

Legal profession—model laws project

Model Bill (Model Provisions)

2nd Edition

August 2006

Draft: legal-prof-2006-d21

This version was last updated on 6 February 2007 to make minor corrections.

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.

Decimal numbering at the Part level is to be core uniform, but not decimal numbering at the section level.

This Bill also contains references identifying the equivalent provisions in the Model Provisions prior to their renumbering (July 2006), the 1st Edition of the Model Provisions where applicable (June 2004), the Victorian Legal Profession Act 2004 (6 June 2006) and the NSW Legal Profession Act 2004 (20 June 2006).

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Chapter 1 Introduction (cf former Pt 1; Vic Pt 1.1; NSW Pt 1.1)

Part 1.1 Preliminary (cf former N/A; Vic Pt 1.1; NSW N/A)

1.1.1 Citation [CNU] (cf former 101; Vic N/A; NSW 1)

This Act may be cited as the *Legal Profession Act 200...*

1.1.2 Commencement [CNU] (cf former 102; Vic 1.1.2; NSW 2)

Note. Appropriate local provisions to be inserted.

1.1.3 Purposes [NC] (cf former 103; Vic 1.1.1; NSW 3)

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.

Part 1.2 Interpretation (cf former N/A; Vic Pt 1.2; NSW N/A)

1.2.1 Definitions [NC; except CU, where defined terms are used in CU Model Provisions; otherwise as marked] (cf former 104; Vic 1.2.1; NSW 4)

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 2.3 (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 of a practising certificate under this Act or a corresponding law; and ***admitted to the legal profession*** has a corresponding meaning.

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.

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 8.2.1 (Approved forms).

associate—see section 1.2.4 (Terms relating to associates and principals of law practices).

Australian lawyer—see section 1.2.2 (Terms relating to lawyers).

Australian legal practitioner—see section 1.2.3 (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.

client includes a person to whom or for whom legal services are provided.

compliance certificate—see section 2.3.11 (Compliance certificates).

conditions means conditions, limitations or restrictions.

contravene includes fail to comply with.

conviction—see section 1.2.8 (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.

costs assessor has the meaning given in section 3.4.2

Disciplinary Tribunal means [each jurisdiction to specify].

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

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
- (b) a person whose Australian practising certificate has been suspended or cancelled under this Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;
- (c) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice; [CNU]
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (f) a person who is the subject of an order under section 2.7.25 (Disqualification from managing incorporated legal practice) or section 2.7.50 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) or under provisions of a corresponding law that correspond to section 2.7.25 or 2.7.50.

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.

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

Fidelity Fund means the fund established under Part 3.6 (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.

grant of an interstate practising certificate includes the issue of an interstate practising certificate. [A jurisdiction may omit “interstate”.]

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

home jurisdiction—see section 1.2.5 (Home jurisdiction).

incorporated legal practice has the same meaning as in Part 2.7 (Incorporated legal practices and multi-disciplinary partnerships).

information notice—see section 1.2.7 (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 external territory); 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 or external territory) if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under Part IX of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if the debt agreement has not ended or has not been terminated; or
- (e) a person who has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) but not if the agreement has been set aside or terminated or all of the obligations that the agreement created have been discharged.

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 1.2.2 (Terms relating to lawyers).

interstate legal practitioner—see section 1.2.3 (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 1.2.4 (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 to, a law practice for the provision of legal services including disbursements but not including interest.

legal practitioner associate—see section 1.2.4 (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 2.7 (Incorporated legal practices and multi-disciplinary partnerships).

legal practitioner partner, in relation to a multi-disciplinary partnership, has the meaning given in Part 2.7 (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 1.2.2 (Terms relating to lawyers).

local legal practitioner—see section 1.2.3 (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 2.7 (Incorporated legal practices and multi-disciplinary partnerships).

practical legal training means:

- (a) legal training by participation in course work; or
- (b) supervised legal training, whether involving articles of clerkship or otherwise;

or a combination of both.

principal—see section 1.2.4 (Terms relating to associates and principals of law practices).

professional misconduct—see section 4.2.2 (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 bankrupt or being served with notice of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth; or
- (b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit; or

- (d) 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 1.2.6 (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 has the meaning given in Part 3.3.

trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, but does not include trust money or money referred to in section 3.3.3.

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

unsatisfactory professional conduct—see section 4.2.1 (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.

1.2.2 Terms relating to lawyers [CU] (cf former 105; Vic 1.2.2; NSW 5)

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.

1.2.3 Terms relating to legal practitioners [CU] (cf former 106; Vic 1.2.3; NSW 6)

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.

1.2.4 Terms relating to associates and principals of law practices [CU] (cf former 107; Vic 1.2.4; NSW 7)

(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
 - (iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
 - (iv) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership); or
 - (v) an employee of, or consultant to, the law practice; or
- (b) an agent of the law practice who is not an Australian legal practitioner; or
- (c) an employee of the law practice who is not an Australian legal practitioner; or
- (d) an Australian-registered foreign lawyer who is a partner in the law practice; or
- (e) a person (not being an Australian legal practitioner) who is a partner in a multi-disciplinary partnership; or
- (f) [an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations].

- (2) For 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).

1.2.5 Home jurisdiction [CU] (cf former 108; Vic 1.2.5; NSW 8)

- (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.

1.2.6 Suitability matters [CNU] (cf former 109; Vic 1.2.6; NSW 9)

- (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 is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.
- (2) A matter is a suitability matter even if it happened before the commencement of this section.

1.2.7 Information notices [CNU] (cf former 110; Vic 1.2.7; NSW 10)

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.

1.2.8 References to convictions for offences [CNU] (cf former 111; Vic 1.2.8; NSW 11)

- (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.

Chapter 2 General requirements for engaging in legal practice (cf former N/A; Vic Chapter 2; NSW Chapter 2)

Part 2.1 Preliminary (cf former N/A; Vic Pt 2.1; NSW Pt 2.1)

Note. Local provisions may be inserted.

Part 2.2 Reservation of legal work and legal titles (cf former Pt 2; Vic Pt 2.2; NSW Pt 2.2)

Division 1 Preliminary (cf former N/A; Vic Pt 2.2 Div 1; NSW N/A)

2.2.1 Purposes [NC] (cf former 201; Vic 2.2.1; NSW 13)

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.

Division 2 Prohibitions (cf former N/A; Vic Pt 2.2 Div 2, Div 3, Div 4; NSW N/A)

2.2.2 Prohibition on engaging in legal practice when not entitled [CU; except NC (2) (b) (unless Part 2.7 adopted), (2) (d)–(h)] (cf former 202; Vic 2.2.2; NSW 14)

- (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 2.7 (Incorporated legal practices and multi-disciplinary partnerships);
 - (c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 2.8 (Legal practice by foreign lawyers);
 - (d) conveyancing work carried out in accordance with a licence in force under the [Conveyancers Licensing Act];
 - (e) work performed by a land agent in respect of instruments he or she is entitled to draw, fill up or prepare, and to charge for, under the [Land Agents Act];
 - (f) the drawing of instruments by an officer or employee in the service of the Crown (including the Public Service) in the course of his or her duty;
 - (g) work performed by the Public Trustee or a trustee company in the course of preparing a will or carrying out any other activities involving the administration of trusts, the estates of living or deceased persons, or the affairs of living persons;
 - (h) 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) 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).
 - (b) Completing a contract as a real estate agent - eg section 315 of the *Legal Practice Act 1996* (Vic).
 - (c) Legal practice engaged in by a complying community legal centre - the NSW Act contains a definition of "complying legal centre", which refers to section 240 of that Act.
- (3) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (1).

- (4) 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).
- (5) 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).

2.2.3 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled [CU] (cf former 203; Vic 2.2.3; NSW 15)

- (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 2.2.2 (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.

2.2.4 Presumptions about taking or using name, title or description specified in regulations [NC] (cf former 204; Vic 2.2.4; NSW 16)

- (1) This section applies to the following names, titles and descriptions:
legal practitioner, barrister, solicitor, attorney, counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel, His Majesty's Counsel, Senior Counsel
- (2) The regulations may specify the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use a name, title or description to which this section applies.
- (3) For the purposes of section 2.2.3 (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 to which this section applies by a person who is not entitled to take or use that name, title or description gives rise to a rebuttable presumption that the person represented that they are entitled to engage in legal practice.
- (4) For the purposes of section 2.2.3 (2), the taking or using of a name, title or description to which this section applies by a person in relation to a body corporate, of which the person is a director, officer, employee or agent, gives rise to a rebuttable presumption 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.

2.2.5 Associates who are disqualified or convicted persons [NC] (cf former 1702; 1st Ed. 1703; Vic 2.2.7; NSW 17)

- (1) A law practice must not have a lay associate whom any principal or other legal practitioner associate of the practice knows to be:
 - (a) a disqualified person; or
 - (b) a person who has been convicted of a serious offence;unless the lay associate is approved by the [appropriate authority] under subsection (2).
- (2) The [appropriate authority] may, on application, approve a lay associate for the purposes of this section.
- (3) [Provision for appeal or review of a decision to refuse an application by a person for approval under this section.]

- (4) An approval under this section may be subject to specified conditions.
- (5) A disqualified person, or a person convicted of a serious offence, must not seek to become a lay associate of a law practice unless the person first informs the law practice of the disqualification or conviction.

Penalty:

- (6) Proceedings for an offence under subsection (5) may only be brought within 6 months after discovery of the offence by the law practice.
- (7) This section does not apply in circumstances prescribed by the regulations.
- (8) In this section:

lay associate of a law practice has the same meaning as in section 1.2.4 (Terms relating to associates and principals of law practices), and includes a consultant to the law practice (however described) who:

- (a) is not an Australian legal practitioner; and
- (b) provides legal or related services to the law practice, other than services of a kind prescribed by the regulations.

Note. Jurisdictions may wish to consider whether there are or need to be provisions dealing with offences committed by law practices that are partnerships.

Division 3 General (cf former N/A; Vic Pt 2.2 Div 5; NSW N/A)

2.2.6 Professional discipline [CU] (cf former 205; Vic 2.2.12; NSW 21)

- (1) A contravention of this Part by an Australian lawyer who is not an Australian legal practitioner is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (2) Nothing in this Part affects any liability that a person who is an Australian lawyer but not an Australian legal practitioner may have under Chapter 4 (Complaints and discipline), and the person may be punished for an offence under this Part as well as being dealt with under Chapter 4 in relation to the same matter.

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

Part 2.3 Admission of local lawyers (cf former Pt 3; Vic Pt 2.3; NSW Pt 2.3)

Introductory note. 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 2.4 of the Model Provisions.

Division 1 Preliminary (cf former Pt 3 Div 1; Vic Pt 2.3 Div 1; NSW Pt 2.3 Div 1)

2.3.1 Purposes [NC] (cf former 301; Vic 2.3.1; NSW 22)

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.

2.3.2 Definitions [NC] (cf former 302; Vic N/A; NSW 23)

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 Eligibility and suitability for admission (cf former Pt 3 Div 3; Vic Pt 2.3 Div 2; NSW Pt 2.3 Div 2)

2.3.3 Eligibility for admission [CNU] (cf former 307; Vic 2.3.2; NSW 24)

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.

Note. Each jurisdiction has agreed to request its admission board or equivalent authority to make or recommend rules along the lines of rules 8 and 9 of the Queensland admission rules in order to address the issue of academic qualifications attained and training requirements completed in a foreign country.

- (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).

2.3.4 Suitability for admission [CNU (1); NC (2)] (cf former 308; Vic 2.3.3; NSW 25)

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 1.2):

- (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.

2.3.5 Early consideration of suitability [NC] (cf former 309; Vic N/A; NSW 26, 27, 28, 29)

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 3 Admission to the legal profession (cf former Pt 3 Div 2; Vic Pt 2.3 Div 3; NSW Pt 2.3 Div 3)

2.3.6 Admission [CNU] (cf former 303; Vic 2.3.4, 2.3.6; NSW 31)

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

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

2.3.7 Conditions [NC] (cf former 304; Vic N/A; NSW N/A)

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.

2.3.8 Roll of persons admitted to the legal profession [NC] (cf former 305; Vic 2.3.7, 2.3.8; NSW 32)

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 a provision that might be adopted.

2.3.9 Local lawyer is officer of Supreme Court [CNU] (cf former 306; Vic 2.3.9; NSW 33)

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:

- (1) A person becomes an officer of the Supreme Court on being admitted to the legal profession under this Act.
- (2) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

Division 4 Powers and functions of certifying body (cf former Pt 3 Div 4; Vic Pt 2.3 Div 4; NSW Pt 2.3 Div 4)

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:

2.3.10 Certifying body to advise on application for admission [NC] (cf former 310; Vic 2.3.10; NSW 35)

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.

2.3.11 Compliance certificates [NC] (cf former 311; Vic N/A; NSW 36)

- (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.

2.3.12 Consideration of applicant's eligibility and suitability [NC] (cf former 312; Vic N/A; NSW 37)

- (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 (cf former Pt 3 Div 5; Vic Pt 2.3 Div 5; NSW Pt 2.3 Div 5)

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:

2.3.13 Supreme Court's jurisdiction [NC] (cf former 313; Vic N/A; NSW N/A)

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.

2.3.14 Certifying body is respondent to applications under this Part [NC] (cf former 314; Vic N/A; NSW N/A)

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

2.3.15 Admission rules [NC] (cf former 315; Vic 2.3.12; NSW 38)

- (1) The [appropriate authority] may make rules for the admission of persons to the legal profession under this Act.
- (2) Without limiting subsection (1), rules 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;
 - (i) fees and costs payable under the rules and the refund or remission of fees.
- (3) 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.

2.3.16 Savings and transitional provisions [NC] (cf former 316; Vic 8.2.1, Sch 2; NSW 737, Sch 9)

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 2.4 Legal practice by Australian legal practitioners (cf former Pt 4; Vic Pt 2.4; NSW Pt 2.4)

Division 1 Preliminary (cf former Pt 4 Div 1; Vic Pt 2.4 Div 1; NSW Pt 2.4 Div 1)

2.4.1 Purposes [NC] (cf former 401; Vic 2.4.1; NSW 39)

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 granting and renewing of local practising certificates.

Division 2 Legal practice in this jurisdiction by Australian legal practitioners (cf former Pt 4 Div 2; Vic Pt 2.4 Div 2; NSW Pt 2.4 Div 2)

2.4.2 Entitlement of holder of Australian practising certificate to practise in this jurisdiction [CU] (cf former 402; Vic 2.4.2; NSW 40)

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

Division 3 Local practising certificates generally (cf former Pt 4 Div 3; Vic Pt 2.4 Div 3; NSW Pt 2.4 Div 3)

2.4.3 Local practising certificates [CNU (1); NC (2); CU (3)] (cf former 403; Vic 2.4.3; NSW 41)

- (1) Practising certificates may be granted under this Part.
- (2) The [appropriate authority] may determine the categories of local practising certificates.
- (3) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the first-mentioned local practising certificate.

Note. Jurisdictions may need to provide transitional provisions to accommodate issues for practitioners and regulators arising from subsection (3).

2.4.4 Suitability to hold local practising certificate [CNU] (cf former 404; Vic 2.4.4; NSW 42)

Note. Each jurisdiction would need to have the power to refuse to grant 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 2.3) 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) This section has effect for the purposes of section 2.4.11 (Grant or renewal of local practising certificate) or any other provision of this Act where the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.
- (2) The [appropriate authority] may, in considering whether or not the person is a fit and proper person to hold a local practising certificate, take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section:
 - (a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;
 - (b) whether the person has contravened a condition of an Australian practising certificate held by the person;
 - (c) whether the person has contravened this Act or a corresponding law or the regulations or legal profession rules under this Act or a corresponding law;
 - (d) whether the person has contravened:
 - (i) an order of the Disciplinary Tribunal; or

- (ii) an order of a corresponding disciplinary body or of another court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
 - (e) without limiting any other paragraph:
 - (i) whether the person has failed to pay a required contribution or levy to the Fidelity Fund [if relevant]; or
 - (ii) whether the person has contravened a requirement 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.
- (3) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (2), if the [appropriate authority] considers that the circumstances warrant the determination.
- (4) 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 by the certifying body or a corresponding authority 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 1. Section 2.4.11 (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.

Note 2. There may be some variation in the test applied by jurisdictions in connection with section 2.4.4 (4).

2.4.5 Duration of local practising certificate [CU (1) & (2); NC (3)] (cf former 405; Vic 2.4.5; NSW 43)

- (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.

2.4.6 Professional indemnity insurance [CNU] (cf former 406; Vic Pt 3.5; NSW Pt 3.3)

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).

2.4.7 Local legal practitioner is officer of Supreme Court [CU] (cf former 407; Vic 2.4.6; NSW 44)

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 (cf former Pt 4 Div 4; Vic Pt 2.4 Div 4; NSW Pt 2.4 Div 4)

2.4.8 Application for grant or renewal of local practising certificate [CU (1)-(6) and (9); NC (7) and (8)] (cf former 408; Vic 2.4.8; NSW 45)

- (1) **Applications generally**

An Australian lawyer may apply to the [appropriate authority] for the grant or renewal of a local practising certificate if eligible to do so under this section.

(2) General eligibility to make application

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

- (a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application:
 - (i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether it applies to the lawyer—the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia; or
- (b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application:
 - (i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or
 - (ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature; or
 - (iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (iv) if subparagraphs (i), (ii) and (iii) do not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i), (ii) or (iii) applies to the lawyer—the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.

(3) Determination of place of legal practice in Australia

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

- (a) the application is made; or
- (b) in the case of a late application—the application should have been made.

(4) **Circumstances in which application cannot be made (more than one Australian practising certificate)**

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

(5) **Application must not be made by ineligible lawyer**

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

(6) **Circumstances in which application must be made**

An Australian legal practitioner who:

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

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

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

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

(9) **Application for local practising certificate by lawyer who practises in Australia and overseas**

A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.

Note. The purpose of this subsection is to deal with a case where a person practises both in Australia and overseas. In that case, overseas practice is to be disregarded (even if it forms the principal portion of the person's overall practice), so that eligibility is determined by reference only to the person's practice in Australia.

2.4.9 Manner of application and fees [NC] (cf former 409; Vic 2.4.9; NSW 46)

- (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.

2.4.10 Timing of application for renewal of local practising certificate [NC] (cf former 410; Vic 2.4.10; NSW 47)

- (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.

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

2.4.11 Grant or renewal of local practising certificate [NC] (cf former 411; Vic 2.4.7, 2.4.12; NSW 48)

- (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 [appropriate authority] may, when granting or renewing a certificate, impose conditions as referred to in section 2.4.13 (Conditions imposed by [appropriate authority]).
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) If the authority grants or renews a local practising certificate, the authority must, as soon as practicable, give the applicant:
- (a) for the grant of a certificate—a local practising certificate; or
 - (b) for the renewal of a certificate—a new local practising certificate [or a notice of renewal].
- (8) 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 Conditions on local practising certificates (cf former Pt 4 Div 8; Vic Pt 2.4 Div 5; NSW Pt 2.4 Div 5)

2.4.12 Conditions generally [NC] (cf former 426; Vic 2.4.13; NSW 49)

- (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 2.4.14 (Imposition or variation of conditions pending criminal proceedings); and
 - (e) any conditions imposed under Chapter 4 (Complaints and discipline) or under provisions of a corresponding law that correspond to Chapter 4.
- (2) If a condition is imposed, varied or revoked under this Act (other than a statutory condition) during the currency of the local practising certificate concerned, the certificate 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.

2.4.13 Conditions imposed by [appropriate authority] [NC] (cf former 427; Vic 2.4.14, 2.4.15; NSW 50, 56)

- (1) The [appropriate authority] may impose conditions on a local practising certificate:
 - (a) when it is granted or renewed; or
 - (b) during its currency.

- (2) A condition imposed under this section must be reasonable and relevant.
- (3) A condition imposed under this section may be about any of the following:
 - (a) requiring the holder of the practising certificate to undertake and complete:
 - (i) continuing legal education; or
 - (ii) specific legal education or training; 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 specific legal education or training unless:
 - (a) the authority is satisfied, having regard to:
 - (i) the nature or currency of the holder's academic studies, legal training or legal experience; or
 - (ii) the holder's conduct;that it is reasonable to require the specific legal education or training to be undertaken; 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 2.4.22 (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.

2.4.14 Imposition or variation of conditions pending criminal proceedings [NC] (cf former 428; Vic 2.4.16; NSW 51)

- (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.

2.4.15 Statutory condition regarding conditions imposed on interstate admission [CNU] (cf former 429; Vic 2.4.17; NSW 52)

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 2.3.7 (Conditions).

2.4.16 Statutory condition regarding practice [as solicitor] [CNU] (cf former 430; Vic 2.4.18; NSW 53)

- (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.
- (3) The [appropriate authority] may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for a person or class of persons, if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to:
 - (a) the length and nature of any legal practice previously engaged in by the person or persons; and

- (b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or persons.
- (4) An exemption under subsection (3) may be given unconditionally or subject to such conditions as the [appropriate authority] thinks appropriate.

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.

2.4.17 Statutory condition regarding notification of offence [NC] (cf former 431; Vic N/A; NSW 55)

- (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 7 (Special powers in relation to local practising certificates—show cause events) applies.

2.4.18 Conditions imposed by legal profession rules [NC] (cf former 432; Vic N/A; NSW 57)

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.

2.4.19 Compliance with conditions [NC] (cf former 433; Vic 4.4.5; NSW 58)

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

Division 6 Amendment, suspension or cancellation of local practising certificates (cf former Pt 4 Div 5; Vic Pt 2.4 Div 6; NSW Pt 2.4 Div 6)

2.4.20 Application of this Division [NC] (cf former 412; Vic 2.4.19; NSW 59)

This Division does not apply in relation to matters referred to in Division 7 (Special powers in relation to local practising certificates—show cause events).

