



Queensland

# Legal Profession Act 2004

**Reprinted as in force on 1 July 2004  
(includes commenced amendments up to 2004 Act No. 13)**

**Reprint No. 1 revised edition**

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This Act is reprinted as at 1 July 2004. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



## Queensland

# Legal Profession Act 2004

## Contents

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<b>Chapter 1</b>	<b>Introduction</b>	
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	37
2	Commencement. . . . .	37
3	Main purposes of this Act . . . . .	38
<b>Part 2</b>	<b>Interpretation</b>	
	<b>Division 1 Dictionary</b>	
4	Definitions . . . . .	38
	<b>Division 2 Meaning of particular terms involving a legal title and related matters</b>	
5	Meaning of terms involving lawyer. . . . .	38
6	Meaning of terms involving legal practitioner. . . . .	39
7	Application to Australian lawyers and Australian legal practitioners. . . . .	39
8	Meaning of barrister. . . . .	40
9	Meaning of solicitor . . . . .	40
10	Meaning of government legal officer and related matters. . . . .	41
11	Meaning of associate and principal and related matters. . . . .	42
	<b>Division 3 Meaning of other terms for this Act</b>	
12	Meaning of home jurisdiction . . . . .	44
13	Meaning of suitability matter . . . . .	44

---

	14	Meaning of serious offence . . . . .	46
	15	Meaning of conviction and quashing a conviction . . . . .	47
	16	Meaning of information notice . . . . .	48
		<b>Division 4            Other matters relating to interpretation</b>	
	17	Notes in text . . . . .	48
	18	Timing for doing things . . . . .	48
	19	Appeal period for appeal to Supreme Court or tribunal . . . . .	48
	20	Grounds that are reasonable in the circumstances . . . . .	49
		<b>Division 5            Other relevant matter</b>	
	21	Contravention of provision that is capable of constituting unsatisfactory professional conduct or professional misconduct . . . . .	49
<b>Chapter 2</b>		<b>Engaging in legal practice other than by Australian-registered foreign lawyers</b>	
<b>Part 1</b>		<b>Preliminary</b>	
	22	Simplified outline of ch 2 . . . . .	50
<b>Part 2</b>		<b>Reservation of legal work and related matters</b>	
	23	Part does not apply to a person if authorised under a Commonwealth law or a government legal officer. . . . .	51
	24	Prohibition on engaging in legal practice when not entitled . . . . .	51
	25	Prohibition on representing or advertising entitlement to engage in legal practice when not entitled . . . . .	53
	26	Part does not affect liability of particular Australian lawyers under ch 3 . . . . .	53
<b>Part 3</b>		<b>Admission of legal practitioners</b>	
		<b>Division 1            Preliminary</b>	
	27	Main purpose of ch 2, pt 3 . . . . .	54

---

28	Definitions for ch 2, pt 3 . . . . .	54
<b>Division 2 Eligibility and suitability for admission as legal practitioners</b>		
29	Eligibility for admission under this Act as a legal practitioner. . . . .	54
30	Suitability for admission under this Act as a legal practitioner. . . . .	56
<b>Division 3 Application for admission</b>		
31	Main purposes of ch 2, pt 3, div 3 . . . . .	56
32	Application for admission under this Act as a legal practitioner. . . . .	56
33	Role of the board relating to application for admission . . . . .	57
34	Role of Supreme Court relating to application for admission . . . . .	57
<b>Division 4 Early consideration of suitability</b>		
35	Main purpose of ch 2, pt 3, div 4 . . . . .	58
36	Early consideration of suitability. . . . .	58
37	Involvement of Supreme Court whether by referral or on appeal. . . . .	59
<b>Division 5 Roll of legal practitioners</b>		
38	Roll of legal practitioners . . . . .	60
39	Local legal practitioner is officer of Supreme Court . . . . .	60
<b>Division 6 Miscellaneous</b>		
40	Conditional admission . . . . .	60
41	Board may appear before Supreme Court. . . . .	61
42	Fees payable . . . . .	61
43	Provision regarding admission rules . . . . .	61
<b>Part 4</b>	<b>Legal practice by Australian legal practitioners</b>	
<b>Division 1 Preliminary</b>		
44	Main purposes of ch 2, pt 4 . . . . .	62
45	Meaning of relevant regulatory authority . . . . .	62

---

46	How suitability relating to holding local practising certificate is to be decided . . . . .	62
<b>Division 2            Legal practice in this jurisdiction</b>		
47	Entitlement to practise in this jurisdiction . . . . .	64
<b>Division 3            Matters relating to applications for grant or renewal of local practising certificates</b>		
48	Application for grant or renewal of local practising certificate . . . . .	64
49	Manner of application . . . . .	66
50	Professional indemnity insurance . . . . .	67
51	Continuing obligation for professional indemnity insurance . . . . .	68
<b>Division 4            Grant or renewal of local practising certificates</b>		
52	Grant or renewal of local practising certificate . . . . .	69
53	Conditions imposed by law society or bar association . . . . .	70
54	Applications relating to conditions . . . . .	71
55	Duration of local practising certificates . . . . .	72
56	Local legal practitioner is officer of Supreme Court . . . . .	73
<b>Division 5            Conditions applying to local practising certificates</b>		
57	Conditions generally . . . . .	73
58	Statutory condition regarding notification of offence . . . . .	73
59	Statutory condition regarding legal practice as solicitor . . . . .	74
60	Statutory condition regarding conditions imposed on interstate admission . . . . .	75
61	Compliance with conditions . . . . .	75
<b>Division 6            Special powers relating to local practising certificates</b>		
62	Application for local practising certificate if show cause event happened after first admission . . . . .	75

---

63	Requirement if show cause event . . . . .	76
64	Refusal, cancellation, suspension or amendment, of local practising certificate because of failure to show cause. . . . .	77
65	Restriction on making further application. . . . .	78
<b>Division 7</b>	<b>Amendment, cancellation or suspension of local practising certificates</b>	
66	Application of ch 2, pt 4, div 7 . . . . .	78
67	Grounds for amending, cancelling or suspending a local practising certificate . . . . .	78
68	Amending, cancelling or suspending local practising certificate . . . . .	79
<b>Division 8</b>	<b>Provisions that apply to other actions including actions under div 6 or 7</b>	
69	Consensual amendment or cancellation etc. . . . .	80
70	Removal from local roll. . . . .	81
71	Operation of amendment, cancellation or suspension of local practising certificate . . . . .	81
72	Return of amended, cancelled or suspended local practising certificate. . . . .	82
73	Relationship of divs 6 and 7 with ch 7, pt 2 . . . . .	83
<b>Division 9</b>	<b>Interstate legal practitioners</b>	
74	Requirement for interstate practising certificate and professional indemnity insurance . . . . .	84
75	Extent of entitlement of interstate legal practitioner to practise in this jurisdiction . . . . .	85
76	Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction . . . . .	85
77	Special provision about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction . . . . .	86
78	Interstate legal practitioner is officer of Supreme Court . . . . .	87

	<b>Division 10</b>	<b>Miscellaneous provisions about local practising certificates and other matters</b>	
	79	Immediate suspension or amendment of local practising certificate . . . . .	87
	80	Protocols . . . . .	89
	81	Consideration of applicant for local practising certificate and certificate holder . . . . .	89
	82	Register of local practising certificates . . . . .	90
	83	Regulatory authority may charge reasonable fees . . . . .	91
<b>Part 5</b>		<b>Legal practice by incorporated legal practices</b>	
	<b>Division 1</b>	<b>Preliminary</b>	
	84	Main purpose of ch 2, pt 5 . . . . .	92
	85	Meaning of incorporated legal practice . . . . .	92
	86	Definitions for ch 2, pt 5 . . . . .	93
	<b>Division 2</b>	<b>Incorporated legal practices providing legal services</b>	
	87	Non-legal services and businesses of incorporated legal practices . . . . .	94
	88	Corporations eligible to be incorporated legal practices . . . . .	94
	89	Notice of intention to start providing legal services . . . . .	95
	90	Prohibition on corporations or directors etc. representing that corporation is incorporated legal practice . . . . .	95
	91	Notice of termination of provision of legal services . . . . .	96
	<b>Division 3</b>	<b>Legal practitioner directors, and other legal practitioners employed by incorporated legal practices</b>	
	92	Incorporated legal practice must have legal practitioner director . . . . .	96
	93	Obligations of legal practitioner director relating to misconduct . . . . .	97



---

94	Incorporated legal practice without legal practitioner director . . . . .	98
95	Obligations and privileges of an Australian legal practitioner who is an officer or employee .	100
<b>Division 4 Particular matters including application of other provisions of relevant laws</b>		
96	Insurance obligations . . . . .	101
97	Conflicts of interest . . . . .	101
98	Disclosure obligations . . . . .	101
99	Effect of non-disclosure on provision of particular services . . . . .	102
100	Application of a legal profession rule . . . . .	103
101	Requirements relating to advertising . . . . .	103
102	Application of provisions of relevant laws relating to trust money or trust accounts . . . . .	104
103	Application provisions about client agreements etc. to incorporated legal practices . . . . .	104
104	Extension to incorporated legal practice of vicarious liability relating to failure to account and dishonesty . . . . .	105
105	Sharing of receipts . . . . .	105
106	Disqualified persons . . . . .	106
<b>Division 5 Ensuring compliance with this Act by incorporated legal practices</b>		
107	Commissioner or law society may audit incorporated legal practice . . . . .	106
108	Banning of incorporated legal practices . . . . .	107
109	Disqualification from managing incorporated legal practice . . . . .	109
110	Disclosure of information to the Australian Securities and Investments Commission . . . . .	110
<b>Division 6 External administration</b>		
111	External administration proceedings under Corporations Act . . . . .	110
112	External administration proceedings under other legislation . . . . .	111

---

113	Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act. . . . .	112
114	Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation . . . . .	113
<b>Division 7            Miscellaneous</b>		
115	Cooperation between courts . . . . .	114
116	Relationship of Act to constitution of incorporated legal practice. . . . .	114
117	Relationship of Act to legislation establishing incorporated legal practice. . . . .	114
118	Relationship of Act to Corporations legislation and certain other instruments . . . . .	115
119	Undue influence. . . . .	115
120	Obligations of individual practitioners not affected . . . . .	116
121	Regulation may require training requirement for legal practitioner director . . . . .	116
<b>Part 6</b>	<b>Legal practice by multi-disciplinary partnerships</b>	
<b>Division 1            Preliminary</b>		
122	Main purpose of ch 2, pt 6 . . . . .	117
123	Meaning of multi-disciplinary partnership . . . . .	117
<b>Division 2            Multi-disciplinary partnerships providing legal services</b>		
124	Conduct of multi-disciplinary partnerships . . . . .	118
125	Notice of intention to start practice in multi-disciplinary partnership . . . . .	118
<b>Division 3            Legal practitioner partners and other legal practitioners employed by multi-disciplinary partnerships</b>		
126	General obligations of legal practitioner partners . . . . .	118
127	Obligations of legal practitioner partner relating to misconduct. . . . .	119

128	Actions of partner who is not an Australian legal practitioner. . . . .	120
129	Obligations and privileges of Australian legal practitioner who is partner or employee. . . . .	120
130	Conflicts of interest . . . . .	121
131	Disclosure obligations . . . . .	121
132	Effect of non-disclosure on provision of particular services . . . . .	122
133	Application of a legal profession rule . . . . .	123
134	Requirements relating to advertising . . . . .	123
135	Requirements relating to trust accounts and particular moneys. . . . .	124
136	Application of provisions about client agreements etc. to multi-disciplinary partnerships . . . . .	124
137	Sharing of receipts. . . . .	124
138	Disqualified persons. . . . .	125
139	Prohibition on partnership with particular partner who is not an Australian legal practitioner . . . . .	125
140	Undue influence. . . . .	126
141	Obligations of practitioners not affected. . . . .	127
142	Regulations . . . . .	127

**Part 7****Fidelity cover****Division 1 Preliminary**

143	Purpose of ch 2, pt 7 . . . . .	128
144	Definitions for ch 2, pt 7 . . . . .	128
145	Application of pt 7 defaults of particular barristers . . . . .	129
146	Time of default . . . . .	129

**Division 2 Fidelity fund**

147	Establishment of fidelity fund . . . . .	130
148	Insurance . . . . .	130
149	Limitation on borrowing powers of law society for fidelity fund . . . . .	131

---

150	Fund to be kept in separate account . . . . .	131
151	Moneys payable into fidelity fund . . . . .	131
152	Expenditure from fund . . . . .	132
153	Audit of accounts . . . . .	133
154	Law society may delegate its powers in relation to the fidelity fund to a committee of management . . . . .	133
155	Minister may require report about fund . . . . .	133
156	Contribution to fidelity fund . . . . .	134
157	Levy for benefit of fidelity fund . . . . .	134
158	Law society may advance moneys from its general funds to fidelity fund . . . . .	135
<b>Division 3            Defaults to which this part                                  applies</b>		
159	Meaning of relevant jurisdiction . . . . .	135
160	Defaults to which this part applies . . . . .	136
161	Defaults relating to financial services or investments . . . . .	137
<b>Division 4            Claims about defaults</b>		
162	Claims about defaults . . . . .	138
163	Time limit for making claims . . . . .	138
164	Advertisements . . . . .	139
165	Time limit for making claims following advertisement . . . . .	140
166	Claims not affected by certain matters . . . . .	141
167	Investigation of claims . . . . .	142
<b>Division 5            Deciding claims</b>		
168	Law society to decide claim . . . . .	142
169	Maximum amount allowable . . . . .	143
170	Costs . . . . .	143
171	Interest . . . . .	144
172	Reduction of claim because of other benefits . . . . .	144
173	Subrogation . . . . .	145
174	Proceedings brought under right of subrogation . . . . .	145

---

175	Repayment of surplus amount . . . . .	146
176	Notification of delay in making decision . . . . .	146
177	Notification of decision . . . . .	146
<b>Division 6 Appeals</b>		
178	Appeal against decision on claim . . . . .	147
179	Appeal against failure to decide claim within 1 year . . . . .	148
180	Proceedings on appeal . . . . .	149
<b>Division 7 Payments from fidelity fund for defaults</b>		
181	Payments for defaults . . . . .	149
182	Caps on payments . . . . .	150
183	Sufficiency of fidelity fund . . . . .	150
<b>Division 8 Claims by law practices or associates</b>		
184	Claims by law practices or associates about defaults . . . . .	151
185	Claims by law practices or associates about notional defaults . . . . .	152
<b>Division 9 Defaults involving interstate elements</b>		
186	Concerted interstate defaults . . . . .	152
187	Defaults involving interstate elements if committed by 1 associate only . . . . .	153
<b>Division 10 Inter-jurisdictional provisions</b>		
188	Protocols . . . . .	154
189	Forwarding claims to corresponding authority in another jurisdiction . . . . .	155
190	Investigation of defaults to which this part applies . . . . .	155
191	Investigation of defaults to which a corresponding law applies . . . . .	155
192	Investigation of concerted interstate defaults . . .	156
193	Recommendations by law society to corresponding authority . . . . .	156

194	Recommendations to and decisions by law society after receiving recommendations from corresponding authority . . . . .	157
195	Request to another jurisdiction to investigate aspects of claim . . . . .	157
196	Request from another jurisdiction to investigate aspects of claim . . . . .	157
197	Cooperation with other authorities . . . . .	158

**Division 11            Miscellaneous**

198	Interstate legal practitioner becoming authorised to withdraw from local trust account. . . . .	158
199	Application of part to incorporated legal practices . . . . .	159
200	Application of part to multi-disciplinary partnerships . . . . .	160
201	Application of part to Australian lawyers whose practising certificates have lapsed . . . . .	160

**Part 8**

**Financial arrangements for those who may engage in legal practice in this jurisdiction**

**Division 1            Preliminary**

202	Main purposes of ch 2, pt 8 . . . . .	161
203	Definitions for ch 2, pt 8 . . . . .	162
204	Relationship with other laws . . . . .	162

**Division 2            Prescribed accounts**

205	Regulation for prescribed account . . . . .	162
206	Deposits to prescribed account . . . . .	163

**Division 3            Interest on trust accounts paid to department**

207	Arrangement with financial institution . . . . .	163
-----	--	-----

**Division 4            Legal Practitioner Interest on Trust Accounts Fund**

208	Establishment of fund . . . . .	163
209	Payments from fund . . . . .	164
210	Minister to decide distribution . . . . .	166
211	Submission of budgets . . . . .	166

**Part 9****Rules about those who may engage in legal practice in this jurisdiction****Division 1 Preliminary**

212	Main purposes of ch 2, pt 9 . . . . .	167
213	Power to make rules not limited to specific references to provision in other chapters or parts . . . . .	167
214	Definition for ch 2, pt 9 . . . . .	167

**Division 2 Legal profession rules**

215	Rules to be made by Governor in Council . . . . .	168
216	Rule may apply to persons generally or by using a defined term involving a legal title . . . . .	168
217	Particular provision about barristers rule . . . . .	169
218	Solicitors rule or barristers rule may apply to government legal officer . . . . .	169
219	Incorporated legal practice rule can not provide for particular matters . . . . .	169
220	Recommendations to the Minister about legal profession rules . . . . .	170
221	Monitoring role of committee . . . . .	170
222	Public notice of proposed legal profession rule . . . . .	171
223	Binding nature of each legal profession rule . . . . .	171
224	Relationship of legal profession rule to this Act and regulation . . . . .	172
225	Relationship of legal profession rule and administration rule . . . . .	172

**Division 3 Administration rules**

226	Rules other than legal profession rule . . . . .	172
227	Indemnity rule . . . . .	175
228	Relationship of administration rule to this Act and regulation . . . . .	176
229	Availability of an administration rule . . . . .	177

**Part 10****Inter-jurisdictional provisions regarding admission and practising certificates****Division 1 Preliminary**

230	Main purpose of ch 2, pt 10 . . . . .	177
231	Relationship of this part with ch 3 . . . . .	178

**Division 2 Notifications to be given to interstate authorities**

232	Notification to other jurisdictions about application for admission . . . . .	178
233	Notification to other jurisdictions about removal from local roll . . . . .	179
234	Law society and bar association to notify other jurisdictions about actions by it . . . . .	179

**Division 3 Notifications to be given by lawyers to local authorities**

235	Lawyer to give notice of removal in another jurisdiction . . . . .	180
236	Lawyer to give notice of removal in foreign country . . . . .	180
237	Provisions relating to requirement to notify . . . . .	181

