum scale fees, to apply.

1018 Progress reports [CU]

- (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.

Division 4 Legal costs generally

1019 On what basis are legal costs recoverable? [CU]

Subject to Division 2, legal costs are recoverable:

- (a) under a costs agreement made in accordance with Division 5 or the corresponding provisions of a corresponding law; or
- (b) if paragraph (a) does not apply, in accordance with an applicable [costs determination or] scale of costs; or

Note: Some jurisdictions may provide for mandatory costs determinations or scales of costs which cannot be overridden by a costs agreement.

- (c) if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.

Note: See section 1041 (2) for the criteria that are to be applied on a costs review to determine whether legal costs are fair and reasonable.

1020 Security for legal costs [NC]

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].

Note. Jurisdictions may wish to include provisions requiring reasonable notice to require security and regulating the way law practices deal with payment in advance of legal costs.

1021 Interest on unpaid legal costs [NC]

A law practice may charge interest on legal costs, at a rate not exceeding the rate for the time being [*insert rate or reference to local legislation for penalty interest rates*], from the period beginning 30 days after payment is demanded until the legal costs are paid.

Division 5 Costs agreements

1022 Making costs agreements [CU (1), (2) & (5); NC (3) & (4)]

- (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.
- (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.

Note. Acceptance by other conduct is not permitted for conditional costs agreements—see section 1023 (3) (c) (i).

- (4) The offer must clearly state:
- (a) that it is an offer to enter a costs agreement; and
 - (b) that the client may accept it in writing or by other conduct; and

(c) the type of conduct that will constitute acceptance.

Note. Some jurisdictions may omit subsections (3) and (4) and provide instead for the agreement to be in writing signed by the client and given to the client.

(5) A costs agreement cannot provide that the legal costs to which it relates are not subject to costs review under Division 7.

Note. If it attempts to do so, the costs agreement will be void—see section 1027 (1).

1023 Conditional costs agreements [NC; but textually uniform if adopted]

(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, and a costs agreement containing a provision of that kind is referred to in this Act as a **conditional costs agreement**.

(2) A conditional costs agreement may relate to any matter, except a matter that involves criminal proceedings or proceedings under the *Family Law Act 1975* of the Commonwealth [*insert reference to other local jurisdiction laws as appropriate; for example, adoption or child protection legislation*].

(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 1022 (1) (c) (costs agreements between law practices).

(5) If a client terminates an agreement within the period referred to in subsection (3) (e), the law practice may recover only those legal costs

in respect of legal services performed for the client before that termination that were reasonably necessary to preserve the client's rights.

1024 Conditional costs agreements involving uplift fees [NC; but textually uniform if adopted]

- (1) A conditional costs agreement may provide for the payment of a reasonable premium on the legal costs (excluding disbursements) otherwise payable under the agreement on the successful outcome of the matter to which those costs relate.

Note. Section 1014 requires a law practice to make certain disclosures to a client before entering a costs agreement that provides for an uplift fee.

- (2) The premium must be a specified percentage of the legal costs (excluding disbursements) otherwise payable and must be separately identified in the agreement.
- (3) If a conditional costs agreement relates to a litigious matter, the premium must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (4) A law practice must not enter a conditional costs agreement that provides for the payment of a premium on the legal costs otherwise payable unless the law practice has a reasonable belief that there is a significant risk that the matter will not have a successful outcome.

Note. Subsection (4) is subject to review in jurisdictions (eg NSW) that provide that practitioners can only make claims if there is a reasonable prospect of success.

- (5) A law practice must not enter into a costs agreement in contravention of this section.

Penalty:

1025 Contingency fees are prohibited [CU]

- (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:
- (a) the value of any property or of any transaction involved in the matter to which the agreement relates; or
 - (b) 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.

Penalty:

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- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable costs determination or scale of costs.

Note 1. Some jurisdictions may wish to provide that a law practice's agreement to accept a lower fee is not prohibited where the outcome is less than the amount sought. For example, section 48D (3) of the *Queensland Law Society Act 1952* provides that "[the prohibition in relation to contingency fees does not prevent a solicitor or firm accepting a lower fee if the actual outcome of the work is less than the outcome sought, for example, the amount recovered is less than the amount sought".

Note 2. Some jurisdictions may wish to include a provision along the lines of section 48E of the Queensland Act which provides: "A client agreement must not include a provision transferring to the practitioner or firm all or part of the client's interest in a proceeding instead of the client being required to pay the practitioner or firm all or part of fees or costs that would otherwise be payable".

1026 Effect of costs agreement [CU (1); NC (2)]

- (1) Subject to this Division and Division 7, a costs agreement may be enforced in the same way as any other contract.
- (2) [*Insert reference to dispute resolution procedure*] may be used to resolve a dispute over an amount claimed to be payable to a law practice under a costs agreement unless the law practice has commenced proceedings for recovery of the disputed amount.

1027 Certain costs agreements are void [CU]

- (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 7, legal costs under a void costs agreement are recoverable as set out in section 1019 (b) or (c) (On what basis are legal costs recoverable?).
- (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 1024 (Conditional costs agreements involving uplift fees) 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 1025 (Contingency fees are prohibited) 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.

1028 Setting aside costs agreements [CU]

- (1) On application by a client, the [*insert relevant body*] may order that a costs agreement be set aside if satisfied that the agreement is not fair, just or reasonable.

Note. The relevant body will vary with each jurisdiction. It could be the costs reviewer, the Supreme Court or another body or person.

- (2) In determining whether or not a costs agreement is fair, just or reasonable, the [relevant body] 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 time at which the agreement was made.

- (3) The [relevant body] may adjourn the hearing of an application under this section pending the completion of any investigation or determination of any charge in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.

Note. "Charge" could be replaced here by "information", depending on the final form of Part 11.

- (4) If the [relevant body] orders that a costs agreement be set aside, it 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):

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- (a) the [relevant body] must apply the applicable scale of costs or costs determination (if any); or
 - (b) if there is no applicable scale of costs or costs determination—the [relevant body] must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account:
 - (i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and
 - (ii) whether or not it was reasonable to carry out the work; and
 - (iii) whether or not the work was carried out in a reasonable manner.
 - (6) In making an order under subsection (4), the [relevant body] 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 the purposes of subsection (5) (b), the [relevant body] 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, [*insert references to any other relevant legislation, regulations, practice rules, etc*];
 - (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;

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- (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 [relevant body] may determine whether or not a costs agreement exists.
- (9) The [relevant body] may order the payment of the costs of and incidental to a hearing under this section.
- Note.** Provision may need to be made for appeals from decisions of the relevant body.

Division 6 Billing

1029 Legal costs cannot be recovered unless bill has been served [NC]

- (1) A law practice must not commence 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 in accordance with sections 1030 (Bills) and 1031 (Notification of client's rights).
- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that:
 - (a) the law practice has given a bill to the person in accordance with sections 1030 and 1031; 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.

1030 Bills [NC]

- (1) A bill may be in the form of a lump sum bill or an itemised bill.

Note. Some jurisdictions may not differentiate between lump sum bills and itemised bills.
- (2) A bill must be signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice.

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- (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 is to 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) 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 on behalf of the person.

1031 Notification of client's rights [CU]

A bill must include or be accompanied by a written statement setting out:

- (a) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
 - (i) costs review under Division 7;
 - (ii) the setting aside of a costs agreement under section 1028 (Setting aside costs agreements);

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- (iii) [each jurisdiction is to specify other avenues available under its laws]; and
 - (b) any time limits that apply to the taking of any action referred to in paragraph (a).

Note. These matters will already have been disclosed under section 1009 (1) (Disclosure of costs to clients).

1032 Person may request itemised bill [NC]

- (1) Within 30 days after receiving a lump sum bill, a person may request the law practice to give them an itemised bill.
- (2) If a person makes a request under subsection (1), the law practice must not commence any proceedings to recover those costs until at least 30 days after complying with the request.
- (3) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (4) Section 1030 (2) and (5) apply to the giving of an itemised bill under this section.

Note. This section will not be necessary for those jurisdictions that do not differentiate between lump sum bills and itemised bills.

1033 Interim bills [NC]

- (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 reviewed under Division 7, 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 reviewed or paid.

Division 7 Costs review

1034 Application by clients for costs review [CNU; except CU (6)]

- (1) A client may apply to a costs reviewer for a review of the whole or any part of legal costs.

Note. This subsection may be amended as appropriate to refer to a review of one of the following: the whole or any part of a bill for legal costs (if Division 6 (Billing) has been incorporated), a claim for legal costs, or a charge for legal costs.
- (2) An application for a costs review may be made even if the legal costs have been wholly or partly paid.

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- (3) If any legal costs have been paid without a bill, the client may nevertheless apply for a costs review and, for that purpose, the request for payment is taken to be a bill.
 - (4) An application under this section must be made within 60 days after the bill was given or the request was made or after the costs were paid (whichever is earlier or earliest).
 - (5) However, a costs reviewer must deal with an application made out of time, unless the costs reviewer considers that the law practice has established that to do so would, in all the circumstances, cause unfair prejudice to the law practice.
 - (6) In this section:
client includes the following:
 - (a) a person who has been given a bill by a law practice (other than a person who is acting merely in the capacity of agent or a similar capacity, for example, a courier);
 - (b) a person who has paid legal costs;
 - (c) a person (other than a person who was given a bill) who is liable to pay legal costs;
 - (d) an executor, administrator or assignee of a person referred to in paragraph (a), (b) or (c);
 - (e) a trustee of the estate of a person referred to in paragraph (a), (b) or (c);
 - (f) a person interested in any property out of which a trustee, executor or administrator who is liable to pay legal costs has paid, or is entitled to pay, those costs.

1035 Application for costs review by law practice retaining another law practice [CNU]

- (1) A law practice that retains another law practice to act on behalf of a client may apply to a costs reviewer for a review of the whole or any part of the legal costs [to which a bill given by the other law practice in accordance with Division 6 (Billing) relates].
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs review and, for that purpose, the request for payment is taken to be a bill.

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- (3) An application is to be made within 60 days after the bill is given or the request for payment is made and may be made even if the legal costs have been wholly or partly paid.
 - (4) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

1036 Application for costs review by law practice giving bill [CNU]

- (1) A law practice that has given a bill [in accordance with Division 6 (Billing)] may apply to a costs reviewer for a review 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 review and, for that purpose, the request for payment is taken to be a bill.
- (3) An application may not be made unless at least 30 days have passed since the bill was given or the request for payment was made or since an application has been made under this Division by another person in respect of the legal costs.

1037 How to make an application for costs review [NC]

- (1) An application for a costs review:
 - (a) must be in the prescribed form (if any); and
 - (b) subject to subsection (4), must be accompanied by the prescribed fee.
- (2) The application must authorise a costs reviewer 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 respect of the matter to which the application relates.
- (3) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.
- (4) A costs reviewer [or appropriate official] may waive or postpone payment of the application fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (5) A costs reviewer [or appropriate official] may refund the application fee either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

Note. In addition, some jurisdictions may provide for no final determination of the costs review until the application fee is paid.

1038 Consequences of application [CNU]

If an application for a costs review is made in accordance with this Division:

- (a) the costs review 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 commence any proceedings to recover the legal costs until the costs review has been completed.

1039 Persons to be notified of application [CNU]

A costs reviewer is to cause a copy of an application for costs review to be given to any law practice or client concerned or any other person whom the costs reviewer thinks it appropriate to notify.

1040 Procedure on review [NC]

If, after proper notice that a costs review will take place, a party to the review does not attend, the costs reviewer may proceed with the review in the absence of that party.

Note. Jurisdictions may also include provisions dealing with the situation where a lump sum bill is followed by an itemised bill, either providing that the law practice is bound by the lump sum bill on a costs review, or that the law practice is not so bound. Jurisdictions will also need to provide their own procedures for review.

1041 Criteria for review [CU]

- (1) In conducting a review of legal costs, the costs reviewer 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 manner; and
 - (c) the fairness and reasonableness of the amount of legal costs in relation to the work.
- (2) In considering what is a fair and reasonable amount of legal costs, the costs reviewer 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, [*insert references to any other relevant legislation, regulations, practice rules, etc*];

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- (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) any relevant costs agreement;
 - (e) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
 - (f) the retainer and whether the work done was within the scope of the retainer;
 - (g) the complexity, novelty or difficulty of the matter;
 - (h) the quality of the work done;
 - (i) the place where, and circumstances in which, the legal services were provided;
 - (j) the time within which the work was required to be done;
 - (k) any other relevant matter.

1042 Outcome of review [NC]

Note. Each jurisdiction to include, as appropriate, provisions as to the outcome of a costs review.

1043 Costs of review [CNU]

- (1) A costs reviewer must determine the costs of a costs review.
- (2) Unless the costs reviewer otherwise orders, and subject to subsection (3):
 - (a) the law practice to which the costs are payable or were paid must pay the costs of the costs review if:
 - (i) on the review the legal costs are reduced by 15% or more; or
 - (ii) the costs reviewer is satisfied that the law practice failed to comply with Division 3;
 - (b) if not, the other party must pay them.

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- (3) The costs reviewer may refer to [the Supreme Court] any special circumstances relating to a costs review and [the Court] may make any order it thinks fit concerning the costs of the costs review.

1044 Referral for disciplinary action [CNU]

- (1) If, on a costs review, the costs reviewer considers that the legal costs charged by a law practice are grossly excessive, the costs reviewer must refer the matter to the [appropriate body] to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved.
- (2) If the costs reviewer considers that a costs review raises any other 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 costs reviewer may refer the matter to the [appropriate body] to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

1045 Appeal [CNU]

- (1) A person may appeal to the [appropriate court] from a decision of a costs reviewer.
- (2) An appeal must be instituted:
- (a) no later than [x] days after the date on which the decision is made; and
 - (b) in accordance with the rules of [appropriate court].
- (3) On appeal, the [appropriate court] may [*insert appropriate powers on appeal*].

1046 Legal costs subject to a consumer dispute are not reviewable [NC]

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a consumer dispute under Part 11 may not be the subject of a costs review under this Division.

Note. A jurisdiction adopting this section will in this context need to consider section 1128, which provides for the referral of complaints involving costs for costs review.

Division 8 Miscellaneous

1047 Application of Part to incorporated legal practices and multi-disciplinary partnerships [CNU]

The regulations may provide that specified provisions of this Part do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.

1048 Imputed acts, omission or knowledge [CU]

For the purposes of 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 the purposes of section 1024 (4) (Conditional costs agreements involving uplift fees) or for the purposes of any provision of this Part prescribed for the purposes of 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 the purposes of section 1024 (4) (Conditional costs agreements involving uplift fees) or for the purposes of any provision of this Part prescribed for the purposes of 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 11 Complaints and discipline

Introductory note 1. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** ("Core Uniform").
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** ("Core Not Uniform").
- Provisions that are not core provisions—marked **NC** ("Not Core").

In summary:

The following provisions are core provisions and require textual uniformity:

- 1104 (Unsatisfactory professional conduct)
- 1105 (1) (Professional misconduct)
- 1106 (Conduct capable of constituting unsatisfactory professional conduct or professional misconduct)

The following provisions are core but do not require textual uniformity:

- The application of each jurisdiction's disciplinary provisions to a lawyer's conduct in the jurisdiction. Machinery should be provided to deal with conduct that occurs in more than one jurisdiction or conduct that occurs wholly or partly outside Australia.
- The range of disciplinary sanctions to be available for the discipline of lawyers. Provisions identifying the entities able to impose the sanctions are not core provisions.
- The publicising of disciplinary action taken.
- Matters relating to protocols, jurisdictional requests to deal with conduct, sharing of information, inter-jurisdictional co-operation, and inter-jurisdictional enforcement of disciplinary orders.