2.4.21 Grounds for amending, suspending or cancelling local practising certificate [NC] (cf former 413; Vic 2.4.20; NSW 60)

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 or has been engaging in legal practice that the holder is not entitled to engage in under this Act.

2.4.22 Amending, suspending or cancelling local practising certificate [NC] (cf former 414; Vic 2.4.21; NSW 61)

- (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 that:
 - (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 7 days and not more than 28 days, as to why the proposed action should not be taken.
- (2) If, after considering all written representations made within the specified time and, in its discretion, written representations made after the specified time, the [appropriate authority] still believes a ground exists to take the proposed action, the authority may:
 - (a) if the notice under subsection (1) 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 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 notice stated the proposed action was to cancel the practising certificate:
 - (i) cancel the certificate; or
 - (ii) suspend the certificate for a period; or
 - (iii) amend the certificate in a less onerous way the authority considers appropriate because of the representations.
- (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.
- (4) In this section, **amend** a certificate means amend the certificate under section 2.4.13 during its currency, otherwise than at the request of the holder of the certificate.

Note. Jurisdictional legislation may provide that certain kinds of conditions do not attract the show-cause procedure (eg conditions under section 2.4.13 (3) (c) (Conditions imposed by [appropriate authority]) concerning trust accounts).

2.4.23 Operation of amendment, suspension or cancellation of local practising certificate [NC] (cf former 415; Vic N/A; NSW 62)

(1) Application of section

This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 2.4.22 (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.

2.4.24 Immediate suspension of local practising certificate [NC] (cf former 423; Vic 2.4.22; NSW 78)

- (1) This section applies, despite Divisions 6 and 7, 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 6; or
 - (b) the ground of the happening of a show cause event in relation to the holder; or
 - (c) any other ground that the authority considers warrants suspension of the certificate in the public interest;
- whether or not any action has been taken or commenced under Division 6 or 7 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 2.4.22 (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.

2.4.25 Other ways of amending or cancelling local practising certificate [CNU] (cf former 416; Vic 2.4.24; NSW 63)

- (1) The [appropriate authority] may amend or cancel a local practising certificate if the holder requests the [authority] to do so.
- (2) The [appropriate authority] may amend a local practising certificate:
 - (a) for a formal or clerical reason; or
 - (b) in another way that does not adversely affect the holder's interests.
- (3) The [appropriate authority] must cancel a local practising certificate if the holder's name has been removed from the local roll or the holder ceases to be an Australian lawyer.

- (4) The amendment or cancellation of a local practising certificate under this section is effected by written notice given to the holder.
- (5) Section 2.4.22 (Amending, suspending or cancelling local practising certificate) does not apply in a case to which this section applies.

2.4.26 Relationship of this Division with Chapter 4 [NC] (cf former 417; Vic 2.4.25; NSW 64)

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

Division 7 Special powers in relation to local practising certificates—show cause events (cf former Pt 4 Div 6; Vic Pt 2.4 Div 7; NSW Pt 2.4 Div 7)

Note. The expression “show cause event” is defined in section 1.2.1. Some jurisdictions may not adopt the show cause procedure for insolvency.

2.4.27 Applicant for local practising certificate—show cause event [CNU] (cf former 418; Vic 2.4.26; NSW 66)

- (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 (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously provided to the [appropriate authority]:

- (a) a statement under this section; or
- (b) a notice and statement under section 2.4.28;

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.

2.4.28 Holder of local practising certificate—show cause event [CNU] (cf former 419; Vic 2.4.27; NSW 67)

- (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) 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.

2.4.29 Refusal, amendment, suspension or cancellation of local practising certificate—failure to show cause [CNU] (cf former 420; Vic 2.4.28; NSW 66, 67)

- (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 2.4.27 (Applicant for local practising certificate—show cause event) or 2.4.28 (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 2.4.27 or 2.4.28 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 2.4.28 (3) is taken to have been provided in accordance with section 2.4.28.
- (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.

2.4.30 Restriction on making further applications [NC] (cf former 421; Vic 2.4.29; NSW 74)

- (1) This section applies if the [appropriate authority] decides under section 2.4.29 (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 2.4.29 (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.

2.4.31 Relationship of this Division with Chapters 4 and 6 [NC] (cf former 422; Vic N/A; NSW 77)

- (1) The [appropriate authority] has and may exercise powers under Part 4.6 (Investigation of complaints), and Chapter 6 (Investigatory powers), in relation to a matter under this Division, as if the matter were the subject of a complaint under Chapter 4.
- (2) Accordingly, the provisions of Part 4.6, and Chapter 6, apply in relation to a matter under this Division, and so apply with any necessary modifications.
- (3) Nothing in this Division prevents a complaint from being made under Chapter 4 about a matter to which this Division relates.

Division 8 Further provisions relating to local practising certificates (cf former Pt 4 Div 7; Vic Pt 2.4 Div 8; NSW Pt 2.4 Div 8)

2.4.32 Surrender and cancellation of local practising certificate [NC] (cf former 424; Vic 2.4.30; NSW 79)

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

2.4.33 Return of local practising certificate [NC] (cf former 425; Vic 2.4.31; NSW 80)

- (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 9 Interstate legal practitioners (cf former Pt 4 Div 9;
Vic Pt 2.4 Div 9; NSW Pt 2.4 Div 11)**

**2.4.34 Requirement for professional indemnity insurance [CNU] (cf former 434;
Vic 3.5.2; NSW 98)**

- (1) An interstate legal practitioner must not engage in legal practice in this jurisdiction, or represent or advertise that the practitioner is entitled to engage in legal practice in this jurisdiction, unless the practitioner:
 - (a) is covered by professional indemnity insurance that:
 - (i) covers legal practice in this jurisdiction; and
 - (ii) has been approved under or complies with the requirements of the corresponding law of the practitioner's home jurisdiction; and
 - (iii) is for at least \$1.5 million (inclusive of defence costs), unless (without affecting subparagraph (i) or (ii)) the practitioner engages in legal practice solely as or in the manner of a barrister; or
 - (b) is employed by a corporation, other than an incorporated legal practice, and the only legal services provided by the practitioner in this jurisdiction are in-house legal services.

Penalty:

- (2) Subsection (1) does not apply to an interstate legal practitioner who:
 - (a) is a government lawyer as defined in section 2.4.45; and
 - (b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work; and
 - (c) has an indemnity or immunity (whether provided by law or governmental policy) that is applicable in respect of that legal practice.

2.4.35 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction [CU] (cf former 435; Vic 2.4.32; NSW 100)

- (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 2.4.36 (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
- 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 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.

Note. This section may need adjustment in some jurisdictions.

2.4.36 Additional conditions on practice of interstate legal practitioners [CU] (cf former 436; Vic 2.4.33; NSW 101)

- (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.
- (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.

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

2.4.37 Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction [CNU] (cf former 437; Vic 2.4.35; NSW 102)

- (1) An interstate legal practitioner must not engage in unsupervised legal practice in this jurisdiction unless:
- (a) if the interstate legal practitioner completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in this or another jurisdiction—the interstate legal practitioner has undertaken a period or periods equivalent to 18 months’ supervised legal practice, worked out under relevant regulations, after the day the practitioner’s first practising certificate was granted; or
 - (b) if the interstate legal practitioner completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—the interstate legal practitioner has undertaken a period or periods equivalent to 2 years’ supervised legal practice, worked out under relevant regulations, after the day the practitioner’s first practising certificate was granted.
- (2) Subsection (1):
- (a) does not apply if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner’s home jurisdiction; or
 - (b) applies only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the interstate legal practitioner in the practitioner’s home jurisdiction.

2.4.38 Interstate legal practitioner is officer of Supreme Court [CU] (cf former 438; Vic 2.4.36; NSW 103)

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 (cf former Pt 4 Div 10; Vic Pt 2.4 Div 10, Div 11; NSW Pt 2.4 Div 12)

2.4.39 Protocols [NC] (cf former 439; Vic 2.4.39; NSW 104)

- (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 in which an Australian lawyer engages in legal practice principally or can reasonably expect to engage in legal practice principally; or
 - (b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction:
 - (i) can be regarded as being of a temporary nature; or
 - (ii) ceases to be of a temporary nature; or
 - (c) the circumstances in which an Australian legal practitioner can reasonably expect to engage in legal practice principally in a jurisdiction during the currency of an Australian practising certificate.
- (2) For 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.

2.4.40 Consideration and investigation of applicants or holders [NC] (cf former 440; Vic 2.4.40; NSW 105)

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

2.4.41 Register of local practising certificates [NC] (cf former 441; Vic 6.2.23; NSW 106)

- (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.

2.4.42 Holders of local practising certificates as barristers [NC] (cf former 441A; 1st Ed. 1701; Vic N/A; NSW 54)

- (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.

2.4.43 Supreme Court orders about conditions [NC] (cf former 442; Vic N/A; NSW 107)

- (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.

2.4.44 Appeals or review [NC] (cf former 443; Vic 2.4.38; NSW 108)

- (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 2.4.30 (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 7 (Special powers in relation to local practising certificates—show cause events). This would apply a measure of consistency.

2.4.45 Government lawyers of other jurisdictions [CNU] (cf former 444; Vic 2.2.2; NSW 114)

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.

Note 3. Government lawyers in some jurisdictions need to have law degrees but do not need to be admitted.

- (1) A government lawyer of another jurisdiction is not subject to:
 - (a) any prohibition under this Act about:
 - (i) engaging in legal practice in this jurisdiction; or

- (ii) making representations about engaging in legal practice in this jurisdiction; or
- (b) conditions imposed on a local practising certificate;
in respect of the performance of his or her official duties or functions as a government lawyer of the other jurisdiction to the extent that he or she is exempt from matters of the same kind under a law of the other jurisdiction.
- (2) Contributions and levies are not payable to the Fidelity Fund by or in respect of a government lawyer of another jurisdiction in his or her capacity as a government lawyer.
- (3) Without affecting the generality of subsection (1), that subsection extends to prohibitions under section 2.4.34 relating to professional indemnity insurance.
- (4) Without affecting subsections (1), (2) and (3), nothing in this section prevents a government lawyer of another jurisdiction from being granted or holding a local practising certificate.
- (5) In this section:
 - another jurisdiction*** means:
 - (a) another State or Territory of the Commonwealth; or
 - (b) the Commonwealth.
 - government agency*** of another jurisdiction means:
 - (a) a government department of that jurisdiction; or
 - (b) a body or organisation that is established by or under the law of that jurisdiction for a public purpose or to exercise governmental functions;and includes a body or organisation (or a class of bodies or organisations) prescribed by the regulations as being within this definition.
government lawyer means an Australian lawyer, or a person eligible for admission to the legal profession, employed in or by a government agency of another jurisdiction.

2.4.46 Fees [NC] (cf former 445; Vic N/A; NSW 91)

- (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].

2.4.47 Refund of fees [NC] (cf former 446; Vic N/A; NSW 79)

- (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.

2.4.48 Savings and transitional provisions [CNU] (cf former 447; Vic 8.2.1, Sch 2; NSW 737, Sch 9)

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 Chapter 8). 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 2.5 Suitability reports (cf former Pt 5; Vic Pt 2.5; NSW N/A)

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 2.6 Inter-jurisdictional provisions regarding admission and practising certificates (cf former Pt 6; Vic Pt 2.6; NSW Pt 2.5)

Division 1 Preliminary (cf former Pt 6 Div 1; Vic Pt 2.6 Div 1; NSW Pt 2.5 Div 1)

2.6.1 Purpose [NC] (cf former 601; Vic 2.6.1; NSW 116)

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.

2.6.2 Definitions [NC] (cf former 602; Vic N/A; NSW 117)

In this Part:

certifying body has the same meaning as in Part 2.3.

foreign regulatory action taken in relation to a person means:

- (a) removal of the person's name from a foreign roll for disciplinary reasons; or
- (b) suspension or cancellation of, or refusal to renew, the person's right to engage in legal practice in a foreign country.

2.6.3 Other requirements not affected [NC] (cf former 603; Vic 2.6.2; NSW 118)

This Part does not affect any powers or duties under Chapter 4 (Complaints and discipline).

Division 2 Notifications to be given by local authorities to interstate authorities (cf former Pt 6 Div 2; Vic Pt 2.6 Div 2; NSW Pt 2.5 Div 2)

2.6.4 Official notification to other jurisdictions of applications for admission and associated matters [NC] (cf former 604; Vic 2.6.3; NSW 119)

- (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.

2.6.5 Official notification to other jurisdictions of removals from local roll [CNU] (cf former 605; Vic 2.6.4; NSW 120)

- (1) This section applies if a person's name is removed from the local roll, except where the removal occurs under section 2.6.11 (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 person's name and address as last known to the registrar; and
 - (b) the date the person's name was removed from the roll; and
 - (c) the reason for removing the person's name;and may contain other relevant information.

2.6.6 [Appropriate authority] to notify other jurisdictions of certain matters [NC] (cf former 606; Vic 2.6.5; NSW 121)

- (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 lawyer 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 lawyer'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 (cf former Pt 6 Div 3; Vic Pt 2.6 Div 3;
 NSW Pt 2.5 Div 3)**

**2.6.7 Lawyer to give notice of removal in another jurisdiction [CNU] (cf former
 607; Vic 2.6.6; NSW 122)**

- (1) If a local lawyer's name has been removed from an interstate roll, the lawyer 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 2.6.11 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).

2.6.8 Lawyer to give notice of interstate orders [NC] (cf former 607A; Vic N/A; NSW 123)

- (1) If an order is made under a corresponding law recommending that the name of a local lawyer be removed from the local roll, the lawyer must, as soon as practicable, give the [registrar] written notice of the order.

Penalty:

- (2) If an order is made under a corresponding law in relation to a local legal practitioner that:
 - (a) the practitioner's local practising certificate be suspended or cancelled; or
 - (b) a local practising certificate not be granted to the practitioner for a period; or
 - (c) conditions be imposed on the practitioner's local practising certificate;

the practitioner must, as soon as practicable, give the [appropriate authority] written notice of the order.

Penalty:

2.6.9 Lawyer to give notice of foreign regulatory action [CNU] (cf former 608; Vic 2.6.7; NSW 124)

- (1) If foreign regulatory action has been taken in relation to a local lawyer, the lawyer must, as soon as practicable, give the [registrar] a written notice of the action taken.

Penalty:

- (2) If foreign regulatory action has been taken in relation to a local legal practitioner, the practitioner must, as soon as practicable, give the [appropriate authority] a written notice of the action taken.

Penalty:

2.6.10 Provisions relating to requirement to notify [CNU] (cf former 609; Vic 2.6.8; NSW 125)

A notice to be given under this Division by a person must:

- (a) state his or her name and address; and
- (b) disclose full details of the action to which the notice relates, including the date on which that action was taken; and
- (c) be accompanied by a copy of any official notification provided to him or her in connection with that action.

Division 4 Taking of action by local authorities in response to notifications received (cf former Pt 6 Div 4; Vic Pt 2.6 Div 4; NSW Pt 2.5 Div 4)

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”.

2.6.11 Peremptory removal of local lawyer’s name from local roll following removal in another jurisdiction [CNU] (cf former 610; Vic 2.6.9; NSW 126)

- (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 2.6.15 (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 2.3 (Admission of local lawyers).

2.6.12 Peremptory cancellation of local practising certificate following removal of name from interstate roll [NC] (cf former 611; Vic 2.6.10; NSW 127)

- (1) This section applies if:
 - (a) a person's name is removed from an interstate roll but he or she remains an Australian lawyer; and
 - (b) he or she is the holder of a local practising certificate; and
 - (c) no order referred to in section 2.6.15 (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.

2.6.13 Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action [CNU] (cf former 611A; 1st Ed. 613; Vic 2.6.12; NSW 128)

- (1) This section applies if the appropriate authority is satisfied that:
 - (a) foreign regulatory action has been taken in relation to a local lawyer; and
 - (b) no order referred to in section 2.6.15 (1) (a) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.
- (2) The authority may serve on the lawyer a notice stating that the authority will apply to the Supreme Court for an order that the lawyer's

name be removed from the local roll unless the lawyer shows cause to the authority why his or her name should not be removed.

- (3) If the lawyer does not satisfy the 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 his or her name be removed from the local roll.
- (4) Before applying for an order that the lawyer's name be removed, the authority must afford the lawyer 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.
- (7) In this section:
appropriate authority means:
 - (a) if the local lawyer holds a local practising certificate—the [appropriate authority]; or
 - (b) if the local lawyer does not hold a local practising certificate but holds an interstate practising certificate—the [appropriate authority]; or
 - (c) if the local lawyer holds neither a local practising certificate nor an interstate practising certificate—[the appropriate authority].

2.6.14 Show cause procedure for cancellation of local practising certificate following foreign regulatory action [CNU] (cf former 611B; Vic N/A; NSW 129)

- (1) This section applies if the [appropriate authority] is satisfied that:
 - (a) foreign regulatory action has been taken in relation to a local legal practitioner; and
 - (b) no order referred to in section 2.6.15 (1) (b) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.
- (2) The [authority] may serve on the practitioner a notice stating that the [authority] proposes to cancel his or her local practising certificate unless the practitioner shows cause to the [authority] why his or her practising certificate should not be cancelled.

- (3) The [authority] must afford the practitioner a reasonable opportunity to show cause why his or her practising certificate should not be cancelled.
- (4) If the practitioner does not satisfy the [authority] that the practising certificate should not be cancelled, the [authority] may cancel the certificate.
- (5) The [authority] must, as soon as practicable, give the practitioner an information notice about its decision to cancel the practising certificate.
- (6) The practitioner may appeal to the Supreme Court against a decision of the [authority] to cancel the practising certificate.
- (7) The Supreme Court may make any order it considers appropriate on the appeal.

2.6.15 Order for non-removal of name or non-cancellation of local practising certificate [CNU] (cf former 612; Vic 2.6.11; NSW 130)

- (1) If an Australian lawyer reasonably expects that his or her name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the Supreme Court for:
 - (a) an order that his or her name not be removed from the local roll under section 2.6.11 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction) [or section 2.6.13 (Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action)]; or
 - (b) an order that his or her local practising certificate not be cancelled under section 2.6.12 (Peremptory cancellation of local practising certificate following removal of name from interstate roll) or section 2.6.14 (Show cause procedure for cancellation of local practising certificate following foreign regulatory action);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 or the foreign regulatory action is likely to be taken; and

- (b) the reason for the removal of the name or the taking of the foreign regulatory action will not involve disciplinary action or the possibility of disciplinary action;
or may refuse to make an order.
- (3) An order under this section may be made subject to any conditions the 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 sections 2.6.11–2.6.14 (as relevant) then apply as if the lawyer’s name were removed from the interstate roll or the foreign regulatory action were taken when the revocation takes effect.
- (5) Nothing in this section affects action being taken in relation to the lawyer under other provisions of this Act.

2.6.16 Local authority may give information to other local authorities [CNU] (cf former 613; 1st Ed. 614; Vic 2.6.13; NSW 131)

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 8.1.4 (Disclosure of information by local regulatory authorities).

Part 2.7 Incorporated legal practices and multi-disciplinary partnerships (cf former Pt 13; Vic Pt 2.7; NSW Pt 2.6)

Division 1 Preliminary (cf former Pt 13 Div 1; Vic Pt 2.7 Div 1; NSW Pt 2.6 Div 1)

2.7.1 Purposes [NC] (cf former 1301; Vic 2.7.1; NSW 132)

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).

2.7.2 Definitions [CU] (cf former 1302; Vic 2.7.2; NSW 133)

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.

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 (cf former Pt 13 Div 2; Vic Pt 2.7 Div 2; NSW Pt 2.6 Div 2)

2.7.3 Nature of incorporated legal practice [CU; except NC (2) (a)] (cf former 1303; Vic 2.7.4; NSW 134)

- (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;

- (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.

2.7.4 Non-legal services and businesses of incorporated legal practices [CU] (cf former 1304; Vic 2.7.5; NSW 135)

- (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.

2.7.5 Corporations eligible to be incorporated legal practice [CU] (cf former 1305; Vic 2.7.6; NSW 136)

- (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.

2.7.6 Notice of intention to start providing legal services [CU; except NC (5)–(7)] (cf former 1306; Vic 2.7.7; NSW 137)

- (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).
- (7) This section does not apply to a corporation referred to in section 2.7.3 (2) (a) or (b).

2.7.7 Prohibition on representations that corporation is incorporated legal practice [NC] (cf former 1307; Vic 2.7.8; NSW 138)

- (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 2.7.6 (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 2.7.6 (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.

2.7.8 Notice of termination of provision of legal services [CU] (cf former 1308; Vic 2.7.9; NSW 139)

- (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.

2.7.9 Incorporated legal practice must have legal practitioner director [CU] (cf former 1309; Vic 2.7.10; NSW 140)

- (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) Nothing in this Part derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (6) The reference in subsection (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression “legal practitioner director” in other provisions of this Act.

2.7.10 Obligations of legal practitioner director relating to misconduct [CU] (cf former 1310; Vic 2.7.11; NSW 141)

- (1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director:
- (a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;
 - (b) conduct of any other director (not being an Australian legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the practice;
 - (c) the unsuitability of any other director (not being an Australian legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.

- (2) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subsection (1) if the director establishes that he or she took all reasonable steps to ensure that:
- (a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subsection (1) (a); or
 - (b) directors (not being Australian legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subsection (1) (b); or
 - (c) unsuitable directors (not being Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subsection (1) (c);

as the case requires.

- (3) A legal practitioner director of an incorporated legal practice must ensure 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.

Note. Jurisdictions may, where vicarious liability is created, consider inclusion of a provision like s 23 of the Criminal Code (Qld).

2.7.11 Incorporated legal practice without legal practitioner director [CU] (cf former 1311; Vic 2.7.12; NSW 142)

- (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.

2.7.12 Obligations and privileges of practitioners who are officers or employees [CU] (cf former 1312; Vic 2.7.13; NSW 143)

- (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.