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

238	Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction . . . . .	181
239	Peremptory cancellation of local practising certificate following removal of name from interstate roll . . . . .	182
240	Order for non-removal of name or non-cancellation of practising certificate . . . . .	183
241	Show cause procedure for removal of local lawyer's name from local roll following removal in foreign country . . . . .	183
242	Local authority may give information to other local authority . . . . .	184



---

<b>Chapter 3</b>	<b>Complaints, investigation matters and discipline</b>	
<b>Part 1</b>	<b>Preliminary</b>	
	<b>Division 1 Preliminary</b>	
243	Main purposes of ch 3 . . . . .	185
	<b>Division 2 Key concepts</b>	
244	Meaning of unsatisfactory professional conduct	185
245	Meaning of professional misconduct . . . . .	185
246	Conduct capable of constituting unsatisfactory professional conduct or professional misconduct . . . . .	186
247	Meaning of respondent . . . . .	187
	<b>Division 3 Application of this chapter</b>	
248	Application of chapter to lawyers, former lawyers and former practitioners . . . . .	187
249	Practitioners to whom this chapter applies . . . .	188
250	Conduct to which this chapter applies—generally . . . . .	188
251	Conduct to which this chapter applies—insolvent under administration, serious offences and tax offences . . . . .	189
252	Chapter also applies to law practice employees	190
	<b>Division 4 Commissioner’s obligations for complaints</b>	
253	Duty to deal with complaints efficiently and expeditiously . . . . .	191
254	Duty to inform complainant about action taken for complaint . . . . .	191
<b>Part 2</b>	<b>Making complaints</b>	
255	Conduct about which complaint may be made .	191
256	Making a complaint . . . . .	192
257	Further information and verification . . . . .	193
258	Complaints made over 3 years after conduct concerned . . . . .	193
259	Summary dismissal of complaints . . . . .	194

---

	260	Withdrawal of complaints . . . . .	195
	261	Commissioner may delay dealing with complaint . . . . .	196
<b>Part 3</b>		<b>Mediation for complaints involving consumer dispute</b>	
	262	Definition for ch 3, pt 3 . . . . .	197
	263	Mediation of complaint involving consumer dispute solely . . . . .	197
	264	Mediation of hybrid complaint . . . . .	197
<b>Part 4</b>		<b>Starting investigations based on complaint or without a complaint</b>	
	265	Referral by commissioner to law society or bar association . . . . .	198
	266	Commissioner investigating a complaint or investigation matter . . . . .	199
	267	Australian lawyer to be notified of complaint or investigation matter . . . . .	200
	268	Role of law society or bar association . . . . .	200
	269	Powers for investigations . . . . .	201
	270	Submissions by respondent . . . . .	203
	271	Referral of matters for cost assessment . . . . .	203
	272	Regulation may provide for covering cost of costs assessor under s 269 or 271 . . . . .	203
<b>Part 5</b>		<b>Discipline</b>	
		<b>Division 1            Decision of commissioner</b>	
	273	Decision of commissioner after investigation . . .	204
	274	Dismissal of complaint . . . . .	204
	275	Record of decision . . . . .	204
		<b>Division 2            Proceedings in disciplinary body</b>	
	276	Starting proceeding before a disciplinary body .	205
	277	Hearings . . . . .	205
	278	Variation of discipline application . . . . .	205
	279	Joinder . . . . .	206

	<b>Division 3</b>	<b>Decisions of disciplinary bodies</b>	
	280	Decisions of tribunal about an Australian legal practitioner . . . . .	206
	281	Orders to be filed in Supreme Court and information notices to be given to parties etc. . .	209
	282	Decisions of committee about discipline application . . . . .	209
	283	Orders to be filed in Supreme Court and information notices to be given to parties etc. . .	211
	284	Interlocutory and interim orders . . . . .	211
	285	Compliance with decisions. . . . .	211
	286	Costs . . . . .	212
	287	Other remedies not affected . . . . .	213
<b>Part 6</b>		<b>Compensation orders</b>	
	<b>Division 1</b>	<b>Preliminary</b>	
	288	Meaning of compensation order . . . . .	214
	<b>Division 2</b>	<b>Compensation orders</b>	
	289	Compensation order relating to pecuniary loss .	214
	290	Effect of compensation order . . . . .	215
	291	Other remedies not affected . . . . .	215
<b>Part 7</b>		<b>Appeals from decisions of disciplinary bodies</b>	
	292	Appeal may be made to Court of Appeal from tribunal's decision. . . . .	216
	293	Appeal to tribunal against committee's decision	216
	294	Appeal to Court of Appeal in relation to a decision of committee . . . . .	217
<b>Part 8</b>		<b>Publication of disciplinary actions</b>	
	295	Definition for ch 3, pt 8 . . . . .	217
	296	Discipline register. . . . .	218
	297	Other means of publicising disciplinary action . .	219
	298	Disciplinary action taken because of infirmity, injury or illness . . . . .	219
	299	Quashing of disciplinary action . . . . .	220

---

300	Liability for publicising disciplinary action. . . . .	220
301	General provisions about disclosure of information . . . . .	221
<b>Part 9</b>	<b>Inter-jurisdictional provisions</b>	
302	Protocols . . . . .	222
303	Request to another jurisdiction to investigate complaint or investigation matter . . . . .	222
304	Request from another jurisdiction to investigate complaint . . . . .	223
305	Sharing of information with corresponding authorities . . . . .	223
306	Cooperation with corresponding authorities. . . . .	224
307	Compliance with orders made under corresponding laws . . . . .	224
308	Other powers or functions not affected . . . . .	225
<b>Part 10</b>	<b>Miscellaneous</b>	
309	Information about complaints procedure . . . . .	225
310	Performance criteria. . . . .	225
311	Annual and other reports to the Minister . . . . .	225
312	Confidentiality of client communications . . . . .	226
313	Waiver of legal professional privilege or benefit of duty of confidentiality . . . . .	227
<b>Chapter 4</b>	<b>External intervention</b>	
<b>Part 1</b>	<b>Preliminary</b>	
314	Main purposes of ch 4 . . . . .	227
315	Definitions for ch 4 . . . . .	228
316	Application of ch 4 . . . . .	229
317	Application of chapter to other persons . . . . .	229
<b>Part 2</b>	<b>Starting external interventions</b>	
318	Circumstances warranting external intervention	230
319	Decision regarding external intervention . . . . .	231

**Part 3****Supervisors**

320	Appointment of supervisor . . . . .	232
321	Notice of appointment . . . . .	233
322	Effect of service of notice of appointment . . . . .	234
323	Role of supervisor . . . . .	235
324	Records of law practice under supervision . . . . .	236
325	Termination of supervisor's appointment . . . . .	236

**Part 4****Managers**

326	Appointment of manager . . . . .	237
327	Notice of appointment . . . . .	238
328	Effect of service of notice of appointment . . . . .	238
329	Role of manager . . . . .	239
330	Records and accounts of law practice under management . . . . .	241
331	Deceased estates . . . . .	242
332	Termination of manager's appointment . . . . .	242

**Part 5****Receivers**

333	Appointment of receiver . . . . .	243
334	Notice of appointment . . . . .	244
335	Effect of service of notice of appointment . . . . .	244
336	Role of receiver . . . . .	245
337	Records and accounts of law practice under receivership . . . . .	246
338	Power of receiver to take possession of regulated property . . . . .	246
339	Power of receiver to take delivery of regulated property . . . . .	247
340	Power of receiver to deal with regulated property . . . . .	248
341	Power of receiver to require documents or information . . . . .	248
342	Examinations . . . . .	248
343	Lien for costs on regulated property of the law practice . . . . .	249

---

344	Regulated property of a law practice is not to be attached . . . . .	250
345	Recovery of regulated property where there has been a breach of trust etc. . . . .	250
346	Improperly destroying property etc. . . . .	252
347	Deceased estates . . . . .	252
348	Termination of receiver's appointment . . . . .	253
<b>Part 6</b>	<b>General</b>	
349	Conditions on appointment of external intervener for a law practice . . . . .	254
350	Status of acts of external intervener for a law practice . . . . .	255
351	Eligibility for reappointment or authorisation . . . . .	255
352	Appeal against appointment . . . . .	255
353	Directions of Supreme Court . . . . .	256
354	Requirement for financial institution to disclose and permit access to accounts . . . . .	256
355	Fees, legal costs and expenses . . . . .	256
356	Reports by external intervener for law practice . . . . .	257
357	Confidentiality for external intervener for law practice . . . . .	257
<b>Chapter 5</b>	<b>Practice of foreign law by foreign lawyers</b>	
<b>Part 1</b>	<b>Preliminary</b>	
358	Main purpose of ch 5 . . . . .	259
359	Definitions for ch 5 . . . . .	259
360	Chapter does not apply to Australian legal practitioners . . . . .	260
<b>Part 2</b>	<b>Practice of foreign law</b>	
361	Requirement for registration. . . . .	260
362	Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction . . . . .	261
363	Scope of practice . . . . .	261
364	Form of practice . . . . .	262

---

365	Application of Australian professional ethical and practice standards . . . . .	263
366	Designation . . . . .	264
367	Letterhead and other identifying documents . . .	265
368	Advertising . . . . .	266
369	Foreign lawyer employing Australian legal practitioner . . . . .	266
370	Trust money and trust accounts . . . . .	267
371	Professional indemnity insurance . . . . .	267
372	Fidelity cover . . . . .	268
<b>Part 3</b>	<b>Local registration of foreign lawyers generally</b>	
373	Local registration of foreign lawyers. . . . .	268
374	Duration of registration. . . . .	268
375	Local registered foreign lawyer is not officer of Supreme Court . . . . .	269
<b>Part 4</b>	<b>Application for grant or renewal of local registration</b>	
376	Application for grant or renewal of registration. .	269
377	Manner of application. . . . .	269
378	Requirements regarding applications for the grant or renewal of registration . . . . .	270
<b>Part 5</b>	<b>Grant or renewal of local registration</b>	
379	Grant or renewal of local registration . . . . .	272
380	Requirement to grant or renew registration if criteria satisfied . . . . .	273
381	Refusal to grant or renew registration . . . . .	274
<b>Part 6</b>	<b>Amendment, cancellation or suspension of local registration</b>	
382	Application of ch 5, pt 6 . . . . .	276
383	Grounds for amending, cancelling or suspending registration . . . . .	276
384	Amending, cancelling or suspending registration . . . . .	277

---

	385	Operation of amendment, cancellation or suspension of registration . . . . .	278
	386	Other ways of amending or cancelling registration . . . . .	279
	387	Relationship of this part with ch 3 . . . . .	280
<b>Part 7</b>		<b>Special powers in relation to local registration</b>	
	388	Applicant for local registration if show cause event happened after first registration as overseas-registered foreign lawyer . . . .	280
	389	Requirement if show cause event . . . . .	281
	390	Refusal, cancellation or suspension of local registration—failure to show cause . . . . .	281
	391	Restriction on making further applications . . . . .	282
	392	Relationship of this part with chs 3 and 7 . . . . .	282
<b>Part 8</b>		<b>Further provisions relating to local registration</b>	
	393	Immediate suspension of registration . . . . .	283
	394	Surrender of local registration certificate and cancellation of registration . . . . .	284
	395	Automatic cancellation of registration on grant of practising certificate . . . . .	284
	396	Cancellation or suspension of registration not to affect disciplinary processes . . . . .	285
	397	Return of local registration certificate on amendment, suspension or cancellation of registration . . . . .	285
<b>Part 9</b>		<b>Conditions on registration</b>	
	398	Conditions generally . . . . .	286
	399	Conditions imposed by law society . . . . .	286
	400	Statutory condition regarding notification of offence . . . . .	287
	401	Conditions imposed by regulation . . . . .	287
	402	Compliance with conditions . . . . .	287



<b>Part 10</b>	<b>Interstate-registered foreign lawyers</b>	
403	Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction . . . .	288
404	Additional conditions on practice of interstate-registered foreign lawyers . . . . .	289
<b>Part 11</b>	<b>Miscellaneous</b>	
405	Consideration and investigation of applicants and holders . . . . .	289
406	Register of locally-registered foreign lawyers . .	290
407	Publication of information about locally-registered foreign lawyers . . . . .	290
408	Supreme Court orders about conditions . . . . .	291
409	Exemption by law society . . . . .	291
410	Membership of professional association . . . . .	291
411	Refund of fees . . . . .	291
<b>Chapter 6</b>	<b>Establishment of entities for this Act, and related matters</b>	
<b>Part 1</b>	<b>Legal Services Commissioner</b>	
	<b>Division 1 Preliminary</b>	
412	Main purposes of ch 6, pt 1 . . . . .	292
	<b>Division 2 Appointment</b>	
413	Legal Services Commissioner . . . . .	292
414	Appointment . . . . .	292
415	Term of appointment . . . . .	293
416	Remuneration and conditions . . . . .	293
417	Acting commissioner . . . . .	293
418	Termination of appointment . . . . .	293
419	Resignation of commissioner . . . . .	294
	<b>Division 3 Functions</b>	
420	Functions . . . . .	294
	<b>Division 4 Legal Services Commission</b>	
421	Establishment of commission . . . . .	294

422	Staff and other resources . . . . .	295
423	Preservation of rights if public service officer appointed or engaged . . . . .	295
424	Preservation of rights if person becomes public service officer. . . . .	296
425	Preservation of rights if public service officer seconded	296

**Division 5            Miscellaneous matters about the  
                                 commissioner**

426	Delegation . . . . .	297
427	Arrangements with regulatory authority about copies of documents . . . . .	297

**Part 2**

**Disciplinary tribunal**

**Division 1            Preliminary**

428	Main purpose of ch 6, pt 2 . . . . .	297
-----	--------------------------------------	-----

**Division 2            Establishment of Legal Practice  
                                 Tribunal and related matters**

429	Establishment, members and chairperson of tribunal . . . . .	298
430	Way tribunal is to operate . . . . .	298
431	Jurisdiction . . . . .	298
432	Powers . . . . .	298
433	Rule-making power . . . . .	298
434	Practice directions . . . . .	299
435	Registrar . . . . .	299
436	Tribunal's seal . . . . .	299

**Division 3            Panels, members of panels and  
                                 related matters**

437	Establishment of panels for helping the tribunal	299
438	Appointment of panel member . . . . .	300
439	Remuneration and appointment conditions of panel members . . . . .	301
440	Termination of appointment . . . . .	301
441	Resignation of members . . . . .	302

---

	<b>Division 4</b>	<b>Role of tribunal members and panel members</b>	
442	Role of members . . . . .		302
443	Disclosure of interests . . . . .		302
	<b>Division 5</b>	<b>Constitution of tribunal for hearings</b>	
444	Constitution of tribunal for hearing . . . . .		303
	<b>Division 6</b>	<b>Other provisions</b>	
445	Institution of proceedings by the commissioner .		304
446	Contempt of tribunal. . . . .		304
447	Conduct that is contempt and an offence . . . . .		304
448	Protection of members etc. . . . .		304
<b>Part 3</b>	<b>Legal Practice Committee</b>		
	<b>Division 1</b>	<b>Preliminary</b>	
449	Main purpose of ch 6, pt 3 . . . . .		305
450	Definitions for ch 6, pt 3 . . . . .		305
	<b>Division 2</b>	<b>Establishment, membership of committee, functions and powers</b>	
451	Establishment of committee. . . . .		305
452	Committee members . . . . .		306
453	Term of appointment . . . . .		306
454	Functions and powers of committee . . . . .		306
455	Administrative support . . . . .		307
	<b>Division 3</b>	<b>Provisions about committee members</b>	
456	Eligibility for membership . . . . .		307
457	Termination of office. . . . .		307
458	Resignation of committee member . . . . .		308
459	Deputy chairperson . . . . .		308
460	Remuneration and allowances of lay members .		308
	<b>Division 4</b>	<b>Provisions about committee performing advisory functions</b>	
461	Application of ch 6, pt 3, div 4 . . . . .		308



	<b>Division 4</b>	<b>Offences</b>	
	485	False or misleading information . . . . .	320
	486	False or misleading documents . . . . .	320
<b>Part 5</b>		<b>Legal Practitioners Admissions Board</b>	
	<b>Division 1</b>	<b>Preliminary</b>	
	487	Main purpose of ch 6, pt 5 . . . . .	321
	488	Definitions for ch 6, pt 5 . . . . .	321
	<b>Division 2</b>	<b>Establishment and membership of board</b>	
	489	Establishment of board . . . . .	321
	490	Members of board . . . . .	321
	<b>Division 3</b>	<b>Board's functions and powers</b>	
	491	Functions and powers of board etc. . . . .	322
	492	Administrative support of the board . . . . .	323
	<b>Division 4</b>	<b>Provisions about board members</b>	
	493	Term of appointment . . . . .	323
	494	Chairperson and deputy chairperson. . . . .	323
	495	Eligibility for membership . . . . .	323
	496	Termination of appointment . . . . .	324
	497	Resignation of board member . . . . .	324
	<b>Division 5</b>	<b>Board business</b>	
	498	Conduct of business . . . . .	324
	499	Times and places of meetings . . . . .	325
	500	Quorum . . . . .	325
	501	Presiding at meetings . . . . .	325
	502	Conduct of meetings . . . . .	325
	503	Minutes . . . . .	326
	504	Disclosure of interests . . . . .	326
	<b>Division 6</b>	<b>Miscellaneous</b>	
	505	Application of particular Acts to board . . . . .	327

**Part 6****Queensland Law Society Incorporated****Division 1 Preliminary**

506	Purposes of ch 6, pt 6 . . . . .	328
507	Definitions for ch 6, pt 6 . . . . .	328

**Division 2 Constitution and related matters about the law society**

508	Establishment of Queensland Law Society . . . . .	329
509	Functions of the law society . . . . .	329
510	General powers of the law society . . . . .	329
511	Status of the law society because of its establishment in Act . . . . .	330
512	Delegation . . . . .	331

**Division 3 Membership of law society**

513	Membership of law society . . . . .	331
-----	-------------------------------------	-----

**Division 4 Council and its membership and officers of the law society**

514	Council of the law society . . . . .	332
515	President, deputy president and vice-president of the law society . . . . .	332
516	Dealing with casual vacancy . . . . .	333
517	No defect because of vacancy . . . . .	333
518	Secretary and other staff of the law society . . . . .	333

**Division 5 Council meetings**

519	Conduct of business at meetings . . . . .	334
520	Presiding at meetings . . . . .	334
521	Quorum . . . . .	334
522	Conduct of council meetings . . . . .	334
523	Minutes . . . . .	335
524	Disclosure of interest . . . . .	335