The following provisions are not core:

- The remainder of the provisions.

Introductory note 2. There is no intention to introduce a uniform process for dealing with complaints. Accordingly, this draft does not attempt to deal with the differing local regulatory structures, but (as elsewhere in the Model Provisions) refers instead to the "[appropriate authority]". Local provisions will adapt by identifying the local authority or authorities, and making consequential adjustments. For example, adjustment may be needed for one authority to take over the investigation of a complaint from another authority; and appeal or review provisions may need to be included.

Introductory note 3. It is not intended that the Model Provisions deal with the conduct of lay associates, but this matter is left for determination by each jurisdiction.

Introductory note 4. Section 1408 (Application of Australian professional ethical and practice standards) applies the provisions of this Part to Australian-registered foreign lawyers as if references in this Part to an Australian lawyer were references to an Australian-registered foreign lawyer.

Division 1 Preliminary

1101 Purposes [NC]

The purposes of this Part 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 by consumers of the services of the legal profession;
- (d) to enable persons who are not lawyers to participate in complaints and disciplinary processes involving lawyers.

Note. The issue of consumer involvement would be addressed by the inclusion of lay membership in the composition of the complaints handling body, which does not form part of the Model Provisions. Paragraph (d) is accordingly optional.

1102 Definitions [NC]

In this Part:

complaint means a complaint under this Part.

conduct means conduct whether consisting of an act or omission.

official complaint means a complaint made under this Part by an [appropriate authority].

1103 Application of Part to lawyers, former lawyers and former practitioners [NC]

- (1) This Part applies 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, and so applies with any necessary modifications.

- (2) This Part applies 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, and so applies with any necessary modifications.

Division 2 Key concepts

1104 Unsatisfactory professional conduct [CU]

For the purposes of 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.

1105 Professional misconduct [CU (1); CNU (2)]

- (1) For the purposes of 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 as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

1106 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct [CU]

Without limiting section 1104 or 1105, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct:

- (a) conduct consisting of a contravention of this Act, the regulations or the legal profession rules;
- (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 2001* of the Commonwealth.

Note 1. It is intended that these provisions are the minimum standard to adopt, but that jurisdictions may expand what is embraced by the concepts, either by expanding the section or amending substantive provisions elsewhere in the Bill. For example, jurisdictions may wish to state that certain conduct “is” professional misconduct.

Note 2. Various sections of the Model Provisions identify particular conduct as capable of constituting unsatisfactory professional conduct or professional misconduct.

Division 3 Application of this Part

1107 Practitioners to whom this Part applies [CNU]

This Part applies to an Australian legal practitioner in respect of conduct to which this Part 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.

Note. Individual jurisdictions may contain additional provisions regarding the application of the Part to Judges, Magistrates and other judicial officers and to lay associates.

1108 Conduct to which this Part applies—generally [CNU]

- (1) Subject to subsection (3), this Part applies to conduct of an Australian legal practitioner occurring in this jurisdiction.
- (2) This Part 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 [appropriate 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 a local legal practitioner, and either:
 - (i) the [appropriate 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.
- Note.** If consent is not given, the matter will be dealt with in each jurisdiction under subsection (1) or its equivalent.
- (3) This Part does not apply to conduct occurring in this jurisdiction if:
 - (a) the [appropriate authority] 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.

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- (4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.
 - (5) The [appropriate authority] may give consent for the purposes of subsection (3) (a), and may do so conditionally or unconditionally.

1109 Conduct to which this Part applies—insolvency, serious offences and tax offences [CNU]

- (1) This Part applies to the following conduct of a local legal practitioner whether occurring in Australia or elsewhere:
 - (a) conduct of the practitioner in respect of 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 2001* of the Commonwealth.
- (2) This section has effect despite anything in section 1108 (Conduct to which this Part applies—generally).

Division 4 Complaints about Australian legal practitioners

1110 Complaints [NC]

- (1) A complaint may be made under this Part about an Australian legal practitioner's conduct to which this Part applies.
- (2) A complaint may be made under this Part about the conduct of an Australian legal practitioner occurring outside this jurisdiction, but the complaint must not be dealt with under this Part unless this Part is or becomes applicable to it.
- (3) A complaint that is duly made is to be dealt with in accordance with this Part.

1111 Making of complaints [NC]

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- (1) A complaint may be made about the conduct of an Australian legal practitioner by any person, including an [appropriate authority].
 - (2) A complaint is to be made to the [appropriate authority].
Note. This may require local adjustments, especially in the case of a complaint made by an [appropriate authority] if there is not a separate complaint receiver.
 - (3) A complaint must be in writing.
 - (4) 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.
 - (5) The [appropriate authority] to which a complaint is made may refer it to an [appropriate authority], unless it deals with the complaint itself.
 - (6) An official complaint cannot be made about the conduct of an Australian legal practitioner unless the [appropriate authority] making the complaint has reasonable cause to suspect that the conduct involves unsatisfactory professional conduct or professional misconduct.

1112 Complaints made over [3 years] after conduct concerned [NC]

- (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 (otherwise 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 [appropriate authority] determines that:
 - (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
 - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (3) A determination made under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned.

Note 1. This subsection, in particular, is optional and depends on the local regulatory structures. It might be preferable to retain a power to review this decision if it is being made by a professional body rather than an official regulator.

Note 2. Savings and transitional provisions for the section will be required to deal with conduct committed before the commencement of the new legislation. This will

need to cover conduct that was covered by a different limitation period; conduct committed by an interstate practitioner; and conduct that is the subject of current disciplinary action.

1113 Further information and verification [NC]

The [appropriate authority] 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.

1114 Practitioner to be notified of complaint [NC]

- (1) The [appropriate authority] is to ensure that written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is given to the Australian legal practitioner about whom the complaint is made.
- (2) The practitioner is to be notified within 7 days of receipt of the complaint by the [appropriate authority].
- (3) The notice must also inform the practitioner of any action already taken by the [appropriate authority] in relation to the complaint.
- (4) The notice must also inform the practitioner of the practitioner's right to make submissions to the [appropriate authority], unless the [appropriate authority] advises the practitioner that the [appropriate authority] has dismissed or intends to dismiss the complaint.

1115 Submissions by practitioner [NC]

- (1) The Australian legal practitioner about whom a complaint is made may, within a period specified by the [appropriate authority], make submissions to the [appropriate authority] about the complaint or its subject-matter or both.
- (2) The [appropriate authority] may at its discretion extend the period in which submissions may be made.
- (3) The [appropriate authority] must consider the submissions made within the permitted period before deciding what action is to be taken in relation to the complaint.

1116 Summary dismissal of complaints [NC]

- (1) The [appropriate authority] may dismiss a complaint if:
 - (a) further information is not given, or the complaint or further information is not verified, as required by the authority under section 1113 (Further information and verification); 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 determination is made under section 1112 (Complaints made over [3 years] after conduct concerned) 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 each Australian roll in which he or she was enrolled; or
 - (g) the complaint is not one that the authority has power to deal with.
- (2) The [appropriate authority] may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the authority forms the view that the complaint requires no further investigation.

1117 Withdrawal of complaints [NC]

- (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 [appropriate authority] or an officer or other representative of the authority.
- (3) If a complaint is withdrawn orally and the complaint was made by a person other than an [appropriate authority], the authority 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 authority;
- unless the complainant has previously provided the authority with written confirmation of the withdrawal.
- (4) A complaint may be withdrawn even though the [appropriate authority] has commenced or completed an investigation of the complaint, but cannot be withdrawn if proceedings with respect to the complaint have been instituted in the Disciplinary Tribunal.
- (5) If a complaint is made by a person other than an [appropriate authority], a further complaint about the matter that is the subject of the withdrawn complaint cannot be made unless the [appropriate authority] is satisfied that it is appropriate to do so in the circumstances.
- (6) If a complaint is duly withdrawn, no further action is to be taken under this Part with respect to the complaint, unless the [appropriate authority] is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances.
- (7) Withdrawal of a complaint does not prevent:
- (a) the [appropriate authority] 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 with respect 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.

Division 5 Mediation

Mediation—Option 1

1118 Mediation of complaints [NC]

- (1) If the [appropriate authority] considers that a complaint is capable of resolution by mediation, the authority may suggest to the complainant and the Australian legal practitioner to whom the complaint relates that they enter into a process of mediation.

Note. The complaint may be withdrawn under section 1117 (Withdrawal of complaints) if the matter is resolved by mediation.

- (2) Subsection (1) does not apply to a complaint if the [appropriate authority] considers that the practitioner would be likely to be found guilty of professional misconduct if proceedings were instituted in the Disciplinary Tribunal with respect to the complaint.
- (3) This section extends to a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

Mediation—Option 2

1119 Definition [NC]

In this Division:

consumer dispute is a dispute between a person and an Australian legal practitioner about conduct of the practitioner to the extent that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct.

1120 Mediation of complaint involving consumer dispute solely [NC]

- (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 [appropriate authority] considers that the whole or a part of the matter that is the subject of the complaint is capable of resolution by mediation, the authority 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 [appropriate authority] may refer the complaint to mediation; and
 - (b) no further action is required on the complaint to the extent that it is referred to mediation, except as provided by section 1122 (Facilitation of mediation).

Note. The complaint may be withdrawn under section 1117 (Withdrawal of complaints) if the matter is resolved by mediation.

1121 Mediation of hybrid complaint [NC]

- (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 [appropriate authority] considers that the whole or a part of the consumer dispute is capable of resolution by mediation, the authority 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 [appropriate authority] may refer the complaint to mediation; and
 - (b) so far as it involves an issue of unsatisfactory professional conduct or professional misconduct, the complaint is to 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 that it is referred to mediation, except as provided by section 1122 (Facilitation of mediation) and except so far as the consumer dispute is relevant to determination of the complaint.

Mediation—Provisions common to Options 1 and 2

1122 Facilitation of mediation [NC]

If the complainant and the Australian legal practitioner concerned agree to enter into a process of mediation under this Division in connection with a complaint, the [appropriate authority] may facilitate the mediation to the extent it considers appropriate.

1123 Admissibility of evidence and documents [NC]

- (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 Division of the whole or a part of the matter that is subject of a complaint; and
 - (b) a document prepared for the purposes of the mediation or attempted mediation.

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- (2) Subsection (1) does not apply to an agreement reached during mediation.

1124 Protection from liability [NC]

Note. Inclusion has been suggested of a provision along the lines of the *Supreme Court Act 1986* (Vic) s 27A, as follows. There are however other options. It may be preferable to include mediators in a general section providing protection from liability. This formulation is the same as that applying to members of the *Administrative Decisions Tribunal Act 1997* (NSW).

A mediator has, in the performance of his or her duties under this Division, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

Note. Another formulation, based on the protection for mediators and neutral evaluators under the *Administrative Decisions Tribunal Act 1997* (NSW) s 109, is as follows:

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of mediation under this Division.

Division 6 Investigation of complaints

1125 Complaints to be investigated [NC]

- (1) The [appropriate authority] is required to investigate each complaint for which it is responsible.
- (2) This section does not apply to:
- (a) a complaint taken over or referred to another [appropriate authority]; or
 - (b) a complaint that is dismissed or withdrawn under this Part; or
 - (c) a complaint to the extent that it is the subject of mediation under this Part.

1126 Appointment of investigator [NC]

The [appropriate authority] may, in writing, appoint a suitably qualified person to investigate a complaint.

1127 Application of Part 15 [NC]

Part 15 (Investigatory powers) applies to an investigation under this Division.

1128 Referral of matters for cost assessment [NC]

For the purpose of investigating a complaint, the [appropriate authority] may refer a matter to a costs assessor for assessment of costs charged or claimed by an Australian legal practitioner.

Note. Further local provisions may be needed here.

Division 7 Decision of [appropriate authority]

1129 Decision of [appropriate authority] after investigation [NC]

- (1) After completing an investigation of a complaint against an Australian legal practitioner, the [appropriate authority] must:
 - (a) institute proceedings in the Disciplinary Tribunal under this Part; or
 - (b) dismiss the complaint under this Part; or
 - (c) take action under section 1131 (Summary conclusion of complaint procedure by fine or reprimand).
- (2) Nothing in this section affects section 1117 (Withdrawal of complaints).

1130 Dismissal of complaint [NC]

After completing an investigation of a complaint against an Australian legal practitioner, the [appropriate authority] may dismiss the complaint if satisfied that:

- (a) 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
- (b) it is in the public interest to do so.

1131 Summary conclusion of complaint procedure by fine or reprimand [NC]

- (1) This section applies if the [appropriate authority]:
 - (a) completes an investigation of a complaint against an Australian legal practitioner; and
 - (b) is satisfied that 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 that the practitioner is generally competent and diligent and that no other material complaints have been made against the practitioner.
- (2) The [appropriate authority] 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.
Note. Jurisdictions would determine whether their investigating authorities are to be vested with power to impose minor penalties, with or without consent, or at all, and what range of low level penalties (eg reprimands and fines) would be available.
- (3) The maximum amount that can be imposed by way of fine is [to be specified].
- (4) A fine is to be paid in the manner and within the period specified by the [appropriate authority].
- (5) Failure to pay a fine wholly or partly is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) If action is taken under subsection (2), no further action is to be taken under this Part with respect to the complaint.
Note. Local provisions may provide for another authority to elect to take over a complaint in these circumstances.

1132 Record of decision [NC]

The [appropriate authority] must cause a record of its decision with respect to a complaint, together with reasons for the decision, to be kept in respect of each complaint dealt with under this Division.

1133 Reasons to be provided to complainant and practitioner [NC]

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 [appropriate authority] in relation to:

- (a) its decision to dismiss the complaint; or
- (b) its decision to institute proceedings in the Disciplinary Tribunal with respect to the complaint; or
- (c) its decision to omit, from the allegations particularised in an information laid before the Disciplinary Tribunal in respect of the complaint, matter that was originally part of the complaint.

Division 8 General procedural matters

1134 Rules of procedural fairness [NC]

The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations, apply in relation to the investigation of complaints and the [appropriate authority's] procedures under this Part.

Note. Jurisdictions may provide further provisions with regard to investigations and procedures.

1135 Duty to deal with complaints efficiently and expeditiously [NC]

It is the duty of the [appropriate authority] to deal with complaints as efficiently and expeditiously as is practicable.

1136 Complainant and practitioner to be informed of action taken [NC]

- (1) If a complaint has been made about an Australian legal practitioner:
 - (a) the [appropriate authority] is to ensure that the complainant is notified in writing of receipt of the complaint by the [appropriate authority]; and
 - (b) the [appropriate authority] is to ensure that the complainant and the practitioner are notified in writing of action taken by the [appropriate authority] in relation to the complaint.
- (2) Without limiting subsection (1), the complainant and the practitioner are entitled to receive written notice of:
 - (a) a decision to dismiss the complaint; or
 - (b) a decision to omit, from the allegations particularised in an information laid before the Disciplinary Tribunal in respect of the complaint, matter that was originally part of the complaint.
- (3) In the case of a decision by the [appropriate authority] to dismiss a complaint, the right of the complainant to apply to the [appropriate authority] for a review of the decision must be included in the notice to the complainant.
- (4) This section does not apply in relation to an official complaint.