2.7.13 Professional indemnity insurance [CNU] (cf former 1313; Vic 3.5.2; NSW 144)

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.

2.7.14 Conflicts of interest [CU] (cf former 1314; Vic 2.7.14; NSW 145)

- (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 2.7.12 (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.

2.7.15 Disclosure obligations [CU] (cf former 1315; Vic 2.7.15; NSW 146)

- (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.

2.7.16 Effect of non-disclosure of provision of certain services [CU] (cf former 1316; Vic 2.7.16; NSW 147)

- (1) This section applies if:
 - (a) section 2.7.15 (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.

2.7.17 Application of legal profession rules [CU] (cf former 1317; Vic 2.7.17; NSW 148)

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.

2.7.18 Requirements relating to advertising [CU] (cf former 1318; Vic 2.7.18; NSW 149)

- (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 in that branch of the legal profession or in that style of legal practice.

- (3) Any advertisement of the kind referred to in this section is, for 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.

2.7.19 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices [CU] (cf former 1319; Vic 2.7.19; NSW 150)

- (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.

2.7.20 Sharing of receipts, revenue or other income [CU] (cf former 1320; Vic 2.7.20; NSW 151)

- (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, revenue or other income arising from the provision of legal services by the practitioner.

- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 2.7.21 (Disqualified persons), and has effect subject to section 2.4.42 (Holders of local practising certificates as barristers).

2.7.21 Disqualified persons [CU] (cf former 1321; Vic 2.7.21; NSW 152)

- (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, revenue or other income arising from the provision of legal services by the incorporated legal practice; or
 - (d) is engaged or paid in connection with the provision of legal services by the incorporated legal practice.

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.

2.7.22 Audit of incorporated legal practice [CU] (cf former 1322; Vic 2.7.22; NSW 670)

- (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 2.7.9 (3) (Incorporated legal practice must have legal practitioner director) requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (2) The [appropriate authority] or the Regulator may, in writing, appoint a suitably qualified person to conduct an audit under this section.
- (3) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit.
- (4) An audit may be conducted whether or not a complaint has been made against an Australian lawyer with respect to the provision of legal services by the incorporated legal practice.
- (5) A report of an audit:
 - (a) 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.

2.7.23 Application of Chapter 6 [NC] (cf former 1323; Vic 2.7.23; NSW 665)

Chapter 6 (Investigatory powers) applies to an audit under this Division.

2.7.24 Banning of incorporated legal practices [CU] (cf former 1324; Vic 2.7.24; NSW 153)

- (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.
- (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 2.7.4 (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 2.7.21 (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 2.7.25 (Disqualification from managing incorporated legal practice) or under provisions of a corresponding law that correspond to that section; or
 - (ii) section 2.7.50 (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.

2.7.25 Disqualification from managing incorporated legal practice [CU] (cf former 1325; Vic 2.7.25; NSW 154)

- (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.

2.7.26 Disclosure of information to Australian Securities and Investments Commission [CU] (cf former 1326; Vic 2.7.26; NSW 155)

- (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.

2.7.27 External administration proceedings under Corporations Act 2001 (Cth) [CU] (cf former 1327; Vic 2.7.27; NSW 156)

- (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.

2.7.28 External administration proceedings under other legislation [CU] (cf former 1328; Vic 2.7.28; NSW 157)

- (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 2.7.27 (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.

2.7.29 Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act 2001 (Cth) [CU] (cf former 1329; Vic 2.7.29; NSW 158)

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Chapter 5 receiver; and
 - (b) the appointment of a Corporations Act administrator.

- (2) The Chapter 5 receiver is under a duty to notify the Corporations Act administrator of the appointment of the Chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) The Chapter 5 receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except where proceedings referred to in section 2.7.27 (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 Chapter 5 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.
- (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.

Chapter 5 receiver means a receiver appointed under Chapter 5.

2.7.30 Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation [CU] (cf former 1330; Vic 2.7.30; NSW 159)

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a Chapter 5 receiver; and
 - (b) the appointment of an external administrator.
- (2) The Chapter 5 receiver is under a duty to notify the external administrator of the appointment of the Chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.
- (3) The Chapter 5 receiver or the external administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Chapter 5 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.

Chapter 5 receiver means a receiver appointed under Chapter 5.

2.7.31 Co-operation between courts [CU] (cf former 1331; Vic 2.7.31; NSW 160)

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.

2.7.32 Relationship of Act to constitution of incorporated legal practice [CU] (cf former 1332; Vic 2.7.32; NSW 161)

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.

2.7.33 Relationship of Act to legislation establishing incorporated legal practice [CU] (cf former 1333; Vic 2.7.33; NSW 162)

- (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.

2.7.34 Relationship of Act to Corporations legislation [CU] (cf former 1334; Vic 2.7.34; NSW 163)

- (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.
- (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.

2.7.35 Undue influence [CU] (cf former 1335; Vic 2.7.35; NSW 164)

A person (whether or not an officer or an employee of an incorporated legal practice) must not cause or induce or attempt to 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 (cf former Pt 13 Div 3; Vic Pt 2.7 Div 3; NSW Pt 2.6 Div 3)

2.7.36 Nature of multi-disciplinary partnership [CU] (cf former 1336; Vic 2.7.36; NSW 165)

- (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.

2.7.37 Conduct of multi-disciplinary partnerships [CU] (cf former 1337; Vic 2.7.37; NSW 166)

- (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 2.7.50 (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.

2.7.38 Notice of intention to start practice in multi-disciplinary partnership [CU] (cf former 1338; Vic 2.7.38; NSW 167)

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:

2.7.39 General obligations of legal practitioner partners [CU] (cf former 1339; Vic 2.7.39; NSW 168)

- (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.

2.7.40 Obligations of legal practitioner partner relating to misconduct [CU] (cf former 1340; Vic 2.7.40; NSW 169)

- (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.

Note. Jurisdictions may, where vicarious liability is created, consider inclusion of a provision like s 23 of the Criminal Code (Qld).

2.7.41 Actions of partner who is not an Australian legal practitioner [CU] (cf former 1341; Vic 2.7.41; NSW 170)

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;
- (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.

2.7.42 Obligations and privileges of practitioners who are partners or employees [CU] (cf former 1342; Vic 2.7.42; NSW 171)

- (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.

2.7.43 Conflicts of interest [CU] (cf former 1343; Vic 2.7.43; NSW 172)

- (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 2.7.42 (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.

2.7.44 Disclosure obligations [CU] (cf former 1344; Vic 2.7.44; NSW 173)

- (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.

2.7.45 Effect of non-disclosure of provision of certain services [CU] (cf former 1345; Vic 2.7.45; NSW 174)

- (1) This section applies if:
 - (a) section 2.7.44 (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.

2.7.46 Application of legal profession rules [CU] (cf former 1346; Vic 2.7.46; NSW 175)

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.

2.7.47 Requirements relating to advertising [CU] (cf former 1347; Vic 2.7.47; NSW 176)

- (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.

2.7.48 Sharing of receipts, revenue or other income [CU] (cf former 1348; Vic 2.7.48; NSW 177)

- (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, revenue or other income arising from the provision of legal services by the partner or practitioner with a partner or partners who are not Australian legal practitioners.
- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 2.7.49 (Disqualified persons), and has effect subject to section 2.4.42 (Holders of local practising certificates as barristers).

2.7.49 Disqualified persons [CU] (cf former 1349; Vic 2.7.49; NSW 178)

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, revenue or other income arising from 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.

2.7.50 Prohibition on partnerships with certain partners who are not Australian legal practitioners [CU] (cf former 1350; Vic 2.7.50; NSW 179)

- (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.

2.7.51 Undue influence [CU] (cf former 1351; Vic 2.7.51; NSW 180)

A person (whether or not a partner, or employee, of a multi-disciplinary partnership) must not cause or induce or attempt to 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 (cf former Pt 13 Div 4; Vic Pt 2.7 Div 4; NSW Pt 2.6 Div 4)

2.7.52 Obligations of individual practitioners not affected [CU] (cf former 1352; Vic 2.7.52; NSW 181)

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.

2.7.53 Regulations [CU] (cf former 1353; Vic 2.7.53; NSW 182)

- (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 2.8 Legal practice by foreign lawyers (cf former Pt 14; Vic Pt 2.8; NSW Pt 2.7)

Note. 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 2.8.52 (Supreme Court orders about conditions) may vary among jurisdictions).

Division 1 Preliminary (cf former Pt 14 Div 1; Vic Pt 2.8 Div 1; NSW Pt 2.7 Div 1)

2.8.1 Purpose [NC] (cf former 1401; Vic 2.8.1; NSW 183)

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.

2.8.2 Definitions [CU] (cf former 1402; Vic 2.8.2; NSW 184)

In this Part:

Australia includes the external Territories.

Australian law means law of the Commonwealth or of a jurisdiction.

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 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 1.2.1 (Definitions).

2.8.3 This Part does not apply to Australian legal practitioners [CU] (cf former 1403; Vic 2.8.3; NSW 185)

- (1) This Part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer).
- (2) Accordingly, nothing in this Part requires or enables an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer) to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.

Division 2 Practice of foreign law (cf former Pt 14 Div 2; Vic Pt 2.8 Div 2; NSW Pt 2.7 Div 2)

2.8.4 Requirement for registration [CU] (cf former 1404; Vic 2.8.4; NSW 186)

- (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 an overseas-registered foreign lawyer:
 - (a) who:

- (i) practises foreign law in this jurisdiction for one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or
 - (ii) is subject to a restriction imposed under the *Migration Act 1958* 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 become a partner or director of a law practice.

2.8.5 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction [CU] (cf former 1405; Vic 2.8.5; NSW 187)

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

2.8.6 Scope of practice [CU] (cf former 1406; Vic 2.8.6; NSW 188)

- (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.
- (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.

2.8.7 Form of practice [CU] (cf former 1407; Vic 2.8.7; NSW 189)

- (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.

2.8.8 Application of Australian professional ethical and practice standards [CU] (cf former 1408; Vic 2.8.8; NSW 190)

- (1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.
- (2) Chapter 4 (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 Chapter 4 applies as if the person were an Australian-registered foreign lawyer);
- and so applies as if references in Chapter 4 to an Australian legal practitioner were references to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Chapter 4 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 Chapter 4 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.

2.8.9 Designation [CU] (cf former 1409; Vic 2.8.9; NSW 191)

- (1) An Australian-registered foreign lawyer may use only the following designations:
 - (a) the lawyer's own name;
 - (b) a title or business name the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;
 - (c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);

- (d) if the lawyer is a principal of any law practice in Australia whose principals include both one or more Australian-registered foreign lawyers and one or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, “Solicitors and locally registered foreign lawyers” or “Australian solicitors and US attorneys”).
- (2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice’s name in or in connection with practising foreign law in this jurisdiction only if:
 - (a) the lawyer indicates, on the lawyer’s letterhead or any other document used in this jurisdiction to identify the lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and
 - (b) the lawyer has provided the 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.

2.8.10 Letterhead and other identifying documents [CU] (cf former 1410; Vic 2.8.10; NSW 192)

- (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 2.8.9 (Designation).
- (4) In this section:
public document includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

2.8.11 Advertising [CU] (cf former 1411; Vic 2.8.11; NSW 193)

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the domestic registration authority or by law on legal practice engaged in 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.

2.8.12 Foreign lawyer employing Australian legal practitioner [CU] (cf former 1412; Vic 2.8.12; NSW 194)

- (1) An Australian-registered foreign lawyer may employ one or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

- (3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.
- (4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not:
 - (a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer; or
 - (b) otherwise practise Australian law in this jurisdiction in the course of that employment.
- (5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least one other partner is an Australian legal practitioner.
- (6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

2.8.13 Trust money and trust accounts [CU, except (3) CNU] (cf former 1413; Vic 2.8.13; NSW 195)

- (1) The provisions of Part 3.3 (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 law practices and Australian legal practitioners.
- (2) In this section, a reference to money is not limited to a reference to money in this jurisdiction.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts for the purposes of this section.

2.8.14 Professional indemnity insurance [CU] (cf former 1414; Vic 3.5.3; NSW 196)

- (1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with one of the following:

- (a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;
 - (b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a)—the foreign lawyer:
 - (i) must have professional indemnity insurance that covers the practice of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and
 - (ii) if the insurance is for less than \$1.5 million (inclusive of defence costs)—must provide a disclosure statement to each client disclosing the level of cover;
 - (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b)—the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.
- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
 - (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this section.
 - (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

Note. No regulations are currently proposed to be made under this subsection, but when made should be [CU].

2.8.15 Fidelity cover [CU] (cf former 1415; Vic 2.8.14; NSW 197)

The regulations may provide that provisions of Part 3.6 (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 (cf former Pt 14 Div 3; Vic Pt 2.8 Div 3; NSW Pt 2.7 Div 3)

2.8.16 Local registration of foreign lawyers [CU] (cf former 1416; Vic 2.8.15; NSW 198)

Overseas-registered foreign lawyers may be registered as foreign lawyers under this Act.

2.8.17 Duration of registration [CU] (cf former 1417; Vic 2.8.16; NSW 199)

- (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.

2.8.18 Locally registered foreign lawyer is not officer of Supreme Court [CU] (cf former 1418; Vic 2.8.17; NSW 200)

A locally registered foreign lawyer is not an officer of the Supreme Court.

Division 4 Applications for grant or renewal of local registration (cf former Pt 14 Div 4; Vic Pt 2.8 Div 4; NSW Pt 2.7 Div 4)

2.8.19 Application for grant or renewal of registration [CU] (cf former 1419; Vic 2.8.18; NSW 201)

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.

2.8.20 Manner of application [CU] (cf former 1420; Vic 2.8.19; NSW 202)

- (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 whether the applicant meets the criteria for registration.
- (5) The fees and costs must not include any component for compulsory membership of any professional association.
- (6) The approved form may require the applicant to disclose:
 - (a) matters that may affect the domestic registration authority's consideration of the application for the grant or renewal of registration; and
 - (b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.
- (7) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.

- (8) The approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

2.8.21 Requirements regarding applications for grant or renewal of registration [CU] (cf former 1421; Vic 2.8.20; NSW 203)

- (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 whether the applicant has been convicted of an offence in Australia or a foreign country, and if so:
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the applicant's age when the offence was committed; and
 - (e) 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:
 - (i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and
 - (ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place; as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and

- (g) specify any special conditions imposed in Australia or a foreign country as a restriction on legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and
 - (h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities the 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) specify which of the paragraphs of section 2.8.14 (1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and
 - (j) provide the information or be accompanied by the other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the 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 engage in legal practice in the foreign country concerned, and the date of registration; and
 - (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.
- (4) The applicant must (if the 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 (cf former Pt 14 Div 5; Vic Pt 2.8 Div 5; NSW Pt 2.7 Div 5)

2.8.22 Grant or renewal of registration [CU] (cf former 1422; Vic 2.8.21; NSW 204)

- (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) The domestic registration authority may, when granting or renewing registration, impose conditions as referred to in section 2.8.42 (Conditions imposed by domestic registration authority).
- (3) If the domestic registration authority grants or renews registration, the authority must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.
- (4) If the domestic registration authority:
 - (a) refuses to grant or renew registration; or
 - (b) imposes a condition of the registration and the applicant does not agree to the condition;the authority must, as soon as practicable, give the applicant an information notice.
- (5) A notice of renewal may be in the form of a new registration certificate or any other form the authority considers appropriate.

Note. Time specifications for decision making and processes may differ among jurisdictions.

2.8.23 Requirement to grant or renew registration if criteria satisfied [CU] (cf former 1423; Vic 2.8.22; NSW 205)

- (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 engaging in legal practice in one or more of the foreign countries; and
 - (c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to:
 - (i) any special conditions in engaging in legal practice in any of the foreign countries; or
 - (ii) any undertakings concerning engaging in legal practice in any of the foreign countries;that would make it inappropriate to register the person; and
 - (d) is satisfied the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were to be granted;
- unless the 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.

2.8.24 Refusal to grant or renew registration [CU] (cf former 1424; Vic 2.8.23; NSW 206)

- (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; or
 - (h) the applicant's foreign legal practice is in receivership (however described).
- (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 (cf former Pt 14 Div 6; Vic Pt 2.8 Div 6; NSW Pt 2.7 Div 6)

2.8.25 Application of this Division [CNU] (cf former 1425; Vic 2.8.24; NSW 207)

This Division does not apply in relation to matters referred to in Division 7 (Special powers in relation to local registration—show cause events).

2.8.26 Grounds for amending, suspending or cancelling registration [CNU] (cf former 1426; Vic 2.8.25; NSW 208)

- (1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer:
 - (a) the registration was obtained because of incorrect or misleading information;
 - (b) the person fails to comply with a requirement of this Part;
 - (c) the person fails to comply with a condition imposed on the person's registration;
 - (d) the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as:
 - (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian lawyer;
 - (e) the person has been convicted of an offence in Australia or a foreign country;

- (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country;
 - (g) the person does not meet the requirements of section 2.8.14 (Professional indemnity insurance);
 - (h) another ground the domestic registration authority considers sufficient.
- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 2.8.42 (Conditions imposed by domestic registration authority).

2.8.27 Amending, suspending or cancelling registration [CNU] (cf former 1427; Vic 2.8.26; NSW 209)

- (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 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 7 days and not more than 28 days, as to why the action proposed should not be taken.
- (2) If, after considering all written representations made within the specified time, the authority still believes grounds exist to take the action, the authority may:
- (a) if the notice under subsection (1) 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 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 notice stated the action proposed was to cancel the registration:
 - (i) cancel the registration; or
 - (ii) suspend the registration for a period; or
 - (iii) amend the registration in a less onerous way the authority considers appropriate because of the representations.
- (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.
 - (6) In this section, *amend* registration means amend the registration under section 2.8.42 during its currency, otherwise than at the request of the foreign lawyer concerned.

2.8.28 Operation of amendment, suspension or cancellation of registration [CNU] (cf former 1428; Vic 2.8.27; NSW 210)

- (1) **Application of section**
This section applies if a decision is made to amend, suspend or cancel a person’s registration under section 2.8.27 (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
 - (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.

2.8.29 Other ways of amending or cancelling registration [CNU] (cf former 1429; Vic 2.8.28; NSW 211)

- (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 2.8.27 (Amending, suspending or cancelling registration) does not apply in that case.

2.8.30 Relationship of this Division with Chapter 4 [CNU] (cf former 1430; Vic 2.8.29; NSW 212)

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

Division 7 Special powers in relation to local registration—show cause events (cf former Pt 14 Div 7; Vic Pt 2.8 Div 7; NSW Pt 2.7 Div 7)

Note. This is subject to local variations.

2.8.31 Applicant for local registration—show cause event [CNU] (cf former 1431; Vic 2.8.30; NSW 213)

- (1) This section applies if:
 - (a) a person is applying for registration as a foreign lawyer under this Act; and
 - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must 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 2.8.32 (Locally registered foreign lawyer—show cause event), 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.

2.8.32 Locally registered foreign lawyer—show cause event [CNU] (cf former 1432; Vic 2.8.31; NSW 214)

- (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) 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.

2.8.33 Refusal, amendment, suspension or cancellation of local registration—failure to show cause [CNU] (cf former 1433; Vic 2.8.32; NSW 215)

- (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 2.8.31 (Applicant for local registration—show cause event) or 2.8.32 (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 2.8.31 or 2.8.32 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 2.8.32 (3) is taken to have been provided in accordance with section 2.8.32.
- (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 registration.

2.8.34 Restriction on making further applications [CNU] (cf former 1434; Vic 2.8.33; NSW 216)

- (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.

2.8.35 Relationship of this Division with Chapters 4 and 6 [CNU] (cf former 1435; Vic N/A; NSW 217)

- (1) The domestic registration authority has and may exercise powers under Part 4.6 (Investigation of complaints), and Chapter 6 (Investigatory powers), in relation to a matter under this Division, as if the matter were the subject of a complaint under Chapter 4.
- (2) Accordingly, the provisions of Part 4.6, and Chapter 6, apply in relation to a matter under this Division, and so apply with any necessary modifications.
- (3) Nothing in this Division prevents a complaint from being made under Chapter 4 about a matter to which this Division relates.

Division 8 Further provisions relating to local registration (cf former Pt 14 Div 8; Vic Pt 2.8 Div 8; NSW Pt 2.7 Div 8)

2.8.36 Immediate suspension of registration [CNU] (cf former 1436; Vic 2.8.34; NSW 218)

- (1) This section applies, despite sections 2.8.27 (Amending, suspending or cancelling registration) and 2.8.28 (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 2.8.27;
 - (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.

2.8.37 Surrender of local registration certificate and cancellation of registration [CNU] (cf former 1437; Vic 2.8.35; NSW 219)

- (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.

2.8.38 Automatic cancellation of registration on grant of practising certificate [CNU] (cf former 1438; Vic 2.8.36; NSW 220)

A person's registration as a foreign lawyer under this Part is taken to be cancelled if the person becomes an Australian legal practitioner.

2.8.39 Suspension or cancellation of registration not to affect disciplinary processes [CNU] (cf former 1439; Vic 2.8.37; NSW 221)

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.

2.8.40 Return of local registration certificate on amendment, suspension or cancellation of registration [CNU] (cf former 1440; Vic 2.8.38; NSW 222)

- (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 (cf former Pt 14 Div 9; Vic Pt 2.8 Div 9; NSW Pt 2.7 Div 9)

2.8.41 Conditions generally [CNU] (cf former 1441; Vic 2.8.39; NSW 223)

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 Chapter 4 (Complaints and discipline) or under provisions of a corresponding law that correspond to Chapter 4.

2.8.42 Conditions imposed by domestic registration authority [CNU] (cf former 1442; Vic 2.8.40; NSW 224)

- (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.