**Division 6 Law society may make rule**

525	Rule . . . . .	336
526	Notice by Minister about law society making a rule . . . . .	337

---

	527	Availability of a society rule . . . . .	337
		<b>Division 7            Miscellaneous</b>	
	528	Starting proceedings . . . . .	338
	529	Recovery of unpaid amount . . . . .	338
<b>Chapter 7</b>		<b>Suitability reports and investigations</b>	
<b>Part 1</b>		<b>Suitability reports</b>	
		<b>Division 1            Preliminary</b>	
	530	Main purpose of ch 7, pt 1 . . . . .	339
	531	Definitions for ch 7, pt 1 . . . . .	339
		<b>Division 2            Police reports</b>	
	532	Relevant authority may ask for police report . . .	340
		<b>Division 3            Health assessments</b>	
	533	Health assessment . . . . .	341
	534	Appointment of health assessor. . . . .	341
	535	Health assessment report . . . . .	342
	536	Payment for health assessment and report . . . .	343
	537	Use of health assessment report. . . . .	343
		<b>Division 4            General</b>	
	538	Confidentiality of suitability report . . . . .	344
	539	Operation of ch 7, pt 1 . . . . .	346
<b>Part 2</b>		<b>Investigators and their powers</b>	
		<b>Division 1            Preliminary</b>	
	540	Main purpose of ch 7, pt 2 . . . . .	346
	541	Definitions for ch 7, pt 2 . . . . .	346
		<b>Division 2            Investigators</b>	
	542	Appointment, qualifications etc. of investigators	346
	543	Appointment conditions and limit on powers . . .	347
	544	Issue of identity card . . . . .	348
	545	Production or display of identity card. . . . .	348
	546	When investigator ceases to hold office. . . . .	348





---

572	Impersonation of investigators . . . . .	363
<b>Division 7                    Provisions about investigations relating to incorporated legal practices</b>		
573	Definition for ch 7, pt 2, div 7 . . . . .	363
574	Application of division to audits and investigations . . . . .	363
575	Examination of persons . . . . .	364
576	Inspection of books . . . . .	365
577	Power to hold hearings . . . . .	366
578	Failure to comply with investigation . . . . .	367
<b>Chapter 8</b>	<b>Miscellaneous matters</b>	
<b>Part 1</b>	<b>Jurisdiction of the Supreme Court</b>	
579	Inherent jurisdiction of Supreme Court . . . . .	368
580	Jurisdiction of Supreme Court . . . . .	368
581	Injunctions . . . . .	368
582	Hearing and deciding particular action without a jury . . . . .	370
<b>Part 2</b>	<b>Suspected offences, particular associates and other matters</b>	
583	Duty of relevant entities to report suspected offences . . . . .	370
584	Associate who is proscribed person or has been convicted of serious offence etc. . . . .	372
585	Executive officers must ensure corporation complies with Act . . . . .	374
586	Offences are summary offences . . . . .	375
587	Limitation on time for starting summary proceeding . . . . .	375
588	Appointments and authority . . . . .	375
589	Signatures . . . . .	376
590	Evidentiary aids—documents . . . . .	376

<b>Part 3</b>	<b>Other matters</b>	
591	Information sharing among entities with functions under Act . . . . .	377
592	Offence of improper disclosure of information . . . . .	378
593	Protection from liability . . . . .	379
594	Approved forms . . . . .	380
595	Regulation-making power . . . . .	381
<b>Part 5</b>	<b>Transitional, savings and repeal provisions</b>	
	<b>Division 1</b>	<b>Definitions for ch 8, pt 5</b>
597	Definitions for ch 8, pt 5 . . . . .	382
	<b>Division 2</b>	<b>Transitional provisions relating to ch 2, pt 2 (Reservation of legal work and related matters)</b>
598	Act or omission that happened before the commencement may be relevant to an offence under ch 2, pt 2 . . . . .	382
599	Offences committed before the commencement . . . . .	383
	<b>Division 3</b>	<b>Transitional provisions relating to ch 2, pt 3 (Admission of legal practitioners)</b>
600	Application for admission made before commencement but not heard by Supreme Court before commencement . . . . .	384
601	References in other Acts to applicant for admission as a barrister or as a solicitor . . . . .	384
	<b>Division 4</b>	<b>Transitional provisions relating to ch 2, pt 4 (Legal practice by Australian legal practitioners)</b>
602	Purpose of div 4 . . . . .	385
603	Actions before commencement that continue to have effect . . . . .	386
604	Applications to law society outstanding at the commencement . . . . .	387
605	Barristers . . . . .	389
606	Professional indemnity insurance as mentioned in s 50(3) . . . . .	390

<b>Division 5</b>	<b>Transitional provisions relating to ch 2, pt 7 (Fidelity cover)</b>	
607	Amounts payable to and from the fidelity fund before commencement . . . . .	391
608	Delegation to committee of management before commencement . . . . .	392
609	Claims for acts or omissions happening before commencement . . . . .	392
<b>Division 6</b>	<b>Transitional provisions relating to ch 2, pt 9 (Rules about those who may engage in legal practice in this jurisdiction)</b>	
610	Continuation of rules of the law society . . . . .	393
611	Bar association rules . . . . .	394
<b>Division 7</b>	<b>Transitional provisions relating to ch 3 (Complaints, investigation matters and discipline)</b>	
612	Complaints made to the council before commencement but not finally dealt with before that time . . . . .	395
613	Complaints made to the legal ombudsman before commencement but not finally dealt with before that time . . . . .	396
614	Basis of complaint mentioned in ss 256 or 613(2) . . . . .	397
<b>Division 8</b>	<b>Transitional provisions relating to matters that are to continue as external interventions under ch 4 (External intervention)</b>	
615	Continuation of appointment under the Queensland Law Society Act, repealed pt 2C to continue as appointment under ch 4 . . . . .	398
<b>Division 9</b>	<b>Transitional provisions relating to ch 6 generally (Establishment of entities for this Act, and related matters)</b>	
616	Records of Solicitors' Board and Barristers' Board . . . . .	400
617	Provisions that require person to be barrister at commencement for particular reasons. . . . .	400

---

<b>Division 10</b>	<b>Transitional provisions relating to ch 6 (Establishment of entities for this Act, and related matters), pt 6 (Queensland Law Society Incorporated)</b>	
618	Definitions for ch 8, pt 5, div 10 . . . . .	401
619	Things done under remade provisions continue to have effect . . . . .	401
620	Re-enacting does not affect legal personality etc. . . . .	401
621	Re-enacting does not affect existing legal relationships . . . . .	402
622	Powers exercised by law society or council before commencement . . . . .	403
623	Membership of the council if no more than 12 members, etc. . . . .	403
624	Membership of the council if more than 12 members, etc. . . . .	403
625	Presidential members . . . . .	404
626	Society rule continues to apply to vacation of office . . . . .	404
627	Delegation by the law society. . . . .	405
<b>Division 11</b>	<b>Transitional provisions relating to the Legal Practitioners Act</b>	
628	Main purposes of ch 8, pt 5, div 11 . . . . .	405
629	Amendment and relocation of the Legal Practitioners Act, s 58 . . . . .	405
630	Effect of relocation . . . . .	405
631	Accounts kept by society under the Legal Practitioners Act, s 51 . . . . .	406
632	Repeal of remaining provisions of Legal Practitioners Act . . . . .	406
633	References to Legal Practitioners Act and related matters. . . . .	407
634	References to other Acts etc. . . . .	407
635	Appeals under Legal Practitioners Act. . . . .	408

	<b>Division 12</b>	<b>Transitional provisions relating to the Queensland Law Society Act</b>	
	636	Main purposes of ch 8, pt 5, div 12 . . . . .	408
	637	Repeals relating to solicitors complaints tribunal under Queensland Law Society Act . . .	408
	638	Repeals relating to legal ombudsman under the Queensland Law Society Act . . . . .	409
	639	Report by the commissioner for 2003-2004 financial year . . . . .	410
	640	Further amendment of Queensland Law Society Act . . . . .	410
	<b>Division 13</b>	<b>Transitional provisions for, and repeal of, the Legal Profession Act 2003</b>	
	641	Transitional provisions relating to appointment of Legal Services Commissioner under the Legal Profession Act 2003 . . . . .	410
	642	Repeal of Legal Profession Act 2003 . . . . .	410
	<b>Division 14</b>	<b>Regulation-making power for transitional purposes</b>	
	643	Transitional regulation-making power . . . . .	410
<b>Schedule 2</b>		<b>Amendments of Legal Practitioners Act 1995, section 58</b> . . . . .	412
<b>Schedule 3</b>		<b>Legal Practitioners Act 1995, section 58 as amended and relocated</b> . . . . .	413
	58	Qualifications for admission . . . . .	413
<b>Schedule 4</b>		<b>Amendment of Queensland Law Society Act 1952</b> . . . . .	416
<b>Schedule 5</b>		<b>Dictionary</b> . . . . .	417
 <b>Endnotes</b>			
	1	Index to endnotes . . . . .	434
	2	Date to which amendments incorporated . . . . .	434
	3	Key . . . . .	434
	4	Table of reprints . . . . .	435

5	List of legislation . . . . .	435
6	List of annotations . . . . .	435

# Legal Profession Act 2004

[as amended by all amendments that commenced on or before 1 July 2004]

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

## Chapter 1 Introduction

### Part 1 Preliminary

#### 1 Short title

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

#### 2 Commencement

- (1) If the date of assent for this Act is on or before 25 May 2004, the following provisions commence on 25 May 2004 but, if the date of assent for this Act is not on or before 25 May 2004, the following provisions commence on the date of assent—
- chapter 1, other than the provisions that are in force
  - sections 83 and 213
  - chapter 2, part 9, division 3
  - chapter 6, part 1, part 2, divisions 1 to 3, part 3, divisions 1 to 3 and part 5, divisions 1 to 4
  - sections 586 and 587
  - chapter 8, part 3 and part 5, division 1
  - sections 602, 605, 610(3) and (6), 613, 617 and 638
  - chapter 8, part 5, divisions 13 and 14

- schedule 5.
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

### **3 Main purposes of this Act**

The main purposes of this Act are as follows—

- (a) to promote the administration of justice;
- (b) to provide for the protection of consumers of legal services and the public generally;
- (c) to regulate legal practice in this jurisdiction, including the practice of foreign law by foreign lawyers;
- (d) to facilitate the regulation of legal practice on a national basis.

## **Part 2 Interpretation**

### **Division 1 Dictionary**

#### **4 Definitions**

The dictionary in schedule 5 defines particular words used in this Act.

### **Division 2 Meaning of particular terms involving a legal title and related matters**

#### **5 Meaning of terms involving lawyer**

- (1) An *Australian lawyer* is a person admitted under this Act as a legal practitioner or admitted to the legal profession of another jurisdiction under a corresponding law.



- (2) A **local lawyer** is a person admitted under this Act as a legal practitioner, whether or not the person is also admitted to the legal profession of another jurisdiction under a corresponding law.
- (3) An **interstate lawyer** is a person who is admitted to the legal profession of another jurisdiction under a corresponding law, but is not admitted under this Act as a legal practitioner.

## **6 Meaning of terms involving legal practitioner**

- (1) An **Australian legal practitioner** is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.
- (2) A **local legal practitioner** is an Australian lawyer who holds a current local practising certificate.
- (3) An **interstate legal practitioner** is an Australian lawyer who holds a current interstate practising certificate, but does not hold a current local practising certificate.

## **7 Application to Australian lawyers and Australian legal practitioners**

- (1) If an entity may exercise a power under this Act in relation to an Australian lawyer, the entity may only exercise the power in relation to a person who is—
  - (a) a local lawyer or local legal practitioner; or
  - (b) an interstate lawyer or interstate legal practitioner, who is engaged in, or proposes to engage in, legal practice in this jurisdiction.
- (2) If an entity may exercise a power under this Act in relation to an Australian legal practitioner, the entity may only exercise the power in relation to a person who is—
  - (a) a local legal practitioner; or
  - (b) an interstate legal practitioner who is engaged in, or proposes to engage in, legal practice in this jurisdiction.
- (3) If the power that may be exercised under subsection (1) or (2) relates to a person's previous act or omission, the power may also be exercised in relation to a person who, at the time of the

previous act or omission, was a local lawyer, local legal practitioner or interstate legal practitioner engaged in legal practice in this jurisdiction.

- (4) Subsections (1) to (3) are subject to a provision that, other than as mentioned in those subsections—
- (a) provides for the exercise of a power in relation to persons; or
  - (b) states the persons to whom the provision applies.

*Example for subsection (4)—*

Section 248 states the persons to whom chapter 3 applies.

- (5) This section does not limit the *Acts Interpretation Act 1954*, section 9.<sup>1</sup>

## **8 Meaning of *barrister***

A *barrister* is—

- (a) a local legal practitioner who holds a current local practising certificate to practise as a barrister granted or renewed by the bar association; or
- (b) an interstate legal practitioner who holds a current interstate practising certificate that entitles the certificate holder to practise only as a barrister or in the manner of a barrister.

## **9 Meaning of *solicitor***

A *solicitor* is—

- (a) a local legal practitioner who holds a current local practising certificate to practise as a solicitor granted or renewed by the law society; or
- (b) an interstate legal practitioner who holds a current interstate practising certificate that is not subject to a condition that allows the legal practitioner to practise only as a barrister or in the manner of a barrister.

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<sup>1</sup> *Acts Interpretation Act 1954*, section 9 (Act to be interpreted not to exceed Parliament's legislative power)

**10 Meaning of *government legal officer* and related matters**

- (1) A *government legal officer* is a person whose employment or appointment in any of the following includes or may include engaging in legal practice—
  - (a) a department of this jurisdiction, the commission, or an agency prescribed under a regulation for this paragraph;
  - (b) a department of government of the Commonwealth;
  - (c) a department of government of another jurisdiction;
  - (d) an agency of another jurisdiction if, under a corresponding law of that jurisdiction, a person engaging in legal practice for the agency is exempted from holding a practising certificate or otherwise does not require a practising certificate.
- (2) A government legal officer is *engaged in government work* when the government legal officer is engaged in legal practice in the course of the officer's duties for the entity in relation to which the person is an employee or appointee.

*Example of engaged in government work—*

A public service employee employed by the Department of Justice and Attorney-General who is engaged in legal practice at the Department of Education and whose duties for the Department of Justice and Attorney-General while working at the Department of Education include providing advice to that department as a client of the Department of Justice and Attorney-General.

- (3) However, for an agency prescribed for subsection (1)(a), a regulation may specify activities that are, or are not, government work.
- (4) If a provision under a relevant law does not apply to a government legal officer engaged in government work, the provision applies to the person who is the government legal officer if the person is engaging in legal practice other than being engaged in government work.
- (5) If a government legal officer holds a practising certificate from the bar association, a condition of the barrister's practising certificate about only practising as a barrister does not apply to the government legal officer to the extent that the government legal officer practises as a solicitor as part of engaging in government work.

- (6) A government legal officer who is an Australian lawyer does not have any less rights, privileges, protections or immunities than an Australian lawyer who is not a government legal officer.
- (7) A government legal officer who is not an Australian lawyer is subject to the same limitations and obligations to which a government legal officer who is an Australian lawyer is subject.
- (8) The provisions of a relevant law about the fidelity fund do not apply to a government legal officer in his or her capacity as a government legal officer engaged in government work even if the government legal officer is the holder of a practising certificate.
- (9) A government legal officer who is an Australian lawyer but does not hold a current local practising certificate may—
  - (a) if the officer was admitted as a barrister before the commencement of section 25<sup>2</sup> or engages in government work in the manner of a barrister—call himself or herself a barrister or another term that describes the way the officer engages in government work; or
  - (b) if the officer was admitted as a solicitor before the commencement of section 25 or engages in government work in the manner of a solicitor—call himself or herself a solicitor or another term that describes the way the officer engages in government work.
- (10) For a person whose employment or appointment in a department of government of the Commonwealth includes or may include engaging in legal practice as mentioned in subsection (1)(b), this Act is subject to the *Judiciary Act 1903* (Cwlth).

## 11 Meaning of *associate* and *principal* and related matters

- (1) An *associate*, of a law practice, is—
  - (a) an Australian legal practitioner who is—

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2 Section 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

*Legal Profession Act 2004*

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- (i) a sole practitioner if the law practice is constituted by the practitioner; or
  - (ii) a partner in the law practice if the law practice is a law firm; or
  - (iii) a legal practitioner director if the law practice is an incorporated legal practice; or
  - (iv) a legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership; or
  - (v) an employee of the law practice; or
- (b) an agent of the law practice who is not an Australian legal practitioner; or
  - (c) an employee of the law practice who is not an Australian legal practitioner; or
  - (d) an Australian-registered foreign lawyer who is a partner in the law practice; or
  - (e) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed under a regulation.
- (2) A ***legal practitioner associate***, of a law practice, is an associate of the practice who is an Australian legal practitioner.
- (3) A ***lay associate***, of a law practice, is an associate of the practice who is not an Australian legal practitioner.
- (4) A ***principal***, of a law practice, is an Australian legal practitioner who is—
- (a) a sole practitioner if the law practice is constituted by the practitioner; or
  - (b) a partner in the law practice if the law practice is a law firm; or
  - (c) a legal practitioner director if the law practice is an incorporated legal practice; or
  - (d) a legal practitioner partner if the law practice is a multi-disciplinary partnership.

## **Division 3                      Meaning of other terms for this Act**

### **12            Meaning of *home jurisdiction***

- (1) The *home jurisdiction*, for an Australian legal practitioner, is the jurisdiction in which the legal practitioner's only or most recent current Australian practising certificate was granted.
- (2) The *home jurisdiction*, for an Australian-registered foreign lawyer, is the jurisdiction in which the foreign lawyer's only or most recent current registration was granted.
- (3) 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) if only 1 jurisdiction is the home jurisdiction for the only associate of the law practice who is an Australian legal practitioner or for all the associates of the law practice who are Australian legal practitioners—that jurisdiction; or
  - (b) if no 1 jurisdiction is the home jurisdiction for all the associates of the law 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 can not be decided under subparagraph (i)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for that jurisdiction; or
    - (iii) if a jurisdiction can not be decided under either subparagraph (i) or (ii)—the jurisdiction decided under criteria prescribed under a regulation.