Division 9 Proceedings in Disciplinary Tribunal

1137 Institution of proceedings [NC]

Proceedings may be instituted in the Disciplinary Tribunal with respect to a complaint against an Australian legal practitioner by [an information] laid by the [appropriate authority] containing one or more charges of unsatisfactory professional conduct or professional misconduct.

1138 Hearings [NC]

- (1) The Disciplinary Tribunal is to conduct a hearing into each allegation particularised in an information laid before the Tribunal.
- (2) The informant in disciplinary proceedings before the Disciplinary Tribunal must cause the complainant to be notified in writing of the date set down by the Tribunal for hearing the matter.
- (3) At least 14 days' notice must be given of the date set down for hearing the matter.
- (4) Subsections (2) and (3) do not apply in relation to an official complaint.

1139 Joinder [NC]

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

1140 Variation of information [NC]

- (1) The Disciplinary Tribunal may, on the application of the informant or on its own motion, vary an information laid so as to omit allegations or to include additional allegations, if satisfied that it is reasonable to do so having regard to all the circumstances.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary an information, the Disciplinary Tribunal is to have regard to whether varying the information will affect the fairness of the proceedings.

- (3) The variation of an information by the Disciplinary Tribunal to include an additional allegation is not precluded because the alleged conduct concerned occurred more than [3 years] before the variation is made.

1141 Nature of allegations [NC]

- (1) An information in respect of a complaint cannot be challenged on the ground that the allegations contained in the information 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 information as laid or were included by way of variation of the information.

1142 Substitution of informant [NC]

- (1) If the [appropriate authority] takes over a complaint after an information has been laid in respect of the complaint, the Disciplinary Tribunal may, on the application of the authority, direct that the informant in the proceedings is to be the authority that has taken over the complaint.
- (2) This section has effect even if a hearing of the matter has commenced before the Disciplinary Tribunal.

1143 Rules of evidence [NC]

The Disciplinary Tribunal is bound by the rules of evidence in conducting a hearing under this Division.

Note. Jurisdictions may provide that the Tribunal is not bound by the rules of evidence, or is not bound by the rules of evidence when dealing with a charge of unsatisfactory professional conduct.

1144 Parties [NC]

- (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 [appropriate authority].
- (2) The parties are entitled to appear at the hearing in respect of the complaint.
- (3) The complainant is entitled to appear at the hearing in respect of:

- (a) those aspects of the hearing that relate to a request by the complainant for a compensation order under this Part; and
 - (b) other aspects of the hearing, but only if the Disciplinary Tribunal grants leave to the complainant to appear in respect of them.
- (4) The Disciplinary Tribunal may grant leave to any other person to appear at the hearing if satisfied that 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 Disciplinary Tribunal) by any other person.

Note. It is a matter for each jurisdiction to determine whether to include provisions for the attendance or compellability of witnesses.

1145 Public hearings [NC]

- (1) A hearing under this Division is to be open to the public, except where the Disciplinary Tribunal directs that the hearing or a part of the hearing is to be closed to the public.
- (2) The Disciplinary Tribunal is not to direct that a hearing or a part of a hearing is to be closed to the public unless satisfied that 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.

1146 Power to disregard procedural lapses [NC]

- (1) The Disciplinary Tribunal may order that a failure by the [appropriate authority] to observe a procedural requirement in relation to a complaint is to be disregarded, if satisfied that the parties to the hearing have not been prejudiced by the failure.
- (2) This section applies to a failure occurring before proceedings were instituted in the Disciplinary Tribunal in relation to the complaint as well as to a failure occurring afterwards.

1147 Determinations of Disciplinary Tribunal [CNU]

Note. The following section contains a minimum set of disciplinary measures that may be taken under the Part. However, the measures will not necessarily be able to be imposed by the Disciplinary Tribunal. If other entities are to be involved, provision will need to be made to set out the appropriate procedures that would be involved.

(1) **Orders generally**

If, after it has completed a hearing under this Division in relation to a complaint against an Australian legal practitioner, the Disciplinary Tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Disciplinary Tribunal may make any one or more of the orders specified in subsections (2), (3) and (4).

(2) **Orders requiring official implementation in this jurisdiction**

The Disciplinary 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 issued 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 issued or to be issued 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.

(3) **Orders requiring official implementation in another jurisdiction**

The Disciplinary 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 that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;

- (c) an order that an interstate 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 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.
- (4) **Orders requiring compliance by practitioner**
The Disciplinary Tribunal may make the following orders under this subsection:
- (a) an order that the practitioner pay a fine of a specified amount, not exceeding [*to be inserted*];
 - (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.
- (5) **Ancillary or other orders**
The Disciplinary 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.
- (6) **Alternative finding**

The Disciplinary Tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.

1148 Interlocutory and interim orders [NC]

- (1) The Disciplinary Tribunal may make interlocutory or interim orders as it thinks fit 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 1147 (Determinations of Disciplinary Tribunal) may be made as interlocutory or interim orders.

1149 Compliance with determinations and orders [NC]

- (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 1147 (2) (Determinations of Disciplinary Tribunal: orders requiring official implementation in this jurisdiction);
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 1148 (Interlocutory and interim orders) so far as it is an order of the kind referred to in section 1147 (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 that they relate to the practitioner's practice of law in this jurisdiction):
 - (i) any order of the Disciplinary Tribunal made under section 1147 (4) (Determinations of Disciplinary Tribunal: orders requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 1148 so far as it is an order of the kind referred to in section 1147 (4) or otherwise needs to be, or is capable of being, enforced in this jurisdiction.

Note. Section 1171 (Compliance with orders made under corresponding laws) contains provisions relating to compliance in this jurisdiction with orders made under corresponding laws.

- (2) The [appropriate authority] must ensure that persons and bodies having relevant powers or functions under a corresponding law of another jurisdiction are notified of the making and contents of:
 - (a) the following orders:
 - (i) an order of the Disciplinary Tribunal made under section 1147 (3) (Determinations of Disciplinary Tribunal: orders requiring official implementation in another jurisdiction) in relation to that corresponding law;
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 1148 (Interlocutory and interim orders) so far as it is an order of the kind referred to in section 1147 (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 Disciplinary Tribunal made under section 1147 (4) (Determinations of Disciplinary Tribunal: orders requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 1148 so far as it is an order of the kind referred to in section 1147 (4) or otherwise needs to be, or is capable of being, enforced in the other jurisdiction.
- (3) If the Disciplinary 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 Disciplinary Tribunal makes an order that an Australian legal practitioner pay a fine, a copy of the order may be filed in a [court to be specified] and the order may be enforced as if it were an order of the court.

1150 Costs [NC]

- (1) The Disciplinary Tribunal must make orders requiring an Australian legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the [appropriate authority] and the complainant), unless the Disciplinary Tribunal is satisfied that exceptional circumstances exist.

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- (2) The Disciplinary Tribunal may make orders 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 [appropriate authority] and the complainant), if satisfied that:
 - (a) the sole or principal reason why the proceedings were instituted in the Disciplinary Tribunal was a failure of the practitioner to co-operate with the [appropriate authority]; or
 - (b) there is some other reason warranting the making of an order in the particular circumstances.
 - (3) The Disciplinary Tribunal may make orders requiring the [appropriate authority] to pay costs, but may do so only if satisfied that 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 orders.
 - (4) The Disciplinary Tribunal may make orders requiring an Australian legal practitioner in respect of whom proceedings are pending before the Tribunal to pay costs on a interlocutory or interim basis.

Note. Alternatively, the Tribunal could order that costs be payable from a particular fund (eg a Public Purpose Fund) in these circumstances.
 - (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.

1151 Notification of result of proceedings before Disciplinary Tribunal [NC]

- (1) The informant in disciplinary proceedings before the Disciplinary Tribunal must cause the complainant to be notified in writing of the determination of the Disciplinary Tribunal.
- (2) This section does not apply in relation to an official complaint.

1152 Other remedies not affected [NC]

This Division does not affect any other remedy available to a complainant.

Division 10 Compensation

1153 Definition [NC]

In this Division:

compensation order means an order referred to in section 1154 (Compensation orders).

1154 Compensation orders [NC]

- (1) A compensation order is an order, made in respect of 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 respect of specified legal services;
 - (b) an order discharging a lien possessed by the practitioner in respect of 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.
- (3) A compensation order under subsection (2) (a) preventing recovery of an amount is effective even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the practitioner.
- (4) A compensation order under subsection (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.
- (5) A compensation order under subsection (2) (c) requiring payment of an amount exceeding [\$10,000] by way of monetary compensation is not to be made unless the complainant and the practitioner both consent to the order.

1155 Prerequisites to making of compensation orders [NC]

- (1) Unless the complainant and the Australian legal practitioner concerned agree, a compensation order is not to be made unless the person or body making it is satisfied:
 - (a) that the complainant has suffered loss because of the conduct concerned; and

- (b) that it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of 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, where a relevant claim for payment from the Fund has been made or determined.

1156 Making of compensation orders [NC]

- (1) The [appropriate authority] may make a compensation order [before instituting proceedings in the Disciplinary Tribunal in relation to a complaint], if satisfied that 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 Disciplinary 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.

Note. Some jurisdictions may not provide for compensation orders to be made by the [appropriate authority].

1157 Enforcement of compensation orders [NC]

- (1) A copy of a compensation order may be filed in a [court to be specified] 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 the court.
- (2) Failure to comply with a compensation order is capable of constituting unsatisfactory professional conduct or professional misconduct.

1158 Other remedies not affected [NC]

The recovery of compensation awarded under this Division does not affect any other remedy available to a complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

Division 11 Publicising disciplinary action

1159 Definitions [CNU]

In this Division:

disciplinary action means:

- (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 issue 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.

Note. Some jurisdictions may wish to introduce stronger publication requirements than provided in this Part, eg publishing orders made by Commissioners, regulatory authorities or other authorities or which relate to unsatisfactory professional conduct. It is also noted that public reprimands of their very nature would involve publication, and that the Model Provisions do not in their current form define the difference between public reprimands and private reprimands.

Register means the Register of Disciplinary Action referred to in section 1160 (Register of Disciplinary Action).

1160 Register of Disciplinary Action [CNU]

- (1) There is to be a register (in this Act referred to as 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 is to 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;

and may include the date and jurisdiction of the person's first and any later admission to the legal profession.

Note. Alternatively, the matters that are to be or may be included in the Register could be prescribed by regulations.

- (3) The Register may be kept in a form determined or identified by the [appropriate authority] and may form part of other registers.
- (4) The Register is to be made available for public inspection on:
 - (a) the internet site of the [appropriate authority]; or
 - (b) an internet site identified on the internet site of the [appropriate authority].
- (5) Information recorded in the Register may be provided to members of the public in any other manner approved by the [appropriate authority].
- (6) The [appropriate authority] may cause any error in or omission from the Register to be corrected.
- (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.

1161 Other means of publicising disciplinary action [CNU]

- (1) The [appropriate authority] may publicise disciplinary action taken against an Australian legal practitioner in any manner the authority thinks fit.
- (2) Nothing in this section affects the provisions of this Division relating to the Register.

1162 Quashing of disciplinary action [CNU]

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the [appropriate authority] under section 1161 (Other means of publicising disciplinary action), the result of the appeal or review must be publicised with equal prominence by the [appropriate authority].

Note. Some jurisdictions may wish to defer publication until after rights of appeal or review have been exhausted.

1163 Liability for publicising disciplinary action [NC]

- (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 [appropriate authority] under this Division; 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 [appropriate authority] under this Division;or matter purporting to contain information of that kind where the matter is incorrect in any respect; or
 - (b) a fair report or summary of that information.

(3) In this section:

protected person means:

- (a) the State; or
- (b) the [appropriate authority]; 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 State or any person or body referred to in this definition.

1164 Disciplinary action taken because of infirmity, injury or illness [CNU]

- (1) Disciplinary action taken against a person because of infirmity, injury or mental or physical illness is not to be recorded in the Register or otherwise publicised under this Division.
- (2) Subsection (1) does not apply where the disciplinary action involves:
 - (a) the suspension or cancellation of the person's Australian practising certificate; or
 - (b) a refusal to issue an Australian practising certificate to the person or to renew the person's Australian practising certificate; or
 - (c) a restriction or prohibition on the person's right to engage in legal practice;

but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register or otherwise publicised under this Division without the person's consent.

1165 General [CNU]

- (1) The provisions of this Division are subject to [provisions relating to secrecy].

Note. Section 1706 (Confidentiality of personal information) provides that that section does not apply to information disclosed under this Division.
- (2) The provisions of this Division are subject to any order made by:
 - (a) the Disciplinary Tribunal in relation to disciplinary action taken under this Part; or

- (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Part; or
 - (c) a court or tribunal of this or another jurisdiction;
so far as the order prohibits or restricts the disclosure of information.
- (3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Division and may be otherwise publicised under this Division.

Division 12 Inter-jurisdictional provisions

1166 Protocols [CNU]

- (1) The [appropriate authority] may enter into arrangements (referred to in this Act as *protocols*) with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in more than one jurisdiction.
- (2) In particular, the protocols may make provision for or with respect to:
 - (a) providing principles to assist in determining where conduct occurs, either generally or in specified classes of cases; and
 - (b) giving and receiving consent for conduct occurring in a jurisdiction to be dealt with under a law of another jurisdiction; and
 - (c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this Division.

1167 Request to another jurisdiction to investigate complaint [CNU]

- (1) The [appropriate authority] may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the [appropriate authority] 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 [appropriate authority] and the Disciplinary Tribunal in the course of dealing with the complaint under this Part.

1168 Request from another jurisdiction to investigate complaint [NC]

- (1) This section applies in relation to a request received by the [appropriate authority] from a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with under a corresponding law.
- (2) The [appropriate authority] may conduct the investigation or authorise another authority to conduct it.
- (3) The provisions of this Part 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 [appropriate authority] or other authority must provide a report on the result of the investigation to the corresponding authority.

1169 Sharing of information with corresponding authorities [CNU]

The [appropriate authority] may enter into arrangements with a corresponding authority for providing information to the corresponding authority about:

- (a) complaints made under this Part; and
- (b) any action taken with respect to any complaints made under this Part, including determinations of the Disciplinary Tribunal under this Part in relation to any complaints.

Note. Consideration may be needed as to whether this power should affect or be affected by applicable privacy legislation. Attention has been drawn to section 37 of the *Mutual Recognition Act 1992* of the Commonwealth.

Note. Consideration may be needed as to whether these arrangements should need formal governmental approval before being entered into.

1170 Co-operation with corresponding authorities [CNU]

- (1) When dealing with a complaint, the [appropriate authority] may consult and co-operate with another person or body who or which has powers under a corresponding law in relation to the person against whom the complaint was made.

- (2) For the purposes of subsection (1), the [appropriate authority] and the other person or body may exchange information concerning the complaint or complaints.

1171 Compliance with orders made under corresponding laws [CNU]

- (1) Persons and bodies having relevant powers or functions under this Act must:
- (a) give effect to any 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) enforce any order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.
- (2) If a corresponding disciplinary body makes an order recommending that a person's name be removed from the roll of lawyers under this Act, the Supreme Court may 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 copy of the order may be filed in a [court to be specified] and the order may be enforced as if it were an order of the court.