2.8.43 Imposition or variation of conditions pending criminal proceedings [NC] (cf former 1443; Vic N/A; NSW 225)

Note. Jurisdictions that include section 2.4.14 (Imposition or variation of conditions pending criminal proceedings) may wish to consider including a similar section in this Division.

2.8.44 Statutory condition regarding notification of offence [CNU] (cf former 1444; Vic 2.8.41; NSW 226)

- (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.

2.8.45 Conditions imposed by legal profession rules [CNU] (cf former 1445; Vic 2.8.42; NSW 227)

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.

2.8.46 Compliance with conditions [CNU] (cf former 1446; Vic 2.8.43; NSW 228)

A locally registered foreign lawyer must not contravene a condition to which the registration is subject.

Penalty:

Division 10 Interstate-registered foreign lawyers (cf former Pt 14 Div 10; Vic Pt 2.8 Div 10; NSW Pt 2.7 Div 10)

2.8.47 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction [CNU] (cf former 1447; Vic 2.8.44; NSW 229)

- (1) This Part does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.
- (2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction:
 - (a) is subject to:
 - (i) any conditions imposed by the [appropriate authority] under section 2.8.48 (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.

2.8.48 Additional conditions on practice of interstate-registered foreign lawyers [CNU] (cf former 1448; Vic 2.8.45; NSW 230)

- (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.
- (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 (cf former Pt 14 Div 11; Vic Pt 2.8 Div 11; NSW Pt 2.7 Div 11)

2.8.49 Consideration and investigation of applicants and locally registered foreign lawyers [CNU] (cf former 1449; Vic 2.8.46; NSW 231)

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this Part, the domestic registration authority may, by notice to the applicant or locally registered foreign lawyer, require the applicant or locally registered foreign lawyer:
 - (a) to give it specified documents or information; or
 - (b) to co-operate with any inquiries that it considers appropriate.
- (2) A 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 domestic registration authority.

2.8.50 Register of locally registered foreign lawyers [CNU] (cf former 1450; Vic 6.2.23; NSW 232)

- (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.

2.8.51 Publication of information about locally registered foreign lawyers [CNU] (cf former 1451; Vic 2.8.47; NSW 233)

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.

2.8.52 Supreme Court orders about conditions [CNU] (cf former 1452; Vic 2.8.48; NSW 234)

- (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.

2.8.53 Exemption by domestic registration authority [CNU] (cf former 1453; Vic 2.8.49; NSW 235)

- (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.

2.8.54 Membership of professional association [CNU] (cf former 1454; Vic 2.8.50; NSW 236)

An Australian-registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

2.8.55 Refund of fees [NC] (cf former 1455; Vic N/A; NSW 237)

- (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.

2.8.56 Appeals or reviews [CNU] (cf former 1456; Vic 2.8.51; NSW 238)

Note. Local provisions to be inserted.

2.8.57 Savings and transitional provisions [CNU] (cf former 1457; Vic 8.2.1, Sch 2; NSW 737, Sch 9)

Note. Local provisions to be inserted.

Part 2.9 Community legal centres (cf former N/A; Vic Pt 2.9; NSW Pt 2.8)

Note. Local provisions may be inserted.

Chapter 3 Conduct of legal practice (cf former N/A; Vic Chapter 3; NSW Chapter 3)

Part 3.1 Preliminary (cf former N/A; Vic Pt 3.1; NSW N/A)

Note. Local provisions may be inserted.

Part 3.2 Manner of legal practice (cf former Pt 16; Vic Pt 3.2; NSW Pt 7.5)

Introductory note 1.

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 (cf former Pt 16 Div 1; Vic Pt 3.2 Div 1; NSW Pt 7.5 Div 1)

3.2.1 Purpose [NC] (cf former 1601; Vic 3.2.1; NSW 701)

The purpose of this Part is to promote the maintenance of high standards of professional conduct by Australian legal practitioners and Australian-registered foreign lawyers by providing for the making and enforcement of rules of professional conduct that apply to them when they practise in this jurisdiction.

Division 2 Legal practice generally (cf former N/A; Vic Pt 3.2 Div 2; NSW Pt 2.4 Div 9)

Note. Local provisions may be inserted.

Division 3 Rules for Australian legal practitioners and Australian-registered foreign lawyers (cf former Pt 16 Div 2; Vic Pt 3.2 Div 3; NSW Pt 7.5 Div 2)

3.2.2 Rules for Australian legal practitioners [CNU] (cf former 1602; Vic 3.2.9; NSW 702, 703, 704)

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.

3.2.3 Rules for Australian-registered foreign lawyers [CNU] (cf former 1603; Vic 3.2.10; NSW 702, 703, 704)

The [appropriate authority] may make rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

Note. Jurisdictions with different professional branches may need to deal with foreign lawyers in each branch separately.

3.2.4 Subject-matter of legal profession rules [CNU] (cf former 1604; Vic 3.2.11; NSW 706)

- (1) Legal profession rules for Australian legal practitioners or Australian-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.

3.2.5 Public notice of proposed legal profession rules [CNU] (cf former 1605; Vic 3.2.13; NSW 707, 708)

- (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
 - (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 4 Rules for incorporated legal practices and multi-disciplinary partnerships (cf former Pt 16 Div 3; Vic Pt 3.2 Div 4; NSW 705)

3.2.6 Rules [CNU] (cf former 1606; Vic 3.2.14; NSW 705)

- (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, but only if the provision of those services by:
 - (i) officers or employees of incorporated legal practices; or

- (ii) partners or employees of multi-disciplinary partnerships; may give rise to a conflict of interest relating to the provision of legal services.
- (2) 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 that may give rise to a conflict of interest relating to the provision of legal services); or
 - (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services).
- (4) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

3.2.7 Rule-making procedures [NC] (cf former 1607; Vic 3.2.15; NSW 705)

The regulations may make provision for or with respect to the making of legal profession rules under this Division.

Division 5 Other legal profession rules (cf former N/A; Vic Pt 3.2 Div 5; NSW N/A)

Note. Local provisions may be inserted.

Division 6 General provisions for legal profession rules (cf former Pt 16 Div 4; Vic Pt 3.2 Div 6; NSW Pt 7.5 Div 4)

3.2.8 Binding nature of legal profession rules [CNU] (cf former 1608; Vic 3.2.17; NSW 711)

- (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 is capable of constituting unsatisfactory professional conduct or professional misconduct.

3.2.9 Legal profession rules inconsistent with Act or regulations [CNU] (cf former 1609; Vic 3.2.18; NSW 712)

Legal profession rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

3.2.10 Availability of rules [CNU] (cf former 1610; Vic 3.2.19; NSW 713)

The [appropriate authority] must ensure that the legal profession rules are available for public inspection (including on its internet site, if any, or on any other internet site specified by the authority), and that amendments are incorporated as soon as possible.

Part 3.3 Trust money and trust accounts (cf former Pt 7; Vic Pt 3.3; NSW Pt 3.1)

Introductory note 1. 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 2. Some jurisdictions may provide that this Part does not apply to barristers.

Division 1 Preliminary (cf former Pt 7 Div 1; Vic Pt 3.3 Div 1; NSW Pt 3.1 Div 1)

3.3.1 Purposes [NC] (cf former 701; Vic 3.3.1; NSW 242)

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.

3.3.2 Definitions [CU] (cf former 702; Vic 3.3.2; NSW 243)

(1) In this Part:

approved ADI means an ADI approved under section 3.3.41 (Approval of ADIs) by the [appropriate authority].

controlled money means money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control.

Note. See section 3.3.16 (6) (Controlled money), which prevents pooling of controlled money.

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

deposit record includes a deposit slip or duplicate deposit slip.

external examination means an external examination under Division 4 of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under Division 4.

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 Division 3 of the affairs of a law practice.

investigator means a person holding an appointment as an investigator under 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 entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes:

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and
- (d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

trust records includes the following documents:

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records;
- (e) trust account ADI statements;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;
- (i) records of monthly reconciliations;
- (j) trust transfer journals;
- (k) statements of account as required to be furnished under the regulations;
- (l) registers required to be kept under the regulations;
- (m) monthly statements required to be kept under the regulations;
- (n) files relating to trust transactions or bills of costs or both;
- (o) written directions, authorities or other documents required to be kept under this Act 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.
- (3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by:
 - (a) the practice alone; or
 - (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
 - (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following:
 - (i) one or more associates of the practice;
 - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

3.3.3 Money involved in financial services or investments [CNU] (cf former 703; Vic 3.3.3; NSW 244)

- (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 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.

3.3.4 Determinations about status of money [CU] (cf former 804; Vic 3.3.4; NSW 245)

- (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.

3.3.5 Application of Part to law practices and trust money [CU] (cf former 705; Vic 3.3.5; NSW 246)

(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:

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

3.3.6 Protocols for determining where trust money is received [CU] (cf former 706; Vic 3.3.6; NSW 247)

- (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.

3.3.7 When money is received [CU] (cf former 707; Vic 3.3.7; NSW 248)

- (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 of the practice; or
 - (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of another person.
- (2) For 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.

3.3.8 Discharge by legal practitioner associate of obligations of law practice [CU] (cf former 708; Vic 3.3.8; NSW 249)

- (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 3.3.44 (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.

3.3.9 Liability of principals of law practice [CU] (cf former 709; Vic 3.3.9; NSW 250)

- (1) 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.
- (2) References in this Part and the regulations made for the purposes of this Part to a law practice include references to the principals of the law practice.

3.3.10 Former practices, principals and associates [CU] (cf former 710; Vic 3.3.10; NSW 251)

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.

3.3.11 Barristers not to receive trust money [NC] (cf former 710A; Vic N/A; NSW 252)

A barrister is not, in the course of practising as a barrister, to receive trust money.

Division 2 Trust accounts and trust money (cf former Pt 7 Div 2; Vic Pt 3.3 Div 2; NSW Pt 3.1 Div 2)

3.3.12 Maintenance of general trust account [CU] (cf former 711; Vic 3.3.11; NSW 253)

- (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 or holds only either or both of the following:

- (a) controlled money;
- (b) transit money received in a form other than 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.

3.3.13 Certain trust money to be deposited in general trust account [CU] (cf former 712; Vic 3.3.13; NSW 254)

- (1) Subject to section 3.3.20, 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 the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Penalty:

- (2) Subject to section 3.3.20, 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) 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.

3.3.14 Holding, disbursing and accounting for trust money [CU] (cf former 713; Vic 3.3.14; NSW 255)

- (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:

3.3.15 Manner of withdrawal of trust money from general trust account [CU] (cf former 713A; Vic N/A; NSW N/A)

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.

Penalty:

- (2) Without limiting subsection (1), the following are specifically prohibited:
 - (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the trust money.

Note. Qld does not currently intend to authorise electronic funds transfer.

3.3.16 Controlled money [CU] (cf former 714; Vic 3.3.15; NSW 256)

- (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.

3.3.17 Manner of withdrawal of controlled money from controlled money account [CU] (cf former 714A; Vic N/A; NSW N/A)

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.

Penalty:

- (2) Without limiting subsection (1), the following are specifically prohibited:

- (a) cash withdrawals;
- (b) ATM withdrawals or transfers;

- (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.
Note. Qld does not currently intend to authorise electronic funds transfer.

3.3.18 Transit money [CU] (cf former 715; Vic 3.3.16; NSW 257)

- (1) Subject to section 3.3.20, 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:

3.3.19 Trust money subject to specific powers [CU] (cf former 716; Vic 3.3.17; NSW 258)

- (1) Subject to section 3.3.20, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Penalty:

- (2) The law practice must account for the money in the way prescribed by the regulations.

Penalty:

3.3.20 Trust money received in the form of cash [CU] (cf former 716A; Vic N/A; NSW 258A)

(1) General trust money

A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.

Penalty:

(2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice:

(a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (1); and

(b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

(3) Controlled money

Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 3.3.16.

(4) Transit money

A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.

Penalty:

(5) Trust money subject of a power

A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.

Penalty:

(6) Paramount operation of this section

This section has effect despite anything to the contrary in any relevant direction, instruction or power.

(7) **Definitions**

In this section:

appropriate person, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in respect of dealings with the money.

general trust money means trust money, other than:

- (a) controlled money; and
- (b) transit money; and
- (c) money that is the subject of a power.

3.3.21 Protection of trust money [CU] (cf former 717; Vic 3.3.18; NSW 259)

- (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.

3.3.22 Intermixing money [CU (1); NC (2) but CU if adopted] (cf former 718; Vic 3.3.19; NSW 260)

- (1) A law practice must not, otherwise than as permitted by subsection (2), mix trust money with other money.

Penalty:

- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the [appropriate authority] and in accordance with any conditions imposed by the [appropriate authority] in relation to the authorisation.

3.3.23 Dealing with trust money: legal costs and unclaimed money [CU] (cf former 719; Vic 3.3.20; NSW 261, 266)

- (1) A law practice may do any of the following, in relation to trust money held in a general trust account or controlled money account of the practice for a person:

- (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
 - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are 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 3.4 (Costs disclosure and assessment).

3.3.24 Deficiency in trust account [CU] (cf former 720; Vic 3.3.21; NSW 262)

- (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.

3.3.25 Reporting certain irregularities and suspected irregularities [CU] (cf former 721; Vic 3.3.22, 3.3.23, 3.3.24; NSW 263)

- (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 8.1.6 (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).

3.3.26 Keeping trust records [CU] (cf former 722; Vic 3.3.25; NSW 264)

- (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:

3.3.27 False names [CU] (cf former 723; Vic 3.3.26; NSW 265)

(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 (cf former Pt 7 Div 3 Subdiv 1; Vic Pt 3.3 Div 3; NSW Pt 3.1 Div 3)

3.3.28 Appointment of investigators [NC] (cf former 724; Vic 3.3.29; NSW 267)

(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.

3.3.29 Investigations [NC] (cf former 725; Vic 3.3.28; NSW 268)

(1) The instrument of appointment may authorise the investigator to conduct either or both of the following:

- (a) routine investigations on a regular or other basis;
- (b) investigations in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice.

(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.

3.3.30 Application of Chapter 6 [NC] (cf former 726; Vic N/A; NSW 269)

Chapter 6 (Investigatory powers) applies to an investigation under this Division.

3.3.31 Investigator's report [NC] (cf former 727; Vic 3.3.47, 3.3.49; NSW 270)

- (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
 - (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
 - (c) as provided in section 6.5.3 (Permitted disclosure of confidential information).

Penalty:

3.3.32 When costs of investigation are debt [NC] (cf former 728; Vic 3.3.48; NSW 271)

- (1) If:
 - (a) an investigator states in his or her report of an investigation that there is evidence that a breach of this Act or the regulations has been committed or evidence that a default (within the meaning of Part 3.6) has occurred in relation to the law practice whose affairs are under investigation; and
 - (b) the [appropriate authority] is satisfied that the breach or default is wilful or of a substantial nature;

the [authority] may decide that the whole or part of the costs of carrying out the 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.

Division 4 External examinations (cf former Pt 7 Div 3 Subdiv 2; Vic Pt 3.3 Div 4; NSW Pt 3.1 Div 4)

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 Division are given by way of example.

3.3.33 Designation of external examiners [NC] (cf former 729; Vic 3.3.51; NSW 272)

- (1) The [appropriate authority] may, in writing, designate persons (referred to in this Division 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.

3.3.34 Trust records to be externally examined [NC] (cf former 730; 1st Ed. 730, 731; Vic 3.3.52; NSW 274)

- (1) A law practice must at least once in each financial year have its trust records externally examined by an external examiner appointed in accordance with the regulations.
Penalty:
- (2) The [appropriate authority] may appoint an external examiner to examine a law practice's trust records if the [authority] is not satisfied:
 - (a) that the practice has had its trust records externally examined as required by this section; or
 - (b) that an external examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of section 3.3.49, this section has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this section.

3.3.35 Examination of affairs in connection with examination of trust records [NC] (cf former 734; Vic 3.3.53; NSW 276)

- (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 Division and Chapter 6 (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.

3.3.36 Designation and appointment of associates as external examiners [NC] (cf former 732; Vic N/A; NSW 273)

- (1) The [appropriate authority] may designate an associate of a law practice under this Division 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 Division to examine the practice's trust records.

3.3.37 Final examination of trust records [NC] (cf former 733; Vic 3.3.55; NSW 275)

- (1) This section applies if a law practice:
 - (a) ceases to be authorised to receive trust money; or
 - (b) ceases to engage in legal practice in this jurisdiction.
- (2) The law practice must appoint an external examiner to examine the practice's trust records:
 - (a) in 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.

3.3.38 Carrying out examination [NC] (cf former 735; Vic N/A; NSW 277)

- (1) Chapter 6 (Investigatory powers) applies to an external examination under this Division.
- (2) Subject to Chapter 6, 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.

Note. Jurisdictions may wish to consider whether auditors of a law practice's annual accounts should be given the powers of an investigator under the Act, or whether jurisdictional legislation should include a mechanism for the auditor to seek the assistance of the appropriate authority in the event of obstruction.

3.3.39 External examiner's report [NC] (cf former 736; Vic 3.3.54; NSW 278)

- (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 6.5.3 (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.

3.3.40 Law practice liable for costs of examination [NC] (cf former 737; Vic N/A; NSW 279)

- (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 5 Provisions relating to ADIs (cf former Pt 7 Div 4; Vic Pt 3.3 Div 5; NSW Pt 3.1 Div 5)

3.3.41 Approval of ADIs [NC] (cf former 738; Vic 3.3.59; NSW 280)

- (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.

3.3.42 ADI not subject to certain obligations and liabilities [NC] (cf former 739; Vic N/A; NSW 281)

- (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.

3.3.43 Reports, records and information [NC] (cf former 740; Vic 3.3.61; NSW 282)

- (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 the external examiner in relation to the law practice concerned.
Penalty:

- (5) Subsections (1)–(4) apply despite any legislation or 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).

Division 6 Statutory deposits (cf former Pt 7 Div 4; Vic Pt 3.3 Div 6; NSW Pt 3.1 Div 6)

3.3.44 Statutory deposits [NC] (cf former 741; Vic 3.3.64, 3.3.65, 3.3.66; 3.3.67; 3.3.68; 3.3.69; NSW 283)

- (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.
- (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 7 Miscellaneous (cf former Pt 7 Div 5; Vic Pt 3.3 Div 8; NSW Pt 3.1 Div 8)

3.3.45 Restrictions on receipt of trust money [NC] (cf former 742; Vic 3.3.71; NSW 295)

- (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) 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 2.7.11 (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
 - (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 2.7.11;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:

3.3.46 Application of Part to incorporated legal practices and multi-disciplinary partnerships [NC] (cf former 743; Vic 3.3.73; NSW 296)

- (1) The obligations imposed on law practices by this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.

- (2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act, the regulations 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.

3.3.47 Disclosure to clients—money not received or held as trust money [NC] (cf former 743A; 1st Ed. 744; Vic N/A; NSW 298)

- (1) In this section:
non-trust money means money that is not trust money for the purposes of this Act because of section 3.3.3 (Money involved in financial services or investments) or because of a determination under section 3.3.4 (Determinations about status of money).
- (2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this section and the regulations, notify the person who entrusted the money to the practice that:
 - (a) the money is not treated as trust money for the purposes of this Act and is not subject to any supervision, investigation or audit requirements of this Act; and
 - (b) a claim against the Fidelity Fund under this Act cannot be made in respect of the money.

Penalty:

- (3) The notification must be given, in writing, to the person at the time:
 - (a) the money was entrusted to the law practice, if the money was non-trust money when it was entrusted to the practice; or
 - (b) the money becomes non-trust money, if the money was trust money when it was entrusted to the practice.
- (4) The regulations may make provision for or with respect to the form and manner in which notification required by this section is to be given and the contents of the notification.

3.3.48 Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate [NC] (cf former 743B; Vic N/A; NSW 299)

- (1) A law practice must in accordance with the regulations notify the [appropriate authority] of the details required by the regulations of each account maintained at an ADI in which the practice or any legal

practitioner associate of the practice holds money entrusted to the practice or legal practitioner associate.

Penalty:

- (2) Subsection (1) applies whether or not the money is trust money and whether or not section 3.3.3 (Money involved in financial services or investments) or 3.3.4 (Determinations about status of money) applies to the money.

3.3.49 Regulations [NC] (cf former 744; 1st Ed. 745; Vic 3.3.75; NSW 300)

- (1) The regulations may make provision for or with respect to any matter to which this Part relates, including for or with respect to:
 - (a) the establishment, maintenance and closure of general trust accounts and controlled money accounts; and
 - (b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money; and
 - (c) without limiting paragraph (a) or (b):
 - (i) the keeping and reconciliation of trust records; and
 - (ii) the establishment and keeping of trust ledger accounts; and
 - (iii) the establishment and keeping of records about controlled money and transit money; and
 - (iv) the establishment and keeping of registers of powers and estates where trust money is involved; and
 - (v) the recording of information about the investment of trust money; and
 - (vi) the furnishing of statements regarding trust money; and
 - (d) the notification to the [appropriate authority] of information relating directly or indirectly to matters to which this Part relates, including information about:
 - (i) trust accounts, trust money and trust records; and
 - (ii) the proposed or actual termination of a law practice that holds trust money; and
 - (iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money; and
 - (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money; and

- (e) the creation and exercise of liens over trust money; and
 - (f) providing exemptions, or providing for the giving of exemptions, from all or any specified requirements of this Part.
- (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 3.4 Costs disclosure and assessment (cf former Pt 10; Vic Pt 3.4; NSW Pt 3.2)

Introductory note. With respect to Division 7 (Costs assessment), 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 assessment, 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 an assessment of costs are specified and are consistent with the categories identified in sections 3.4.37, 3.4.38 and 3.4.39. 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 assessment. 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 3.4.48.
- The criteria for costs assessment set out in section 3.4.44 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 assessment.
- It is a core requirement that regulatory authorities must be statutorily obliged to deal with disciplinary or other issues that arise from a costs assessment. There must be a mandatory statutory requirement on a costs assessor to refer to the regulatory authority overcharging on costs and failure to comply with disclosure requirements if the assessor forms the opinion that the breach was or breaches were grossly excessive. In all other circumstances a costs assessor must have the discretion to refer to the regulatory authority.