### **13            Meaning of *suitability matter***

- (1) Each of the following is a *suitability matter* in relation to a 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;
- (d) whether the person engaged in legal practice in Australia—
  - (i) when not admitted, or not holding a practising certificate, as required under a relevant law or a corresponding law; or
  - (ii) if admitted, in contravention of a condition on which admission was granted; or
  - (iii) while the person's practising certificate is or was suspended or in contravention of a condition applicable to the certificate;
- (e) whether the person has practised law in a foreign country—
  - (i) when not permitted under a law of that country to do so; or
  - (ii) if permitted to do so, in contravention of a condition applicable to the permission;
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under a relevant law, 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 the other profession or occupation that involved a finding of guilt;
- (h) whether the person's name has been removed from—

- (i) the local roll, including the roll of barristers and roll of solicitors, but has not since been restored to or entered on a local roll, including the roll of barristers and roll of solicitors; or
  - (ii) an interstate roll, but 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 cancelled or suspended 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 a relevant law, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed for a law practice engaged in by the person;
  - (l) whether the person is or has been subject to an order under a relevant law, a law of the Commonwealth or a corresponding law, disqualifying the applicant from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
  - (m) whether the person currently has a material physical or mental infirmity.
- (2) A matter mentioned in subsection (1) is a suitability matter for a person even if it happened before the commencement of this section, except if the provision in subsection (1) about the matter refers to the current situation in relation to the person.

## 14 Meaning of *serious offence*

A *serious offence* is an offence whether committed in or outside this jurisdiction that is—

- (a) an indictable offence against an Act, or against a law of the Commonwealth or another 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 an Act 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 an Act if committed in this jurisdiction, whether or not the offence could be dealt with summarily if committed in this jurisdiction.

## 15 **Meaning of *conviction* and *quashing a conviction***

- (1) A ***conviction***, for an offence, includes either of the following whether or not a conviction is recorded on sentence—
  - (a) a finding of guilt;
  - (b) the acceptance of a guilty plea.
- (2) Without limiting subsection (1), ***quashing a conviction***, for an offence—
  - (a) includes quashing—
    - (i) a finding of guilt for the offence; or
    - (ii) the acceptance of a guilty plea for the offence; and
  - (b) does not include quashing a conviction if—
    - (i) a finding of guilt in relation to the offence remains unaffected; or
    - (ii) the acceptance of a guilty plea in relation to the offence remains unaffected.
- (3) A conviction includes a conviction before the commencement of this section.

*Note—*

See also the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A, table, items 24 and 25.

**16 Meaning of *information notice***

- (1) An *information notice* is a written notice to a person about a decision relating to the person stating—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) whether or not the person may appeal under this Act against the decision to a stated court or entity; and
  - (d) if the person may appeal under this Act, the day by which the appeal must be started.
- (2) A provision under this Act may provide that an information notice for the purposes of the provision must include other stated information.
- (3) If a person may appeal within a number of days after the day an information notice is given to the person, a defect in the notice does not affect the person's right to appeal in relation to the matters dealt with in the information notice.

**Division 4 Other matters relating to interpretation****17 Notes in text**

A note in the text of this Act is part of this Act.

**18 Timing for doing things**

If no time is provided or allowed for doing something under this Act, the thing is to be done as soon as practicable, and as often as is required.

**19 Appeal period for appeal to Supreme Court or tribunal**

If a provision of this Act provides that a person has a stated number of days to appeal to the Supreme Court or the tribunal (the *appeal period*), the court or tribunal may allow a person who may appeal within the appeal period to appeal after that

appeal period if the court or tribunal considers it appropriate having regard to the extent of, and reasons for, the delay.

## **20 Grounds that are reasonable in the circumstances**

- (1) If a person is required, under this Act, to be satisfied or not satisfied of, or have a belief or suspicion about, a particular matter before the person may do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied or have the belief or suspicion on grounds that are reasonable in the circumstances.
- (2) If, under this Act, a person who is satisfied or not satisfied of, or has a belief or suspicion about, a particular matter is required to do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied, or have the belief or suspicion, on grounds that are reasonable in the circumstances.
- (3) If an entity is required under this Act to consider that a particular matter is appropriate, including, for example, the following entities, before the entity may do or refrain from doing an act or make a decision, the entity must not do or refrain from doing the act, or make the decision, unless the entity considers the particular matter is appropriate on grounds that are reasonable in the circumstances—
  - (a) a disciplinary body;
  - (b) the board;
  - (c) a regulatory authority;
  - (d) the commissioner;
  - (e) an investigator.

## **Division 5 Other relevant matter**

### **21 Contravention of provision that is capable of constituting unsatisfactory professional conduct or professional misconduct**

- (1) This section applies if a provision states that a contravention of another provision is capable of constituting unsatisfactory

professional conduct or professional misconduct and a penalty is provided for a contravention of that other provision (the *offence provision*).

- (2) A person may be punished for an offence under the offence provision as well as being dealt with under chapter 3<sup>3</sup> in relation to the same matter.

## **Chapter 2            Engaging in legal practice                           other than by                           Australian-registered foreign                           lawyers**

### **Part 1                Preliminary**

#### **22            Simplified outline of ch 2**

Generally, this chapter seeks to achieve the main purposes of this Act by providing that—

- (a) legal practice is engaged in only by persons who are properly qualified and hold a current practising certificate; and
- (b) only persons who are eligible and suitable for admission are admitted under this Act as legal practitioners; and
- (c) an Australian lawyer may obtain a local practising certificate from the law society or bar association and become a local legal practitioner; and
- (d) a corporation may engage in legal practice as an incorporated legal practice while it has a legal practitioner director; and
- (e) a partnership consisting of at least 1 partner who is not an Australian legal practitioner may engage in providing

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3 Chapter 3 (Complaints, investigation matters and discipline)



Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to any of the following—
- (a) a person who engages in legal practice, or in activities that constitute legal practice in this jurisdiction, under a law of this jurisdiction;
  - (b) an incorporated legal practice engaged in legal practice as authorised under part 5;<sup>4</sup>
  - (c) an Australian-registered foreign lawyer engaged in the practice of foreign law as authorised under chapter 5;<sup>5</sup>
  - (d) a person preparing or assisting in the preparation of a will if it is prepared in the course of the person's employment with a trustee company;
  - (e) a person preparing or assisting in the preparation of a contract if it is prepared by a real estate agent for another person;
  - (f) a person engaged in activities that the person is authorised under a regulation for this section to engage in.
- (3) A person is not entitled to recover any amount for anything the person did in contravention of subsection (1).
- (4) A person may recover from someone else (the *other person*), as a debt due to the person, any amount the person paid to the other person for anything the other person did in contravention of subsection (1).
- (5) This section is subject to chapter 2, part 4, division 9.<sup>6</sup>
- (6) In this section—

*real estate agent* see the *Property Agents and Motor Dealers Act 2000*, schedule 2.

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4 Part 5 (Legal practice by incorporated legal practices)

5 Chapter 5 (Practice of foreign law by foreign lawyers)

6 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 4 (Legal practice by Australian legal practitioners), division 9 (Interstate legal practitioners)

*trustee company* see the *Trustee Companies Act 1968*, section 4.

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

- (1) A person must not, without a reasonable excuse, represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) A director, officer, employee or agent of a body corporate that is not a corporation must not, without a reasonable excuse, represent or advertise that the body corporate is entitled to engage in legal practice.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (3) Subsections (1) and (2) do not apply to a representation or advertisement about a person being entitled to engage in legal practice as mentioned in section 24(2).

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

- (5) This section is subject to chapter 2, part 4, division 9.<sup>7</sup>

**26 Part does not affect liability of particular Australian lawyers under ch 3**

This part does not affect any liability that a person who is an Australian lawyer but not an Australian legal practitioner may have under chapter 3.<sup>8</sup>

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<sup>7</sup> Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 4 (Legal practice by Australian legal practitioners), division 9 (Interstate legal practitioners)

<sup>8</sup> Chapter 3 (Complaints, investigation matters and discipline)

## **Part 3                      Admission of legal practitioners**

### **Division 1                Preliminary**

#### **27            Main purpose of ch 2, pt 3**

The main purpose of this part is to provide for persons who are eligible and suitable for admission to be admitted under this Act as legal practitioners.

#### **28            Definitions for ch 2, pt 3**

In this part—

*admission rules* means the rules under the *Supreme Court of Queensland Act 1991*, section 118,<sup>9</sup> for admission under this Act of legal practitioners and for associated matters.

*applicant for admission* means a person who has applied for admission under this Act as a legal practitioner.

*Supreme Court*, in relation to an exercise of power of the court, means—

- (a) if the admission rules provide that the power may be exercised by a single Supreme Court judge—a single Supreme Court judge; or
- (b) otherwise—the Court of Appeal.

### **Division 2                Eligibility and suitability for admission as legal practitioners**

#### **29            Eligibility for admission under this Act as a legal practitioner**

- (1) A person is eligible for admission under this Act as a legal practitioner only if the person—

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<sup>9</sup> *Supreme Court of Queensland Act 1991*, section 118 (Rule-making power)



*Legal Profession Act 2004*

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- (a) is a natural person aged 18 years or more; and
- (b) has attained approved academic qualifications or corresponding academic qualifications; and
- (c) has satisfactorily completed approved practical legal training requirements or corresponding practical legal training requirements.

*Note—*

See also schedule 3 for persons who may be eligible for admission under this Act as legal practitioners.

- (2) In this section—

***approved academic qualifications*** means academic qualifications that are approved under the admission rules for admission under this Act as a legal practitioner.

***approved practical legal training requirements*** means legal training requirements that are approved under the admission rules for admission under this Act as a legal practitioner.

***corresponding academic qualifications*** means academic qualifications that would qualify the person for admission to the legal profession in another jurisdiction if the board 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 board 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—*

The board is the Legal Practitioners Admissions Board established under section 489.<sup>10</sup>

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10 Section 489 (Establishment of board)

**30 Suitability for admission under this Act as a legal practitioner**

- (1) A person is suitable for admission under this Act as a legal practitioner only if the person is a fit and proper person.
- (2) In deciding if the person is a fit and proper person, the Supreme Court must consider—
  - (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and
  - (b) other matters that the court considers relevant.
- (3) However, the Supreme Court may consider a person suitable for admission under this Act as a legal practitioner despite a suitability matter because of the circumstances relating to the matter.

**Division 3 Application for admission****31 Main purposes of ch 2, pt 3, div 3**

The main purposes of this division are—

- (a) to allow a person who considers himself or herself eligible for admission and suitable for admission to apply to the Supreme Court for admission under this Act as a legal practitioner; and
- (b) to provide for the board's role in relation to an application for admission under this Act as a legal practitioner.

**32 Application for admission under this Act as a legal practitioner**

- (1) A person may apply (an *application for admission*) to the Supreme Court to be admitted under this Act as a legal practitioner.
- (2) The application must be made in the approved form and under the admission rules.

**33 Role of the board relating to application for admission**

- (1) The board's role is to help the Supreme Court by making a recommendation about each application for admission.
- (2) The board must consider each application and, in particular, whether or not—
  - (a) the application is made under the admission rules; and
  - (b) the applicant is eligible for admission under this Act as a legal practitioner; and
  - (c) the applicant is suitable for admission under this Act as a legal practitioner, including having regard to all suitability matters in relation to the applicant to the extent appropriate; and
  - (d) there are other matters the Supreme Court may consider relevant.
- (3) As part of considering the application, the board may, by notice to the applicant, require—
  - (a) the applicant to give it stated documents or information; or
  - (b) the applicant to cooperate with any inquiries by the board that it considers appropriate.
- (4) An applicant's failure to comply with a notice under subsection (3) by the date stated in, and in the way required by, the notice is a ground for recommending to the Supreme Court that the applicant not be admitted under this Act as a legal practitioner.
- (5) The board makes a recommendation to the Supreme Court about the application by giving the recommendation to the Brisbane registrar and a copy of it to the applicant.
- (6) However, if the board considers it appropriate to apply to the Supreme Court for a direction about a matter concerning an application, the board may do so.

**34 Role of Supreme Court relating to application for admission**

- (1) The Supreme Court must hear and decide each application for admission in the way the court considers appropriate.

- (2) Without limiting subsection (1), the court may—
  - (a) if satisfied the applicant for admission is eligible and suitable for admission under this Act as a legal practitioner—make an order admitting the applicant as a legal practitioner; or
  - (b) otherwise—refuse the application.
- (3) The court's order as mentioned in subsection (2)(a) may be made unconditionally or on conditions the court considers appropriate.
- (4) In deciding the application, the Supreme Court may rely on a recommendation of the board under section 33.
- (5) Also, the Supreme Court may hear and decide an application for a direction as mentioned in section 33(6) and give a direction to the board as the court considers appropriate.

## **Division 4                      Early consideration of suitability**

### **35            Main purpose of ch 2, pt 3, div 4**

The main purpose of this division is to allow a person, including someone undertaking a course of legal studies, to apply for a declaration by the board, or a direction of the Supreme Court, about whether a matter relating to the person, including a suitability matter, may affect a current or future application for admission.

### **36            Early consideration of suitability**

- (1) This section applies if a person considers a matter may adversely affect an assessment of the person's suitability for admission under this Act as a legal practitioner, including, for example, a suitability matter.
- (2) The person may apply, in the approved form, to the board for a declaration that the matter will not, without more, adversely affect the board's assessment of the person's suitability for admission under this Act as a legal practitioner.

- (3) The board must consider the application and do 1 of the following—
  - (a) make the declaration;
  - (b) refer the application to the Supreme Court for a direction if the board considers a direction would be appropriate;
  - (c) refuse to make the declaration.
- (4) A declaration made under subsection (3)(a), or under a direction mentioned in subsection (3)(b), is binding on the board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.
- (5) If the board decides to refuse to make the declaration sought—
  - (a) the board must give the applicant an information notice about the refusal; and
  - (b) the applicant may appeal to the Supreme Court against the refusal within 28 days after the day the information notice is given to the applicant.

### **37 Involvement of Supreme Court whether by referral or on appeal**

- (1) If an application under section 36(2) is referred to the Supreme Court as mentioned in section 36(3)(b), the court may give a direction to the board as the court considers appropriate.
- (2) If the applicant appeals to the Supreme Court against the decision of the board to refuse to make the declaration, the appeal is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the board may be given on the appeal.
- (3) On an appeal under this section, the Supreme Court may make an order as it considers appropriate.

## **Division 5                      Roll of legal practitioners**

### **38            Roll of legal practitioners**

- (1) The Supreme Court must keep a roll of legal practitioners (the *local roll*).
- (2) The local roll must include the roll of barristers, and the roll of solicitors, as kept by the Supreme Court and as in existence immediately before the commencement of this section.
- (3) After the Supreme Court makes an order admitting a person as a legal practitioner—
  - (a) the registrar for the Supreme Court district at which the Supreme Court is sitting must, under the admission rules, enter the person's name on the local roll; and
  - (b) the person must sign the local roll.
- (4) The person's admission under this Act as a legal practitioner takes effect when the person signs the local roll.
- (5) Subject to the admission rules, the Brisbane registrar may give written directions to any other registrar about keeping the local roll.

### **39            Local legal practitioner is officer of Supreme Court**

- (1) A person becomes an officer of the Supreme Court on being admitted under this Act as a legal practitioner.
- (2) A person who immediately before the commencement of this section was an officer of the Supreme Court, because of the person's admission as a barrister or solicitor, continues to be an officer of that court.

## **Division 6                      Miscellaneous**

### **40            Conditional admission**

- (1) This section applies to a person admitted under this Act as a legal practitioner if—

- (a) the person's admission was subject to a condition, whether or not the condition has been amended since it was imposed; and
  - (b) the condition as imposed or amended has not lapsed or been revoked.
- (2) The Supreme Court may do any of the following in relation to the condition—
- (a) revoke or vary the condition on which the person was admitted under this Act as a legal practitioner, whether on application of the person or on the court's own initiative;
  - (b) order the removal of the person's name from the local roll for contravening the condition.
- (3) Without limiting subsection (2)(b), a contravention of a condition is capable of constituting unsatisfactory professional conduct or professional misconduct.

#### **41 Board may appear before Supreme Court**

The board, by a member of the board or by an Australian legal practitioner acting for the board, is entitled to appear before and be heard by the Supreme Court at a hearing about any application made under this part.

#### **42 Fees payable**

The board must charge the fee prescribed under a regulation for matters under this part or for matters dealt with in the admission rules.

#### **43 Provision regarding admission rules**

*The admission rules must not require a person to satisfactorily complete, before admission under this Act as a legal practitioner, a period of supervised training that is more than a period or periods equivalent to 1 full-time year, as decided under the admission rules.*<sup>11</sup>

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11 This provision had not commenced on or before the reprint date.

## **Part 4                      Legal practice by Australian    legal practitioners**

### **Division 1                Preliminary**

#### **44        Main purposes of ch 2, pt 4**

The main purposes of this part are as follows—

- (a) to provide a system for the law society to grant or renew a local practising certificate to a person who practises or intends to practise as a solicitor;
- (b) to provide a system for the bar association to grant or renew a local practising certificate to a person who practises or intends to practise only as a barrister;
- (c) to facilitate the national practice of law by allowing an interstate legal practitioner to engage in legal practice in this jurisdiction or an interstate lawyer to obtain a local practising certificate.

#### **45        Meaning of *relevant regulatory authority***

*A relevant regulatory authority* is—

- (a) if the person in relation to whom the expression is used practises, or intends to practise, only as a barrister—the bar association; or
- (b) otherwise—the law society.

#### **46        How suitability relating to holding local    practising certificate is to be decided**

- (1) Suitability in relation to holding or continuing to hold a local practising certificate is to be decided by reference to whether the applicant or certificate holder is a fit and proper person to hold the certificate.
- (2) A regulatory authority of this jurisdiction, in considering whether a person is, or is no longer, a fit and proper person to hold a local practising certificate, may take into account any



*Legal Profession Act 2004*

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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 a relevant law or a corresponding law;
  - (d) whether the person has contravened—
    - (i) an order of a disciplinary body or the Supreme Court; or
    - (ii) an order of a corresponding disciplinary body, or of a 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) whether the person has failed to pay an amount for which the person is or was liable under a relevant law, including, for example, an amount payable to the fidelity fund under a relevant law;
  - (f) whether, without limiting paragraph (e), the person has contravened a provision of a relevant law about professional indemnity insurance;
  - (g) other matters the authority considers are appropriate to take into account because of the public interest in the integrity of the legal profession.
- (3) Even though the regulatory authority considers a matter mentioned in subsection (2) in relation to a person, the authority may consider the person is suitable to hold a local practising certificate after considering the circumstances of the matter mentioned in that subsection.
- (4) A regulatory authority can not take into account, as a ground for refusing to grant or renew, or for cancelling, a local practising certificate, a matter if the matter was—

- (a) disclosed in an application for admission to the legal profession in another jurisdiction; and
  - (b) a Supreme Court or a corresponding authority of another jurisdiction decided the matter was not sufficient to refuse an application for admission to the legal profession.
- (5) However, subsection (4) does not prevent the regulatory authority taking account of the matter as relevant when considering other matters in relation to the person.