1172 Other powers or functions not affected [CNU]

Nothing in this Division affects any powers or functions that a person or body has apart from this Division.

Division 13 Miscellaneous

1173 Jurisdiction of Supreme Court [NC]

The inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of local lawyers are not affected by anything in this Part, and extend to:

- (a) local legal practitioners; and
- (b) interstate legal practitioners engaged in legal practice in this jurisdiction.

1174 Information about complaints procedure [NC]

The [appropriate authority] must:

- (a) produce information about the making of complaints and the procedure for dealing with complaints; and
- (b) ensure that that information is available to members of the public on request; and
- (c) provide assistance to members of the public in making complaints.

1175 Failure to comply with orders [NC]

- (1) A failure by a person to comply with an order of the Disciplinary Tribunal under this Act or an order of a corresponding disciplinary body under a corresponding law is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (2) A person who fails to comply with 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 failure continues.

1176 Performance criteria [NC]

- (1) The [appropriate authority] must develop performance criteria relating to the handling of complaints under this Part.
- (2) The [appropriate authority] is to include the relevant criteria in its annual report [under this Act], together with an assessment of its performance against the criteria in the period to which the report relates.

1177 Reports to Minister [NC]

- (1) The [appropriate authority] must submit to the Minister, at the times and in respect of the periods required by the Minister, reports on the handling of complaints.
- (2) A report is to deal with matters specified by the Minister and other matters the [appropriate authority] 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 any other law.

1178 Duty to report suspected offences [NC]

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- (1) This section applies if the [appropriate authority] suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law.
 - (2) The [appropriate authority] 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 [appropriate authority] holds the relevant suspicion.

Note. Attention is drawn to section 367 of the *Legal Profession Act 2003* of Queensland.

1179 Protection from liability [NC]

A matter or thing done or omitted to be done by:

- (a) the [appropriate authority] or any member of the [appropriate authority]; or
- (b) a committee or subcommittee of the [appropriate authority] or any member of a committee or subcommittee; or
- (c) any person involved in the conduct of an investigation under this Part; or
- (d) the Disciplinary Tribunal or any member of the Disciplinary Tribunal; or
- (e) the Registrar of the Disciplinary Tribunal; or
- (f) a mediator to whom a matter is referred under this Part; or
- (g) any member of the staff of any of the above;

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Part, subject a member or member of staff, the [appropriate authority] [if a natural person], the person involved in the conduct of the investigation, the Registrar or the mediator, personally to any action, liability, claim or demand.

Note. This section is an example of a provision that may vary in each jurisdiction. Consideration is also to be given to extending the protection to cover witnesses and other persons.

1180 Non-compellability of certain witnesses [NC]

A person referred to in section 1179 (Protection from liability) is not compellable in any legal proceedings (including proceedings before the Disciplinary Tribunal) to give evidence or produce documents in respect of any matter in which the person was involved in the course of the administration of this Part.

Note. Individual jurisdictions may provide exceptions to this section, for example in connection with royal commissions.

1181 Confidentiality of client communications [NC]

Subject to section 1182 (Claims of privilege), an Australian legal practitioner must comply with a requirement under this Part to answer a question or to produce information or a document, despite any duty of confidentiality in respect of a communication between the practitioner and a client.

1182 Claims of privilege [NC]

If, in any investigation or proceedings under this Part, a person properly claims privilege in respect of any information:

- (a) the [appropriate authority] or Disciplinary Tribunal may require that person to disclose the information; and
- (b) if any information adverse to the interests of that person is then disclosed, no question or answer relating to that 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 1178 (Duty to report suspected offences).

1183 Waiver of privilege or duty of confidentiality [NC]

- (1) If a client of an Australian legal practitioner makes a complaint about the practitioner, the complainant is taken to have waived legal professional 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.

1184 Delegation by [appropriate authority] [NC]

The [appropriate authority] may delegate in writing any or all of its powers and functions under this Part to a person or persons.

Note. This provision may be more appropriately located in another part of the Model Provisions (eg the final Part), though the section as currently drafted relates specifically to this Part.

Part 12 External intervention

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Division 1 Preliminary

1201 Purposes [NC]

- (1) The purposes of this Part are as follows:
 - (a) to ensure that an appropriate range of options is available for intervention in the business and professional affairs of lawyers (including foreign lawyers) for the purpose of protecting:
 - (i) the interests of the general public; and
 - (ii) protecting the interests of clients; and
 - (iii) the interests of 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; and
 - (b) to ensure that interventions occur in a way that minimises adverse consequences for the lawyers concerned and their clients.
- (2) It is intended that interventions occur consistently with:
 - (a) similar interventions in other jurisdictions, especially where a law practice operates in this jurisdiction and one or more other jurisdictions; and
 - (b) other provisions of this Act.

Note. This Part:

- (a) applies to all law practices, regardless of whether they are incorporated under the *Corporations Act 2001* of the Commonwealth; and
- (b) is intended to apply so that it, rather than the *Corporations Act 2001* of the Commonwealth or the *Bankruptcy Act 1966* of the Commonwealth applies in respect of the winding up of trust property and in respect of the carrying on of a law practice by external intervention.

1202 Definitions [CU]

In this Part:

external intervener means a supervisor, manager or receiver under this Part.

external intervention means the appointment of, and the exercise of the powers and functions of, a supervisor, manager or receiver under this Part.

regulated property, in relation to a law practice, means the following:

- (a) trust money received, receivable or held by the practice;
- (b) other property received or receivable for or on behalf of another person by the practice in providing legal services;
- (c) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a) or (b);
- (d) documents or records of any description relating to anything referred to in paragraph (a), (b) or (c);
- (e) any means by which any records that are referred to in paragraph (d) and not written may be reproduced in writing.

1203 Application of Part to Australian-registered foreign lawyers [CU]

This Part applies, with any necessary adaptations, to Australian-registered foreign lawyers in the same way as it applies to law practices.

1204 Application of Part to other persons [CU]

This Part 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 his or her 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.

Division 2 Initiation of external intervention

1205 Circumstances warranting external intervention [CU]

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;
 - (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—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 [appropriate authority] forms a belief on reasonable grounds that the practice:
 - (i) is not dealing adequately with trust money or is not properly attending to the affairs of the practice;
 - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or the affairs of the practice; or
 - (iii) has failed properly to account in a timely manner to any person for trust money received by the practice for or on behalf of that person; or
 - (iv) has failed properly to make a payment of trust money when required to do so by a person entitled to that money or entitled to give a direction for payment; or
 - (v) is in breach of the regulations 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
 - (vii) is the subject of a complaint relating to trust money received by the practice; or

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- (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 received by the practice or for properly winding up the affairs of the practice; or
- (e) any other proper cause exists in relation to the practice.

1206 Determination regarding external intervention [CU]

- (1) This section applies when the [appropriate authority] becomes aware that one or more of the circumstances referred to in section 1205 (Circumstances warranting external intervention) exist in relation to a law practice and decides that, having regard to the interests of the clients, owners and employees of the practice and to other matters that it considers appropriate, external intervention is warranted.
- (2) The [appropriate authority] may determine:
 - (a) to appoint a supervisor of trust money received by the law practice, if the authority 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 authority is of the opinion:
 - (i) that the practice is or may be a viable business concern; and
 - (ii) that, for this to occur, 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 authority 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 [appropriate authority] may, from time to time, make further determinations in relation to the law practice and for that purpose may

revoke a previous determination with effect from a date or event specified by the authority.

- (4) A further determination may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original determination was made and whether or not any further circumstances have come into existence in relation to the law practice after the original determination 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 [appropriate authority] 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.

Division 3 Supervisors

1207 Appointment of supervisor [CU]

- (1) This section applies if the [appropriate authority] determines to appoint a supervisor of trust money received by a law practice.
- (2) The [appropriate authority] may, by instrument in writing, appoint a person as supervisor.
- (3) The appointee must be either:
 - (a) an Australian legal practitioner; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;and may (but need not) be an employee of the [appropriate authority].
- (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; and
 - (c) specify the term of the appointment; and
 - (d) specify any conditions imposed by the [appropriate authority] when the appointment is made; and

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- (e) specify any fees payable by way of remuneration to the supervisor specifically for carrying out his or her duties in relation to the external intervention; and
 - Note.** Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the [appropriate authority].
 - (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.

1208 Notice of appointment [CU]

- (1) As soon as possible after an appointment of a supervisor for a law practice is made, the [appropriate authority] 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 authority 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; 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 [appropriate authority] when the appointment is made; and
 - (f) contain or be accompanied by other information or material prescribed by the regulations.

1209 Effect of service of notice of appointment [CU]

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money received by a law practice and until the appointment is terminated, the ADI must ensure that 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
 - (b) the withdrawal or transfer is made by 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.
- (2) After service on a person (other than the supervisor or an ADI) of a notice of the appointment of a supervisor of trust money received by a law practice and until the appointment is terminated, the person must not:
 - (a) deal with any of the practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty:

- (3) A supervisor may, for the purposes of 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.
- (4) 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.

1210 Role of supervisor [CU]

- (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 on behalf of the practice; and
 - (b) to open and close trust accounts.

- (2) For the purpose of exercising or performing his or her 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 having control of documents relating to trust money received by the practice to give the supervisor:
 - (i) access to the documents the supervisor reasonably requires; and
 - (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 his or her 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 his or her appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the [appropriate authority] and:
 - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; 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 member of the police force 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.

Note. There may be jurisdictional variations in connection with the conferral of powers under this section.

1211 Records of and dealing with trust money of law practice under supervision [CU]

- (1) A supervisor of trust money of a law practice must maintain the records of his or her 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 the trust money in the same way as a law practice must deal with trust money.

1212 Termination of supervisor's appointment [CU]

- (1) The appointment of a supervisor for a law practice terminates in the following circumstances:
- (a) the term of the appointment comes to an end;
 - (b) the appointment of a manager for the practice takes effect;
 - (c) the appointment of a receiver for the practice takes effect;
 - (d) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
 - (e) a determination of the [appropriate authority] that the appointment be terminated has taken effect.
- (2) The [appropriate authority] may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) The [appropriate authority] must serve a written notice of the termination on all persons originally served with notice of the appointment.

Division 4 Managers

1213 Appointment of manager [CU]

- (1) This section applies if the [appropriate authority] determines to appoint a manager for a law practice.
- (2) The [appropriate authority] 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 [appropriate authority].
- (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 [appropriate authority] when the appointment is made; and
 - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee of the [appropriate authority].

 - (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.

1214 Notice of appointment [CU]

- (1) As soon as possible after an appointment of a manager for a law practice is made, the [appropriate authority] 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 authority reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any reporting requirements to be observed by the manager; and
 - (e) specify any conditions imposed by the [appropriate authority] when the appointment is made; and
 - (f) contain or be accompanied by other information or material prescribed by the regulations.

1215 Effect of service of notice of appointment [CU]

- (1) After service on a law practice of a notice of the appointment of a manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.
Penalty:
- (2) 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 that 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 manager or by a receiver appointed for the practice; or
 - (b) the withdrawal or transfer is made by the manager, or by a receiver appointed for the practice, 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 manager or by a receiver appointed for the practice.
- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not:

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- (a) deal with any of the practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the practice;

but this subsection does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the practice.

Penalty:

- (4) A manager may, for the purposes of subsection (2) (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 (2) 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.

1216 Role of manager [CU]

- (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 in accordance with this Act and the regulations;
 - (g) winding up the affairs of the practice.
- (2) For the purpose of exercising his or her 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 practitioner or any other person having control of client files and associated documents (including documents relating to trust money received by the practice) to give the manager:
 - (i) access to the files and documents the manager reasonably requires; and
 - (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 his or her 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 his or her appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the [appropriate authority] and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; 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 member of the police force to assist entry.

1217 Records and accounts of law practice under management and dealings with trust money [CU]

- (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.

1218 Deceased estates [CU]

- (1) It is the duty of the manager for a law practice to co-operate 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.

1219 Termination of manager's appointment [CU]

- (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 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;
 - (c) the manager has wound up the affairs of the practice;
 - (d) a determination of the [appropriate authority] that the appointment be terminated has taken effect.

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- (2) The [appropriate authority] may determine 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 [appropriate authority].
 - (5) The [appropriate authority] must serve a written notice of the termination on all persons originally served with notice of the appointment.

Division 5 Receivers

1220 Option 1—Appointment of receiver [by [appropriate authority]] [CU]

- (1) This section applies if the [appropriate authority] determines to appoint a receiver for a law practice.
- (2) The [appropriate authority] may, by instrument in writing, appoint a person as receiver.
- (3) The appointee must be:
 - (a) an Australian legal practitioner; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;and may (but need not) be an employee of the [appropriate authority].
- (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 [appropriate authority] when the appointment is made; and

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- (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and
 - Note.** Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee of the [appropriate authority].
 - (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.

1221 Option 2—Appointment of receiver [by Supreme Court] [CU]

Note. If this option is adopted, other provisions eg section 1206 (Determination regarding external intervention) may need amendment.

- (1) This section applies if the [appropriate authority] determines to apply to the Supreme Court for the appointment of a receiver for a law practice.
 - (2) The Supreme Court may, on the application of the [appropriate authority], appoint a person as receiver for the law practice.
 - (3) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
 - (4) Before commencing to hear an application for appointment of a receiver, the Supreme Court must order from the precincts of the Court any person who is not:
 - (a) an officer of the Court; or
 - (b) a party, a legal representative of a party, or a clerk of a legal representative of a party; or
 - (c) a principal of the law practice concerned; or
 - (d) a person who is about to or is in the course of giving evidence; or
 - (e) a person permitted by the Court to be present in the interests of justice.
- Note.** Some jurisdictions may not include this subsection.
- (5) The appointee must be:

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- (a) an Australian legal practitioner; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;
and may (but need not) be an employee of the [appropriate authority].
- (6) 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 Supreme Court when the appointment is made; and
 - (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and
Note. Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee of the [appropriate authority].
 - (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (7) 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.

1222 Notice of appointment [CU]

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the [appropriate authority] 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 authority reasonably believes should be served with the notice.
- (2) The notice must:
 - (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify the term (if any) of the appointment; and
 - (d) specify any reporting requirements to be observed by the receiver; and
 - (e) specify any conditions imposed by the [appropriate authority] [or Supreme Court] when the appointment is made; and
 - (f) contain or be accompanied by other information or material prescribed by the regulations.

1223 Effect of service of notice of appointment [CU]

- (1) After service on a law practice of a notice of the appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice.
Penalty:
- (2) 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 that 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 receiver or by a manager appointed for the practice; or
 - (b) the withdrawal or transfer is made by the receiver, or by a manager appointed for the practice, 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 receiver or by a manager appointed for the practice.
- (3) After service on a person of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the person must not:
 - (a) deal with any of the practice's trust money; or

- (b) sign any cheque or other instrument drawn on a trust account of the practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the practice;

but this subsection does not apply to an ADI or the receiver or manager for the practice.

Penalty:

- (4) A receiver may, for the purposes of subsection (2) (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 (2) 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.