Accordingly, all provisions contained in Division 7 should be regarded as core provisions (with sections 3.4.37 (10) and 3.4.44 being textually uniform), other than sections 3.4.40, 3.4.43, 3.4.47 and 3.4.51, which are not core.

Uniformity of core provisions will promote the intention that the one disclosure document issued by a law practice will satisfy the costs disclosure requirements of all jurisdictions.

Division 1 Preliminary (cf former Pt 10 Div 1; Vic Pt 3.4 Div 1; NSW Pt 3.2 Div 1)

3.4.1 Purposes [NC] (cf former 1001; Vic 3.4.1; NSW 301)

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 assessment of legal costs and the setting aside of certain costs agreements.

3.4.2 Definitions [NC; except CU as marked] (cf former 1002; Vic 3.4.2; NSW 302)

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*].

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 3.4.25, but does not include a costs agreement to the extent to which section 3.4.27 (1) (Contingency fees are prohibited) applies.

costs agreement means an agreement about the payment of legal costs.
[CU]

costs assessment means an assessment of legal costs under Division 7.

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

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

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)).

disbursements includes outlays.

itemised bill means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be assessed under Division 7.

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

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.

public authority means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest.

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

sophisticated client means a client to whom, because of section 3.4.13 (1) (c) or (d), disclosure under section 3.4.10 or 3.4.11 (1) is not or was not required. [CU]

third party payer—see section 3.4.3 (Terms relating to third party payers). [CU]

uplift fee means additional legal costs (excluding disbursements) payable under a costs agreement on the successful outcome of the matter to which the agreement relates.

Note. This definition will be omitted if section 3.4.26 is omitted.

3.4.3 Terms relating to third party payers [CU] (cf former 1002A; Vic N/A; NSW N/A)

- (1) For the purposes of this Part:
 - (a) a person is a **third party payer**, in relation to a client of a law practice, if the person is not the client and:

- (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (ii) being under that obligation, has already paid all or a part of those legal costs; and
 - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and
 - (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

Division 2 Application of this Part (cf former Pt 10 Div 2; Vic Pt 3.4 Div 2; NSW Pt 3.2 Div 2)

3.4.4 Application of Part—first instructions rule [CU] (cf former 1003; Vic 3.4.3; NSW 303)

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

3.4.5 Part also applies by agreement or at client's election [CU] (cf former 1004; Vic 3.4.4; NSW 304)

- (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 accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2) (a) in respect of the matter; or
 - (ii) the client gives a notification under subsection (2) (b) in respect of the matter.
- (2) For the purposes of subsection (1) (c), the client may:
 - (a) accept, in writing or by other conduct, a written offer that complies with subsection (3) to enter into an agreement with the law practice that this Part is to apply to the matter; or
 - (b) notify the law practice in writing that the client requires this Part to apply to the matter.
- (3) An offer referred to in subsection (2) (a) must clearly state:
 - (a) that it is an offer to enter into an agreement that this Part is to apply to the matter; and
 - (b) that the client may accept it in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.
- (4) A notification has no effect for 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.

3.4.6 Displacement of Part [CU] (cf former 1005; Vic 3.4.5; NSW 305)

- (1) This section applies if this Part applies to a matter by the operation of section 3.4.4 or 3.4.5.
- (2) This Part ceases to apply to the matter if:
 - (a) either:
 - (i) the legal services are or will be provided wholly or primarily in another jurisdiction; or
 - (ii) the matter has a substantial connection with another jurisdiction;
 - or both; and

- (b) either:
 - (i) the client enters under the corresponding law of the other jurisdiction into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
 - (ii) the client notifies under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law) 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 3.4.5.

3.4.7 How and where does a client first instruct a law practice? [CU] (cf former 1006; Vic 3.4.6; NSW 306)

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

3.4.8 When does a matter have a substantial connection with this jurisdiction? [CU] (cf former 1007; Vic 3.4.7; NSW 307)

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.

3.4.9 What happens when different laws apply to a matter? [CU] (cf former 1008; Vic 3.4.8; NSW 308)

- (1) This section applies if this Part applies to a matter for a period and a corresponding law applies for another period.
- (2) If this Part applied to a matter for a period and a corresponding law applies to the matter afterwards, this Part continues to apply in respect of legal costs (if any) incurred while this Part applied to the matter.

- (3) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.
- (4) However:
 - (a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 7 (Costs assessment) accordingly applies in respect of those legal costs; or
 - (b) if the client enters into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 7 accordingly does not apply in respect of those legal costs.
- (5) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by facsimile transmission, e-mail or some other written form.
- (6) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.
- (7) This section has effect despite any other provisions of this Part.

Division 3 Costs disclosure (cf former Pt 10 Div 3; Vic Pt 3.4 Div 3; NSW Pt 3.2 Div 3)

3.4.10 Disclosure of costs to clients [CU; except NC (1) (b) (ii) & (iii)] (cf former 1009; Vic 3.4.9; NSW 309)

- (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 after receipt of a lump sum bill; and
 - (iv) be notified under section 3.4.17 of any substantial change to the matters disclosed under this section; and
- (c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, 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
- (d) details of the intervals (if any) at which the client will be billed; and
- (e) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (2)); and
- (f) if the matter is a litigious matter, an estimate of:
- (i) the range of costs that may be recovered if the client is successful in the litigation; and
 - (ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and
- (g) the client's right to progress reports in accordance with section 3.4.19; and
- (h) details of the person whom the client may contact to discuss the legal costs; and
- (i) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
- (i) costs assessment under Division 7;
 - (ii) the setting aside of a costs agreement under section 3.4.30 (Setting aside costs agreements);
 - (iii) [each jurisdiction is to specify other avenues available under its laws]; and
- (j) any time limits that apply to the taking of any action referred to in paragraph (i); and
- (k) that the law of this jurisdiction applies to legal costs in relation to the matter; and
- (l) information about the client's right:

- (i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
- (ii) to notify under a corresponding law (and within the time allowed by the corresponding law) 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 enter into an agreement or give a notification as mentioned in paragraph (l) will be under provisions of the law of the other jurisdiction that correspond to section 3.4.5 (Part also applies by agreement or at client's election).

- (2) For the purposes of subsection (1) (e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.
- (3) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.
- (4) For the purposes of subsection (1) (f) the disclosure must include:
 - (a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client's legal costs; and
 - (b) if applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.
- (5) A law practice may disclose any or all of the details referred to in subsection (1) (b) (i)–(iii), (g), (i), (j) and (l) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so at the time the other details are disclosed as required by this section the practice is taken to have complied with this section in relation to the details so disclosed.

3.4.11 Disclosure if another law practice is to be retained [CU] (cf former 1010; Vic 3.4.10; NSW 310)

- (1) If a law practice intends to retain another law practice on behalf of a client, the first law practice must disclose to the client the details specified in section 3.4.10 (1) (a), (c) and (d) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 3.4.10.
- (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 3.4.10, 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.

3.4.12 How and when must disclosure be made to a client? [CU] (cf former 1011; Vic 3.4.11; NSW 311)

- (1) Disclosure under section 3.4.10 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.
- (2) Disclosure under section 3.4.11 (1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of sections 3.4.10 and 3.4.11.

3.4.13 Exceptions to requirement for disclosure [CU; CNU amounts in subsection (1) (a)] (cf former 1012; Vic 3.4.12; NSW 312, 722A)

- (1) Disclosure under section 3.4.10 or 3.4.11 (1) is not required to be made in any of the following circumstances:
 - (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1,500 (exclusive of GST) or the prescribed amount (whichever is higher);
 - (b) if:

- (i) the client has received one or more disclosures under section 3.4.10 or 3.4.11 (1) from the law practice in the previous 12 months; and
 - (ii) the client has agreed in writing to waive the right to disclosure; and
 - (iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not warranted;
- (c) if the client is:
- (i) a law practice or an Australian legal practitioner; or
 - (ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (each within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (iii) a financial services licensee (within the meaning of that Act); or
 - (iv) a liquidator, administrator or receiver (as respectively referred to in that Act); or
 - (v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of that Act) if it were a company; or
 - (vi) a proprietary company (within the meaning of that Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or
 - (vii) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (viii) 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.
- (2) Despite subsection (1) (a), if a law practice becomes aware that the total legal costs are likely to exceed \$1,500 (exclusive of GST) or the prescribed amount (whichever is higher), the law practice must disclose the matters in section 3.4.10 or 3.4.11 (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 3.4.19; or
 - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 3.4.10; or
 - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

3.4.14 Additional disclosure—settlement of litigious matters [CU] (cf former 1013; Vic 3.4.13; NSW 313)

- (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.

3.4.15 Additional disclosure—uplift fees [NC] (cf former 1014; Vic 3.4.14; NSW 314)

- (1) If a costs agreement involves an uplift fee, the law practice must, before entering into the agreement, disclose to the client in writing:
- (a) the law practice's legal costs; and
 - (b) the uplift fee (or the basis of calculation of the uplift fee); and
 - (c) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

Note 1. This section will be omitted if section 3.4.26 is omitted.

Note 2. Not all jurisdictions have agreed to regulate uplift fees or to adopt the textual approach set out in sections 3.4.15 and 3.4.26

3.4.16 Form of disclosure [CU] (cf former 1015; Vic 3.4.15; NSW 315)

- (1) Written disclosures to a client under this Division:
- (a) must be expressed in clear plain language; and
 - (b) may be in a language other than English if the client is more familiar with that language.
- (2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written disclosure.

3.4.17 Ongoing obligation to disclose [CU] (cf former 1016; Vic 3.4.16; NSW 316)

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

3.4.18 Effect of failure to disclose [CU] (cf former 1017; Vic 3.4.17; NSW 317)

- (1) **Postponement of payment of legal costs until assessed**

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under Division 7.

Note. Under section 3.4.48, the costs of an assessment in these circumstances are generally payable by the law practice.

(2) **Bar on recovering proceedings until legal costs assessed**

A law practice that does not disclose to a client or an associated third party payer anything required by this Division to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under Division 7.

(3) **Setting costs agreement aside**

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client or associated third party payer may also apply under section 3.4.30 for the costs agreement to be set aside.

(4) **Reduction of legal costs on assessment**

If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, then, on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the costs assessor to be proportionate to the seriousness of the failure to disclose.

Note. The wording of this subsection may need to be adjusted to conform to a jurisdiction's legislation as to the role or functions of a costs assessor.

(5) **Effect on legal costs where law practice retains another law practice that fails to disclose**

If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by section 3.4.11 (2), then subsections (1)–(4):

- (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and
- (b) do apply to the legal costs owing to the retained law practice.

- (6) **Circumstances where associated third party payer involved**
In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other:
- (a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
 - (b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (7) **Non-disclosure capable of constituting unsatisfactory professional conduct or professional misconduct**
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.

3.4.19 Progress reports [CU] (cf former 1018; Vic 3.4.18; NSW 318)

- (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.

3.4.20 Disclosure to associated third party payers [CU] (cf former 1018A; Vic N/A; NSW N/A)

- (1) If a law practice is required to make a disclosure to a client of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing:
 - (a) at the time the disclosure to the client is required under this Division; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.
- (3) Section 3.4.16 (Form of disclosure) applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 3.4.19 (1) (b) (Progress reports) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

Division 4 Legal costs generally (cf former Pt 10 Div 4; Vic Pt 3.4 Div 4; NSW Pt 3.2 Div 4)

3.4.21 On what basis are legal costs recoverable? [CU] (cf former 1019; Vic 3.4.19; NSW 319)

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 (or which can be overridden if the jurisdiction so provides) 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 3.4.44 (2) for the criteria that are to be applied on a costs assessment to determine whether legal costs are fair and reasonable.

3.4.22 Security for legal costs [NC] (cf former 1020; Vic 3.4.20; NSW 320)

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.

3.4.23 Interest on unpaid legal costs [NC] (cf former 1021; Vic 3.4.21; NSW 321)

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the practice has given a bill for the costs in accordance with this Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

Division 5 Costs agreements (cf former Pt 10 Div 5; Vic Pt 3.4 Div 5; NSW Pt 3.2 Div 5)

Note. Some jurisdictions may wish to include a non-core provision that enables costs agreements to contract out of a costs determination or scale of costs in force in the jurisdiction (except if it is a determination or scale that includes a provision preventing it from being overridden by a costs agreement).

3.4.24 Making costs agreements [CU (1), (2), (5) and (6); NC (3) & (4)] (cf former 1022; Vic 3.4.26; NSW 322)

- (1) A costs agreement may be made:
 - (a) between a client and a law practice retained by the client; or
 - (b) between a client and a law practice retained on behalf of the client by another law practice; or
 - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
 - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer in accordance with subsection (4) that is accepted in writing or by other conduct.

Note. Acceptance by other conduct is not permitted for conditional costs agreements—see section 3.4.25 (3) (c) (i).

- (4) The offer must clearly state:
 - (a) that it is an offer to enter into a costs agreement; and
 - (b) that the offer can be accepted in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.
- (5) Except as provided by section 3.4.52, a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under Division 7.

Note. If it attempts to do so, the costs agreement will be void—see section 3.4.29 (1).

- (6) A reference in section 3.4.30 and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1) (d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

3.4.25 Conditional costs agreements [NC; but textually uniform if adopted] (cf former 1023; Vic 3.4.27; NSW 323)

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.

- (2) A conditional costs agreement may relate to any matter, except a matter that involves 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 3.4.22 (1) (c) (costs agreements between law practices).
- (5) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement made with a sophisticated client.
- (6) If a client terminates an agreement within the period referred to in subsection (3) (e), the law practice:
 - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
 - (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

3.4.26 Conditional costs agreements involving uplift fees [NC] (cf former 1024; Vic 3.4.28; NSW 324)

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable:
 - (a) a range of estimates of the uplift fee; and
 - (b) an explanation of the major variables that will affect the calculation of the uplift fee.
- (4) If a conditional costs agreement relates to a litigious matter:
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (5) A law practice must not enter into a costs agreement in contravention of this section.

Penalty:

3.4.27 Contingency fees are prohibited [CU] (cf former 1025; Vic 3.4.29; NSW 325)

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Penalty:

- (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".

3.4.28 Effect of costs agreement [CU (1); NC (2)] (cf former 1026; Vic 3.4.30; NSW 326)

- (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.

3.4.29 Certain costs agreements are void [CU; except NC (4)] (cf former 1027; Vic 3.4.31; NSW 327)

- (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 3.4.21 (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 3.4.26 (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 3.4.27 (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.

3.4.30 Setting aside costs agreements [CNU] (cf former 1028; Vic 3.4.32; NSW 328)

- (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 or reasonable.

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

- (2) In determining whether or not a costs agreement is fair or reasonable, and without limiting the matters to which the [relevant body] can have regard, 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 circumstances and conduct of the parties before and when the agreement was made;
 - (e) the circumstances and the conduct of the parties in the matters after the agreement was made;
 - (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;
 - (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.

- (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 Chapter 4.
- (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):
- (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;
 - (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.
- (10) In this section:
client means a person to whom or for whom legal services are or have been provided.
Note. See also section 3.4.24 (6) which extends the application of this section to associated third party payers.

Division 6 Billing (cf former Pt 10 Div 6; Vic Pt 3.4 Div 6; NSW Pt 3.2 Div 7)

3.4.31 Legal costs cannot be recovered unless bill has been served [NC] (cf former 1029; Vic 3.4.33; NSW 331)

- (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 3.4.32 (Bills) and 3.4.33 (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 3.4.32 and 3.4.33; 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.

3.4.32 Bills [NC] (cf former 1030; Vic 3.4.34; NSW 332)

- (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.
- (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) Despite anything in subsections (2)–(6), a bill may be given to a client electronically if the client is a sophisticated client and requested the bill to be given electronically.
- (8) In this section:
agent of a person means an agent, law practice or Australian legal practitioner who has authority to accept service of legal process on behalf of the person.

3.4.33 Notification of client's rights [CU] (cf former 1031; Vic 3.4.35; NSW 333)

- (1) 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 assessment under Division 7;
 - (ii) the setting aside of a costs agreement under section 3.4.30 (Setting aside costs agreements);
 - (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 3.4.10 (1) (Disclosure of costs to clients).
- (2) Subsection (1) does not apply in relation to a sophisticated client.
- (3) A law practice may provide the written statement referred to in subsection (1) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.

3.4.34 Request for itemised bill [NC] (cf former 1032A; 1st Ed. 1032; Vic 3.4.36; NSW 332A)

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.
- (3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.
- (4) Subject to subsection (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.
- (5) If the person makes a request for an itemised bill in accordance with this section, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.
- (6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (7) Section 3.4.32 (2), (5) and (6) 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.

3.4.35 Interim bills [NC] (cf former 1032; 1st Ed. 1033; Vic 3.4.37; NSW 334)

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be assessed under Division 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 assessed or paid.

Division 7 Costs assessment (cf former Pt 10 Div 7; Vic Pt 3.4 Div 7; NSW Pt 3.2 Div 11)

3.4.36 Definition [NC] (cf former 1033A; Vic N/A; NSW N/A)

In this Division:

client means a person to whom or for whom legal services are or have been provided.

3.4.37 Application by clients or third party payers for costs assessment [CNU; except CU (6)] (cf former 1033; 1st Ed. 1034; Vic 3.4.38; NSW 350)

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

Note. This subsection may be amended as appropriate to refer to an assessment 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) A third party payer may apply to a costs assessor for an assessment of the whole or any part of legal costs payable by the third party payer.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for a costs assessment.
- (5) An application by a client or third party payer for a costs assessment under this section must be made within 12 months after:
- (a) the bill was given or the request for payment was made to the client or third party payer; or
 - (b) the costs were paid if neither a bill was given nor a request was made.
- (6) However, an application that is made out of time, otherwise than by:
- (a) a sophisticated client; or
 - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned;

may be dealt with by the costs assessor if the [Court], on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt after the 12 month period.

Note. It is intended that only a Court will be able to make a determination under subsection (6).

- (7) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (8) If there is an associated third party payer for a client of a law practice:
- (a) nothing in this section prevents:
 - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is solely liable; and
 - (ii) the associated third party payer from making one or more applications for assessment under this section in relation to costs for which the associated third party payer is solely liable;and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and
 - (b) the client or the associated third party payer:
 - (i) may participate in the costs assessment process where the other of them makes an application for assessment under this section in relation to costs for which they are both liable; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment; and
 - (c) the law practice:
 - (i) must participate in the costs assessment process where an application is made under this section by the associated third party payer in the same way as the practice must participate in the process where an application is made under this section by a client; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment.
- (9) If there is a non-associated third party payer for a client of a law practice:
- (a) nothing in this section prevents:

- (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is liable; and
 - (ii) the non-associated third party payer from making one or more applications for assessment under this section in relation to costs for which the non-associated third party payer is liable;and those applications may be made by them at the same time or at different times but must be dealt with separately; and
 - (b) the client:
 - (i) may participate in the costs assessment process where the non-associated third party payer makes an application under this section in relation to the legal costs for which the non-associated third party payer is liable; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment; and
 - (c) the law practice:
 - (i) must participate in the costs assessment process; and
 - (ii) is taken to be a party to the assessment; and
 - (d) despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.
- (10) In this section:
- client** includes the following:
- (a) an executor or administrator of a client;
 - (b) a trustee of the estate of a client.
- third party payer** includes the following:
- (a) an executor or administrator of a third party payer;
 - (b) a trustee of the estate of a third party payer.

3.4.38 Application for costs assessment by law practice retaining another law practice [CNU] (cf former 1034; 1st Ed. 1035; Vic 3.4.39; NSW 351)

- (1) A law practice that retains another law practice to act on behalf of a client may apply to a costs assessor for an assessment of the whole or any part of the legal costs [to which a bill given by the other law practice 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 assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application under this section must be made within 60 days after:
 - (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid if neither a bill was given nor a request was made.
- (5) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

3.4.39 Application for costs assessment by law practice giving bill [CNU] (cf former 1035; 1st Ed. 1036; Vic 3.4.40; NSW 352)

- (1) A law practice that has given a bill [in accordance with Division 6 (Billing)] may apply to a costs assessor for an assessment of the whole or any part of the legal costs to which the bill relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this section unless at least 30 days have passed since:
 - (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid if neither a bill was given nor a request was made; or
 - (c) an application has been made under this Division by another person in respect of the legal costs.

3.4.40 How to make an application for costs assessment [NC] (cf former 1036; 1st Ed. 1037; Vic N/A; NSW 354)

- (1) An application for a costs assessment:
 - (a) must be made in accordance with the regulations (if any); and
 - (b) subject to subsection (4), must be accompanied by the prescribed fee.

- (2) The application must authorise a costs assessor to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any law practice, Australian legal practitioner or Australian-registered foreign lawyer concerned, in 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 assessor [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 assessor [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 assessment until the application fee is paid.

3.4.41 Consequences of application [CNU] (cf former 1037; 1st Ed. 1038; Vic 3.4.41; NSW 355)

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

- (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
- (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.

3.4.42 Persons to be notified of application [CNU] (cf former 1038; 1st Ed. 1039; Vic N/A; NSW 356)

- (1) A costs assessor is to cause a copy of an application for costs assessment to be given to any law practice or client concerned or any other person whom the costs assessor thinks it appropriate to notify.
- (2) A person who is notified by the costs assessor under subsection (1):
 - (a) is entitled to participate in the costs assessment process; and
 - (b) is taken to be a party to the assessment; and
 - (c) if the costs assessor so determines, is bound by the assessment.