## **Division 2                    Legal practice in this jurisdiction**

### **47            Entitlement to practise in this jurisdiction**

- (1) Subject to this Act, an Australian legal practitioner is entitled to engage in legal practice in this jurisdiction.
- (2) Also, a government legal officer engaged in government work is entitled to engage in legal practice in this jurisdiction as a government legal officer even though the government legal officer is not an Australian legal practitioner.
- (3) Subsection (2) does not prevent a government legal officer from being the holder of a local practising certificate.

## **Division 3                    Matters relating to applications for grant or renewal of local practising certificates**

### **48            Application for grant or renewal of local practising certificate**

- (1) An Australian lawyer may apply to a regulatory authority for the grant or renewal of a local practising certificate if eligible to do so.
- (2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulation relating to eligibility for the practising certificate and—

- (a) for an Australian lawyer who is not an Australian legal practitioner at the time of making the application—
    - (i) the lawyer's place of residence in Australia is this jurisdiction; or
    - (ii) the lawyer reasonably expects to be engaged in legal practice principally from this jurisdiction during the currency of the certificate applied for; or
    - (iii) the lawyer does not have a place of residence in Australia; or
  - (b) for an Australian 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 principally is this jurisdiction; or
    - (ii) the lawyer holds a current local practising certificate and engages in legal practice principally in another jurisdiction under an arrangement that is of a temporary nature; or
    - (iii) the lawyer reasonably expects to be engaged in legal practice principally in this jurisdiction during the currency of the certificate applied for; or
    - (iv) the lawyer's place of residence in Australia is this jurisdiction; or
    - (v) the lawyer does not have a place of residence in Australia.
- (3) For subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice principally is to be decided by reference to the lawyer's legal practice during the certificate period current at the time—
- (a) the application is made; or
  - (b) in the case of a late application—the application should have been made.
- (4) An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.
- (5) An Australian legal practitioner who engages in legal practice principally in this jurisdiction during a financial year and

intends to engage in legal practice in the following financial year must apply for the grant or renewal of a local practising certificate for the following financial year.

- (6) Subsection (5) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that—
  - (a) the practitioner reasonably expected to engage in legal practice principally in this jurisdiction under an arrangement that is of a temporary nature; or
  - (b) the practitioner reasonably expected to engage in legal practice principally in another jurisdiction during the currency of the interstate practising certificate.
- (7) Also, subsection (5) does not apply to a local legal practitioner who applied for the grant of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice principally in the other jurisdiction during the currency of the interstate practising certificate.
- (8) The exemption under subsection (6)(a) stops operating at the end of the period prescribed under a regulation for this subsection.
- (9) If an applicant was, immediately before the commencement of this section, lawfully engaged in legal practice in the manner of a barrister or solicitor, for subsection (2)(b) the applicant is taken to be an Australian legal practitioner at the time the person makes the application.
- (10) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

## **49 Manner of application**

- (1) An application for the grant or renewal of a local practising certificate must be—
  - (a) made in the approved form of the relevant regulatory authority; and
  - (b) made in the way provided for under an administration rule of the relevant regulatory authority; and

- (c) for an application for renewal—made within the period stated in an administration rule of the relevant regulatory authority.
- (2) An approved form for an application for the grant or renewal of a local practising certificate—
  - (a) may require information about the applicant’s eligibility under section 48 and suitability matters in relation to the applicant; and
  - (b) if the form requires information about suitability matters—must direct the attention of the applicant to section 62(3)<sup>12</sup> in relation to information that need not be disclosed.

## **50 Professional indemnity insurance**

- (1) This section applies to each of the following persons who makes an application for the grant or renewal of a local practising certificate—
  - (a) an Australian lawyer who is a government legal officer who, in the lawyer’s application for the grant or renewal of the certificate, stated the lawyer did not intend to engage in legal practice other than engaging in government work;
  - (b) an Australian lawyer who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services to the corporation;
  - (c) another Australian lawyer other than an Australian lawyer mentioned in paragraph (a) or (b).
- (2) A relevant regulatory authority must not grant or renew a local practising certificate unless the authority—
  - (a) for an application by an Australian lawyer mentioned in subsection (1)(a)—imposes a condition on the certificate that the lawyer is not to engage in legal practice other than as a government legal officer engaged in government work; or

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12 Section 62 (Application for local practising certificate if show cause event happened after first admission)

- (b) for an application by an Australian lawyer mentioned in subsection (1)(b)—imposes a condition on the certificate that the lawyer is not to engage in legal practice other than for providing in-house legal services; or
  - (c) for an application by an Australian lawyer mentioned in subsection (1)(c)—is satisfied the lawyer will, during the currency of the practising certificate, be covered by professional indemnity insurance that complies with this Act.
- (3) Professional indemnity insurance complies with this Act in relation to a practising certificate if it complies with the requirements prescribed under a regulation.
  - (4) A regulation may, for example, require professional indemnity insurance in relation to a practising certificate to be of a kind approved, or provided under a scheme approved, or provided by an insurer approved, or arranged, by the relevant regulatory authority for the practising certificate.
  - (5) An approval mentioned in subsection (4) may relate to professional indemnity insurance approved under a corresponding law.

## **51 Continuing obligation for professional indemnity insurance**

- (1) A local 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—
  - (a) if conditions are imposed under section 50 on the practitioner’s practising certificate—the practitioner complies with the conditions; and
  - (b) if the practitioner must, under that section, have professional indemnity insurance—the practitioner complies with the requirements prescribed under a regulation mentioned in section 50(3) for professional indemnity insurance.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) If a person must, under section 50, have professional indemnity insurance and the person becomes aware that the person will not be covered by professional indemnity insurance that complies with the requirements prescribed under a regulation mentioned in section 50(3), the person must notify the regulatory authority of that fact, in the approved form.
- (3) A contravention of subsection (1) or (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

## **Division 4                      Grant or renewal of local practising certificates**

### **52            Grant or renewal of local practising certificate**

- (1) A regulatory authority must consider an application that has been made to it 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 regulatory authority may refuse to consider the application, or refuse to grant or renew a local practising certificate, for 1 or more of the following reasons—
  - (a) the application is not made under this Act;
  - (b) the application is not made in the way required by an administration rule of the authority relating to the application;
  - (c) the application is not accompanied by the fee set by the authority in an administration rule of the authority about fees for services.
- (3) The authority must not grant or renew a local practising certificate if the authority considers—
  - (a) the applicant was not eligible to apply for the grant or renewal of the certificate when the application was made; or

- (b) the applicant's circumstances have changed since the application was made and, having regard to information that has come to the authority's attention, the applicant would not have been eligible to make the application had the information been known when the application was made; or
  - (c) the applicant is not suitable to hold the certificate.<sup>13</sup>
- (4) If the authority grants or renews a local practising certificate, the authority must 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.
- (5) If the authority refuses to grant or renew a local practising certificate—
- (a) the authority must give the applicant an information notice about the decision to refuse the application; and
  - (b) the applicant may appeal to the Supreme Court against the refusal within 28 days after the day the information notice is given to the applicant.

### **53 Conditions imposed by law society or bar association**

- (1) At the time a regulatory authority grants a local practising certificate, the authority may impose any reasonable and relevant condition on the practising certificate.
- (2) Without limiting subsection (1), the condition may be about any of the following—
  - (a) limiting the certificate holder to supervised legal practice in the way stated in the condition;
  - (b) controlling or otherwise regulating the operation of a trust account;

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<sup>13</sup> See section 46 (How suitability relating to holding a local practising certificate is to be decided).



- (c) restricting the certificate holder to particular conditions concerning employment or supervision;
  - (d) a matter agreed to by the certificate holder.
- (3) Also, the condition may require the certificate holder to undertake and complete education or an academic training course only if—
- (a) the regulatory authority, having regard to the certificate holder's previous academic studies, legal training, experience or conduct, considers that clients of the certificate holder may be at risk of harm if the condition is not imposed; or
  - (b) the condition is 1 that is imposed generally on all certificate holders or classes of certificate holders.
- (4) A regulatory authority's power to impose a condition mentioned in subsection (3) is not limited by, and does not limit, the regulatory authority's power to impose a condition under an administration rule of the type mentioned in section 226(2)(b), (c) or (d).<sup>14</sup>

## **54 Applications relating to conditions**

- (1) This section applies if a regulatory authority imposes a condition on a practising certificate, other than a condition applying in relation to a practising certificate under an administration rule of the authority.
- (2) If the applicant did not apply for a practising certificate subject to the condition—
  - (a) the regulatory authority must give the applicant an information notice about the decision to impose the condition; and
  - (b) the applicant may appeal to the Supreme Court against the imposition within 28 days after the day the information notice is given to the applicant.
- (3) The regulatory authority may revoke a condition imposed under this section on application of the certificate holder in the

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14 Section 226 (Rules other than legal profession rule)

approved form, or on its own initiative, by giving written notice about the revocation to the certificate holder.

- (4) If a certificate holder applies for the revocation of a condition and the relevant regulatory authority refuses to grant the application—
  - (a) the authority must give the applicant an information notice about the decision refusing the application; and
  - (b) the applicant may appeal to the Supreme Court against the imposition of the condition within 28 days after the day the information notice is given to the applicant.

## **55 Duration of local practising certificates**

- (1) A local practising certificate granted under this Act is in force from the date stated in it until the end of the financial year in which it is granted, unless the certificate is sooner cancelled or suspended.
- (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 cancelled or suspended.
- (3) If a local legal practitioner applies for the renewal of a local practising certificate before the time stated in the regulatory authority's administration rule for applying for a renewal and the authority has not decided the application by the following 1 July, the certificate—
  - (a) continues in force on and after that 1 July until 1 of the following happens—
    - (i) the authority renews or refuses to renew the certificate;
    - (ii) the local legal practitioner withdraws the application for renewal;
    - (iii) the certificate is cancelled or suspended; and
  - (b) if renewed, is taken to have been renewed on that 1 July.

**56 Local legal practitioner is officer of Supreme Court**

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

**Division 5 Conditions applying to local practising certificates****57 Conditions generally**

A local practising certificate is subject to the following—

- (a) a condition imposed by the relevant regulatory authority under division 4<sup>15</sup> at the time the certificate is granted unless the condition is revoked at a later time;
- (b) a statutory condition as mentioned in section 58 or 59;
- (c) a condition imposed under division 6 or 7;<sup>16</sup>
- (d) a condition imposed under chapter 3<sup>17</sup> or under a corresponding law;
- (e) a condition imposed under a regulation, a legal profession rule or an administration rule.

*Note—*

See section 603 about action taken by the solicitor's complaints tribunal that continues to have effect after the commencement of that section.

**58 Statutory condition regarding notification of offence**

- (1) It is a statutory condition of a local practising certificate that the certificate holder must give notice in the approved form to the relevant regulatory authority if the certificate holder is convicted of an offence that would have to be disclosed under the admission rules for an application for admission.

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15 Division 4 (Grant or renewal of local practising certificates)

16 Division 6 (Special powers relating to local practising certificates) or 7 (Amendment, cancellation or suspension of local practising certificates)

17 Chapter 3 (Complaints, investigation matters and discipline)

- (2) The notice must be given to the regulatory authority within 7 days after the conviction.
- (3) The regulatory authority's administration rules may specify the person to whom, or the address to which, the notice is to be given or sent.
- (4) This section does not apply to a show cause event to which division 6<sup>18</sup> applies.

### **59 Statutory condition regarding legal practice as solicitor**

- (1) Each local practising certificate granted or renewed by the law society must state whether the certificate holder—
  - (a) may only engage in supervised legal practice; or
  - (b) may engage in unsupervised legal practice.
- (2) An administration rule of the law society may provide for the requirements for a person to be eligible for a practising certificate that states that the certificate holder may engage in unsupervised legal practice.
- (3) However, the administration rule must not state that a person is eligible for a practising certificate providing for unsupervised legal practice unless—
  - (a) if the person completed supervised legal training to qualify—the person has undertaken a period or periods equivalent to 18 months supervised legal practice, worked out under a regulation, after the date the practitioner's first practising certificate was granted; or
  - (b) if the person completed other practical legal training to qualify—the practitioner has undertaken a period or periods equivalent to 2 years supervised legal practice, worked out under a regulation, after the date the practitioner's first practising certificate was granted.
- (4) In this section—

**qualify** means qualify for admission under this Act as a legal practitioner or admission to the legal profession in another jurisdiction.

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18 Division 6 (Special powers relating to local practising certificates)

*supervised legal training* means practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise.

**60 Statutory condition regarding conditions imposed on interstate admission**

It is a statutory condition of a local practising certificate that the certificate holder must not contravene the following—

- (a) a condition that was imposed on the holder's admission to the legal profession under a corresponding law (an *imposed condition*) if the imposed condition is still in force;
- (b) an imposed condition as amended from time to time.

**61 Compliance with conditions**

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

*Example—*

If a person engages in unsupervised legal practice and the relevant practising certificate states the certificate holder may only engage in supervised legal practice, the person contravenes a condition of the certificate.

- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

**Division 6 Special powers relating to local practising certificates**

**62 Application for local practising certificate if show cause event happened after first admission**

- (1) This section applies if—
  - (a) a person is applying for the grant of a local practising certificate 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 was first admitted under this Act as a legal practitioner or to the legal profession in another jurisdiction, however the admission was expressed at the time of that admission.
- (2) As part of the application, the person must give to the relevant regulatory authority a written statement—
  - (a) about the show cause event; and
  - (b) explaining why, despite the event, the applicant is a suitable person to hold a local practising certificate.
- (3) However, a person need not give a statement under subsection (2) if the person has previously given the regulatory authority a statement under this section, or a notice and statement under section 63, for the event stating why, despite the event, the person is, or continues to be, a suitable person to hold a local practising certificate.
- (4) The regulatory authority must give a copy of a statement under subsection (2) to the commissioner.
- (5) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **63 Requirement if show cause event**

- (1) If a show cause event happens in relation to a local legal practitioner, the practitioner must give to the relevant regulatory authority both of the following—
  - (a) within 7 days after the date of the event—notice, in the approved form, that the event happened;
  - (b) within 28 days after the date of the event—a written statement explaining why, despite the event, the practitioner continues to be a suitable person to hold a local practising certificate.
- (2) The regulatory authority must give a copy of the notice and the statement under subsection (1) to the commissioner.

- (3) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (4) However, if a written statement is given after the 28 days mentioned in subsection (1)(b), the regulatory authority may accept the statement and take it into consideration.

**64 Refusal, cancellation, suspension or amendment, of local practising certificate because of failure to show cause**

- (1) The relevant regulatory authority may refuse to grant or renew, or may cancel, suspend or amend, a local practising certificate if the applicant or certificate holder—
  - (a) is required by section 62 or 63<sup>19</sup> to give a written statement relating to a matter to the regulatory authority and the applicant or certificate holder has not done so; or
  - (b) has given a written statement under section 62 or 63 but the authority does not consider that the applicant or certificate holder has shown in the statement that the person is a suitable person to hold or to continue to hold a local practising certificate.
- (2) For subsection (1)(b), a written statement accepted by the regulatory authority as mentioned in section 63(4) is taken to be given under section 63.
- (3) If the regulatory authority decides to refuse to grant or renew, or to cancel, suspend or amend, a local practising certificate—
  - (a) the authority must give the applicant or certificate holder an information notice about the decision; and
  - (b) the applicant or certificate holder may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the applicant or certificate holder.
- (4) Also, the regulatory authority must give a copy of the information notice to the commissioner.

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<sup>19</sup> Section 62 (Application for local practising certificate if show cause event happened after first admission) or 63 (Requirement if show cause event)

**65 Restriction on making further application**

- (1) This section applies if a regulatory authority decides under section 64 to refuse to grant or renew a local practising certificate or to cancel a local practising certificate.
- (2) The authority may also decide that the applicant or certificate holder is not entitled to apply for the grant of a local practising certificate for a stated period of not more than 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 64(3)(a) and the applicant or certificate holder may also appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the applicant or certificate holder.
- (4) A person about 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 stated in the decision.

**Division 7                      Amendment, cancellation or suspension of local practising certificates****66 Application of ch 2, pt 4, div 7**

This division does not apply to a show cause event in relation to which a regulatory authority may exercise a power under division 6.<sup>20</sup>

**67 Grounds for amending, cancelling or suspending a local practising certificate**

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

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20 Division 6 (Special powers relating to local practising certificates)



- (a) the certificate holder is no longer a fit and proper person to hold the certificate;<sup>21</sup>
- (b) the certificate holder does not have, or no longer has, professional indemnity insurance that complies with this Act in relation to the relevant practising certificate;
- (c) if a condition of the certificate is that the certificate holder is limited to legal practice stated in the certificate—the certificate holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

## **68 Amending, cancelling or suspending local practising certificate**

- (1) If the relevant regulatory authority believes a ground exists to amend, cancel or suspend a person's local practising certificate (the *proposed action*), the authority must give the person a notice (the *show cause notice*) that states—
  - (a) the proposed action and—
    - (i) if the proposed action is to amend the certificate in a way—states the proposed amendment; and
    - (ii) if the proposed action is to suspend the certificate—states the proposed period of suspension; and
  - (b) the grounds for proposing to take the proposed action; and
  - (c) an outline of the facts and circumstances that form the basis for the authority's belief; and
  - (d) an invitation to the certificate holder to make written representations to the authority, within a stated time of not less than 28 days, why the proposed action should not be taken.
- (2) If, after considering all written representations made within the stated time or, in its discretion, after the stated time, the

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<sup>21</sup> See section 46 (How suitability relating to holding a practising certificate is to be decided).

regulatory authority still believes a ground exists to take the proposed action, the authority may—

- (a) if the show cause notice stated the proposed action was to amend the practising certificate—amend the certificate in the way stated, or in another way the authority is satisfied will be less onerous for the certificate holder; or
  - (b) if the show cause notice stated the proposed action was to cancel the practising certificate—cancel the certificate or suspend the certificate for a period; or
  - (c) if the show cause notice stated the proposed action was to suspend the practising certificate for a stated period—suspend the certificate for a period no longer than the stated period or amend the certificate in a way the authority is satisfied is appropriate because of the written representations.
- (3) If the regulatory authority decides to amend, cancel or suspend the local practising certificate—
- (a) the authority must give the certificate holder an information notice about the decision; and
  - (b) the certificate holder may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the certificate holder.