1224 Role of receiver [CU]

- (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 the purpose of winding up the affairs of the law practice and in the interests of the practice's clients, the [appropriate authority] 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) authorise 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 [appropriate authority] 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 Part and is taken have been appointed as manager for the law practice.

- (4) The [appropriate authority] may, by instrument in writing, terminate an authorisation to carry on a legal practice granted under this section.

1225 Records and accounts of law practice under receivership and dealings with trust money [CU]

- (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.

1226 Power of receiver to take possession of regulated property [CU]

- (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 Supreme Court is satisfied that 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 any further orders it thinks fit.
- (5) An order under subsection (4) operates to authorise:
- (a) any member of the police force; or
 - (b) the receiver or a person authorised by the receiver, together with any member of the police force;

to enter the premises specified in the order and search for, seize and remove 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.

1227 Power of receiver to take delivery of regulated property [CU]

- (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) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property to the practice, the person must deliver the property to the receiver.

Penalty:

- (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.

1228 Power of receiver to deal with regulated property [CU]

- (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 manner in which the law practice might lawfully have dealt with the property.

1229 Power of receiver to require documents or information [CU]

- (1) A receiver for a law practice may require a person who is:
- (a) an associate or former associate of the practice; or
 - (b) any person having control of documents relating to the practice;
- to give the receiver either or both of the following:
- (c) access to documents the receiver reasonably requires;
 - (d) information the receiver reasonably requires.
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Penalty:

- (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.
Note. Section 1707 (Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements) contains a similar provision in respect of legal professional privilege and duties of confidence. That section is not a core provision.
- (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.
- (5) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.

1230 Examinations [CU]

- (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 or affirmation 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.

Penalty:

- (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.

1231 Lien for costs on regulated property [CU]

- (1) This section applies if:
 - (a) a receiver has been appointed for a law practice; and
 - (b) 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 legal practitioner associate a written notice requiring the 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 legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the 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.

1232 Regulated property not to be attached [CU]

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.

Note. There may need to be a displacement provision under the Corporations Act.

1233 Receiver may recover money paid away in bets [CU]

If any money of or under the control of a law practice has been stolen or embezzled, the receiver for the practice is taken, for the purposes of [to be inserted], to have been the person from whom the money was stolen or embezzled.

Note. This provision is based on section 258 of the *Legal Practice Act 1996* (Vic) where section 67 of the *Gaming and Betting Act 1966* (Vic) was referred to, and will need adjustment or adaptation in other jurisdictions.

1234 Recovery of regulated property where there has been a breach of trust etc [CU]

- (1) This subsection 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, 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 [appropriate authority] to do so may give a certificate with respect to all or any of the following facts:

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- (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.

Note. This provision is based on section 259 of the *Legal Practice Act 1996* (Vic).

1235 Improperly destroying property etc [CU]

A person must not, with intent to defeat the purpose of this Division, and whether before or after appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Penalty:

Note. This provision is based on section 263 of the *Legal Practice Act 1996* (Vic). That section also states that the offence is an indictable offence.

1236 Deceased estates [CU]

- (1) It is the duty of the receiver for a law practice to co-operate 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.

1237 Termination of receiver's appointment [CU]

- (1) The appointment 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) a determination of the [appropriate authority] that the appointment be terminated has taken effect.
- (2) The [appropriate authority] may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver's appointment cannot be terminated without the approval of the Supreme Court.

Note. The involvement of the Supreme Court at this point will depend on the Court's role in the appointment of receivers.
- (4) 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 [appropriate authority], if it is not practicable to transfer and deliver the regulated property to the practice.
- (5) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (4) unless the expenses of receivership have been paid to the [appropriate authority].
- (6) The [appropriate authority] must serve a written notice of the termination on all persons originally served with notice of the appointment.

Division 6 General

1238 Conditions on appointment of external intervener [CU]

- (1) An appointment of an external intervener is subject to:
 - (a) any conditions imposed by the [appropriate authority]; and
 - (b) any conditions imposed by or under the regulations.
- (2) The [appropriate authority] may impose conditions:
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The [appropriate authority] may revoke or vary conditions imposed under subsection (2).

1239 Status of acts of external intervener [CU]

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of:
 - (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 [the law practice or] an associate of the law practice to any personal liability.

1240 Eligibility for reappointment or authorisation [CU]

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.

1241 Appeal against appointment [CU]

- (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 is to be lodged 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.

Note. Jurisdictional legislation would contain provisions about appeal or review.

1242 Directions of Supreme Court [CU]

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.

1243 Requirement for ADI to disclose and permit access to accounts [CU]

Despite any rule of law to the contrary, an external intervener for a law practice may require an ADI in which the practice has or has had an account:

- (a) to disclose every account of the practice that, in the opinion of the intervener, may be relevant to the affairs of the practice; and
- (b) to permit the making of a copy or the taking of extracts from any account of that kind.

1244 Fees, legal costs and expenses [CU]

- (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 [appropriate authority], be taxed or assessed.

Note. This subsection may need to be adapted to or expanded for local requirements.

- (3) The fees and costs are payable by and recoverable from the law practice.
- (4) Fees and costs not paid to the external intervener by the law practice are payable from the Fidelity Fund [or other appropriate local fund].
- (5) The [appropriate authority] may recover any unpaid fees and costs from the law practice.

- (6) Fees and costs paid by or recovered from the law practice after they have been paid from the Fidelity Fund [or other fund] are to be paid to the Fund.

1245 Reports by external intervener [CU]

- (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 [appropriate authority]; and
 - (b) a written report to the [appropriate authority] at the termination of the appointment.
- (3) An external intervener must also keep the [appropriate authority] informed of the progress of the external intervention, including reports to the authority 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.

1246 Confidentiality [CU]

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except:
- (a) so far as is necessary for exercising his or her powers or functions;
 - (b) as provided in subsection (2).
- (2) An external intervener may disclose information to any of the following:
- (a) any court, tribunal or other person acting judicially;
 - (b) a regulatory authority of any jurisdiction;
 - (c) 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;
- (d) a member of the police force of any jurisdiction if the [appropriate authority] [, investigator] or external examiner believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
- (e) 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;
- (f) a client or former client of the law practice concerned if the information relates to the client or former client;
- (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
- (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned.

1247 Protection from liability [CU]

No liability attaches to the [appropriate authority] 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 purported exercise of the intervener's powers or duties under this Act.

Part 13 Incorporated legal practices and multi-disciplinary partnerships

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Division 1 Preliminary

1301 Purposes [NC]

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).

1302 Definitions [CU]

In this Part:

corporation means:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations.

Note. Uniformity between jurisdictions is not necessarily required as to which bodies are prescribed by regulations, but if the same bodies are prescribed in two or more jurisdictions, there should be consistency in the prescription and in regulations prescribing who are directors or officers of the bodies. NSW proposes to prescribe industrial organisations incorporated under a law of the Commonwealth or of a jurisdiction.

director, in relation to:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth—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.

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 Part:

- (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; or
- (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; or
- (e) a person who is the subject of an order under this Act or a corresponding Act prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the provision of legal services; or
- (f) a person who is the subject of an order under section 1325 (Disqualification from managing incorporated legal practice) or section 1350 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) or under provisions of a corresponding law that correspond to section 1325 or 1350.

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 2001* of the Commonwealth—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 [to be specified].

related body corporate means:

- (a) in relation to a company within the meaning of the *Corporations Act 2001* of the Commonwealth—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

1303 Nature of incorporated legal practice [CU; except NC (2) (a)]

- (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 form of, or have any expectation of, a fee, gain or reward for the legal services it provides; or
Note. There may be jurisdictional variations as to whether this paragraph is adopted.
 - (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;

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- (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) this Part or the regulations so provide.
- Note.** Jurisdictions may include a provision exempting community legal centres, and trustee corporations (in relation to functions authorised by trustee corporations legislation or incidental functions).
- (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.

1304 Non-legal services and businesses of incorporated legal practices [CU]

- (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 by the regulations.
- Note 1.** Contravention of this section or these regulations is a ground for banning an incorporated legal practice.
- Note 2.** Each jurisdiction may impose its own prohibitions so far as they relate to the corporation providing legal services in that jurisdiction.

1305 Corporations eligible to be incorporated legal practice [CU]

- (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.

1306 Notice of intention to start providing legal services [CU; except NC (5) & (6)]

- (1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the [appropriate authority] 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.

Penalty:

- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subsection (1) is in default of this section until it gives the [appropriate authority] written notice, in the approved form, of the failure to comply with that subsection and 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).

1307 Prohibition on representations that corporation is incorporated legal practice [NC]

- (1) A corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 1306 (Notice of intention to start providing legal services).

Penalty:

- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 1306 (Notice of intention to start providing legal services).

Penalty:

- (3) A reference in this section to a person, being:
 - (a) a corporation—representing or advertising that the corporation is an incorporated legal practice; or

- (b) a director, officer, employee or agent of a corporation—representing or advertising that the corporation is an incorporated legal practice;

includes a reference to the person doing anything that states or implies that the corporation is entitled to engage in legal practice.

1308 Notice of termination of provision of legal services [CU]

- (1) A corporation must, within the prescribed period after it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice, give the [appropriate authority] a written notice, in the approved form, of that fact.

Penalty:

- (2) 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.

1309 Incorporated legal practice must have legal practitioner director [CU]

- (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 the purposes of 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 that 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, the regulations or the legal profession rules; 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 regulations or the legal profession rules, the director must take all reasonable action available to the director to ensure that:

- (a) the breaches do not occur; and
 - (b) appropriate remedial action is taken in respect of breaches that do occur.
- (5) A contravention of subsection (3) or (4) or both by a legal practitioner director is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) Nothing in this Part derogates from the obligations or liability of a director of an incorporated legal practice under any other law.
- (7) 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.

1310 Obligations of legal practitioner director relating to misconduct [CU]

- (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 of an incorporated legal practice must ensure that 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.
- (3) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct by the legal practitioner director.

Note. Jurisdictions may, where vicarious liability is created, consider inclusion of a provision like s 23 of the Criminal Code (Qld).

1311 Incorporated legal practice without legal practitioner director [CU]

- (1) An incorporated legal practice contravenes this subsection if it does not have any legal practitioner directors for a period exceeding 7 days.
Penalty:
- (2) If an incorporated legal practice ceases to have any legal practitioner directors, the incorporated legal practice must notify the [appropriate authority] as soon as possible.
Penalty:
- (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.
Penalty:
- (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 period of 7 days 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 [appropriate authority] 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 authority, 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.

1312 Obligations and privileges of practitioners who are officers or employees [CU]

- (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 1 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.

1313 Professional indemnity Insurance [CNU]

Note. It is intended that each legal practitioner practising in an incorporated legal practice, and each incorporated legal practice (in relation to the provision of legal services), will be required to have approved professional indemnity insurance that offers consumers of legal services provided through incorporated legal practices similar consumer protection to that which they would have if they obtained legal services through a law firm. Each jurisdiction will need to consider what provisions may need to be included in their legislation to achieve this, while at the same time minimising any possible barriers to interstate/national practice.

1314 Conflicts of interest [CU]

- (1) For the purposes of 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 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 an incorporated legal practice.

Note. Under section 1312 (Obligations and privileges of practitioners who are officers or employees), 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.

1315 Disclosure obligations [CU]

- (1) This section applies if a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services, but does not apply where the practice provides only legal services in this jurisdiction.
- (2) Each legal practitioner director of the incorporated legal practice, and any employee who is an Australian legal practitioner and who provides the services on behalf of the practice, must ensure that a disclosure, complying with the requirements of this section and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.

Penalty:

- (3) The disclosure must be made by giving the person a notice in writing:
 - (a) setting out the services to be provided; and
 - (b) stating 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

Note. For example, the person might be a licensed conveyancer. However, this paragraph would not apply in a case where a law applying in the

jurisdiction prohibits a particular legal service from being provided by a person who is not an Australian legal practitioner.

- (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.

Note. Paragraphs relating to disclosure of benefits and commissions are not included, but are expected to be dealt with in regulations or legal profession rules.

- (4) The regulations may make provision for or with respect to the following matters:
- (a) the manner in which a 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 an incorporated legal practice.
- (5) Without limiting subsection (4), the additional matters may include the kind of services provided by the incorporated legal practice and whether those services are or are not covered by the insurance or other provisions of this Act.
- (6) 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.

1316 Effect of non-disclosure of provision of certain services [CU]

- (1) This section applies if:
- (a) section 1315 (Disclosure obligations) 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.

1317 Application of legal profession rules [CU]

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.

1318 Requirements relating to advertising [CU]

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- (1) Any restriction imposed by or under this or any other Act, the regulations or the 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 of the relevant class of Australian legal practitioners.
 - (3) Any advertisement of the kind referred to in this section is, for the purposes of 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.

1319 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices [CU]

- (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.

1320 Sharing of receipts [CU]

- (1) Nothing in this Act, the regulations or the legal profession rules prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services by the practitioner.
- (2) This section does not extend to the sharing of receipts in contravention of section 1321 (Disqualified persons), and has effect subject to section 1701 (Barristers).

1321 Disqualified persons [CU]

- (1) An incorporated legal practice is guilty of an offence if a person who is 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 of 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.

Penalty:

- (2) The failure of a legal practitioner director of an incorporated legal practice to ensure that the practice complies with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

1322 Audit of incorporated legal practice [CU]

- (1) The [appropriate authority] or the Regulator 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 the 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. Section 1309 (3) (Incorporated legal practice must have legal practitioner director) requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (2) 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.
- (3) A report of an audit:
 - (a) is to be provided to the incorporated legal practice concerned; and
 - (b) may be provided by the [appropriate authority] to the Regulator or by the Regulator to the [appropriate authority] (as the case may be); and
 - (c) may be provided by the Regulator to a corresponding authority; 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.

1323 Application of Part 15 [NC]

Part 15 (Investigatory powers) applies to an audit under this Division.

1324 Banning of incorporated legal practices [CU]

- (1) The Supreme Court may, on the application of the Regulator or the [appropriate authority], make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the Court considers appropriate if satisfied that:
 - (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 Supreme 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.

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- (3) Action may be taken against an incorporated legal practice on any of the following grounds:
- (a) that 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) that the [appropriate authority] or the Regulator 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) that the incorporated legal practice (or a related body corporate) has contravened section 1304 (Non-legal services and businesses of incorporated legal practices) or the regulations made under that section;
 - (d) that the incorporated legal practice has contravened section 1321 (Disqualified persons);
 - (e) that a person who is an officer of the incorporated legal practice and who is the subject of an order under:
 - (i) section 1325 (Disqualification from managing incorporated legal practice) or under provisions of a corresponding law that correspond to that section; or
 - (ii) section 1350 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) 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 Regulator or [appropriate authority] that applied for the order 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 Regulator may determine 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 Regulator or [appropriate authority] from instead applying for an order under this section.
- (6) A corporation that provides legal services in contravention of a disqualification under this section is guilty of an offence.

Penalty:

- (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.

1325 Disqualification from managing incorporated legal practice [CU]

- (1) The Supreme Court may, on the application of the Regulator or the [appropriate authority], 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 that:
 - (a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the *Corporations Act 2001* of the Commonwealth from managing corporations; and
 - (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of 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 2001* of the Commonwealth.
- (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.

1326 Disclosure of information to Australian Securities and Investments Commission [CU]

- (1) This section applies if the [appropriate authority] or Regulator, 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 [appropriate authority] or Regulator 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.