3.4.43 Procedure on assessment [NC] (cf former 1039; 1st Ed. 1040; Vic 3.4.43; NSW N/A)

If, after proper notice that a costs assessment will take place, a party to the assessment does not attend, the costs assessor may proceed with the assessment in the absence of 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 assessment, or that the law practice is not so bound. Jurisdictions will also need to provide their own procedures for assessment.

3.4.44 Criteria for assessment [CU] (cf former 1040; 1st Ed. 1041; Vic 3.4.44; NSW 363)

- (1) In conducting an assessment of legal costs, the costs assessor must consider:
 - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
 - (b) whether or not the work was carried out in a reasonable manner; and
 - (c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 3.4.45 or 3.4.46 applies to any disputed costs.
- (2) In considering what is a fair and reasonable amount of legal costs, the costs assessor may have regard to any or all of the following matters:
 - (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act, [*insert references to any other relevant legislation, regulations, practice rules, etc*];
 - (b) any disclosures made by the law practice under Division 3;
 - (c) any relevant advertisement as to:
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
 - (e) the retainer and whether the work done was within the scope of the retainer;

- (f) the complexity, novelty or difficulty of the matter;
 - (g) the quality of the work done;
 - (h) the place where, and circumstances in which, the legal services were provided;
 - (i) the time within which the work was required to be done;
 - (j) any other relevant matter.
- (3) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

3.4.45 Assessment of costs by reference to costs agreement [CU] (cf former 1041A; Vic N/A; NSW 361)

- (1) A costs assessor must assess the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if:
- (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
 - (b) the agreement has not been set aside under section 3.4.30 (Setting aside costs agreements);
- unless the assessor is satisfied:
- (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of Division 3 (Costs disclosure); or
 - (d) that Division 5 (Costs agreements) precludes the law practice concerned from recovering the amount of the costs; or
 - (e) that the parties otherwise agree.
- (2) The costs assessor is not required to initiate an examination of the matters referred to in subsection (1) (c) and (d).

3.4.46 Assessment of costs by reference to [costs determination or] scale of costs [NC] (cf former 1041B; Vic 3.4.43; NSW N/A)

A costs assessor must assess the amount of any disputed costs that are subject to a [costs determination or] scale of costs by reference to the [determination or] scale.

Note. If a jurisdiction includes a non-core provision that expressly enables costs agreements to contract out of costs determinations or scales of costs, the above section should indicate that the section does not apply to the extent that a costs agreement has excluded the operation of the determination or scale.

3.4.47 Outcome of assessment [NC] (cf former 1041; 1st Ed. 1042; Vic N/A; NSW 367)

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

3.4.48 Costs of assessment [CNU] (cf former 1042; 1st Ed. 1043; Vic 3.4.45; NSW 369)

- (1) A costs assessor must determine the costs of a costs assessment.
- (2) Unless the costs assessor otherwise orders and subject to subsection (4), the law practice to which the legal costs are payable or were paid must pay the costs of the assessment if:
 - (a) on the assessment the legal costs are reduced by 15% or more;
or
 - (b) the costs assessor is satisfied that the law practice failed to comply with Division 3.
- (3) Unless the costs assessor otherwise orders and subject to subsection (4), if the law practice is not, under subsection (2), liable to pay the costs of the assessment, the costs of the assessment must be paid by the party ordered by the costs assessor to pay those costs.
- (4) The costs assessor may refer to [the Supreme Court] any special circumstances relating to a costs assessment and [the Court] may make any order it thinks fit concerning the costs of the costs assessment.

3.4.49 Referral for disciplinary action [CNU] (cf former 1043; 1st Ed. 1044; Vic 3.4.46; NSW 393)

- (1) If, on a costs assessment, the costs assessor considers that the legal costs charged by a law practice are grossly excessive, the costs assessor 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 assessor considers that a costs assessment 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 assessor 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.

3.4.50 Appeal [CNU] (cf former 1044; 1st Ed. 1045; Vic 3.4.47; NSW 384, 385)

- (1) A person may appeal to the [appropriate court] from a decision of a costs assessor.
- (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*].

3.4.51 Legal costs subject to a consumer dispute are not assessable [NC] (cf former 1045; 1st Ed. 1046; Vic 3.4.48; NSW N/A)

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a consumer dispute under Chapter 4 may not be the subject of a costs assessment under this Division.

Note. A jurisdiction adopting this section will in this context need to consider section 4.6.4, which provides for the referral of complaints involving costs for costs assessment.

3.4.52 Contracting out of Division by sophisticated clients [CNU] (cf former 1046A; Vic N/A; NSW N/A)

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Division.

Division 8 Miscellaneous (cf former Pt 10 Div 8; Vic Pt 3.4 Div 8; NSW Pt 3.2 Div 12)

3.4.53 Application of Part to incorporated legal practices and multi-disciplinary partnerships [CNU] (cf former 1046; 1st Ed. 1047; Vic 3.4.49; NSW 397)

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.

3.4.54 Imputed acts, omission or knowledge [CU] (cf former 1047; 1st Ed. 1048; Vic 3.4.50; NSW 399)

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 3.4.26 (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 3.4.26 (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 3.5 Professional indemnity insurance (cf former Pt 9; Vic Pt 3.5; NSW Pt 3.3)

Note. Development will continue of a scheme relating to professional indemnity insurance that will facilitate interstate practice. Interim arrangements are located in sections 2.4.6, 2.4.34, 2.7.13 and 2.8.14.

Part 3.6 Fidelity cover (cf former Pt 8; Vic Pt 3.6; NSW Pt 3.4)

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

Division 1 Preliminary (cf former Pt 8 Div 1; Vic Pt 3.6 Div 1; NSW Pt 3.4 Div 1)

3.6.1 Purpose [NC] (cf former 801; Vic 3.6.1; NSW 418)

The purpose of this Part is to establish and maintain a fund to provide a source of compensation for defaults by law practices arising from or constituted by acts or omissions of associates.

3.6.2 Definitions [NC; except CU as marked] (cf former 802; Vic 3.6.2; NSW 419)

In this Part:

capping and sufficiency provisions of:

- (a) this jurisdiction—means section 3.6.31 (Caps on payments) and section 3.6.32 (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 arising from or constituted by 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 in the course of legal practice by the practice, 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 in the course of legal practice by the practice, where the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty.

[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 3.6.8 (Meaning of “relevant jurisdiction”).

3.6.3 Time of default [CU] (cf former 803; Vic 3.6.3; NSW 420)

- (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.

3.6.4 Application of this Part [NC] (cf former 803A; Vic N/A; NSW 421)

This Part does not apply to a default of a law practice consisting of a barrister.

Division 2 Fidelity Fund (cf former Pt 8 Div 2; Vic Pt 6.7 Div 2; NSW Pt 3.4 Div 2)

3.6.5 Establishment of Fidelity Fund [CNU] (cf former 804; Vic 6.7.15; NSW 422)

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.

3.6.6 Insurance [CNU] (cf former 805; Vic 6.7.22; NSW 428)

- (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.

3.6.7 Borrowing [CNU] (cf former 806; Vic 6.7.23; NSW 429)

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

Division 3 Defaults to which this Part applies (cf former Pt 8 Div 3; Vic Pt 3.6 Div 2; NSW Pt 3.4 Div 4)

3.6.8 Meaning of “relevant jurisdiction” [CU] (cf former 807; Vic 3.6.4; NSW 433)

- (1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be 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 or constituted by 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 3.6.36 (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.

3.6.9 Defaults to which this Part applies [CU] (cf former 808; Vic 3.6.5; NSW 434)

- (1) This Part applies to a default of a law practice arising from or constituted by an act or omission of one or more associates of the practice, where this jurisdiction is the relevant jurisdiction for the only associate or one or more of associates involved.
- (2) It is immaterial where the default occurs.
- (3) It is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this or any other jurisdiction or of the Commonwealth or that proceedings have not been commenced or concluded in relation to a crime or other offence of that kind.

3.6.10 Defaults relating to financial services or investments [CNU] (cf former 809; Vic 3.6.6; NSW 435)

- (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:

- (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 (cf former Pt 8 Div 4; Vic Pt 3.6 Div 3; NSW Pt 3.4 Div 5)

3.6.11 Claims about defaults [CNU] (cf former 810; Vic 3.6.7; NSW 436)

- (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.

3.6.12 Time limit for making claims [CNU] (cf former 811; Vic 3.6.8; NSW 437)

- (1) Subject to section 3.6.14 (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:
 - (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.

3.6.13 Advertisements [CNU] (cf former 812; Vic 3.6.9; NSW 438)

- (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].
- (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.

3.6.14 Time limit for making claims following advertisement [CNU] (cf former 813; Vic 3.6.10; NSW 439)

- (1) This section applies if the [appropriate authority] publishes a notice under section 3.6.13 (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 3.6.12 (Time limit for making claims) had the notice not been published.

3.6.15 Claims not affected by certain matters [CNU] (cf former 814; Vic 3.6.11; NSW 440)

- (1) A claim may be made about a law practice's default despite a change in the status of the practice or the associate concerned after the occurrence of the act or omission giving rise to or constituting the default.
- (2) A claim that has been made is not affected by a later change in the status of the practice or associate.
- (3) For 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).

3.6.16 Investigation of claims [CNU] (cf former 815; Vic 3.6.12; NSW 436)

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

3.6.17 Advance payments [CNU] (cf former 816; Vic 3.6.13; NSW 441)

- (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 (cf former Pt 8 Div 5; Vic Pt 3.6 Div 4; NSW Pt 3.4 Div 6)

3.6.18 Determination of claims [CNU] (cf former 817; Vic 3.6.14; NSW 442)

- (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.

3.6.19 Maximum amount allowable [CNU] (cf former 818; Vic 3.6.15; NSW 444)

- (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 3.6.20 (Costs) or to interest payable under section 3.6.21 (Interest).

3.6.20 Costs [CNU] (cf former 819; Vic 3.6.16; NSW 445)

- (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.

3.6.21 Interest [CNU] (cf former 820; Vic 3.6.17; NSW 446)

- (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.

3.6.22 Reduction of claim because of other benefits [CNU] (cf former 821; Vic 3.6.18; NSW 447)

- (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 3.6.24 (Repayment of certain amounts).

3.6.23 Subrogation [CNU] (cf former 822; Vic 3.6.19; NSW 448)

- (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 not be disallowed on any of the grounds set out in section 3.6.18 (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.

3.6.24 Repayment of certain amounts [CNU] (cf former 823; Vic 3.6.20; NSW 449)

- (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.

3.6.25 Notification of delay in making decision [CNU] (cf former 824; Vic 3.6.21; NSW 450)

- (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.

3.6.26 Notification of decision [CNU] (cf former 825; Vic 3.6.22; NSW 451)

- (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.

3.6.27 Appeal against [or review of] decision on claim [CNU] (cf former 826; Vic 3.6.23; NSW 452)

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.

3.6.28 Appeal against failure to determine claim [CNU] (cf former 827; Vic 3.6.24; NSW 453)

- (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 3.6.21 (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 3.6.21 (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.

3.6.29 Court proceedings [CNU] (cf former 828; Vic 3.6.25; NSW 454)

In any proceedings brought in a court under section 3.6.23 (Subrogation) or section 3.6.27 (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 (cf former Pt 8 Div 6; Vic Pt 3.6 Div 5; NSW Pt 3.4 Div 7)

3.6.30 Payments for defaults [CNU] (cf former 829; Vic 6.7.16; NSW 455)

- (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.

3.6.31 Caps on payments [CNU] (cf former 830; Vic 3.6.26; NSW 456)

- (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).

- (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.

3.6.32 Sufficiency of Fidelity Fund [CNU] (cf former 831; Vic 3.6.27; NSW 457)

- (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 (cf former Pt 8 Div 7; Vic Pt 3.6 Div 6; NSW Pt 3.4 Div 8)

3.6.33 Claims by law practices or associates about defaults [CNU] (cf former 832; Vic 3.6.28; NSW 458)

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission of an associate of the practice.
- (2) A claim may be made under section 3.6.11 (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 3.6.11 by the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

3.6.34 Claims by law practices or associates about notional defaults [CNU] (cf former 833; Vic 3.6.29; NSW 459)

- (1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by one or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced, is referred to in this section as a *notional default*.
- (3) This Part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

Division 8 Defaults involving interstate elements (cf former Pt 8 Div 8; Vic Pt 3.6 Div 7; NSW Pt 3.4 Div 9)

3.6.35 Concerted interstate defaults [CU] (cf former 834; Vic 3.6.30; NSW 460)

- (1) The [appropriate authority] may treat a concerted interstate default as if the default consisted of 2 or more separate defaults:
 - (a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and
 - (b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.
- (2) The [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.

3.6.36 Defaults involving interstate elements where committed by one associate only [CU] (cf former 835; Vic 3.6.31; NSW 461)

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, where the default involves more than one of

the cases referred to in section 3.6.8 (2)–(4) (Meaning of “relevant jurisdiction”).

- (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
 - (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 (cf former Pt 8 Div 9; Vic Pt 3.6 Div 8; NSW Pt 3.4 Div 10)

3.6.37 Protocols [CNU] (cf former 836; Vic 3.6.32; NSW 462)

- (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.

3.6.38 Forwarding of claims [CNU] (cf former 837; Vic 3.6.33; NSW 463)

- (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.

3.6.39 Investigation of defaults to which this Part applies [CNU] (cf former 838; Vic 3.6.34; NSW 464)

- (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.

3.6.40 Investigation of defaults to which a corresponding law applies [CNU] (cf former 839; Vic 3.6.35; NSW 465)

- (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.

3.6.41 Investigation of concerted interstate defaults and other defaults involving interstate elements [CNU] (cf former 840; Vic 3.6.36; NSW 466)

- (1) This section applies if any of the following appears to have occurred:
 - (a) a concerted interstate default;
 - (b) a default to which section 3.6.36 (Defaults involving interstate elements where committed by one associate only) applies.
- (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.

3.6.42 Recommendations by [appropriate authority] to corresponding authorities [CNU] (cf former 841; Vic 3.6.37; NSW 467)

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.

3.6.43 Recommendations to and decisions by [appropriate authority] after receiving recommendations from corresponding authorities [CNU] (cf former 842; Vic 3.6.38; NSW 468)

- (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).

3.6.44 Request to another jurisdiction to investigate aspects of claim [CNU] (cf former 843; Vic 3.6.39; NSW 469)

- (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.

3.6.45 Request from another jurisdiction to investigate aspects of claim [CNU] (cf former 844; Vic 3.6.40; NSW 470)

- (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.

3.6.46 Co-operation with other authorities [CNU] (cf former 845; Vic 3.6.41; NSW 471)

- (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 (cf former Pt 8 Div 10; Vic Pt 3.6 Div 9; NSW Pt 3.4 Div 11)

3.6.47 Interstate legal practitioner becoming authorised to withdraw from local trust account [NC] (cf former 846; Vic 6.7.27; NSW 472)

- (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.

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.

3.6.48 Application of Part to incorporated legal practices [NC] (cf former 847; Vic 3.6.42; NSW 473)

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.
- (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.

3.6.49 Application of Part to multi-disciplinary partnerships [NC] (cf former 848; Vic 3.6.43; NSW 474)

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.

3.6.50 Application of Part to sole practitioners whose practising certificates lapse [NC] (cf former 849; Vic 3.6.44; NSW 475)

- (1) This section applies if an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed and the lawyer was a sole practitioner immediately before the certificate 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 or renewed.
- (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) if a manager or receiver is appointed under this Act for the law practice; or
 - (b) when the period of 6 months after the practising certificate actually lapsed expires; or
 - (c) if the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law;whichever first occurs.

3.6.51 Savings and transitional provisions [NC] (cf former 850; Vic 8.2.1, Sch 2; NSW 737, Sch 9)

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.

Chapter 4 Complaints and discipline (cf former Pt 11; Vic Chapter 4; NSW Chapter 4)

Introductory note 1.

The following provisions are core provisions and require textual uniformity:

- 4.2.1 (Unsatisfactory professional conduct)
- 4.2.2 (1) (Professional misconduct)
- 4.2.3 (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 2.8.8 (Application of Australian professional ethical and practice standards) applies the provisions of this Chapter to Australian-registered foreign lawyers as if references in this Chapter to an Australian lawyer were references to an Australian-registered foreign lawyer.

Part 4.1 Preliminary (cf former Pt 11 Div 1; Vic Pt 4.1 Div 1; NSW Pt 4.1 Div 1)

4.1.1 Purposes [NC] (cf former 1101; Vic 4.1.1; NSW 494)

The purposes of this Chapter are as follows:

- (a) to provide a nationally consistent scheme for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints about lawyers;
- (d) to enable 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.

4.1.2 Definitions [NC] (cf former 1102; Vic N/A; NSW 495)

In this Chapter:

complaint means a complaint under this Chapter.

conduct means conduct whether consisting of an act or omission.

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

4.1.3 Application of Chapter to lawyers, former lawyers and former practitioners [NC] (cf former 1103; Vic 4.1.3; NSW 500)

- (1) This Chapter 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 Chapter 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.

Part 4.2 Key concepts (cf former Pt 11 Div 2; Vic Pt 4.4 Div 2; NSW Pt 4.1 Div 1)

4.2.1 Unsatisfactory professional conduct [CU] (cf former 1104; Vic 4.4.2; NSW 496)

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.

4.2.2 Professional misconduct [CU (1); CNU (2)] (cf former 1105; Vic 4.4.3; NSW 497)

(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.

4.2.3 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct [CU] (cf former 1106; Vic 4.4.4; NSW 498)

Without limiting section 4.2.1 or 4.2.2, 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;
- (f) conduct of an Australian legal practitioner in failing to comply with an order of the Disciplinary Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law);
- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

Note. 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.

Part 4.3 Application of this Chapter (cf former Pt 11 Div 3; Vic Pt 4.1 Div 2; NSW Pt 4.1 Div 2)

4.3.1 Practitioners to whom this Chapter applies [CNU] (cf former 1107; Vic 4.1.2; NSW 499)

This Chapter applies to an Australian legal practitioner in respect of conduct to which this Chapter applies, and so applies:

- (a) whether or not the practitioner is a local lawyer; and

- (b) whether or not the practitioner holds a local practising certificate; and
- (c) whether or not the practitioner holds an interstate practising certificate; and
- (d) whether or not the practitioner resides or has an office in this jurisdiction; and
- (e) whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

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

4.3.2 Conduct to which this Chapter applies—generally [CNU] (cf former 1108; Vic 4.1.4; NSW 501)

- (1) Subject to subsection (3), this Chapter applies to conduct of an Australian legal practitioner occurring in this jurisdiction.
- (2) This Chapter also applies to an Australian legal practitioner's conduct occurring outside this jurisdiction, but only:
 - (a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either:
 - (i) the [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 Chapter 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.
- (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.

4.3.3 Conduct to which this Chapter applies—insolvency, serious offences and tax offences [CNU] (cf former 1109; Vic 4.1.5; NSW 502)

- (1) This Chapter applies to the following conduct of a local legal practitioner whether occurring in Australia or elsewhere:
 - (a) conduct of the practitioner in 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 4.3.2 (Conduct to which this Chapter applies—generally).

**Part 4.4 Complaints about Australian legal practitioners
(cf former Pt 11 Div 4; Vic Pt 4.2; NSW Pt 4.2)**

4.4.1 Complaints [NC] (cf former 1110; Vic 4.2.1, 4.2.11; NSW 503)

- (1) A complaint may be made under this Chapter about an Australian legal practitioner's conduct to which this Chapter applies.

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

4.4.2 Making of complaints [NC] (cf former 1111; Vic 4.2.6; NSW 504)

- (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.

4.4.3 Complaints made over [3 years] after conduct concerned [NC] (cf former 1112; Vic N/A; NSW 506)

- (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 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.

4.4.4 Further information and verification [NC] (cf former 1113; Vic 4.2.9; NSW 507)

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.

4.4.5 Practitioner to be notified of complaint [NC] (cf former 1114; Vic 4.2.8; NSW 508)

- (1) The [appropriate authority] is to ensure, that, as soon as practicable after a complaint is made, written notice of the making of the 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) Subsection (1) does not apply if the [appropriate authority] is of the opinion that the giving of the notice will or is likely to:
- (a) prejudice the investigation of the complaint; or
 - (b) prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned; or
 - (c) place the complainant or another person at risk of intimidation or harassment; or
 - (d) prejudice pending court proceedings.
- (3) In a case in which subsection (2) applies, the [appropriate authority]:
- (a) may postpone giving the practitioner a copy of the complaint and notice about making submissions, until of the opinion that it is appropriate to do so; or

- (b) may at [its] discretion:
 - (i) notify the practitioner of the general nature of the complaint; and
 - (ii) inform the practitioner of the practitioner's right to make submissions specifying the period within which submissions must be made, if of the opinion that the practitioner has sufficient information to make submissions.
- (4) The notice must also inform the practitioner of any action already taken by the [appropriate authority] in relation to the complaint.
- (5) 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.
- (6) Nothing in this section requires the [appropriate authority] to give written notice under this section to the practitioner until the [appropriate authority] has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint, and properly prepare the notice.

4.4.6 Submissions by practitioner [NC] (cf former 1115; Vic N/A; NSW 509)

- (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.

4.4.7 Summary dismissal of complaints [NC] (cf former 1116; Vic 4.2.10; NSW 511)

- (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 4.4.4 (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 4.4.3 (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 any 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.

4.4.8 Withdrawal of complaints [NC] (cf former 1117; Vic N/A; NSW 512)

- (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 Chapter 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.

Part 4.5 Mediation (cf former Pt 11 Div 5; Vic Pt 4.3 Div 3; NSW Pt 4.3)

Mediation—Option 1

4.5.1 Mediation of complaints [NC] (cf former 1118; Vic N/A; NSW N/A)

- (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 4.4.8 (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

4.5.2 Definition [NC] (cf former 1119; Vic N/A; NSW 514)

In this Part:

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.