## **Division 8                      Provisions that apply to other actions including actions under div 6 or 7**

### **69            Consensual amendment or cancellation etc.**

- (1) Subsection (2) applies if—
- (a) a local legal practitioner applies, in the approved form, to the regulatory authority to amend or cancel the practitioner’s practising certificate; or
  - (b) the regulatory authority proposes to amend a local legal practitioner’s practising certificate—

- (i) only for a formal or clerical reason or in another way that does not adversely affect the practitioner's interests; and
  - (ii) the practitioner agrees in writing to the amendment.
- (2) The authority may amend or cancel the local practising certificate as mentioned in subsection (1) by written notice given to the legal practitioner.

## **70 Removal from local roll**

- (1) If a local legal practitioner's name is removed from the local roll, the regulatory authority must cancel the practising certificate by information notice given to the legal practitioner.
- (2) The regulatory must give written notice of the cancellation to the certificate holder.

## **71 Operation of amendment, cancellation or suspension of local practising certificate**

- (1) This section applies if a decision is made to amend, cancel or suspend a local practising certificate under section 64 or 68.<sup>22</sup>
- (2) Subject to subsections (3) and (4), the amendment, cancellation or suspension takes effect on the later of the following—
  - (a) the day that the information notice about the decision is given to the certificate holder;
  - (b) the day stated in the information notice.
- (3) If the practising certificate is amended, cancelled or suspended because the certificate holder has been convicted of an offence—

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<sup>22</sup> Section 64 (Refusal, cancellation, suspension or amendment, of a local practising certificate because of a failure to show cause) or 68 (Amending, cancelling or suspending local practising certificate)

- (a) the Supreme Court may, on application of the certificate holder, order that the amendment, cancellation or suspension be stayed until—
    - (i) the end of the time to appeal against the conviction; or
    - (ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and
  - (b) the amendment, cancellation or suspension does not have effect during any period for which the stay is in force.
- (4) If the practising certificate is amended, cancelled or suspended because the certificate holder has been convicted of an offence and a court quashes the conviction—
- (a) the amendment or suspension ceases to have effect when the court quashes the conviction; or
  - (b) the cancellation ceases to have effect when the court quashes the conviction and the certificate is restored as if it had merely been suspended.

## **72 Return of amended, cancelled or suspended local practising certificate**

- (1) This section applies if a local practising certificate is amended, cancelled or suspended by a relevant regulatory authority under division 6 or 7 or section 69.<sup>23</sup>
- (2) The regulatory authority may—
  - (a) give the certificate holder a notice requiring the holder to return the certificate to the authority in the way stated in the notice within a stated period of not less than 7 days; or
  - (b) include in an information notice that the authority must give to the certificate holder under division 6 or 7 a further notice requiring the holder to return the

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<sup>23</sup> Division 6 (Special powers relating to local practising certificates) or 7 (Amendment, cancellation or suspension of local practising certificates) or section 69 (Consensual amendment or cancellation etc.)

certificate to the authority in the way stated in the notice within a stated period of not less than 7 days.

- (3) The certificate holder must comply with the requirement, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) The regulatory authority must return the practising certificate to the certificate holder—
- (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.

### **73 Relationship of divs 6 and 7 with ch 7, pt 2**

- (1) An investigator, who was nominated by a regulatory authority for appointment as an investigator, may exercise powers under chapter 7, part 2<sup>24</sup> for a matter under division 6 or a matter under division 7, as if the matter were the subject of a complaint.
- (2) Accordingly, the provisions of chapter 7, part 2 apply in relation to a matter under division 6 and a matter under division 7, and so apply with any necessary changes.
- (3) Nothing in division 6 or 7 prevents—
- (a) a regulatory authority from making a complaint about a matter to which division 6 or 7 relates; or
  - (b) the commissioner from investigating or referring a matter for investigation as mentioned in section 265.<sup>25</sup>

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24 Chapter 7 (Suitability reports and investigations), part 2 (Investigators and their powers)

25 Section 265 (Referral by commissioner to law society or bar association)

## **Division 9                    Interstate legal practitioners**

### **74            Requirement for interstate practising certificate and professional indemnity insurance**

- (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) complies with the requirements prescribed under a regulation, being requirements that are no more onerous than the requirements under section 50;<sup>26</sup> 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.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) A regulation may require an interstate legal practitioner to disclose information about professional indemnity insurance to clients or prospective clients.
- (4) This section does not apply to an interstate legal practitioner who—
  - (a) is a government legal officer; and
  - (b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work.

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26 Section 50 (Professional indemnity insurance)

**75      Extent of entitlement of interstate legal practitioner to practise in this jurisdiction**

- (1) This part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.
- (2) Also, the interstate legal practitioner's right to engage in legal practice in this jurisdiction—
  - (a) is subject to—
    - (i) specific provisions under this Act applying to interstate legal practitioners; and
    - (ii) any conditions imposed by the relevant regulatory authority under section 76 in relation to the interstate legal practitioner; and
  - (b) to the greatest practicable extent and with all necessary changes—
    - (i) is the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
    - (ii) is subject to any condition applicable to the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on the practitioner's admission to the legal profession in that jurisdiction.
- (3) An interstate legal practitioner must not engage in legal practice in this jurisdiction in a way that is not authorised under this Act or in contravention of any condition mentioned in this section.
- (4) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

**76      Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction**

- (1) The relevant regulatory authority may impose a condition on an interstate legal practitioner engaged in legal practice in this

jurisdiction that the authority may impose under this Act on a local practising certificate at the time it is granted or renewed.

- (2) However, conditions imposed under this section must not be more onerous than conditions applying to local legal practitioners.
- (3) If the regulatory authority imposes a condition on an interstate legal practitioner engaged in legal practice in this jurisdiction—
  - (a) the authority must give the interstate legal practitioner an information notice about the decision to impose the condition; and
  - (b) the interstate legal practitioner may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the certificate holder.

## **77 Special provision about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction**

- (1) An interstate legal practitioner must not engage in unsupervised legal practice in this jurisdiction unless—
  - (a) if the person completed supervised legal training to qualify—the person has undertaken a period or periods equivalent to 18 months supervised legal practice, worked out under a regulation, after the date the practitioner’s first practising certificate was granted; or
  - (b) if the person completed other practical legal training to qualify—the practitioner has undertaken a period or periods equivalent to 2 years supervised legal practice, worked out under a regulation, after the date the practitioner’s first practising certificate was granted.
- (2) In this section—

***qualify*** means qualify for admission to the legal profession.

***supervised legal training*** means practical legal training principally under the supervision of an Australian legal practitioner, whether involving articles of clerkship or otherwise.



**78 Interstate legal practitioner is officer of Supreme Court**

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

**Division 10 Miscellaneous provisions about local practising certificates and other matters****79 Immediate suspension or amendment of local practising certificate**

- (1) This section applies if the relevant regulatory authority in relation to a local legal practitioner considers it necessary in the public interest to take action under this section in relation to that legal practitioner, whether or not action in relation to the legal practitioner has been started under division 6 or 7.<sup>27</sup>
- (2) The relevant regulatory authority may immediately suspend the local practising certificate of the legal practitioner for any of the following reasons, whether they happened before or after the commencement of this section—
  - (a) the legal practitioner has become an insolvent under administration;
  - (b) the legal practitioner has been convicted of a serious offence or tax offence;
  - (c) the regulatory authority believes there is any ground mentioned in section 67<sup>28</sup> for which the local practising certificate is likely to be cancelled or suspended under section 68.<sup>29</sup>

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27 Division 6 (Special powers relating to local practising certificates) or 7 (Amendment, cancellation or suspension of local practising certificates)

28 Section 67 (Grounds for amending, cancelling or suspending a local practising certificate)

29 Section 68 (Amending, cancelling or suspending local practising certificate)

- (3) The relevant regulatory authority may immediately amend a local practising certificate of the legal practitioner to provide for either of the following—
  - (a) imposing or amending conditions about controlling or otherwise regulating conditions about the legal practitioner's trust account;
  - (b) suspending stated operations in relation to the certificate holder's trust account or directing the certificate holder not to operate the account.
- (4) The relevant regulatory authority suspends or amends a local practising certificate by giving an information notice to the local legal practitioner about the regulatory authority's decision to suspend or amend.
- (5) The information notice must also state that the local legal practitioner may make written representations to the regulatory authority about the suspension or amendment.
- (6) Subject to subsection (9), the practising certificate continues to be subject to the suspension or amendment until the earlier of the following—
  - (a) the time at which the regulatory authority informs the local legal practitioner of the authority's decision by information notice under section 68(3);
  - (b) the end of 56 days after the information notice is given to the local legal practitioner under this section.
- (7) If the local legal practitioner makes written representations to the regulatory authority about the suspension or amendment, the authority must consider the written representations.
- (8) The regulatory authority may revoke the suspension or amendment at any time, whether or not because of written representations made to it by the local legal practitioner.
- (9) Also, the regulatory authority may apply to the Supreme Court for an order extending the period of the suspension or amendment and, if the court considers it appropriate and the suspension or amendment has not ended under subsection (6), the court may extend the period of the suspension or amendment for a further period of not more than a further 56 days after the date of the court order.

- (10) The regulatory authority must give the certificate holder an information notice about its decision to apply under subsection (9) for an order extending the period of the suspension or amendment.

## **80 Protocols**

- (1) A regulatory authority may enter into arrangements (*jurisdiction protocols*) with regulatory authorities of other jurisdictions about deciding—
- (a) the jurisdiction from which an Australian lawyer practises law principally or can reasonably expect to practise law principally; or
  - (b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction—
    - (i) may 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 may reasonably expect to practise law principally in a jurisdiction during the currency of the practitioner’s practising certificate.
- (2) For this Act, and to the extent that a jurisdiction protocol is relevant, a matter mentioned in subsection (1)(a), (b) or (c) must be decided under the relevant jurisdiction protocol.
- (3) The regulatory authority may enter into an arrangement that amends, revokes or replaces a jurisdiction protocol.
- (4) A jurisdiction protocol, or an amendment, revocation or replacement of a jurisdiction protocol, has effect in this jurisdiction only to the extent it is approved under a regulation.

## **81 Consideration of applicant for local practising certificate and certificate holder**

- (1) The purpose of this section is to enable a regulatory authority to obtain a document or information, or a person’s

cooperation, to the extent necessary for the authority to consider whether or not—

- (a) to grant or renew a local practising certificate; or
  - (b) to amend, cancel or suspend a local practising certificate.
- (2) The relevant regulatory authority may, by written notice to the applicant or certificate holder, ask the applicant or certificate holder—
- (a) to give it a stated document or information that the authority believes is necessary for the authority's consideration about a local practising certificate; or
  - (b) to cooperate in a stated way with the authority in an investigation or inquiry that the authority believes is necessary for the authority's consideration about a local practising certificate.
- (3) The regulatory authority may decide not to grant or renew a local practising certificate, or to amend, cancel or suspend a local practising certificate, if the applicant or the certificate holder fails—
- (a) to give the stated documents or information as requested under subsection (2); or
  - (b) to cooperate with the authority in its investigations or inquiries as requested under subsection (2).

## **82 Register of local practising certificates**

- (1) A regulatory authority must, in the way it considers appropriate, keep a register of the names of Australian lawyers to whom it grants local practising certificates.
- (2) The register must—
  - (a) state conditions, if any, imposed on a local practising certificate relating to the certificate holder engaging in legal practice; and
  - (b) include other particulars prescribed under a regulation.

- (3) A regulatory authority must ensure that an up-to-date version of its register is available, without charge, for public inspection—
  - (a) at the authority's principal place of business during normal working hours; or
  - (b) on the authority's Internet site or an Internet site identified on the authority's Internet site.

### **83 Regulatory authority may charge reasonable fees**

- (1) A regulatory authority may charge fees for services that it provides, including, for example, the services provided by the authority as part of performing its functions under this Act.

*Example of a service that a regulatory authority provides as part of performing its functions under this Act—*

Granting or renewing a practising certificate.

- (2) The fee for a service must be reasonable having regard to the cost to the regulatory authority of performing all of its functions under a relevant law and the funding that the authority has received under this Act, and a fee for a service is not unreasonable only because the particular fee is more than the cost of providing the specific service.
- (3) The fees set by a regulatory authority must be included in an administration rule.
- (4) Despite subsection (1), a regulatory authority may not charge a fee for a service provided to another entity that has functions under a relevant law except so far as the other entity has arranged, on a commercial basis, for the regulatory authority to perform a service associated with the functions of the other entity.

## **Part 5**                      **Legal practice by incorporated legal practices<sup>30</sup>**

### **Division 1**                **Preliminary**

#### **84**        **Main purpose of ch 2, pt 5**

*The main purpose of this part is to regulate the provision of legal services by corporations in this jurisdiction, whether or not the legal services are provided in conjunction with other services.*

#### **85**        **Meaning of incorporated legal practice**

- (1) *A corporation is an **incorporated legal practice** if it engages in legal practice in this jurisdiction, whether or not it provides services that are not legal services.*
- (2) *However, a corporation is not an incorporated legal practice if the legal services provided by it are only either or both of the following services—*
  - (a) *in-house legal services;*
  - (b) *services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee of the corporation who is not an Australian legal practitioner.*
- (3) *Also, a corporation that provides legal services is not an incorporated legal practice if the corporation is prescribed under a regulation as a corporation that is not an incorporated legal practice.*
- (4) *Despite subsection (2) and (3), a corporation that is not an incorporated legal practice as mentioned in those subsections must comply with any regulation applying provisions of this part, with or without changes, to that corporation.*

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30 Chapter 2, part 5 (sections 84–121) had not commenced on or before the reprint date.

- (5) *Nothing in this part affects or applies to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions under a corresponding law or corresponding laws.*

**86 Definitions for ch 2, pt 5**

*In this part—*

***corporation*** means—

- (a) *a company within the meaning of the Corporations Act; or*
- (b) *a body corporate prescribed under a regulation for this definition.*

***director*** means—

- (a) *in relation to a company within the meaning of the Corporations Act—a director as defined in section 9 of that Act; or*
- (b) *in relation to another body corporate prescribed under a regulation—a person stated or described in the regulation as a director.*

***related body corporate*** means—

- (a) *in relation to a company within the meaning of the Corporations Act—a related body corporate within the meaning of section 50 of that Act; or*
- (b) *in relation to another body corporate prescribed under a regulation—a person prescribed under a regulation as a related body corporate.*

## **Division 2**                      **Incorporated legal practices providing legal services**

### **87**            **Non-legal services and businesses of incorporated legal practices**

- (1) *An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.*
- (2) *An incorporated legal practice must not conduct a managed investment scheme.*
- (3) *Also, if a regulation prohibits an incorporated legal practice, or a related body corporate of the practice, from providing a service or conducting a business of a kind stated in the regulation, the practice must not provide the service or conduct the business.*

*Note—*

*Contravention of this section or a regulation is a ground for banning an incorporated legal practice under section 108.<sup>31</sup>*

### **88**            **Corporations eligible to be incorporated legal practices**

- (1) *Subject to this part, a corporation, other than a corporation mentioned in section 85(2) or (3), is 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 under—*
  - (a) *this Act; or*
  - (b) *a law of the Commonwealth under which the corporation is incorporated or its affairs are regulated; or*
  - (c) *an Act, or a law of another jurisdiction, under which it is incorporated or its affairs are regulated.*

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31 Section 108 (Banning of incorporated legal practices)



- (3) *An incorporated legal practice is not required to hold a practising certificate.*

**89 Notice of intention to start providing legal services**

- (1) *Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the law society notice, in the law society approved form, of its intention to do so.*
- (2) *A corporation must not engage in legal practice in this jurisdiction if it has not given a notice under subsection (1).*

*Maximum penalty—*

- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>32</sup>—300 penalty units; or*
- (b) *for a corporation—1 500 penalty units.*
- (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 law society notice, in the law society 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 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 the corporation for anything the corporation did in contravention of subsection (2).*

**90 Prohibition on corporations or directors etc. representing that corporation is incorporated legal practice**

- (1) *A corporation must not, without a reasonable excuse, represent or advertise that the corporation is an incorporated*

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32 Section 585 (Executive officers must ensure corporation complies with Act)

*legal practice unless a notice in relation to the corporation has been given under section 89.*

*Maximum penalty—300 penalty units.*

- (2) *A director, officer, employee or agent of a corporation must not, without a 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 89.*

*Maximum penalty—300 penalty units or 2 years imprisonment.*

- (3) *A reference in this section to representing or advertising that a corporation is an incorporated legal practice includes doing anything that states or implies that the corporation is entitled to engage in legal practice.*

### **91 Notice of termination of provision of legal services**

*A corporation must, within the period prescribed under a regulation after it stops engaging in legal practice in this jurisdiction, give the law society notice, in the law society approved form, of that fact.*

*Maximum penalty—*

- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>33</sup>—20 penalty units; or*  
 (b) *for a corporation—100 penalty units.*

## **Division 3 Legal practitioner directors, and other legal practitioners employed by incorporated legal practices**

### **92 Incorporated legal practice must have legal practitioner director**

- (1) *An incorporated legal practice is required to have at least 1 legal practitioner director who is validly appointed.*

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33 Section 585 (Executive officers must ensure corporation complies with Act)

- (2) *Each legal practitioner director of an incorporated legal practice is, for the purposes only of this Act, 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 practice—*
  - (a) *under the professional obligations of Australian legal practitioners and other obligations imposed under this Act; and*
  - (b) *so that the obligations of the 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 an Australian legal practitioner or other obligations imposed under this Act, the director must take all reasonable action available to the director to ensure that—*
  - (a) *the breaches do not happen; and*
  - (b) *if a breach has happened—appropriate remedial action is taken in relation to the breach.*
- (5) *A contravention of subsection (3) or (4) or both by a legal practitioner director is capable of constituting unsatisfactory professional conduct or professional misconduct.*
- (6) *Nothing in this part derogates from the obligations or liabilities of a director of an incorporated legal practice under another law.*

**93**      ***Obligations of legal practitioner director relating to misconduct***

- (1) *Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director—*

- (a) *unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;*
  - (b) *conduct of another 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 another director, not being an Australian legal practitioner, of the incorporated legal practice to be a director of a corporation that provides legal services.*
- (2) *A legal practitioner director of an incorporated legal practice must ensure that all reasonable action available to the legal practitioner director is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the practice.*
- (3) *A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct by the legal practitioner director.*

**94**     ***Incorporated legal practice without legal practitioner director***

- (1) *An incorporated legal practice contravenes this subsection if it does not have a legal practitioner director for the corporation for a period exceeding 7 days.*
- (2) *If an incorporated legal practice stops having a legal practitioner director, the practice must give notice to the law society of that fact, in the law society approved form, within 7 days after the practice stops having a legal practitioner director.*