1327 External administration proceedings under Corporations Act 2001 (Cth) [CU]

- (1) This section applies to proceedings in any court under Chapter 5 (External administration) of the *Corporations Act 2001* of the Commonwealth:
 - (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 [appropriate authority] and the Regulator are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in 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 2001* of the Commonwealth.
- (5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

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

1328 External administration proceedings under other legislation [CU]

- (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 1327 (External administration proceedings under Corporations Act 2001 (Cth)) applies.
- (2) The [appropriate authority] and the Regulator are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in 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.

1329 Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act 2001 (Cth) [CU]

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Part 12 receiver; and
 - (b) the appointment of a Corporations Act administrator.
- (2) The Part 12 receiver is under a duty to notify the Corporations Act administrator of the appointment of the Part 12 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) The Part 12 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 1327 (External administration proceedings under Corporations Act 2001 (Cth)) have been commenced.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Part 12 receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.

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- (5) The [appropriate authority] and the Regulator are entitled to intervene in the proceedings, unless the court determines that 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 the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.
 - (7) In this section:
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 2001* of the Commonwealth; or
 - (b) a person who is appointed to exercise powers under that Act and who is prescribed, or of a class prescribed, by the regulations for the purposes of this definition.

Part 12 receiver means a receiver appointed under Part 12.

1330 Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation [CU]

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Part 12 receiver; and
 - (b) the appointment of an external administrator.
- (2) The Part 12 receiver is under a duty to notify the external administrator of the appointment of the Part 12 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.
- (3) The Part 12 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 Supreme Court may make any orders it considers appropriate, and no liability attaches to the Part 12 receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.

(5) The [appropriate authority] and the Regulator are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(6) In this section:

external administrator means a person who is appointed to exercise powers under other legislation (whether or not of this jurisdiction) and who is prescribed, or of a class prescribed, by the regulations for the purposes of this definition.

Part 12 receiver means a receiver appointed under Part 12.

1331 Co-operation between courts [CU]

Courts of this jurisdiction may make arrangements for communicating and co-operating with other courts or tribunals in connection with the exercise of powers under this Part.

1332 Relationship of Act to constitution of incorporated legal practice [CU]

The provisions of this Act or the regulations that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.

1333 Relationship of Act to legislation establishing incorporated legal practice [CU]

- (1) This section applies to a corporation that is established by or under a law (whether or not of this jurisdiction), is an incorporated legal practice, but is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (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.

1334 Relationship of Act to Corporations legislation [CU]

- (1) The regulations may declare any provision of this Act or the regulations that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth.

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- (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 or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation; or
 - (b) a specified provision of the Corporations legislation; or
 - (c) the Corporations legislation other than a specified provision; or
 - (d) the Corporations legislation otherwise than to a specified extent.
- (3) In this section:
matter includes act, omission, body, person or thing.

1335 Undue influence [CU]

A person (whether or not an officer or an employee of an incorporated legal practice) must not cause or induce:

- (a) a legal practitioner director; or
- (b) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice;

to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as an Australian legal practitioner.

Penalty:

Division 3 Multi-disciplinary partnerships

1336 Nature of multi-disciplinary partnership [CU]

- (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.

1337 Conduct of multi-disciplinary partnerships [CU]

- (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 by the regulations, where the business of the partnership includes the provision of legal services.

Note 1. Contravention of these regulations is a ground for making a prohibition order under section 1350 (Prohibition on partnerships with certain partners who are not Australian legal practitioners).

Note 2. Each jurisdiction may impose its own prohibitions so far as they relate to the partnership providing legal services in that jurisdiction.

1338 Notice of intention to start practice in multi-disciplinary partnership [CU]

A legal practitioner partner must, before starting to provide legal services in this jurisdiction as a member of a multi-disciplinary partnership, give the [appropriate authority] written notice, in the approved form, of his or her intention to do so.

Penalty:

1339 General obligations of legal practitioner partners [CU]

- (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 that 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, the regulations and the legal profession rules; 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.

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- (3) A contravention of subsection (2) by a legal practitioner partner is capable of constituting unsatisfactory professional conduct or professional misconduct.

1340 Obligations of legal practitioner partner relating to misconduct [CU]

- (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 that 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.
- (3) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

Note. Jurisdictions may, where vicarious liability is created, consider inclusion of a provision like s 23 of the Criminal Code (Qld).

1341 Actions of partner who is not an Australian legal practitioner [CU]

A partner of a multi-disciplinary partnership who is not an Australian legal practitioner does not contravene a provision of this Act, the regulations or the legal profession rules 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;

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- (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.

1342 Obligations and privileges of practitioners who are partners or employees [CU]

- (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.

1343 Conflicts of interest [CU]

- (1) For the purposes of 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. Under section 1342 (Obligations and privileges of practitioners who are partners or employees), an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership must comply with the same professional obligations as other practitioners.

1344 Disclosure obligations [CU]

- (1) This section applies if a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services.
- (2) Each legal practitioner partner of the multi-disciplinary partnership, and any employee of the partnership who is an Australian legal practitioner and who provides the services on behalf of the partnership, must ensure that a disclosure, complying with the requirements of this section and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.

Penalty:

- (3) The disclosure must be made by giving the person a notice in writing:
 - (a) setting out the services to be provided; and
 - (b) stating 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

Note. For example, the person might be a licensed conveyancer. However, this paragraph would not apply in a case where a law applying in the jurisdiction prohibits a particular legal service from being provided by a person who is not an Australian legal practitioner.

- (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.

Note. Paragraphs relating to disclosure of benefits and commissions have been omitted, but are expected to be dealt with in regulations or legal profession rules.

- (4) The regulations may make provision for or with respect to the following matters:
 - (a) the manner 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.

- (5) Without limiting subsection (4), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether those services are or are not covered by the insurance or other provisions of this Act.
- (6) 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.

1345 Effect of non-disclosure of provision of certain services [CU]

- (1) This section applies if:
 - (a) section 1344 (Disclosure obligations) 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.

1346 Application of legal profession rules [CU]

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.

1347 Requirements relating to advertising [CU]

- (1) Any restriction imposed by or under this or any other Act, the regulations or the 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 the purposes of 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.

1348 Sharing of receipts [CU]

- (1) Nothing in this Act, the regulations or the legal profession rules prevents a legal practitioner partner, or an Australian legal practitioner who is an employee of a multi-disciplinary partnership, from sharing receipts 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 in contravention of section 1349 (Disqualified persons), and has effect subject to section 1701 (Barristers).

1349 Disqualified persons [CU]

- (1) A legal practitioner partner of a multi-disciplinary partnership must not knowingly:
- (a) be a partner of a disqualified person in the multi-disciplinary partnership; or
 - (b) share with a disqualified person the receipts of the provision of legal services by the multi-disciplinary partnership; or
 - (c) employ or pay a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.
- (2) A contravention of subsection (1) by a legal practitioner partner of a multi-disciplinary partnership is capable of constituting unsatisfactory professional conduct or professional misconduct.

1350 Prohibition on partnerships with certain partners who are not Australian legal practitioners [CU]

- (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 Regulator or [appropriate authority], 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 that the person is not a fit and proper person to be a partner; or
 - (b) the Court is satisfied that 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, if the Court is satisfied that 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 Supreme Court on application by the Regulator or [appropriate authority] 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.

1351 Undue influence [CU]

A person (whether or not a partner, or employee, of a multi-disciplinary partnership) must not cause or induce:

- (a) a legal practitioner partner; or
- (b) an employee of a multi-disciplinary partnership who provides legal services and who is an Australian legal practitioner;

to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as an Australian legal practitioner.

Penalty:

Division 4 Miscellaneous

1352 Obligations of individual practitioners not affected [CU]

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 or any other Act, the regulations or the legal profession rules in his or her capacity as an Australian legal practitioner.

1353 Regulations [CU]

- (1) The regulations may make provision for or with respect to 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 14 Legal practice: foreign lawyers

Introductory note. This Part contains:

- Provisions that are core provisions and require textual uniformity—marked **CU** (“Core Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

It is important that jurisdictions have provisions corresponding to Divisions 6–11, but they would be subject to local variations (eg show cause procedures for insolvency may not be adopted in some jurisdictions; and section 1452 (Supreme Court orders about conditions) may vary among jurisdictions).

Division 1 Preliminary

1401 Purpose [NC]

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.

1402 Definitions [CU]

In this Part:

Australia includes the external Territories.

Australian law means law of the Commonwealth or of a jurisdiction.

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

domestic registration authority means [each jurisdiction to specify].

Note. In the interests of simplicity, this draft proceeds on the basis that there is only one domestic registration authority for this jurisdiction. If there is more than one such authority, there may need to be a definition of “appropriate domestic registration authority”.

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 foreign country.

local registration certificate means a registration certificate given or issued under this Part.

overseas-registered foreign lawyer means a natural person 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 that country.

Note. The terms *Australian-registered foreign lawyer*, *foreign country*, *interstate-registered foreign lawyer* and *locally registered foreign lawyer* are defined in section 104 (Definitions).

1403 This Part does not apply to Australian legal practitioners [CU]

- (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.

Note. Jurisdictions that provide exemptions for government lawyers with regard to practising certificates may need to consider whether foreign lawyers engaged by them should be registered.

Division 2 Practice of foreign law

1404 Requirement for registration [CU]

- (1) A person must not practise foreign law in this jurisdiction unless the person is:
 - (a) an Australian-registered foreign lawyer; or
 - (b) an Australian legal practitioner.Penalty:

- (2) However, a person does not contravene subsection (1) if the person is a foreign lawyer:
- (a) who:
 - (i) practises foreign law in this jurisdiction for one or more continuous periods that do not each exceed 12 months; or
 - (ii) is subject to a restriction imposed under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and
 - (b) who:
 - (i) does not maintain an office for the purpose of practising foreign law in this jurisdiction; or
 - (ii) does not have a commercial legal presence in this jurisdiction.

1405 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction [CU]

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

1406 Scope of practice [CU]

- (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 under 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 under the regulations.

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- (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.

1407 Form of practice [CU]

- (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)–(e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

1408 Application of Australian professional ethical and practice standards [CU]

- (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, constitute professional misconduct or unsatisfactory professional conduct.

- (2) Part 11 (Complaints and discipline) 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 Part 11 applies as if the person were an Australian-registered foreign lawyer);
- and so applies as if references in Part 11 to an Australian legal practitioner were references to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Part 11 for the purposes of this section.
- (4) Without limiting the matters that may be taken into account in determining 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 wilfully or without reasonable excuse.
- (5) Without limiting any other provision of this section or the orders that may be made under Part 11 as applied by this section, the following orders may be made under that Part 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.

1409 Designation [CU]

- (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;

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- (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 domestic registration authority 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 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.

1410 Letterhead and other identifying documents [CU]

- (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 1409 (Designation).
- (4) In this section:
public document includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

1411 Advertising [CU]

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the domestic registration authority or by law on the practice of law by an Australian legal practitioner that are relevant to the practice of law 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.

1412 Foreign lawyer employing Australian legal practitioner [CU]

- (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.

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- (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.

1413 Trust money and trust accounts [CU]

- (1) The provisions of Part 7 (Trust money and trust accounts), and any other provisions of this Act or [any legal profession rule] 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 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 the purposes of this section.

1414 Professional Indemnity insurance [CU]

An Australian-registered foreign lawyer who practises foreign law in this jurisdiction must have professional indemnity insurance that conforms with the requirements (if any) prescribed by the regulations.

1415 Fidelity cover [CU]

The regulations may provide that provisions of Part 8 (Fidelity cover) apply to prescribed classes of Australian-registered foreign lawyers and so apply with any modifications specified in the regulations.

Division 3 Local registration of foreign lawyers generally

1416 Local registration of foreign lawyers [CU]

Overseas-registered foreign lawyers may be registered as foreign lawyers under this Act.

1417 Duration of registration [CU]

- (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 determined by the following 1 July, the registration:
 - (a) continues in force on and from that 1 July until the domestic registration authority 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.

1418 Locally registered foreign lawyer is not officer of Supreme Court [CU]

A locally registered foreign lawyer is not an officer of the Supreme Court.

Division 4 Applications for grant or renewal of local registration

1419 Application for grant or renewal of registration [CU]

An overseas-registered foreign lawyer may apply to the domestic registration authority for the grant or renewal of registration as a foreign lawyer under this Act.

1420 Manner of application [CU]

- (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 [required fees].
- (2) Different fees may be set according to different factors determined by the domestic registration authority.
- (3) The fees are not to be greater than the maximum fees for a local practising certificate.
- (4) The domestic registration authority may also require the applicant to pay any reasonable costs and expenses incurred by the authority in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about the applicant's entitlement to be registered.
- (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 applicant's eligibility 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.

1421 Requirements regarding applications for grant or renewal of registration [CU]

- (1) An application for grant of registration must state the applicant's educational and professional qualifications.
- (2) An application for grant or renewal of registration must:
 - (a) state 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) state that the applicant is not an Australian legal practitioner; and
- (c) state 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 his or her capacity as:
 - (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian lawyer; and
- (d) state that the applicant is not a party in any pending criminal or civil proceedings in Australia or a foreign country that is likely to result in disciplinary action being taken against the applicant; and
- (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and
- (f) state that the applicant is:
 - (i) not otherwise personally prohibited from carrying on the practice of law in any place or bound by any undertaking not to carry out the practice of law in any place; and
 - (ii) not subject to any special conditions in carrying on any practice of law 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 the practice of law 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 domestic registration authority 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) 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 domestic registration authority.

- (3) The application must (if the domestic registration authority so requires) be accompanied by an original instrument, or a copy of an original instrument, from each 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 practise law 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 domestic registration authority so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The domestic registration authority may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the authority.
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the domestic registration authority.

Division 5 Grant or renewal of registration

1422 Grant or renewal of registration [CU]

- (1) The domestic registration authority 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) If the domestic registration authority grants or renews registration, the authority must, as soon as practicable, give the applicant:
 - (a) a registration certificate or a notice of renewal; and

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- (b) an information notice, if the authority imposes a condition on the registration (unless the applicant agrees to the condition).
 - (3) A notice of renewal may be in the form of a new registration certificate or any other form the authority considers appropriate.
Note. Time specifications for decision making and processes may differ among jurisdictions.

1423 Requirement to grant or renew registration if criteria satisfied [CU]

- (1) The domestic registration authority must grant an application for registration as a foreign lawyer if the domestic registration authority:
 - (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 the practice of law 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 carrying on the practice of law in any of the foreign countries; or
 - (ii) any undertakings concerning the practice of law in any of the foreign countries;that would make it inappropriate to register the person; and
 - (d) is satisfied the applicant demonstrates an intention:
 - (i) to practise foreign law in this jurisdiction; and
 - (ii) to establish an office or a commercial legal presence in this jurisdiction within a reasonable period after grant of registration for practice;unless the authority refuses the application under this Part.
- (2) The domestic registration authority must grant an application for renewal of a person's registration, unless the authority 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.