4.5.3 Mediation of complaint involving consumer dispute solely [NC] (cf former 1120; Vic N/A; NSW 515)

- (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 4.5.6 (Facilitation of mediation).

Note. The complaint may be withdrawn under section 4.4.8 (Withdrawal of complaints) if the matter is resolved by mediation.

4.5.4 Mediation of hybrid complaint [NC] (cf former 1121; Vic N/A; NSW 516)

- (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 Chapter 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 4.5.6 (Facilitation of mediation) and except so far as the consumer dispute is relevant to determination of the complaint.

4.5.5 Nature of mediation [NC] (cf former 1121A; Vic N/A; NSW 519)

Mediation of a consumer dispute is not limited to formal mediation procedures and extends to encompass preliminary assistance in dispute resolution, such as the giving of informal advice designed to ensure that the parties are fully aware of their rights and obligations and that there is full and open communication between the parties concerning the dispute.

Mediation—Provisions common to Options 1 and 2

4.5.6 Facilitation of mediation [NC] (cf former 1122; Vic N/A; NSW 518)

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

4.5.7 Admissibility of evidence and documents [NC] (cf former 1123; Vic N/A; NSW 522)

- (1) The following are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence:
 - (a) evidence of anything said or admitted during a mediation or attempted mediation under this Part of the whole or a part of the matter that is subject of a complaint; and
 - (b) a document prepared for the purposes of the mediation or attempted mediation.
- (2) Subsection (1) does not apply to an agreement reached during mediation.

4.5.8 Protection from liability [NC] (cf former 1124; Vic 6.4.4; NSW 524)

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 Part, 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 Part.

Part 4.6 Investigation of complaints (cf former Pt 11 Div 6; Vic Pt 4.4 Div 3; NSW Pt 4.4)

4.6.1 Complaints to be investigated [NC] (cf former 1125; Vic 4.4.7; NSW 525)

- (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 Chapter;
or
- (c) a complaint to the extent that it is the subject of mediation under this Chapter.

4.6.2 Appointment of investigator [NC] (cf former 1126; Vic N/A; NSW 531)

- (1) The [appropriate authority] may, in writing, appoint a suitably qualified person to investigate a complaint.
- (2) Such an appointment may be made generally (to apply for all complaints or for all complaints of a specified class) or for a specified complaint.

4.6.3 Application of Chapter 6 [NC] (cf former 1127; Vic N/A; NSW 536)

Chapter 6 (Investigatory powers) applies to an investigation under this Part.

4.6.4 Referral of matters for cost assessment [NC] (cf former 1128; Vic 4.3.5; NSW 533)

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.

Part 4.7 Decision of [appropriate authority] (cf former Pt 11 Div 7; Vic N/A; NSW Pt 4.5)

4.7.1 Decision of [appropriate authority] after investigation [NC] (cf former 1129; Vic 4.4.13; NSW 537)

- (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 Chapter; or
 - (b) dismiss the complaint under this Chapter; or
 - (c) take action under section 4.7.3 (Summary conclusion of complaint procedure by fine or reprimand).

- (2) Nothing in this section affects section 4.4.8 (Withdrawal of complaints).

4.7.2 Dismissal of complaint [NC] (cf former 1130; Vic 4.4.13; NSW 539)

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.

4.7.3 Summary conclusion of complaint procedure by fine or reprimand [NC] (cf former 1131; Vic 4.4.13; NSW 540)

- (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 1.** 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.
- Note 2.** Jurisdictions may consider including review or appeal mechanisms (attention is drawn to section 540 (5) of the *Legal Profession Act 2004* of NSW).
- (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) If action is taken under subsection (2), no further action is to be taken under this Chapter with respect to the complaint.

Note. Local provisions may provide for another authority to elect to take over a complaint in these circumstances.

4.7.4 Record of decision [NC] (cf former 1132; Vic N/A; NSW 541)

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 Part.

4.7.5 Reasons to be provided to complainant and practitioner [NC] (cf former 1133; Vic N/A; NSW 542)

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.

Part 4.8 General procedural matters (cf former Pt 11 Div 8; Vic N/A; NSW Pt 4.12)

4.8.1 Rules of procedural fairness [NC] (cf former 1134; Vic N/A; NSW 591)

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 Chapter.

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

4.8.2 Duty to deal with complaints efficiently and expeditiously [NC] (cf former 1135; Vic 4.4.12; NSW 592)

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

4.8.3 Complainant and practitioner to be informed of action taken [NC] (cf former 1136; Vic N/A; NSW N/A)

- (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.

Part 4.9 Proceedings in Disciplinary Tribunal (cf former Pt 11 Div 9; Vic Pt 4.4 Div 4; NSW Pt 4.8)

4.9.1 Institution of proceedings [NC] (cf former 1137; Vic N/A; NSW 551)

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.

4.9.2 Hearings [NC] (cf former 1138; Vic 4.4.15; NSW 553)

- (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.

4.9.3 Joinder [NC] (cf former 1139; Vic N/A; NSW 554)

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 Australian legal practitioners.

4.9.4 Variation of information [NC] (cf former 1140; Vic N/A; NSW 555)

- (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 inclusion of an additional allegation is not precluded on any or all of the following grounds:
 - (a) the additional allegation has not been the subject of a complaint;
 - (b) the additional allegation has not been the subject of an investigation;
 - (c) the alleged conduct occurred more than 3 years ago.

4.9.5 Nature of allegations [NC] (cf former 1141; Vic N/A; NSW 556)

- (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.

4.9.6 Substitution of informant [NC] (cf former 1142; Vic N/A; NSW 557)

- (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.

4.9.7 Rules of evidence [NC] (cf former 1143; Vic N/A; NSW 558)

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

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.

4.9.8 Parties [NC] (cf former 1144; Vic N/A; NSW 559)

- (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 Chapter; 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.

4.9.9 Public hearings [NC] (cf former 1145; Vic N/A; NSW 560)

- (1) A hearing under this Part 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.

4.9.10 Power to disregard procedural lapses [NC] (cf former 1146; Vic N/A; NSW 561)

- (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.

4.9.11 Determinations of Disciplinary Tribunal [CNU] (cf former 1147; Vic 4.4.16, 4.4.17, 4.4.18, 4.4.19, 4.4.20; NSW 562)

Note. The following section contains a minimum set of disciplinary measures that may be taken under the Chapter. 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 Part 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 Tribunal may make such orders as it thinks fit, including any one or more of the orders specified in this section.

(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 granted to the practitioner before the end of a specified period;
- (d) an order that:
 - (i) specified conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and
 - (ii) the conditions be imposed for a specified period; and
 - (iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;
- (e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

(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 recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;
- (c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;
- (d) an order recommending:
 - (i) that specified conditions be imposed on the practitioner's interstate practising certificate; and
 - (ii) that the conditions be imposed for a specified period; and
 - (iii) a specified 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.

4.9.12 Interlocutory and interim orders [NC] (cf former 1148; Vic N/A; NSW 563)

- (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 4.9.11 (Determinations of Disciplinary Tribunal) may be made as interlocutory or interim orders.

4.9.13 Compliance with determinations and orders [NC] (cf former 1149; Vic N/A; NSW 565)

- (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 4.9.11 (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 4.9.12 (Interlocutory and interim orders) so far as it is an order of the kind referred to in section 4.9.11 (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 4.9.11 (4) (Determinations of Disciplinary Tribunal: orders requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 4.9.12 so far as it is an order of the kind referred to in section 4.9.11 (4) or otherwise needs to be, or is capable of being, enforced in this jurisdiction.
- Note.** Section 4.12.6 (Compliance with recommendations or 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 4.9.11 (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 4.9.12 (Interlocutory and interim orders) so far as it is an order of the kind referred to in section 4.9.11 (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 4.9.11 (4) (Determinations of Disciplinary Tribunal: orders requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Disciplinary Tribunal made under section 4.9.12 so far as it is an order of the kind referred to in section 4.9.11 (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.

4.9.14 Costs [NC] (cf former 1150; Vic N/A; NSW 566)

- (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.
- (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.

4.9.15 Notification of result of proceedings before Disciplinary Tribunal [NC] (cf former 1151; Vic N/A; NSW 567)

- (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.

4.9.16 Other remedies not affected [NC] (cf former 1152; Vic N/A; NSW 569)

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

Part 4.10 Compensation (cf former Pt 11 Div 10; Vic N/A; NSW Pt 4.9)

4.10.1 Definition [NC] (cf former 1153; Vic N/A; NSW 495)

In this Part:

compensation order means an order referred to in section 4.10.2 (Compensation orders).

4.10.2 Compensation orders [NC] (cf former 1154; Vic 4.2.14; NSW 571)

- (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.

4.10.3 Prerequisites to making of compensation orders [NC] (cf former 1155; Vic 4.2.14; NSW 572)

- (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.

4.10.4 Making of compensation orders [NC] (cf former 1156; Vic N/A; NSW 573)

- (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].

4.10.5 Enforcement of compensation orders [NC] (cf former 1157; Vic N/A; NSW 574)

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.

4.10.6 Other remedies not affected [NC] (cf former 1158; Vic 4.2.14; NSW 575)

The recovery of compensation awarded under this Part 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.

Part 4.11 Publicising disciplinary action (cf former Pt 11 Div 11; Vic Pt 4.4 Div 6; NSW Pt 4.10)

4.11.1 Definitions [CNU] (cf former 1159; Vic 4.4.25; NSW 576)

In this Part:

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 grant or renew an Australian practising certificate to the practitioner;
 - (iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager of the practitioner's practice.

Note. Some jurisdictions may wish to introduce stronger publication requirements than provided in this Chapter, 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 4.11.2 (Register of Disciplinary Action).

4.11.2 Register of Disciplinary Action [CNU] (cf former 1160; Vic 4.4.26, 4.4.27; NSW 577)

- (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.

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

4.11.3 Other means of publicising disciplinary action [CNU] (cf former 1161; Vic 4.4.28; NSW 578)

- (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 Part relating to the Register.

4.11.4 Quashing of disciplinary action [CNU] (cf former 1162; Vic N/A; NSW 579)

- (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 4.11.3 (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.

4.11.5 Liability for publicising disciplinary action [NC] (cf former 1163; Vic N/A; NSW 580)

- (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 Part; or
 - (c) keeping, publishing or enabling access to the Register.
- (2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith:
 - (a) information about disciplinary action:
 - (i) recorded in the Register; or
 - (ii) otherwise publicised by the [appropriate authority] under this Part;or matter purporting to contain information of that kind where the matter is incorrect in any respect; or
 - (b) a fair report or summary of that information.

(3) In this section:

protected person means:

- (a) the State; or
- (b) the [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.

4.11.6 Disciplinary action taken because of infirmity, injury or illness [CNU] (cf former 1164; Vic 4.4.30; NSW 581)

- (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 Part.
- (2) Subsection (1) does not apply where the disciplinary action involves:
 - (a) the suspension or cancellation of the person's Australian practising certificate; or
 - (b) a refusal to grant or renew an Australian practising certificate applied for by the person; or
 - (c) a restriction or prohibition on the person's right to engage in legal practice;

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

4.11.7 General [CNU] (cf former 1165; Vic 4.4.31; NSW 582)

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

Note. Section 8.1.5 (Confidentiality of personal information) provides that that section does not apply to information disclosed under this Part.
- (2) The provisions of this Part are subject to any order made by:
 - (a) the Disciplinary Tribunal in relation to disciplinary action taken under this Chapter; or

- (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Chapter; or
 - (c) a court or tribunal of this or another jurisdiction;
- 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 Part and may be otherwise publicised under this Part.

Part 4.12 Inter-jurisdictional provisions (cf former Pt 11 Div 12; Vic Pt 4.4 Div 7; NSW Pt 4.11)

4.12.1 Protocols [CNU] (cf former 1166; Vic 4.4.32; NSW 583)

- (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 Part.

4.12.2 Request to another jurisdiction to investigate complaint [CNU] (cf former 1167; Vic 4.4.33; NSW 584)

- (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 Chapter.

4.12.3 Request from another jurisdiction to investigate complaint [NC] (cf former 1168; Vic 4.4.34; NSW 585)

- (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 Chapter relating to the investigation of a complaint apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the complaint that is the subject of the request.
- (4) The [appropriate authority] or other authority must provide a report on the result of the investigation to the corresponding authority.

4.12.4 Sharing of information with corresponding authorities [CNU] (cf former 1169; Vic 4.4.35; NSW 586)

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

- (a) complaints and investigations under this Chapter; and
- (b) any action taken with respect to any complaints made or investigations conducted under this Chapter, including determinations of the Disciplinary Tribunal under this Chapter.

4.12.5 Co-operation with other authorities [CNU] (cf former 1170; Vic 4.4.36; NSW 587)

- (1) When dealing with a complaint or conducting an investigation, the [appropriate authorities] may separately or jointly consult and co-operate with another person or body (whether in or of Australia or a foreign country) who or which has or may have relevant information

or powers in relation to the person against whom the complaint was made or the person under investigation.

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

4.12.6 Compliance with recommendations or orders made under corresponding laws [CNU] (cf former 1171; Vic 4.4.37; NSW 588)

- (1) Persons and bodies having relevant powers or functions under this Act must:
 - (a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
 - (b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.
- (2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed from the roll of lawyers under this Act, the Supreme Court must order the removal of the name from the local 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.

4.12.7 Other powers or functions not affected [CNU] (cf former 1172; Vic 4.4.38; NSW 589)

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

Part 4.13 Miscellaneous (cf former Pt 11 Div 13; Vic Pt 4.4 Div 8; NSW Pt 4.12)

4.13.1 Jurisdiction of Supreme Court [NC] (cf former 1173; Vic 4.4.39; NSW 590)

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 Chapter, and extend to:

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

4.13.2 Information about complaints procedure [NC] (cf former 1174; Vic 4.2.12; NSW 593)

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.

4.13.3 Failure to comply with orders [NC] (cf former 1175; Vic N/A; NSW 596)

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.

4.13.4 Performance criteria [NC] (cf former 1176; Vic N/A; NSW 597)

- (1) The [appropriate authority] must develop performance criteria relating to the handling of complaints under this Chapter.
- (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.

4.13.5 Reports to Minister [NC] (cf former 1177; Vic N/A; NSW 598)

- (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.

4.13.6 Protection from liability [NC] (cf former 1179; Vic 6.3.11, 6.4.4; NSW 601)

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 Chapter; 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 Chapter; 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 Chapter, 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.

4.13.7 Non-compellability of certain witnesses [NC] (cf former 1180; Vic N/A; NSW 602)

A person referred to in section 4.13.6 (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 Chapter.

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

4.13.8 Confidentiality of client communications [NC] (cf former 1181; Vic N/A; NSW 603)

Subject to section 4.13.9 (Claims of privilege), an Australian legal practitioner must comply with a requirement under this Chapter to answer a question or to produce information or a document, despite any duty of confidentiality in respect of a communication between the practitioner and a client.

4.13.9 Claims of privilege [NC] (cf former 1182; Vic N/A; NSW N/A)

If, in any investigation or proceedings under this Chapter, 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 8.1.7 (Duty to report suspected offences).

4.13.10 Waiver of privilege or duty of confidentiality [NC] (cf former 1183; Vic 4.2.15; NSW 604)

- (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.

Chapter 5 External intervention (cf former Pt 12; Vic Chapter 5; NSW Chapter 5)

Part 5.1 Preliminary (cf former Pt 12 Div 1; Vic Pt 5.1; NSW Pt 5.1)

5.1.1 Purposes [NC] (cf former 1201; Vic 5.1.1; NSW 610)

- (1) The purpose of this Chapter is to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers for the purpose of protecting the interests of:
 - (a) the general public; and
 - (b) clients; and
 - (c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients.
- (2) It is intended that interventions occur consistently with:
 - (a) similar interventions in other jurisdictions, especially where a law practice operates in this jurisdiction and one or more other jurisdictions; and
 - (b) other provisions of this Act.

Note. This Chapter:

- (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.

5.1.2 Definitions [CU] (cf former 1202; Vic 5.1.2; NSW 611)

- (1) In this Chapter:

external intervener means a supervisor, manager or receiver under this Chapter.

external intervention means the appointment of, and the exercise of the powers and functions of, a supervisor, manager or receiver under this Chapter.

regulated property, in relation to a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the practice;
 - (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
 - (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
 - (d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which any records referred to in paragraph (c) may be produced or reproduced in visible form.
- (2) Other expressions used in this Chapter have the same meanings as in Part 3.3 (Trust money and trust accounts).

5.1.3 Application of Chapter to Australian-registered foreign lawyers [CU] (cf former 1203; Vic 5.1.3; NSW 613)

This Chapter applies, with any necessary adaptations, to Australian-registered foreign lawyers and former Australian-registered foreign lawyers in the same way as it applies to law practices.

5.1.4 Application of Chapter to other persons [CU] (cf former 1204; Vic 5.1.4; NSW 614)

This Chapter applies, with any necessary adaptations, to:

- (a) a former law practice or former Australian legal practitioner; and
- (b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of 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.

Part 5.2 Initiation of external intervention (cf former Pt 12 Div 2; Vic Pt 5.2; NSW Pt 5.2)

5.2.1 Circumstances warranting external intervention [CU] (cf former 1205; Vic 5.2.1; NSW 615)

External intervention may take place in relation to a law practice in any of the following circumstances:

- (a) where a legal practitioner associate involved in the practice:
 - (i) has died; or
 - (ii) ceases to be an Australian legal practitioner; or
 - (iii) has become an insolvent under administration; or
 - (iv) is in prison;
- (b) in the case of a firm—where the partnership has been wound up or dissolved;
- (c) in the case of an incorporated legal practice—where the corporation concerned:
 - (i) ceases to be an incorporated legal practice; or
 - (ii) is being or has been wound up; or
 - (iii) has been deregistered or dissolved;
- (d) in any case—where the [appropriate authority] forms a belief on reasonable grounds that the practice or an associate of the practice:
 - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice;
 - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or
 - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or
 - (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
 - (v) is in breach of the regulations or legal profession rules with the result that the record-keeping for the practice's trust account is inadequate; or

- (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
 - (vii) is the subject of a complaint relating to trust money or trust property received by the practice; or
 - (viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Act; or
 - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding up the affairs of the practice; or
- (e) where any other proper cause exists in relation to the practice.

5.2.2 Determination regarding external intervention [CU] (cf former 1206; Vic 5.2.2; NSW 616)

- (1) This section applies when the [appropriate authority] becomes aware that one or more of the circumstances referred to in section 5.2.1 (Circumstances warranting external intervention) exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it considers appropriate, external intervention is warranted.
- (2) The [appropriate authority] may determine:
- (a) to appoint a supervisor of trust money of 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 external intervention is required because of issues relating to the practice's trust records; or
 - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

- (c) to appoint a receiver for the law practice, if the 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.

Part 5.3 Supervisors of trust money (cf former Pt 12 Div 3; Vic Pt 5.3; NSW Pt 5.3)

5.3.1 Appointment of supervisor of trust money [CU] (cf former 1207; Vic 5.3.1; NSW 617)

- (1) This section applies if the [appropriate authority] determines to appoint a supervisor of trust money of a law practice.
- (2) The [appropriate authority] may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either:
 - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be an employee of the [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 of trust money; 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 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.

5.3.2 Notice of appointment [CU] (cf former 1208; Vic 5.3.2; NSW 618)

- (1) As soon as possible after an appointment of a supervisor of trust money of 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 of trust money; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the supervisor; and
- (e) specify any conditions imposed by the [appropriate authority] when the appointment is made; and
- (f) include a statement that the law practice may appeal against the appointment of the supervisor under section 5.6.4 (Appeal against appointment); and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

5.3.3 Effect of service of notice of appointment [CU] (cf former 1209; Vic 5.3.3; NSW 619)

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of 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 a nominee of the supervisor; or
 - (b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.
- (2) After service on a person (other than the supervisor or an ADI) of a notice of the appointment of a supervisor of trust money of 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 of trust money 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.

5.3.4 Role of supervisor of trust money [CU] (cf former 1210; Vic 5.3.4, 5.3.5; NSW 620)

- (1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money, including powers:
 - (a) to receive trust money entrusted to the practice; and
 - (b) to open and close trust accounts.
- (2) For 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 who has or had control of documents relating to trust money received by the practice to give the supervisor either or both of the following:
 - (i) access to the files and documents the supervisor reasonably requires;
 - (ii) information relating to the trust money the supervisor reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to 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.

5.3.5 Records of and dealing with trust money of law practice under supervision [CU] (cf former 1211; Vic 5.3.6; NSW 621)

- (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.

5.3.6 Termination of supervisor's appointment [CU] (cf former 1212; Vic 5.3.7; NSW 622)

- (1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances:
 - (a) the term of the appointment comes to an end;

- (b) the appointment is set aside under section 5.6.4;
 - (c) the appointment of a manager for the practice takes effect;
 - (d) the appointment of a receiver for the practice takes effect;
 - (e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
 - (f) a 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.

Part 5.4 Managers (cf former Pt 12 Div 4; Vic Pt 5.4; NSW Pt 5.4)

5.4.1 Appointment of manager [CU] (cf former 1213; Vic 5.4.1; NSW 623)

- (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.

5.4.2 Notice of appointment [CU] (cf former 1214; Vic 5.4.2; NSW 624)

- (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) include a statement that the law practice may appeal against the appointment of the manager under section 5.6.4 (Appeal against appointment); and

- (g) contain or be accompanied by other information or material prescribed by the regulations.

5.4.3 Effect of service of notice of appointment [CU] (cf former 1215; Vic 5.4.3; NSW 625)

- (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:
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by:
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by:
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver.
- Note.** Qld does not currently intend to authorise electronic funds transfer.
- (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:
 - (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 or another trust account nominated by the manager or receiver.

5.4.4 Role of manager [CU] (cf former 1216; Vic 5.4.4, 5.4.5; NSW 626)

- (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 practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the manager either or both of the following:
 - (i) access to the files and documents the manager reasonably requires;
 - (ii) information relating to client matters the manager reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to 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.