*Maximum penalty—*

- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>34</sup>—60 penalty units; or*
- (b) *for a corporation—300 penalty units.*

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34 Section 585 (Executive officers must ensure corporation complies with Act)

*Legal Profession Act 2004*

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- (3) *An incorporated legal practice that contravenes subsection (1) is taken to be in default of legal practitioner director requirements under this section for the period from the end of the period of 7 days until—*
- (a) *it has at least 1 legal practitioner director; or*
  - (b) *a person is appointed under this section, or the provisions of a corresponding law, in relation to the practice.*
- (4) *An incorporated legal practice must not provide legal services in this jurisdiction during any period it is taken to be in default of legal practitioner director requirements as mentioned in subsection (3).*
- Maximum penalty—*
- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>35</sup>—180 penalty units; or*
  - (b) *for a corporation—900 penalty units.*
- (5) *The law society may, if it considers it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice, or another person nominated by the law society, in the absence of a legal practitioner director, to perform or discharge 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 perform or discharge 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 subsection (5) in relation to the practice.*

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35 Section 585 (Executive officers must ensure corporation complies with Act)

**95**     ***Obligations and privileges of an Australian legal practitioner who is an officer or employee***

- (1) *An Australian legal practitioner who provides legal services for an incorporated legal practice in the capacity of an officer or employee of the incorporated legal practice—
  - (a) is not excused from compliance with the professional obligations, or any obligations under any law, of an Australian legal practitioner; and
  - (b) does not lose the professional privileges of an Australian legal practitioner.*
- (2) *For the purpose only of subsection (1), the professional obligations and professional privileges of an Australian legal practitioner apply as if—
  - (a) for an incorporated legal practice with 2 or more legal practitioner directors—the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; and
  - (b) for an incorporated legal practice with only 1 legal practitioner director—the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.*
- (3) *To remove any doubt, it is declared that 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 without fee or reward by the Australian legal practitioners employed by the practice.*

**Division 4**                    **Particular matters including  
application of other provisions of  
relevant laws**

**96**            **Insurance obligations**

- (1) *The provisions of this Act, including provisions of an administration rule, relating to insurance apply with any necessary changes to incorporated legal practices in relation to the provision of legal services in the same way that the provisions apply to Australian legal practitioners.*
- (2) *However, subsection (1) does not affect an 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 an administration rule relating to insurance.*

**97**            **Conflicts of interest**

- (1) *This section applies for the application of any law, including the common law or a legal profession rule, relating to conflicts of interest to the conduct of a legal practitioner director, or an Australian legal practitioner who is an officer or employee of, an incorporated legal practice.*
- (2) *The interests of the incorporated legal practice or any related body corporate are also taken to be those of the legal practitioner concerned, in addition to any interests that the practitioner has apart from this subsection.*
- (3) *A legal profession rule may provide for additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.*

**98**            **Disclosure obligations**

- (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 if the practice provides only legal services in this jurisdiction.*
- (2) *Each legal practitioner director of the incorporated legal practice, and any legal practitioner associate of the practice*

*who provides the services for the practice, must ensure that a disclosure that complies with the requirements of this section and a regulation made for this section is made to the person about the services.*

*Maximum penalty—100 penalty units.*

- (3) *The disclosure must be made by giving the person a written notice—*
  - (a) *setting out the services to be provided and identifying which of those services are legal services; and*
  - (b) *stating whether or not all the legal services 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 those legal services; and*
  - (d) *stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.*
- (4) *A regulation may provide for the following matters—*
  - (a) *the way 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 provisions of this Act, including, for example, provisions about insurance.*
- (6) *A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on 1 occasion or on more than 1 occasion.*

**99 Effect of non-disclosure on provision of particular services**

- (1) *This section applies if—*



- (a) *section 98 applies 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 about the service.*
- (2) *The standard of care owed by the practice in relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.*

### **100 Application of a legal profession rule**

*A legal profession rule, so far as it applies to an Australian legal practitioner, applies to an Australian legal practitioner who is an officer or employee of an incorporated legal practice, unless the rule otherwise provides.*

### **101 Requirements relating to advertising**

- (1) *A restriction imposed under this Act or another Act in connection with advertising by Australian legal practitioners applies to advertising by an incorporated legal practice in relation to the provision of legal services.*
- (2) *If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or persons who practise in a particular style of legal practice, the restriction applies only to the extent that the incorporated legal practice carries on the business of that branch of the legal profession or in that particular style of legal practice.*
- (3) *An advertisement made in contravention of a restriction under this section is, for the purposes of a disciplinary proceeding 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 the application of the restriction to incorporated legal practices.*

**102 Application of provisions of relevant laws relating to trust money or trust accounts**

- (1) *A provision under a relevant law relating to trust money or trust accounts applies to an incorporated legal practice in the same way as the provision applies to a solicitor within the meaning of the Trust Accounts Act 1973.*
- (2) *For subsection (1)—*
  - (a) *the obligations and rights of a solicitor within the meaning of the Trust Accounts Act 1973 under the provision of a relevant law extend to an incorporated legal practice, but only in connection with legal services provided by the practice; and*
  - (b) *money received by a solicitor within the meaning of the Trust Accounts Act 1973 for another person in the course of legal practice includes money received by any officer or employee of the incorporated legal practice for another person in the course of providing legal services.*
- (3) *A regulation may provide that specified provisions under a relevant law relating to trust money or trust accounts do not apply to incorporated legal practices or apply with specified changes.*

**103 Application provisions about client agreements etc. to incorporated legal practices**

*A regulation may provide that specified provisions of the Queensland Law Society Act 1952, parts 4A and 4B<sup>36</sup> do not apply to incorporated legal practices or apply with specified changes.*

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36 *Queensland Law Society Act 1952, parts 4A (Client agreements) and 4B (Payment for work)*

**104 Extension to incorporated legal practice of vicarious liability relating to failure to account and dishonesty**

- (1) *This section applies to any of the following, being a proceeding based on the vicarious liability of an incorporated legal practice—*
- (a) *a civil proceeding relating to a failure to account for, pay or deliver money or other 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 other property under the direct or indirect control of the practice;*
  - (b) *a civil proceeding for any other debt owed, or damages payable, to a client because of a dishonest act or omission by a legal practitioner associate employed by the practice in connection with the provision of legal services to the client.*
- (2) *If the incorporated legal practice would not, apart from this section, be vicariously liable for any acts or omissions of its officers and employees in the proceeding, 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.*

**105 Sharing of receipts**

- (1) *Nothing under this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services by the practitioner.*
- (2) *This section does not extend to the sharing of receipts in contravention of section 106, and has effect subject to section 217.<sup>37</sup>*

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37 Section 217 (Particular provision about barristers rule)

**106 Disqualified persons**

- (1) *An incorporated legal practice commits 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 of the practice; or*
  - (b) *is a partner of the incorporated legal practice in a business that includes the provision of legal services; or*
  - (c) *shares the receipts of the provision of legal services by the incorporated legal practice; or*
  - (d) *is engaged or paid for the provision of legal services by the incorporated legal practice.*

*Maximum penalty—*

- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>38</sup>—60 penalty units; or*
  - (b) *for a corporation—300 penalty units.*
- (2) *Failure by a legal practitioner director of an incorporated legal practice to ensure that the incorporated legal practice complies with subsection (1) is capable of constituting professional misconduct.*

## **Division 5 Ensuring compliance with this Act by incorporated legal practices**

**107 Commissioner or law society may audit incorporated legal practice**

- (1) *An ILP authority may conduct an audit of an incorporated legal practice about—*
- (a) *the compliance of the practice, and of its officers and employees, with the requirements of—*
    - (i) *this part; or*

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38 Section 585 (Executive officers must ensure corporation complies with Act)

- (ii) *a regulation, a legal profession rule or an administration rule, so far as it applies to incorporated legal practices; or*
      - (iii) *an incorporated legal practice rule; 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.*
  - (2) *An audit may be conducted whether or not a complaint has been made against a person in relation to the provision of legal services by the incorporated legal practice.*
  - (3) *A report of the audit—*
    - (a) *must be given to the incorporated legal practice concerned; and*
    - (b) *may be given to another ILP authority; and*
    - (c) *may be taken into account for—*
      - (i) *a discipline application involving legal practitioner directors or other persons; or*
      - (ii) *the grant, renewal, amendment, cancellation or suspension of a practising certificate.*

## **108 Banning of incorporated legal practices**

- (1) *The Supreme Court may, on application of an ILP authority, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the court considers appropriate if the court is satisfied that—*
  - (a) *a ground for disqualifying the corporation under this section has been established; and*
  - (b) *the disqualification is justified.*
- (2) *If the Supreme Court considers it appropriate, an order under this section may be made—*
  - (a) *subject to conditions as to the conduct of the incorporated legal practice; or*
  - (b) *subject to conditions as to when or in what circumstances the order is to take effect; or*

- (c) *together with orders to safeguard the interests of clients or employees of the incorporated legal practice.*
- (3) *Action may be taken against an incorporated legal practice on any of the following grounds—*
- (a) *a legal practitioner director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a relevant law or a corresponding law;*
- (b) *an ILP authority is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;*
- (c) *the incorporated legal practice, or a related body corporate, has contravened section 87<sup>39</sup> or a regulation made under that section;*
- (d) *the incorporated legal practice has contravened section 106;<sup>40</sup>*
- (e) *a person is acting in the management of the incorporated legal practice who is the subject of an order—*
- (i) *under section 109 or provisions of a corresponding law that correspond to that section; or*
- (ii) *under section 139<sup>41</sup> or provisions of a corresponding law that correspond to that section.*
- (4) *If a corporation is disqualified under this section, the ILP authority that applied for the order must notify the corresponding authority of every other jurisdiction.*
- (5) *If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the commissioner may decide that the corporation is taken to be disqualified from providing legal services in this jurisdiction*

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39 Section 87 (Non-legal services and businesses of incorporated legal practices)

40 Section 106 (Disqualified persons)

41 Section 139 (Prohibition on partnership with particular partner who is not an Australian legal practitioner)

*for the same period, but nothing in this subsection prevents an ILP 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 commits an offence.*

*Maximum penalty—*

- (a) *for a person guilty under the Criminal Code, chapter 2 of an offence or for section 585<sup>42</sup>—180 penalty units; or*
- (b) *for a corporation—900 penalty units.*
- (7) *A corporation that is disqualified under this section ceases to be an incorporated legal practice.*
- (8) *Conduct of an Australian legal practitioner who provides legal services for a corporation in the capacity of an officer or employee of the corporation is capable of being unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the corporation is disqualified under this section.*
- (9) *A regulation may provide for the publication and notification of orders made under this section, including notification of corresponding authorities of other jurisdictions.*

### **109 Disqualification from managing incorporated legal practice**

- (1) *The Supreme Court may, on application of an ILP 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 the court is satisfied that—*
- (a) *the person is a person who could be disqualified under the Corporations Act, section 206C, 206D, 206E or 206F<sup>43</sup> from managing corporations; and*

42 Section 585 (Executive officers must ensure corporation complies with Act)

43 Corporations Act, section 206C (Court power of disqualification—contravention of civil penalty provision), 206D (Court power of disqualification—insolvency and non-payment of debts), 206E (Court power of disqualification—repeated contraventions of Act) or 206F (ASIC's power of disqualification)

- (b) *the disqualification is justified.*
- (2) *The Supreme Court may, on application of a person subject to a disqualification order under this section, revoke the order.*
- (3) *A disqualification order made under subsection (1) has effect for the purposes only of this Act and does not affect the application or operation of the Corporations Act.*
- (4) *A regulation may provide for 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.*

## **110 Disclosure of information to the Australian Securities and Investments Commission**

- (1) *This section applies if an ILP authority, in connection with performing functions or exercising powers under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.*
- (2) *The ILP authority 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.*

## **Division 6 External administration**

### **111 External administration proceedings under Corporations Act**

- (1) *This section applies to a proceeding in any court under the Corporations Act, chapter 5<sup>44</sup>—*

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44 Corporations Act, chapter 5 (External administration)



- (a) *relating to a corporation that is an externally-administered body corporate under that Act and that is or was an incorporated legal practice; or*
- (b) *relating to a corporation that is or was an incorporated legal practice becoming an externally-administered body corporate under that Act.*
- (2) *Each ILP authority is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the incorporated legal practice.*
- (3) *The court may, when exercising its jurisdiction in the proceeding, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.*
- (4) *Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of the Corporations Act.*
- (5) *Subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act, section 5G in relation to the provisions of chapter 5 of that Act.*

*Note—*

*The Corporations Act, section 5G, 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.*

## **112 External administration proceedings under other legislation**

- (1) *This section applies to a proceeding for the external administration, however expressed, of an incorporated legal practice but does not apply to a proceeding to which section 111 applies.*
- (2) *Each ILP authority is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the incorporated legal practice.*

- (3) *The court may, when exercising its jurisdiction in the proceeding, 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.*

**113** ***Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act***

- (1) *This section applies if an incorporated legal practice is the subject of both—*
  - (a) *the appointment of a QLS receiver; and*
  - (b) *the appointment of a Corporations Act administrator.*
- (2) *The QLS receiver is under a duty to notify the Corporations Act administrator of the appointment of the QLS receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.*
- (3) *The QLS 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 if a proceeding mentioned in section 111 has been started.*
- (4) *The Supreme Court may make any orders it considers appropriate, and no liability attaches to the QLS 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 under the orders.*
- (5) *Each ILP authority is entitled to intervene in the proceeding, unless the court decides that the proceeding does 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 the Corporations Act, section 5G 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; or*
- (b) *a person who is appointed to exercise powers under that Act and who is prescribed under a regulation for this definition.*

***QLS receiver*** means *a receiver appointed under section 333.*<sup>45</sup>

**114 Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation**

- (1) *This section applies if an incorporated legal practice is the subject of both—*
  - (a) *the appointment of a QLS receiver; and*
  - (b) *the appointment of an external administrator.*
- (2) *The QLS receiver is under a duty to notify the external administrator of the appointment of the QLS receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.*
- (3) *The QLS 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 QLS 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 under the orders.*

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<sup>45</sup> Section 333 (Appointment of receiver)

- (5) *Each ILP authority is entitled to intervene in the proceeding, unless the court decides that the proceeding does 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—
- (a) *appointed to exercise powers under an Act other than a relevant law, or under an Act of the Commonwealth or another jurisdiction; and*
- (b) *prescribed under a regulation for this definition.*
- QLS receiver* means a receiver appointed under section 333.

## **Division 7                      Miscellaneous**

### **115      Cooperation between courts**

*Courts of this jurisdiction may make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this part.*

### **116      Relationship of Act to constitution of incorporated legal practice**

*A provision under a relevant law that applies in relation to an incorporated legal practice prevails, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.*

### **117      Relationship of Act to legislation establishing incorporated legal practice**

- (1) *This section applies to a corporation, established by or under a law whether or not of this jurisdiction, that is an incorporated legal practice but is not a company under the Corporations Act.*
- (2) *The provisions of this Act that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over*

*provisions of the legislation under which the corporation is established or regulated that are prescribed under a regulation.*

### **118 Relationship of Act to Corporations legislation and certain other instruments**

- (1) *A regulation may declare a provision under a relevant law that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.<sup>46</sup>*
- (2) *A regulation may declare a matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted under a relevant law to be an excluded matter for the purposes of the Corporations Act, section 5F,<sup>47</sup> 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 other than to a specified extent.*
- (3) *In this section—*  
*matter includes act, omission, body, person or thing.*

### **119 Undue influence**

*A person, whether or not an officer or employee of an incorporated legal practice, must not cause or induce an Australian legal practitioner who provides legal services for the practice, to contravene this Act or the practitioner's professional obligations as an Australian legal practitioner.*

*Maximum penalty—300 penalty units.*

<sup>46</sup> Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws)

<sup>47</sup> Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

**120 Obligations of individual practitioners not affected**

*Except as provided by this part, nothing in this part affects an obligation imposed on a legal practitioner director of an incorporated legal practice, or a legal practitioner associate of the practice who provides legal services for the practice, under this Act or another Act in his or her capacity as an Australian legal practitioner.*

**121 Regulation may require training requirement for legal practitioner director**

- (1) A regulation may provide for the following—
  - (a) *that a legal practitioner director of an incorporated legal practice must undertake training as required by the regulation;*
  - (b) *the legal services provided by incorporated legal practices;*
  - (c) *other services provided by incorporated legal practices in circumstances where a conflict of interest relating to the provision of legal services may arise.*
- (2) *Without limiting subsection (1)(a), the regulation may provide that a person who has a qualification or experience of a type prescribed under the regulation need not undertake that training.*
- (3) *A regulation may provide that a breach of a provision of the regulation is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director, or by the Australian legal practitioner responsible for the breach, or both.*

**Part 6**                      **Legal practice by  
multi-disciplinary  
partnerships<sup>48</sup>**

**Division 1**                **Preliminary**

**122**    **Main purpose of ch 2, pt 6**

*The main purpose of this part is to regulate the provision of legal services by multi-disciplinary partnerships in this jurisdiction, whether or not the legal services are provided in conjunction with other services.*

**123**    **Meaning of multi-disciplinary partnership**

- (1) *A partnership is a **multi-disciplinary partnership** if it is a partnership between 1 or more Australian legal practitioners and 1 or more other persons who are not Australian legal practitioners, if the partnership business includes the provision of legal services in this jurisdiction as well as other services.*
- (2) *However, a partnership consisting only of 1 or more Australian legal practitioners and 1 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 1 or more other jurisdictions.*

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<sup>48</sup> Chapter 2, part 6 (sections 122–142) had not commenced on or before the reprint date.