1424 Refusal to grant or renew registration [CU]

- (1) The domestic registration authority may refuse to consider an application if it is not made in accordance with this Act or the regulations.
- (2) The domestic registration authority 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.
- (3) The domestic registration authority 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 domestic registration authority may refuse to grant registration if the authority is satisfied that 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 domestic registration authority may refuse to renew registration if the authority is satisfied that the applicant is not a fit and proper person to continue to be registered after considering:
 - (a) the nature of any offence 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 domestic registration authority; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.
- (6) The domestic registration authority may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the domestic registration authority refuses to grant or renew registration, the authority must, as soon as practicable, give the applicant an information notice.
- (8) Nothing in this section affects the operation of Division 7 (Special powers in relation to local registration—show cause events).

Division 6 Amendment, suspension or cancellation of local registration

1425 Application of this Division [CNU]

This Division does not apply in relation to matters referred to in Division 7 (Special powers in relation to local registration—show cause events).

1426 Grounds for amending, suspending or cancelling registration [CNU]

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 otherwise contravened any of the requirements mentioned in section 1421 (Requirements regarding applications for grant or renewal of registration);

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- (c) the Disciplinary Tribunal or a corresponding disciplinary body has ordered the amendment, suspension or cancellation of the person's registration;
 - (d) a foreign registration authority has suspended or cancelled the person's registration in a foreign country because of criminal, civil or disciplinary proceedings against the person;
 - (e) the person's registration in a foreign country has lapsed;
 - (f) the person has not established an office to practise foreign law or a commercial legal presence in this jurisdiction within the period prescribed by the regulations after being granted registration;
 - (g) the person, having ceased to have an office or commercial legal presence in this jurisdiction after being granted registration, has not had an office or a commercial legal presence in this jurisdiction for a period prescribed by the regulations;
 - (h) the person has become an insolvent under administration;
 - (i) another ground the domestic registration authority considers sufficient.

1427 Amending, suspending or cancelling registration [CNU]

- (1) If the domestic registration authority considers reasonable grounds exist to amend, suspend or cancel a person's registration by it as a foreign lawyer (the *action*), the authority must give the person a notice (the *show cause notice*) that:
 - (a) states the action proposed and:
 - (i) if the proposed action is to amend the registration in any way—states the proposed amendment; and
 - (ii) if the proposed action is to suspend the registration—states the proposed suspension period; and
 - (b) states the grounds for proposing to take the action; and
 - (c) outlines the facts and circumstances that form the basis for the authority's belief; and
 - (d) invites the person to make written representations to the authority, within a specified time not less 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 authority still believes grounds exist to take the action, the authority may:

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- (a) if the show cause notice stated the action proposed was to amend the registration—amend the registration in the way specified or in another way the authority considers appropriate in the light of the representations; or
 - (b) if the show cause notice stated 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 show cause notice stated the action proposed was to cancel the registration:
 - (i) cancel the registration; or
 - (ii) suspend the registration for a period.
- (3) The authority may, at its discretion, consider representations made after the specified time.
 - (4) The authority must give the person notice of the authority's decision.
 - (5) If the authority amends, suspends or cancels the registration, the authority must give the person an information notice.

1428 Operation of amendment, suspension or cancellation of registration [CNU]

- (1) **Application of section**

This section applies if a decision is made to amend, suspend or cancel a person's registration under section 1427 (Amending, suspending or cancelling registration).
- (2) **Action to take effect on giving of notice or specified date**

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) **Grant of stay**

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

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- (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
 - (4) **Quashing of conviction**
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.

1429 Other ways of amending or cancelling registration [CNU]

- (1) This section applies if:
 - (a) a locally registered foreign lawyer requests the domestic registration authority to amend or cancel the registration and the authority proposes to give effect to the request; or
 - (b) the domestic registration authority proposes to amend a locally registered foreign lawyer's registration only:
 - (i) for a formal or clerical reason; or
 - (ii) in another way that does not adversely affect the lawyer's interests.
- (2) The domestic registration authority may amend or cancel the registration as referred to in subsection (1) by written notice given to the lawyer, and section 1427 (Amending, suspending or cancelling registration) does not apply in that case.

1430 Relationship of this Division with Part 11 [CNU]

Nothing in this Division prevents the domestic registration authority from making a complaint under Part 11 (Complaints and discipline) about a matter to which this Division relates.

Division 7 Special powers in relation to local registration—show cause events

Note. This is subject to local variations.

1431 Applicant for local registration—show cause event [CNU]

- (1) This section applies if:

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- (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 provide to the domestic registration authority 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 domestic registration authority a statement under this section, or a notice and statement under section 1432 (Locally registered foreign lawyer—show cause event), explaining why, despite the show cause event, the person considers himself or herself to be a suitable person fit and proper person to be a locally registered foreign lawyer.
 - (4) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

1432 Locally registered foreign lawyer—show cause event [CNU]

- (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 domestic registration authority 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) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (4) If a written statement is provided after the 28 days mentioned in subsection (2) (b), the domestic registration authority may accept the statement and take it into consideration.

1433 Refusal, amendment, suspension or cancellation of local registration—failure to show cause [CNU]

- (1) The domestic registration authority 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 1431 (Applicant for local registration—show cause event) or 1432 (Locally registered foreign lawyer—show cause event) to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
 - (b) has provided a written statement in accordance with section 1431 or 1432 but the authority does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this section only, a written statement accepted by the domestic registration authority under section 1432 (4) is taken to have been provided in accordance with section 1432.
- (3) The domestic registration authority must give the applicant or foreign lawyer an information notice about the decision to refuse to grant or renew, or to suspend or cancel, the certificate.

1434 Restriction on making further applications [CNU]

- (1) If the domestic registration authority determines under this Division to cancel a person's registration, the authority may also determine 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 in respect of whom a determination 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 determination.
- (3) If the domestic registration authority makes a determination under this section, the authority must, as soon as practicable, give the applicant an information notice.

1435 Relationship of this Division with Parts 11 and 15 [CNU]

- (1) The domestic registration authority has and may exercise powers under Division 6 (Investigation of complaints) of Part 11, and Part 15

(Investigatory powers), in relation to a matter under this Division, as if the matter were the subject of a complaint under Part 11.

- (2) Accordingly, the provisions of Division 6 of Part 11, and Part 15, apply in relation to a matter under this Division, and so apply with any necessary modifications.
- (3) Nothing in this Division prevents the domestic registration authority from making a complaint under Part 11 about a matter to which this Division relates.

Division 8 Further provisions relating to local registration

1436 Immediate suspension of registration [CNU]

- (1) This section applies, despite sections 1427 (Amending, suspending or cancelling registration) and section 1428 (Operation of amendment, suspension or cancellation of registration) if the domestic registration authority considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.
- (2) The authority may, by written notice given to the person, immediately suspend the registration until the earlier of the following:
 - (a) the time at which the authority informs the person of the authority's decision by notice under section 1427;
 - (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 state:
 - (a) the reasons for the suspension; and
 - (b) that the person may make written representations to the authority about the suspension; and
 - (c) that the person may appeal against the suspension to [a specified court or tribunal] within [28] days after the date of the notice.
- (4) The person may make written representations to the authority about the suspension, and the authority must consider the representations.
- (5) The authority may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.

1437 Surrender of local registration certificate and cancellation of registration [CNU]

- (1) A person registered as a foreign lawyer under this Part may surrender the local registration certificate to the domestic registration authority.
- (2) The authority may cancel the registration.

1438 Automatic cancellation of registration on grant of practising certificate [CNU]

A person's registration as a foreign lawyer under this Part is taken to be cancelled if the person becomes an Australian legal practitioner.

1439 Suspension or cancellation of registration not to affect disciplinary processes [CNU]

The suspension or cancellation of a person's registration as a foreign lawyer under this Part does not affect any disciplinary processes in respect of matters arising before the suspension or cancellation.

1440 Return of local registration certificate on amendment, suspension or cancellation of registration [CNU]

- (1) This section applies if a person's registration under this Part as a foreign lawyer is amended, suspended or cancelled.
- (2) The authority may give the person a notice requiring the person to return the certificate to the authority 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, unless the person has a reasonable excuse.

Penalty:

- (4) If the certificate is amended, the authority must return the certificate to the person as soon as practicable after amending it.

Division 9 Conditions on registration

1441 Conditions generally [CNU]

Registration as a foreign lawyer under this Part is subject to:

- (a) any conditions imposed by the domestic registration authority; 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 Part 11 (Complaints and discipline) or under provisions of a corresponding law that correspond to Part 11.

1442 Conditions imposed by domestic registration authority [CNU]

- (1) The domestic registration authority 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 respect of which a condition could be imposed on a local practising certificate;
 - (b) a matter agreed to by the foreign lawyer.
- (4) The authority 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 domestic registration authority may vary or revoke conditions imposed by it under this section.

1443 Imposition or variation of conditions pending criminal proceedings [NC]

Note. Jurisdictions that include section 428 (Imposition or variation of conditions pending criminal proceedings) may wish to consider including a similar section in this Division.

1444 Statutory condition regarding notification of offence [CNU]

- (1) It is a statutory condition of registration as a foreign lawyer that the lawyer:
 - (a) must notify the domestic registration authority 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 of the event and by a written notice.
- (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be sent or delivered.
- (3) This section does not apply to an offence to which Division 7 (Special powers in relation to local registration—show cause events) applies.

1445 Conditions imposed by legal profession rules [CNU]

The legal profession rules 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.

1446 Compliance with conditions [CNU]

A locally registered foreign lawyer must not contravene a condition to which the registration is subject.

Penalty:

Division 10 Interstate-registered foreign lawyers

1447 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction [CNU]

- (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.

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- (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 [appropriate authority] under section 1448 (Additional conditions on practice of interstate-registered foreign lawyers); and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that section; and
- Note.** Inclusion of subparagraph (ii) is a matter for each jurisdiction.
- (b) is, to the greatest practicable extent and with all necessary changes:
 - (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 domestic registration authority, 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 manner not authorised by this Act or in contravention of any condition referred to in this section.
- (5) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

1448 Additional conditions on practice of interstate-registered foreign lawyers [CNU]

- (1) The [appropriate authority] 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.

Note. Inclusion of this subsection is a matter for each jurisdiction.

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- (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 about the decision to impose a condition.

Division 11 Miscellaneous

1449 Consideration and investigation of applicants and holders [CNU]

- (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 domestic registration authority may:
 - (a) ask an applicant for any further documents or information the authority requires; or
 - (b) make any investigations or inquiries it considers appropriate.
- (2) A failure:
 - (a) to produce documents or information under this section; or
 - (b) to co-operate with the domestic registration authority in its investigations or inquiries under this section when requested to do so;

is a ground for making an adverse decision in relation to the action being considered by the authority.

1450 Register of locally registered foreign lawyers [CNU]

- (1) The domestic registration authority must keep a register of the names of locally registered foreign lawyers.
- (2) The register must:
 - (a) state 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 authority decides.
- (4) The register must be available for inspection, without charge, at the authority's office during normal business hours.

1451 Publication of information about locally registered foreign lawyers [CNU]

The domestic registration authority 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.

1452 Supreme Court orders about conditions [CNU]

- (1) The domestic registration authority may apply to the Supreme Court for an order that an Australian-registered foreign lawyer not contravene a condition imposed under this Part.
- (2) The Supreme Court may make any order it considers appropriate on the application.

1453 Exemption by domestic registration authority [CNU]

- (1) The domestic registration authority may exempt an Australian-registered foreign lawyer or class of Australian-registered foreign lawyers from compliance with a specified provision of this Act or the regulations, or from compliance with a specified rule or part of a rule that would otherwise apply to the foreign lawyer or class of foreign lawyers.
- (2) An exemption may be granted unconditionally or subject to conditions specified in writing.
- (3) The domestic registration authority may revoke or vary any conditions imposed under this section or impose new conditions.

1454 Membership of professional association [CNU]

An Australian-registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

1455 Refund of fees [NC]

- (1) The regulations may provide for the refund of a portion of a fee paid in respect of 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 is to be made; and
 - (b) the amount of the refund or the manner in which the amount of the refund is to be determined.

1456 Appeals or reviews [CNU]

Note. Local provisions to be inserted.

1457 Savings and transitional provisions [CNU]

Note. Local provisions to be inserted.

Part 15 Investigatory powers

Introductory note. This Part contains provisions that are not core provisions—marked **NC** (“Not Core”).

Division 1 Preliminary

1501 Purpose of Part [NC]

The purpose of this Part is to provide powers that are exercisable in connection with:

- (a) trust account investigations—the investigation of the affairs of law practices under Subdivision 1 of Division 3 of Part 7 (Trust money and trust accounts); and
- (b) trust account examinations—the external examination of the trust records of law practices under Subdivision 2 of Division 3 of Part 7; and
- (c) complaint investigations—the investigation of complaints under Part 11 (Complaints and discipline); and
- (d) ILP compliance audits—the conduct of audits under Division 2 (Incorporated legal practices) of Part 13 in relation to incorporated legal practices.

1502 Definitions [NC]

In this Part:

complaint investigation—see section 1501 (c).

ILP compliance audit—see section 1501 (d).

investigator means:

- (a) an investigator under Subdivision 1 of Division 3 of Part 7; or
- (b) an external examiner under Subdivision 2 of Division 3 of Part 7; or
- (c) an investigator under Part 11; or
- (d) in relation to an audit under Division 2 of Part 13—the [appropriate authority] or a person authorised by the [appropriate authority] to in connection with the audit.

trust account examination—see section 1501 (b).

trust account investigation—see section 1501 (a).

Division 2 Requirements relating to documents, information and other assistance

1503 Application of Division [NC]

This Division applies to:

- (a) trust account investigations; and
- (b) trust account examinations; and
- (c) complaint investigations; and
- (d) ILP compliance audits.

1504 Requirements that may be imposed for investigations, examinations and audits under Parts 7 and 13 [NC]

- (1) For the purpose of 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 his or her 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) having control of documents relating to the affairs of the practice to give the investigator:
 - (a) access to the documents relating to the practice's affairs the investigator reasonably requires; and
 - (b) information relating to the practice's affairs the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under this section must comply with the requirement.

Penalty:

1505 Requirements that may be imposed for investigations under Part 11 [NC]

- (1) For the purpose of 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);

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- (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 co-operate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, the investigator may, on production of evidence of his or her appointment, require an associate or former associate of the lawyer or any other person (including, for example, an ADI, auditor or liquidator but not including the lawyer) having control of documents relating to the affairs of the lawyer to give the investigator:
- (a) access to the documents relating to the lawyer's affairs the investigator reasonably requires; and
 - (b) information relating to the lawyer's affairs 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.
- Penalty:
- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.

1506 Provisions relating to requirements under this Division [NC]

- (1) This section applies to a requirement imposed on a person under this Division.
 - (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on:
 - (a) the ground that the giving of the information or access to information may tend to incriminate the person; or
 - (b) the ground that a legal practitioner has a lien over a particular document or class of documents.
- Note.** Section 1707 (Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements) contains a similar provision in respect of legal professional privilege and duties of confidence. That section is not a core provision.
- (3) If, before complying with the requirement, the person objects to the investigator on the ground that giving it may tend to incriminate the

- person, the information is inadmissible in evidence in any proceeding against the person 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.
- (4) The investigator 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 authority thinks necessary for the purposes of the investigation in relation to which it was produced.
- (5) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (6) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) The [appropriate authority] may suspend a local practitioner's local practising certificate while a failure by the practitioner to comply with the requirement continues.

Division 3 Entry and search of premises

1507 Application of Division [NC]

This Division applies to:

- (a) trust account investigations; and
- (b) complaint investigations;

but does not apply to:

- (c) trust account examinations; or
- (d) ILP compliance audits.