5.4.5 Records and accounts of law practice under management and dealings with trust money [CU] (cf former 1217; Vic 5.4.6; NSW 627)

- (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.

5.4.6 Deceased estates [CU] (cf former 1218; Vic 5.4.7; NSW 628)

- (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.

5.4.7 Termination of manager's appointment [CU] (cf former 1219; Vic 5.4.8; NSW 629)

- (1) The appointment of a manager for a law practice terminates in the following circumstances:
 - (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 5.6.4;
 - (c) the appointment of a receiver for the practice takes effect, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and duties of a manager;
 - (d) the manager has wound up the affairs of the practice;

- (e) a 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) If the appointment terminates in the circumstances referred to in subsection (1) (a), (c) or (e), 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.

Part 5.5 Receivers (cf former Pt 12 Div 5; Vic Pt 5.5; NSW Pt 5.5)

5.5.1 Option 1—Appointment of receiver [by [appropriate authority]] [CU] (cf former 1220; Vic N/A; NSW N/A)

- (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 who holds an unrestricted practising certificate; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;and may (but need not) be an employee of the [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
 - (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.

5.5.2 Option 2—Appointment of receiver [by Supreme Court] [CU] (cf former 1221; Vic 5.5.1; NSW 630)

Note. If this option is adopted, other provisions eg section 5.2.2 (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, an officer or employee of 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:
 - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be an employee of the [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.

5.5.3 Notice of appointment [CU] (cf former 1222; Vic 5.5.2; NSW 631)

- (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) indicate the extent to which the receiver has the powers of a manager for the practice; and
 - (e) specify any reporting requirements to be observed by the receiver; and
 - (f) specify any conditions imposed by the [appropriate authority] [or Supreme Court] when the appointment is made; and
 - (g) include a statement that the law practice may appeal against the appointment of the receiver under section 5.6.4 (Appeal against appointment); and
- Note.** This paragraph will not be appropriate for jurisdictions adopting option 2 (section 5.5.2).
- (h) contain or be accompanied by other information or material prescribed by the regulations.

5.5.4 Effect of service of notice of appointment [CU] (cf former 1223; Vic 5.5.3; NSW 632)

- (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:
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by:
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by:
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager.

Note. Qld does not currently intend to authorise electronic funds transfer.

- (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 or another trust account nominated by the receiver or manager.

5.5.5 Role of receiver [CU; except NC (5)–(7)] (cf former 1224; Vic 5.5.4; NSW 633)

- (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) 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 Chapter 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.
- (5) For the purpose of exercising his or her powers under this section, the receiver may exercise any or all of the following powers:
 - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver:

- (i) access to the files and documents the receiver reasonably requires; and
 - (ii) information relating to client matters the receiver reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to 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.
- (6) If the receiver takes anything from the premises, the receiver 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.
- (7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

5.5.6 Records and accounts of law practice under receivership and dealings with trust money [CU] (cf former 1225; Vic 5.5.5; NSW 634)

- (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.

5.5.7 Power of receiver to take possession of regulated property [CU] (cf former 1226; Vic 5.5.6; NSW 635)

- (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.

5.5.8 Power of receiver to take delivery of regulated property [CU] (cf former 1227; Vic 5.5.7; NSW 636)

- (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.

5.5.9 Power of receiver to deal with regulated property [CU] (cf former 1228; Vic 5.5.8; NSW 637)

- (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.

5.5.10 Power of receiver to require documents or information [CU] (cf former 1229; Vic 5.5.9; NSW 638)

- (1) A receiver for a law practice may require:
- (a) a person who is an associate or former associate of the practice; or
 - (b) a person who has or has had control of documents relating to the affairs of the practice; or
 - (c) a person who has information relating to regulated property of the practice or property that the receiver believes on reasonable grounds to be regulated property of the practice;
- to give the receiver either or both of the following:
- (d) access to the documents relating to the affairs of the practice the receiver reasonably requires;
 - (e) information relating to the affairs of the practice the receiver reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

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 8.1.6 (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; or
 - (d) proceedings taken by the receiver for the recovery of regulated property.

5.5.11 Examinations [CU] (cf former 1230; Vic 5.5.10; NSW 639)

- (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.

5.5.12 Lien for costs on regulated property [CU] (cf former 1231; Vic 5.5.11; NSW 640)

- (1) This section applies if:
 - (a) a receiver has been appointed for a law practice; and
 - (b) the practice or a legal practitioner associate of the practice claims a lien for legal costs on regulated property of the practice.
- (2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the practice or associate to give the receiver within a specified period of not less than one month:
 - (a) particulars sufficient to identify the regulated property; and
 - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

5.5.13 Regulated property not to be attached [CU] (cf former 1232; Vic 5.5.12; NSW 641)

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.

5.5.14 Receiver may recover money stolen or embezzled [NC] (cf former 1233; Vic 5.5.13; NSW N/A)

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.

5.5.15 Recovery of regulated property where there has been a breach of trust etc [CU] (cf former 1234; Vic 5.5.14; NSW 642)

- (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, paid to, or transferred to, a person (*the transferee*) in breach of trust, improperly or unlawfully and the transferee:
 - (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
 - (b) did not provide to the practice or any other person any or any adequate consideration for the taking, payment or transfer; or
 - (c) because of the taking, payment or transfer, became indebted or otherwise liable to the practice or to a client of the practice in the amount of the payment or in another amount.
- (2) The receiver is entitled to recover from the transferee:
 - (a) if subsection (1) (a) applies—the amount of the payment or the value of the regulated property taken or transferred; or
 - (b) if subsection (1) (b) applies—the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or
 - (c) if subsection (1) (c) applies—the amount of the debt or liability;and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.
- (3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been paid in breach of trust, improperly or unlawfully to a person (*the prospective plaintiff*) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party:
 - (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
 - (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.
- (4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been used in breach of trust, improperly or unlawfully so as to discharge a debt

or liability of a person (*the debtor*), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.

- (5) A person authorised by the [appropriate authority] to do so may give a certificate with respect to all or any of the following facts:
- (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt, and the identity of the person from whom it was received;
 - (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;
 - (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the practice and the truth or falsity of those entries;
 - (d) the money and securities held by the practice at the specified time.
- (6) If the receiver brings a proceeding under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

Note. This provision is based on section 259 of the *Legal Practice Act 1996* (Vic).

5.5.16 Improperly destroying property etc [CNU] (cf former 1235; Vic 5.5.15; NSW 643)

A person must not, with intent to defeat the operation of this Part, 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. Some jurisdictions may prefer not to include the concept of intent to defeat the operation of the Part (attention is drawn to section 346 of the *Legal Profession Act 2004* of Queensland).

5.5.17 Deceased estates [CU] (cf former 1236; Vic 5.5.16; NSW 644)

- (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.

5.5.18 Option 1—Termination of receiver's appointment by [appropriate authority] [NC] (cf former 1237A; 1st Ed. 1237; Vic N/A; NSW N/A)

- (1) The appointment by the [appropriate authority] of a receiver for a law practice terminates in the following circumstances:
 - (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 5.6.4;
 - (c) 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, and the termination takes effect immediately or with effect from a specified date.
- (3) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to:
 - (a) another external intervener appointed for the practice within the period of 14 days beginning with the day after the date of the termination; or
 - (b) the practice, if another external intervener is not appointed for the practice within that period and if paragraph (c) does not apply; or
 - (c) another person in accordance with arrangements approved by the [appropriate authority], if it is not practicable to transfer and deliver the regulated property to the practice.

- (4) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (3) unless the expenses of receivership have been paid.
- (5) The [appropriate authority] must serve a written notice of the termination on all persons originally served with notice of the appointment.

5.5.19 Option 2—Termination of receiver’s appointment [NC] (cf former 1237; Vic 5.5.17; NSW 645)

- (1) The appointment by the Supreme Court of a receiver for a law practice terminates in the following circumstances:
 - (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 5.6.4;
 - (c) a determination of the Supreme Court that the appointment be terminated has taken effect.
- (2) The Supreme Court may, on application by the appropriate authority or receiver made at any time, determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver for a law practice must apply to the Supreme Court for termination of the appointment when the affairs of the practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (4) The Supreme Court may make any order it considers appropriate in relation to an application under this section.
- (5) The appointment of a receiver is not stayed by the making of an application for termination of the receiver’s appointment, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the Supreme Court’s decision on the application except to the extent (if any) that the Court otherwise directs.
- (6) 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.
- (7) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (6) unless the expenses of receivership have been paid.
- (8) The [appropriate authority] must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 5.6 General (cf former Pt 12 Div 6; Vic Pt 5.6; NSW Pt 5.6)

5.6.1 Conditions on appointment of external intervener [CU] (cf former 1238; Vic 5.6.1; NSW 646)

- (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).

5.6.2 Status of acts of external intervener [CU] (cf former 1239; Vic 5.6.2; NSW 647)

- (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.

5.6.3 Eligibility for reappointment or authorisation [CU] (cf former 1240; Vic 5.6.3; NSW 648)

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.

5.6.4 Appeal against appointment [CU] (cf former 1241; Vic 5.6.4; NSW 649)

- (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.
- (3) The Supreme Court may make any order it considers appropriate on the appeal.
- (4) The appointment of an external intervener is not stayed by the making of an appeal, and the external intervener may accordingly continue to exercise his or her powers and functions as external intervener during the currency of the appeal except to the extent (if any) that the Supreme Court otherwise directs.

Note. Jurisdictional legislation would contain provisions about appeal or review.

5.6.5 Directions of Supreme Court [CU] (cf former 1242; Vic 5.6.5; NSW 650)

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.

5.6.6 Manager and receiver appointed for law practice [CU] (cf former 1242A; Vic N/A; NSW 650A)

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

5.6.7 ADI disclosure requirements [CU, except (2) NC] (cf former 1243; Vic 5.6.6; NSW 651)

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener [without charge]:
 - (a) whether or not the practice, or an associate of the practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) details identifying every account so maintained.Penalty:
- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice [, and without charge]:
 - (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
 - (b) provide the intervener with full details of any transactions relating to any such account or money.Penalty:
- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener [without charge]:

- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
- (b) the details of any such account.

Penalty:

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

5.6.8 Fees, legal costs and expenses [CU] (cf former 1244; Vic 5.6.7; NSW 652)

- (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, costs and expenses are payable by and recoverable from the law practice.
- (4) Fees, costs and expenses not paid to the external intervener by the law practice are payable from the Fidelity Fund [or other appropriate local fund].
- (5) The [appropriate authority] may recover any unpaid fees, costs and expenses from the law practice.

- (6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the Fidelity Fund [or other fund] are to be paid to the Fund.

5.6.9 Reports by external intervener [CU] (cf former 1245; Vic 5.6.8; NSW 653)

- (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.

5.6.10 Confidentiality [CU] (cf former 1246; Vic 5.6.9; NSW 655)

- (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 intervener 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.

5.6.11 Provisions relating to requirements under this Part [NC] (cf former 1246A; Vic N/A; NSW N/A)

- (1) This section applies to a requirement imposed on a person under this Part to give an external intervener access to documents or information.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
Note. Section 8.1.6 (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) The external intervener imposing the requirement may:
 - (a) inspect any document provided pursuant to the requirement; and
 - (b) make copies of the document or any part of the document; and

- (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.
- (4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (5) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) The [appropriate authority]:
 - (a) may on its own initiative; or
 - (b) must if directed to do so by the [Regulator];suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

5.6.12 Obstruction of external intervener [NC] (cf former 1246B; Vic N/A; NSW N/A)

- (1) A person must not, without reasonable excuse, obstruct an external intervener exercising a power under this Act.
Penalty:
- (2) In this section:
obstruct includes hinder, delay, resist and attempt to obstruct.

5.6.13 Protection from liability [CU] (cf former 1247; Vic 5.6.10; NSW 656)

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.

Chapter 6 Investigatory powers (cf former Pt 15; Vic N/A; NSW Chapter 6)

Part 6.1 Preliminary (cf former Pt 15 Div 1; Vic N/A; NSW Pt 6.1)

6.1.1 Purpose of Chapter [NC] (cf former 1501; Vic N/A; NSW 657)

The purpose of this Chapter is to provide powers that are exercisable in connection with:

- (a) trust account investigations—the investigation of the affairs of law practices under Division 3 of Part 3.3 (Trust money and trust accounts); and
- (b) trust account examinations—the external examination of the trust records of law practices under Division 4 of Part 3.3; and
- (c) complaint investigations—the investigation of complaints under Chapter 4 (Complaints and discipline); and
- (d) ILP compliance audits—the conduct of audits under Division 2 (Incorporated legal practices) of Part 2.7 in relation to incorporated legal practices.

6.1.2 Definitions [NC] (cf former 1502; Vic N/A; NSW 658)

In this Chapter:

complaint investigation—see section 6.1.1 (c).

ILP compliance audit—see section 6.1.1 (d).

investigator means:

- (a) an investigator under Division 3 of Part 3.3; or
- (b) an external examiner under Division 4 of Part 3.3; or
- (c) an investigator under Chapter 4; or
- (d) in relation to an audit under Division 2 of Part 2.7—the [appropriate authority] or a person authorised by the [appropriate authority] in connection with the audit.

trust account examination—see section 6.1.1 (b).

trust account investigation—see section 6.1.1 (a).

Part 6.2 Requirements relating to documents, information and other assistance (cf former Pt 15 Div 2; Vic N/A; NSW Pt 6.2)

6.2.1 Application of Part [NC] (cf former 1503; Vic N/A; NSW N/A)

This Part applies to:

- (a) trust account investigations; and
- (b) trust account examinations; and
- (c) complaint investigations; and
- (d) ILP compliance audits.

6.2.2 Requirements that may be imposed for investigations, examinations and audits under Parts 3.3 and 2.7 [NC] (cf former 1504; Vic N/A; NSW 659)

- (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) who has or has had control of documents relating to the affairs of the practice to give the investigator either or both of the following:
 - (a) access to the documents relating to the affairs of the practice the investigator reasonably requires;
 - (b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Penalty:

6.2.3 Requirements that may be imposed for investigations under Chapter 4 [NC] (cf former 1505; Vic N/A; NSW 660)

- (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);
 - (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 a law practice of which the lawyer is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the lawyer) who has or has had control of documents relating to the affairs of the lawyer to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;
 - (b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.
- 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.

6.2.4 Provisions relating to requirements under this Part [NC] (cf former 1506; Vic N/A; NSW N/A)

- (1) This section applies to a requirement imposed on a person under this Part.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on:
 - (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 law practice or Australian legal practitioner has a lien over a particular document or class of documents.

Note. Section 8.1.6 (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 imposing the requirement may:
 - (a) inspect any document provided pursuant to the requirement; and
 - (b) make copies of the document or any part of the document; and
 - (c) retain the document for a period the investigator thinks necessary for the 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]:
 - (a) may on its own initiative; or
 - (b) must if directed to do so by the [Regulator];suspend a local practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

Part 6.3 Entry and search of premises (cf former Pt 15 Div 3; Vic N/A; NSW Pt 6.3)

6.3.1 Application of Part [NC] (cf former 1507; Vic N/A; NSW 661)

This Part applies to:

- (a) trust account investigations; and
- (b) complaint investigations;

but does not apply to:

- (c) trust account examinations; or
- (d) ILP compliance audits.

6.3.2 Investigator's power to enter premises [NC] (cf former 1508; Vic N/A; NSW 662)

- (1) For the purpose of carrying out an investigation, an investigator may enter and remain on premises to exercise the powers in section 6.3.4 (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 Part; 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 Part.
- (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:

6.3.3 Search warrants [NC] (cf former 1509; Vic N/A; NSW 663)

- (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 6.3.4 (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.

6.3.4 Powers of investigator while on premises [NC] (cf former 1510; Vic N/A; NSW 664)

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers:
- (a) search the premises and examine anything on the premises;
 - (b) search for any information, document or other material relating to the matter to which the investigation relates;
 - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;
 - (d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
 - (e) make copies of any relevant material or any part of any relevant material;
 - (f) seize and take away any relevant material or any part of any relevant material;
 - (g) use (free of charge) photocopying equipment on the premises 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.

Part 6.4 Additional powers in relation to incorporated legal practices (cf former Pt 15 Div 4; Vic N/A; NSW Pt 6.4)

6.4.1 Application of Part [NC] (cf former 1511; Vic N/A; NSW 665)

- (1) This Part 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 Part are additional to the other provisions of this Chapter.

6.4.2 Investigative powers relating to investigations and audits [NC] (cf former 1512; Vic N/A; NSW 666)

An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.

6.4.3 Examination of persons [NC] (cf former 1513; Vic N/A; NSW 667)

- (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.

6.4.4 Inspection of books [NC] (cf former 1514; Vic N/A; NSW 668)

- (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 Part applies.

6.4.5 Power to hold hearings [NC] (cf former 1515; Vic N/A; NSW 669)

- (1) The [appropriate authority] or investigator may hold hearings for the purposes of an investigation, examination or audit to which this Part applies.
- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth apply to a hearing, 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 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].

6.4.6 Failure to comply with investigation [NC] (cf former 1516; Vic N/A; NSW 671)

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 Part;
- (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 Part;
- (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 Part;
 - (ii) any condition imposed by the [appropriate authority] or the investigator in the exercise of powers conferred by this Part.

Part 6.5 Miscellaneous (cf former Pt 15 Div 5; Vic N/A; NSW Pt 6.5)

6.5.1 Obstruction of investigator [NC] (cf former 1517; Vic N/A; NSW 674)

- (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 6.3.4 (1) (j) must not, without reasonable excuse, fail to comply with the request.

Penalty:

- (3) In this section:

obstruct includes hinder, delay, resist and attempt to obstruct.

6.5.2 Obligation of Australian lawyers [NC] (cf former 1518; Vic N/A; NSW 676)

- (1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) An Australian lawyer must not mislead an investigator or the [appropriate authority] in the exercise of:
 - (a) any power or function under this Chapter; or
 - (b) any power or function under a provision of a corresponding law that corresponds to this Chapter.
- (3) An Australian lawyer who is subject to:
 - (a) a requirement under section 6.2.3 (Requirements that may be imposed for investigations under Chapter 4); 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.

6.5.3 Permitted disclosure of confidential information [NC] (cf former 1519; Vic N/A; NSW 677)

- (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.

Legal profession
Model laws project
Regulatory authorities

Chapter 7

Chapter 7 Regulatory authorities (cf former N/A; Vic Chapter 6; NSW Chapter 7)

Note. Local provisions may be inserted.

Chapter 8 General (cf former Pt 17; Vic Pt 7.2 Div 3; NSW Chapter 8)

Introductory note. Other provisions may be needed in local Acts, eg protection from liability; secrecy; appeal or review.

Part 8.1 General provisions (cf 2nd Ed. N/A; Vic N/A; NSW N/A)

8.1.1 Delegation by [appropriate authority] [NC] (cf former 1184; Vic 6.2.19, 6.3.12, 6.5.7; NSW 718)

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

8.1.2 Liability of principals [CU] (cf former 1701; 1st Ed. 1702; Vic 7.2.12; NSW 719)

- (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.

8.1.3 Injunctions [NC] (cf former 1703; 1st Ed. 1704; Vic 7.2.13; NSW 720)

- (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.

8.1.4 Disclosure of information by local regulatory authorities [NC] (cf former 1704; 1st Ed. 1705; Vic 7.2.14; NSW 721)

(1) A local regulatory authority may disclose information to another local regulatory authority about any matter relating to or arising under this Act or a corresponding law.

(2) A local regulatory authority may disclose information to an interstate regulatory authority about any matter relating to or arising under this Act or a corresponding law.

(3) In this section:

interstate regulatory authority means:

- (a) an authority having powers or functions under a corresponding law; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations.

local regulatory authority means:

- (a) an authority having powers or functions under this Act; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations.

8.1.5 Confidentiality of personal information [CNU] (cf former 1705; 1st Ed. 1706; Vic 7.2.15; NSW 722)

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 disclose to any other person, whether directly or indirectly, any personal information obtained by reason of being a relevant person.

Penalty:

(2) Subsection (1) does not apply to the disclosure of information:

- (a) to the extent that the disclosure is reasonably required to perform duties or exercise functions under this Act, the

- regulations or the legal profession rules or under any other Act or regulations made under any other Act; or
- (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act, the regulations or the legal profession rules or under any other Act or regulations made under any other Act; or
 - (c) with the prior consent in writing of the person to whom the information relates; or
 - (d) to a court or tribunal in the course of legal proceedings; or
 - (e) pursuant to an order of a court or tribunal under any Act or law; or
 - (f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.
- (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.

8.1.6 Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements [NC] (cf former 1706; 1st Ed. 1707; Vic N/A; NSW 724)

- (1) This section applies to a requirement under:
 - (a) section 3.3.25 (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 5.5.10 (Power of receiver to require documents or information) to give access to documents or information; or
 - (c) section 6.2.4 (Provisions relating to requirements under this Part) 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.

8.1.7 Duty to report suspected offences [NC] (cf former 1178; Vic N/A; NSW 730A)

- (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 583 of the *Legal Profession Act 2004* of Queensland.

Part 8.2 Machinery provisions (cf former N/A; Vic N/A; NSW N/A)

8.2.1 Approved forms [NC] (cf former 1707; 1st Ed. 1708; Vic N/A; NSW 734)

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.

8.2.2 Savings and transitional provisions [NC] (cf former 1708; 1st Ed. 1709; Vic 8.2.1, Sch 2; NSW 737, Sch 9)

Note. To be included in local legislation. The provisions may be suitable for inclusion in a separate Chapter or in a Schedule. The provisions could include the saving of legal profession rules and deeming them to be made under the new legislation.

8.2.3 Regulations [NC] (cf former 1709; 1st Ed. 1710; Vic 7.2.17; NSW 738)

- (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.