1508 Investigator's power to enter premises [NC]

- (1) For the purpose of carrying out an investigation, an investigator may enter and remain on premises to exercise the powers in section 1510 (Powers of investigator while on premises).
- (2) In the case of 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; or
 - (ii) the investigator may enter the premises under the authority of a search warrant issued under this Division; or
 - (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) In the case of 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; or
 - (b) the investigator may enter the premises under the authority of a search warrant issued under this Division.
- (4) The investigator must not exercise the power in subsection (2) (b) (iii) unless the [appropriate authority] in the particular case has authorised the investigator (orally or in writing) to do so.
- (5) The investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce evidence of his or her appointment.

Penalty:

1509 Search warrants [NC]

- (1) For the purpose of carrying out an investigation, an investigator may apply to [issuing authority] for a search warrant.
- (2) The [issuing authority] may, on application made under this section, issue a search warrant to an investigator if:
 - (a) an investigator satisfies the [issuing authority] that there are reasonable grounds to suspect that relevant material is located at the premises; and
 - (b) the [issuing authority] is satisfied that there are reasonable grounds for issuing the warrant.

Note. Subsection (2) may vary from jurisdiction to jurisdiction to conform to local standards and requirements.

- (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 1510 (Powers of investigator while on premises).
- (4) A search warrant may be executed by the investigator to whom it is issued or by any other investigator.
- (5) An investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.

Penalty:

Note. Jurisdictions may adopt differing approaches regarding searches. Additional or supplementary local provisions may also be needed.

1510 Powers of investigator while on premises [NC]

- (1) An investigator who enters premises under this Division 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 for the purpose of copying any relevant material;
 - (h) with respect 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;
 - (ii) download or otherwise obtain any documents or information;
 - (iii) make copies of any documents or information held in it;
 - (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 his or her 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 purposes of the investigation.
- (2) Any documents, information or anything else obtained by the investigator may be used for the purposes of the investigation.

- (3) If an investigator takes anything away from the premises, the investigator must issue a receipt in a form approved by the [appropriate authority] and:
 - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
 - (b) otherwise, leave it on 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.

Division 4 Additional powers in relation to incorporated legal practices

1511 Application of Division [NC]

- (1) This Division applies to:
 - (a) trust account investigations; and
 - (b) complaint investigations; and
 - (c) ILP compliance audits;conducted in relation to incorporated legal practices.
- (2) The provisions of this Division are additional to the other provisions of this Part.

1512 Investigative powers relating to investigations and audits [NC]

An investigator conducting an investigation or audit to which this Division applies may exercise the powers set out in this Division.

1513 Examination of persons [NC]

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth applies 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 [appropriate authority] or the investigator;
 - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 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 [appropriate authority].
- (3) Sections 22 (2) and (3), 25 (2) and (2A), 26 and 27 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth do not apply in respect of the exercise of the powers conferred by this section.

1514 Inspection of books [NC]

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30 (1), 34 and 37–39 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (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 [appropriate authority] or the 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 [appropriate authority] or a person authorised

by the [appropriate authority] who is an officer or employee of the [appropriate authority];

- (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 Division applies.

1515 Power to hold hearings [NC]

- (1) The [appropriate authority] or investigator may hold hearings for the purposes of an investigation, examination or audit to which this Division 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* of the Commonwealth apply to a hearing, with the following modifications (and any other necessary modifications):
 - (a) a reference to Australian Securities and Investments Commission (however expressed) is taken to be a reference to the [appropriate authority] or the investigator;
 - (b) a reference to a member or staff member is taken to be a reference to the [appropriate authority] or a person authorised by the [appropriate authority] who is an officer or employee of the [appropriate authority];
 - (c) a reference to a prescribed form is taken to be a reference to a form approved by the [appropriate authority].

1516 Failure to comply with investigation [NC]

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 [appropriate authority] or the investigator, or a person authorised by the [appropriate authority] or the investigator, in the exercise of powers conferred by this Division;
- (b) a contravention by an Australian legal practitioner of any condition imposed by the [appropriate authority] or the investigator in the exercise of powers conferred by this Division;
- (c) a failure by a legal practitioner director of an incorporated legal practice to ensure that 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 [appropriate authority] or the investigator, or a person authorised by the [appropriate authority] or the investigator, in the exercise of powers conferred by this Division;
- (ii) any condition imposed by the [appropriate authority] or the investigator in the exercise of powers conferred by this Division.

Division 5 Miscellaneous

1517 Obstruction of investigator [NC]

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a power under this Act.

Penalty:

- (2) A person requested to do anything under section 1510 (1) (j) must not, with reasonable excuse, fail to comply with the request.

Penalty:

- (3) In this section:

obstruct includes hinder, delay, resist and attempt to obstruct.

1518 Obligation of Australian lawyers [NC]

- (1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this Part, 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 [appropriate authority] in the exercise of:

- (a) any power or function under this Part; or
- (b) any power or function under a provision of a corresponding law that corresponds to this Part.

- (3) An Australian lawyer who is subject to:

- (a) a requirement under section 1505 (Requirements that may be imposed for investigations under Part 11); or

- (b) a requirement under provisions of a corresponding law that correspond to that section;

must not, without reasonable excuse, fail to comply with the requirement.

- (4) A contravention of subsection (2) or (3) is capable of constituting unsatisfactory professional conduct or professional misconduct.

1519 Permitted disclosure of confidential information [NC]

- (1) The [appropriate authority] 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 [appropriate authority] or any other body regulating legal practitioners in any jurisdiction;
- (c) any officer of or Australian legal practitioner instructed by:
 - (i) the [appropriate authority] 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 member of the police force if the [appropriate authority] 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 respect of 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 [appropriate authority] or a member of the [appropriate authority]; or
 - (b) an investigator; or
 - (c) a person acting at the direction of any person or entity referred to in this definition.

Part 16 Legal profession rules

Introductory note 1. This Part contains:

- Provisions that are core provisions but do not require textual uniformity—marked **CNU** (“Core Not Uniform”).
- Provisions that are not core provisions—marked **NC** (“Not Core”).

Core provisions include:

- Power to make rules for Australian legal practitioners, foreign lawyers, incorporated legal practices and multi-disciplinary partnerships.
- The rules will be binding and enforceable by legislation.
- The rules need to be publicly available.
- There should be public consultation during the rule-making process.

Introductory note 2. Other provisions may also be required in each jurisdiction, including any requirements about publication, disallowance, their status as statutory instruments. It is intended that the rule making bodies will apply core model provisions.

Division 1 Preliminary

1601 Purpose [NC]

The purpose of this Part is to promote the maintenance of high standards of professional conduct by Australian legal practitioners and locally 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

1602 Rules for Australian legal practitioners [CNU]

The [appropriate authority] may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners.

Note. Jurisdictions with different professional branches may need to deal with them separately.

1603 Rules for foreign lawyers [CNU]

The [appropriate authority] may make rules about legal practice in this jurisdiction as a locally registered foreign lawyer.

Note. Jurisdictions with different professional branches may need to deal with foreign lawyers in each branch separately.

1604 Subject-matter of legal profession rules [CNU]

- (1) Legal profession rules for Australian legal practitioners or locally registered foreign lawyers may make provision about 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.

1605 Public notice of proposed legal profession rules [CNU]

- (1) The [appropriate authority] proposing to make a legal profession rule under this Division must ensure that a notice is published [in a daily newspaper circulating in this jurisdiction]:
 - (a) explaining the object of the proposed rule; and
 - (b) advising where or how a copy of the proposed rule may be accessed, obtained or inspected; and
 - (c) inviting comments and submissions within a specified period of not less than 21 days from the date of first publication of the notice.
- (2) The authority must ensure that a copy of the proposed rule is given to the Attorney-General [or the Minister, or the [appropriate authority]] before the notice is published.
- (3) The authority must not make the rule before the end of the period specified in the notice for making comments and submissions and must ensure that any comments and submissions received within that period are appropriately considered.
- (4) However, the authority may make the rule before the end of the period specified in the notice for making comments and submissions if:
 - (a) the authority considers that the urgency of the case warrants immediate action; and

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- (b) the notice indicates that the authority is of that view and intends to act immediately.
 - (5) Subsections (1)–(4) do not apply to a proposed rule that the Attorney-General [or the Minister, or the [appropriate authority]] considers does not warrant publication because of its minor or technical nature.
Note. Subsections (2) and (5) will depend on the regulatory structure in a jurisdiction.

Division 3 Rules for incorporated legal practices and multi-disciplinary partnerships

1606 Rules [CNU]

- (1) The [appropriate authority] 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, and in particular the provision of services that are not legal services by:
 - (i) officers or employees of incorporated legal practices; or
 - (ii) partners or employees of multi-disciplinary partnerships;in circumstances where a conflict of interest relating to the provision of legal services may arise.
- (2) Without limiting subsection (1), 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 in circumstances where a conflict of interest relating to the provision of legal services may arise); or

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- (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (otherwise than in connection with the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise); or
 - (c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (otherwise than the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise); or
 - (d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (otherwise than in connection with the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise).
- (4) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

1607 Rule-making procedures [NC]

The regulations may make provision for or with respect to the making of legal profession rules under this Division.

Division 4 General

1608 Binding nature of legal profession rules [CNU]

- (1) Legal profession rules are binding on Australian legal practitioners and locally registered foreign lawyers to whom they apply.
- (2) Failure to comply with legal profession rules does not amount to a breach of this Act, but is capable of constituting unsatisfactory professional conduct or professional misconduct.

1609 Legal profession rules inconsistent with Act or regulations [CNU]

Legal profession rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

1610 Availability of rules [CNU]

The [appropriate authority] must ensure that the legal profession rules are available for public inspection on its internet site or another internet site identified on its internet site, and that amendments are incorporated as soon as possible.

Part 17 Miscellaneous

Introductory note 1. This Part contains:

- Provisions that are not core provisions—marked **NC** ("Not Core").
- A provision that is a core provision and requires textual uniformity—marked **CU** ("Core Uniform").

Introductory note 2. Other provisions may be needed in local Acts, eg protection from liability; secrecy; appeal or review.

1701 Barristers [NC]

- (1) 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 solicitor and barrister) from any or all of the following:
 - (a) engaging in legal practice:
 - (i) otherwise than as a sole practitioner;
 - (ii) in partnership with any person;
 - (iii) as the employee of any person;
 - (b) holding office as a legal practitioner director of an incorporated legal practice.
- (2) Conditions may be imposed on a local practising certificate granted to a barrister (but not a solicitor and barrister) that the barrister must not:
 - (a) engage in legal practice:
 - (i) otherwise than as a sole practitioner;
 - (ii) in partnership with any person;
 - (iii) as the employee of any person;
 - (b) hold office as a legal practitioner director of an incorporated legal practice.

1702 Liability of principals [CU]

- (1) If a law practice contravenes, whether by act or omission, any provision of this Act or the regulations 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.

1703 Associates who are disqualified or convicted persons [NC]

- (1) A local legal practitioner must not have a lay associate who the practitioner knows to be:
 - (a) a disqualified person; or
 - (b) a person who has been convicted of a serious offence;unless the associate is approved by the [appropriate authority].
- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) The [appropriate authority] may, on application, approve a lay associate for the purposes of this section.
- (4) [Provision for appeal or review of a decision to refuse an application by a person for approval under this section.]
- (5) An approval under this section may be subject to specified conditions.
- (6) A disqualified person, or a person convicted of a serious offence, must not seek to become a lay associate of a local legal practitioner unless the person first informs the practitioner of the disqualification or conviction.

Penalty:
- (7) Proceedings for an offence under subsection (6) may only be brought within 6 months after discovery of the offence by the [appropriate authority].
- (8) This section does not apply in circumstances prescribed by the regulations.
- (9) In this section:

disqualified person means a person:

 - (a) whose name has been removed from an Australian roll; or
 - (b) who is suspended from legal practice in Australia.

Note. Jurisdictions may add further classes of disqualified persons.

lay associate of a local legal practitioner has the same meaning as in section 107 (Terms relating to associates and principals of law practices), and includes:

- (a) a person (not being an Australian legal practitioner) who is a partner of the local legal practitioner in a business that includes the local legal practitioner's practice; or
- (b) a person (not being an Australian legal practitioner) who shares the receipts of the local legal practitioner's practice; or
- (c) a person who is employed or paid in connection with the local legal practitioner's practice.

1704 Injunctions [NC]

- (1) Where 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;the Supreme Court may, on the application of the [appropriate authority], grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) Where an application for an injunction under subsection (1) has been made, the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.
- (3) Where in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

- (4) The Supreme Court may discharge or vary an injunction granted under subsection (1) or (3).
- (5) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously refused or failed to do that act or thing ; and
 - (c) whether or not 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.
- (6) The Supreme Court must not require the [appropriate authority] or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (7) In this section:
this Act includes the regulations and the legal profession rules.

Note. This section is based on section 1324 of the *Corporations Act 2001*, but does not follow it identically.

1705 Disclosure of information by local regulatory authorities [NC]

- (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

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- (b) a person or body prescribed, or of a class prescribed, by the regulations.

1706 Confidentiality of personal information [CNU]

Note. Some jurisdictions may have difficulty in sharing information with another jurisdiction whose corresponding provision is not substantially in accord with this section.

- (1) A relevant person must not, except to the extent necessary:
- (a) to perform duties or exercise functions under this Act, the regulations or legal profession rules or under any other Act or regulations made under any other Act; or
 - (b) to disclose information that the relevant person is expressly authorised, permitted or required to disclose under:
 - (i) this Act, including Division 11 (Publishing disciplinary action) of Part 11 (Complaints and Discipline); or
 - (ii) the regulations or legal profession rules; or
 - (iii) any other Act or regulations made under any other Act;
- disclose to any other person, whether directly or indirectly, any personal information by reason of being a relevant person.

Penalty:

- (2) Subsection (1) does not apply to the disclosure of information:
- (a) with the prior consent in writing of the person to whom the information relates; or
 - (b) to a court or tribunal in the course of legal proceedings; or
 - (c) pursuant to an order of a court or tribunal under another Act or law; or
 - (d) to the extent reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.
- (3) Subsection (1) extends to the disclosure of information that was disclosed under a corresponding law to a local regulatory authority or a relevant person.
- (4) 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 a natural person 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.

1707 Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements [NC]

- (1) This section applies to a requirement under:
 - (a) section 721 (Reporting certain irregularities and suspected irregularities) to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
 - (b) section 1229 (Power of receiver to require documents or information) to give access to documents or information; or
 - (c) section 1506 (Provisions relating to requirements under this Division) to produce documents, provide information or otherwise assist in, or co-operate 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 legal professional privilege or any other duty of confidence.

1708 Approved forms [NC]

An authority having a power or function under this Act may approve application forms and other forms for use in connection with that power or function.

1709 Savings and transitional provisions [NC]

Note. To be included in local legislation. The provisions may be suitable for inclusion in a separate Part or in a Schedule. The provisions could include the saving of legal profession rules and deeming them to be made under the new legislation.

1710 Regulations [NC]

- (1) The [*insert regulation-making body*] may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
 - (2) The regulations:
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may impose a penalty, not exceeding [*insert maximum penalty*], for a contravention of the regulations.
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