*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) *under the professional obligations of Australian legal practitioners and other obligations imposed under this Act; and*
  - (b) *so that the obligations of legal practitioner partners, and legal practitioner associates who are employed by the practice, are not affected by other partners and employees of the partnership.*
- (3) *A contravention of subsection (2) by a legal practitioner partner is capable of constituting unsatisfactory professional conduct or professional misconduct.*

**127 Obligations of legal practitioner partner relating to misconduct**

- (1) *Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner partner of a multi-disciplinary partnership—*
  - (a) *unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the multi-disciplinary partnership;*
  - (b) *conduct of another 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 another partner, not being an Australian legal practitioner, of the multi-disciplinary partnership to be a member of a partnership that provides legal services.*
- (2) *A legal practitioner partner of a multi-disciplinary partnership must ensure that all reasonable action available to the legal practitioner partner is taken to deal with any unsatisfactory professional conduct or professional*

*misconduct of an Australian legal practitioner employed by the partnership.*

- (3) *A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct by the legal practitioner partner.*

**128    *Actions of partner who is not an Australian legal practitioner***

- (1) *A partner of a multi-disciplinary partnership who is not an Australian legal practitioner does not contravene a provision of this Act merely because of any of the following—*
- (a) *the partner is a member of a partnership and the partnership business includes the provision of legal services;*
  - (b) *the partner receives a 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 partnership business includes the provision of legal services;*
  - (d) *the partner shares with another partner the receipts of business of the partnership that is the business of an Australian legal practitioner.*
- (2) *Subsection (1) is subject to any other provision that expressly applies to a partner of a multi-disciplinary partnership who is not an Australian legal practitioner.*

**129    *Obligations and privileges of Australian legal practitioner who is partner or employee***

- (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 the professional obligations, or other obligations under any law, of an Australian legal practitioner; and*

- (b) *does not lose the professional privileges of an Australian legal practitioner.*
- (2) *To remove any doubt, it is declared that 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 employee of a multi-disciplinary partnership.*

### **130 Conflicts of interest**

- (1) *This section applies for the application of any law, including the common law or a legal profession rule, relating to conflicts of interest to the conduct of an Australian legal practitioner who is a legal practitioner partner or employee of a multi-disciplinary partnership.*
- (2) *The interests of the multi-disciplinary partnership, or any partner of the multi-disciplinary partnership, are also taken to be the interests of the legal practitioner concerned, in addition to any interests that the practitioner has apart from this subsection.*
- (3) *A legal profession rule may provide for additional duties and obligations in connection with conflicts of interest arising out of the conduct of a multi-disciplinary partnership.*

### **131 Disclosure obligations**

- (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 that complies with the requirements of this section and a regulation made for this section is made to the person about the services.*

*Maximum penalty—100 penalty units.*

- (3) *The disclosure must be made by giving the person a written notice—*

- (a) *setting out the services to be provided and identifying which of those services are legal services; and*
  - (b) *stating whether or not all the legal services 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 those legal services; and*
  - (d) *stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.*
- (4) *A regulation may provide for the following matters—*
- (a) *the way 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 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 provisions of this Act, including, for example, provisions about insurance.*
- (6) *A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on 1 occasion or on more than 1 occasion.*

**132 Effect of non-disclosure on provision of particular services**

- (1) *This section applies if—*
- (a) *section 131 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 relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.*

### **133 Application of a legal profession rule**

*A legal profession rule, so far as it applies to an Australian legal practitioner, applies to the following unless the rule otherwise provides—*

- (a) *an Australian legal practitioner who is a legal practitioner partner of a multi-disciplinary partnership;*
- (b) *an Australian legal practitioner who is an employee of the multi-disciplinary partnership.*

### **134 Requirements relating to advertising**

- (1) *A restriction imposed under this Act or another Act in connection with advertising by Australian legal practitioners applies to advertising by a multi-disciplinary partnership in relation to the provision of legal services.*
- (2) *If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or 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 that branch of the legal profession or that particular style of legal practice.*
- (3) *An advertisement by a multi-disciplinary partnership about the provision of services that include legal services is, for the purposes of a disciplinary proceeding 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 application to multi-disciplinary partnerships.*

**135 Requirements relating to trust accounts and particular moneys**

- (1) *A provision under a relevant law relating to trust money or trust accounts applies to a multi-disciplinary partnership in the same way as the provision applies to a solicitor within the meaning of the Trust Accounts Act 1973.*
- (2) *For subsection (1)—*
  - (a) *the obligations and rights of a solicitor within the meaning of the Trust Accounts Act 1973 under the provision of a relevant law extend to a multi-disciplinary partnership, but only in connection with legal services provided by the partnership; and*
  - (b) *money received by a solicitor within the meaning of the Trust Accounts Act 1973 for another person in the course of legal practice includes money received by any officer or employee of the multi-disciplinary partnership for another person in the course of providing legal services.*
- (3) *A regulation may provide that specified provisions under a relevant law relating to trust money or trust accounts do not apply to a multi-disciplinary partnership or apply with specified changes.*

**136 Application of provisions about client agreements etc. to multi-disciplinary partnerships**

*A regulation may provide that specified provisions of the Queensland Law Society Act 1952, parts 4A and 4B<sup>49</sup> do not apply to multi-disciplinary partnerships or apply with specified changes.*

**137 Sharing of receipts**

- (1) *Nothing under this Act prevents a legal practitioner partner of a multi-disciplinary partnership, or an Australian legal practitioner who is an employee of a multi-disciplinary*

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<sup>49</sup> *Queensland Law Society Act 1952, parts 4A (Client agreements) and 4B (Payment for work)*

*partnership, from sharing with a partner of the partnership who is not an Australian legal practitioner; receipts arising from the provision of legal services by the partner or practitioner.*

- (2) *This section does not extend to the sharing of receipts in contravention of section 138, and has effect subject to section 217.<sup>50</sup>*

### **138 Disqualified persons**

- (1) *A legal practitioner partner of a multi-disciplinary partnership must not knowingly—*
- (a) *be a partner of a disqualified person in the multi-disciplinary partnership; or*
  - (b) *share with a disqualified person the receipts of the provision of legal services by the multi-disciplinary partnership; or*
  - (c) *employ or pay a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.*
- (2) *A contravention of subsection (1) by a legal practitioner partner of a multi-disciplinary partnership is capable of constituting unsatisfactory professional conduct or professional misconduct.*

### **139 Prohibition on partnership with particular partner who is not an Australian legal practitioner**

- (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) *The Supreme Court may make an order prohibiting an Australian legal practitioner from being a partner of a person to whom this section applies and who is specified in the order in relation to a business that includes the provision of legal services if the court is satisfied that—*

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50 Section 217 (Particular provision about barristers rule)

- (a) *the person is not a fit and proper person to be a partner; or*
  - (b) *the person has been found guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct; or*
  - (c) *for a corporation—the corporation has, under section 108,<sup>51</sup> 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 law society, the commissioner 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 Supreme Court may make an order under subsection (2) on application by the commissioner or the law society or on its own initiative.*
- (6) *A regulation may make provision about the publication and notification of orders made under this section.*

## **140 Undue influence**

*A person, whether or not a partner or employee of a multi-disciplinary partnership, must not cause or induce either of the following persons to contravene this Act or the person's professional obligations as an Australian legal practitioner—*

- (a) *a legal practitioner partner of a multi-disciplinary partnership;*

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51 Section 108 (Banning of incorporated legal practices)



- (b) *an employee of a multi-disciplinary partnership who provides legal services and who is an Australian legal practitioner.*

*Maximum penalty—300 penalty units.*

#### **141 Obligations of practitioners not affected**

*Except as provided by this part, nothing in this part affects an obligation imposed on a legal practitioner partner of, or an Australian legal practitioner who is an employee of, a multi-disciplinary partnership under this Act or another Act in his or her capacity as an Australian legal practitioner.*

#### **142 Regulations**

- (1) *A regulation may provide for the following—*
- (a) *the legal services provided by legal practitioner partners or employees of multi-disciplinary partnerships;*
  - (b) *other services provided by legal practitioner partners or employees of multi-disciplinary partnerships in circumstances in which a conflict of interest relating to the provision of legal services may arise.*
- (2) *A regulation may provide that a breach of a provision of the regulation is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner partner of a multi-disciplinary partnership, or by the Australian legal practitioner responsible for the breach, or both.*

## Part 7 Fidelity cover

### Division 1 Preliminary

#### 143 Purpose of ch 2, pt 7

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

#### 144 Definitions for ch 2, pt 7

In this part—

*capping and sufficiency provisions* means—

- (a) for this jurisdiction—sections 182 and 183;<sup>52</sup> or
- (b) for another jurisdiction—the provisions of the corresponding law of that jurisdiction that correspond to those sections.

*claim* means a claim, under this part, against the fidelity fund about a default of a law practice.

*claimant* means a person who makes a claim.

*concerted interstate default* means a default of a law practice that arises from an act or omission—

- (a) that was committed jointly by 2 or more associates of the practice; or
- (b) parts of which were committed by different associates of the practice or different combinations of associates of the practice;

if this jurisdiction is the relevant jurisdiction for at least 1 of the associates and another jurisdiction is the relevant jurisdiction for at least 1 other of the associates.

*default*, in relation to a law practice, means—

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52 Sections 182 (Caps on payments) and 183 (Sufficiency of fidelity fund)

- (a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice, or an associate of the practice, in the course of legal practice by the practice or an associate, if the failure arises from an act or omission of an associate that involves dishonesty; or
- (b) a fraudulent dealing with trust property that was received by the law practice, or an associate of the practice, in the course of legal practice by the practice or an associate, if the fraudulent dealing is constituted by or arises from an act or omission of an associate that involves dishonesty.

*pecuniary loss*, in relation to a default of a law practice, 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.

#### **145 Application of pt 7 defaults of particular barristers**

- (1) This part does not apply to a default of a local legal practitioner who holds a current local practising certificate granted or renewed by the bar association.
- (2) Also a regulation may provide whether or not, and if so to what extent, this part applies or does not apply to a default of an interstate legal practitioner.

#### **146 Time of default**

- (1) A default of a law practice is taken to have happened when the act or omission giving rise to, or constituting, the default happened.
- (2) An omission is taken to have happened on—
  - (a) the date on or by which the act not performed ought reasonably to have been performed; or

- (b) if a date can not be decided under paragraph (a)—on another date decided under a regulation.
- (3) Subsections (1) and (2) are relevant to decide the following—
  - (a) which jurisdiction’s law applies to a default of a law practice by reference to when the default happened;
  - (b) whether the law practice was a law practice at the time when the default happened.
- (4) However, subsection (3) does not limit the other purposes for which subsections (1) and (2) may be relevant.

## **Division 2                      Fidelity fund**

### **147      Establishment of fidelity fund**

- (1) The Legal Practitioners’ Fidelity Guarantee Fund established under the *Queensland Law Society Act 1952*, section 12, as in force immediately before the commencement of this section, is continued in existence under this Act.
- (2) The fidelity fund continues to be vested in the law society.
- (3) Subject to section 154,<sup>53</sup> the law society must manage and administer the fidelity fund.

### **148      Insurance**

- (1) The law society may arrange with an insurer for insurance in relation to claims, and liabilities arising out of claims, against the fidelity fund.
- (2) Without limiting subsection (1), the law society may arrange for insurance relating to 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 the proceeds.

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<sup>53</sup> Section 154 (Law society may delegate its powers in relation to the fidelity fund to a committee of management)

- (4) No liability, including liability in defamation, is incurred by a protected person in relation to anything done or omitted to be done in good faith for the purpose of arranging for insurance under this section.
- (5) In this section—
- protected person*** means—
- (a) the law society or a council member; or
  - (b) a person acting at the direction of the law society or a council member.

#### **149 Limitation on borrowing powers of law society for fidelity fund**

- (1) Despite the *Statutory Bodies Financial Arrangements Act 1982*, the law society can not borrow money for the purposes of the fidelity fund.
- (2) Subsection (1) does not apply to an advance to the fund by the law society under section 158.<sup>54</sup>

#### **150 Fund to be kept in separate account**

All moneys constituting the fund must, pending the investment or application of the amount of that money under this Act or another Act, be paid or transferred into a financial institution to the credit of a separate account to be called ‘The Legal Practitioners’ Fidelity Guarantee Fund Account’.

#### **151 Moneys payable into fidelity fund**

The fidelity fund consists of the following—

- (a) all amounts paid to or on account of the fund by Australian legal practitioners under this Act as contributions or levies;

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<sup>54</sup> Section 158 (Law society may advance moneys from its general funds to fidelity fund)

- (b) the interest accruing from the investment of the amount of all or part of the fund under the *Statutory Bodies Financial Arrangements Act 1982*;
- (c) all amounts given or advanced to the fund by the law society under section 158;<sup>55</sup>
- (d) all amounts properly payable to the fund and recovered for the law society in the exercise of any right of action conferred under this Act;
- (e) all other amounts that may be lawfully paid into the fund.

## **152 Expenditure from fund**

Subject to this Act, the following may be paid out of the fund as required—

- (a) the amount of all claims, including costs and interest allowed or established against the fund under this Act;
- (b) all legal expenses and costs incurred in defending claims made against the fund or otherwise incurred in relation to the fund;
- (c) all premiums payable in relation to contracts of insurance entered into by the law society under section 148;<sup>56</sup>
- (d) the expenses incurred in the administration of the fund;
- (e) the amount of repayments for amounts given or advanced to the fund by the law society under section 158;<sup>57</sup>
- (f) all unpaid charges on the fund, and liabilities of the fund, as mentioned in section 183;<sup>58</sup>
- (g) all other moneys payable out of the fund under this Act.

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55 Section 158 (Law society may advance moneys from its general funds to fidelity fund)

56 Section 148 (Insurance)

57 Section 158 (Law society may advance moneys from its general funds to fidelity fund)

58 Section 183 (Sufficiency of fidelity fund)

**153 Audit of accounts**

- (1) This section applies in addition to the *Financial Administration and Audit Act 1977*, section 73.<sup>59</sup>
- (2) At least once a year, the auditor-general must audit the accounts of the fidelity fund separately to the audit of the law society.
- (3) However, the auditor-general may audit the accounts more often than required under subsection (2).
- (4) For an audit of the accounts of the fidelity fund, the auditor-general may perform the functions and exercise the powers of the auditor-general under the *Financial Administration and Audit Act 1977*, part 6.

**154 Law society may delegate its powers in relation to the fidelity fund to a committee of management**

- (1) This section applies if the law society establishes a committee of management for the fidelity fund and delegates any or all of its powers in relation to the fidelity fund to the committee of management.
- (2) The committee must consist of not less than 3 nor more than 5 council members.
- (3) The majority of members of the committee must be council members.

**155 Minister may require report about fund**

- (1) This section applies if, at any time, the Minister believes that the fidelity fund is not sufficient to satisfy the liabilities of the fund at or about that time.
- (2) The Minister may, by written notice to the council, require the law society to give the Minister a written report about the fund on the matters stated in the notice.

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<sup>59</sup> *Financial Administration and Audit Act 1977*, section 73 (Auditor-general to audit consolidated fund and public sector entities unless exempted)

- (3) The law society must comply with the requirement within 14 days after receiving the notice or within the further time allowed by the Minister.

### **156 Contribution to fidelity fund**

- (1) A person who applies to the law society for the grant or renewal of a local practising certificate in relation to a financial year must pay a contribution for the financial year to the fidelity fund under an administration rule of the law society.
- (2) A payment of a contribution under this section is in addition to all other fees payable in relation to the application.
- (3) Without limiting section 226,<sup>60</sup> an administration rule of the law society may provide for different contributions to be payable by different classes of local legal practitioners.
- (4) This section does not apply to—
  - (a) a government legal officer whose local practising certificate is subject to a condition that the officer is not to engage in legal practice other than as a government legal officer engaged in government work; or
  - (b) local legal practitioners of a particular class prescribed under a regulation.

### **157 Levy for benefit of fidelity fund**

- (1) This section applies if, at a particular time, the law society believes that the fidelity fund is not sufficient to satisfy the liabilities of the fidelity fund at or about that time.
- (2) The law society may, by resolution, impose on each local legal practitioner who must pay a contribution under section 156 for the relevant financial year, or local legal practitioners of a particular class, a levy of an amount that the law society considers reasonable.

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60 Section 226 (Rules other than legal professional rule)



- (3) Without limiting section 226,<sup>61</sup> an administration rule of the law society may provide for different levies to be payable by different classes of local legal practitioners.
- (4) The amount of the levy is payable into the fidelity fund by a date and in a way stated in the resolution.

### **158 Law society may advance moneys from its general funds to fidelity fund**

The law society may, from its general funds, give or advance on terms as the law society considers reasonable an amount for the fidelity fund.

## **Division 3 Defaults to which this part applies**

### **159 Meaning of *relevant jurisdiction***

- (1) The *relevant jurisdiction*, for an associate of a law practice whose act or omission, whether alone or with 1 or more other associates of the practice, gives rise to a default of the practice, is the relevant jurisdiction decided under this section.
- (2) For 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 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 kept; or
  - (b) otherwise—the associate’s home jurisdiction.
- (3) For a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is—

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61 Section 226 (Rules other than legal professional rule)

- (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 kept; or
  - (b) otherwise—the associate’s home jurisdiction.
- (4) For a default involving trust property received in Australia, or received outside Australia and brought into Australia, the relevant jurisdiction for the associate is the associate’s home jurisdiction.

*Note—*

Section 187<sup>62</sup> provides that the law society may treat the default as consisting of 2 or more defaults for the purpose of deciding the liability of the fidelity fund.

## **160 Defaults to which this part applies**

- (1) This part applies to a default of a law practice arising from an act or omission of 1 or more associates of the practice, if this jurisdiction is the relevant jurisdiction for the only associate or 1 or more of the associates involved.
- (2) Each of the following is immaterial—
  - (a) the jurisdiction where the default happened;
  - (b) that the act or omission giving rise to a default does not constitute a crime or other offence under the law of this jurisdiction, the Commonwealth or another jurisdiction;
  - (c) that a proceeding has not been started, or if started has not ended, in relation to a crime or other offence of that kind.

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62 Section 187 (Defaults involving interstate elements if committed by 1 associate only)

**161 Defaults relating to financial services or investments**

- (1) This part does not apply to a default of a law practice to the extent that the default happens in relation to money or property that is entrusted to the practice in connection with—
  - (a) a financial service provided by the practice, or an associate of the practice, in circumstances where the practice or associate—
    - (i) is required to hold an Australian financial services licence covering the provision of the service, whether or not an Australian financial services licence is held at any relevant time; or
    - (ii) provides the service as a representative of another person who carries on a financial services business; or
  - (b) a managed investment scheme, or mortgage financing, undertaken by the practice; or
  - (c) another purpose that is an investment purpose, whether on the practice's own account or as agent.
- (2) Without limiting subsection (1), this part does not apply to a default of a law practice if the default happens in relation to money or property that was placed with the practice for investment purposes unless—
  - (a) the money or property was entrusted to or held by the practice—
    - (i) in the ordinary course of legal practice in relation to a matter; and
    - (ii) primarily in connection with the provision of legal services to or at the direction of the client for that matter; 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.

(3) In this section—

*Australian financial services licence* has the same meaning as in the Corporations Act, chapter 7.<sup>63</sup>

*financial service* has the same meaning as in the Corporations Act, chapter 7.

*financial services business* has the same meaning as in the Corporations Act, chapter 7.

*representative* has the same meaning as in the Corporations Act, chapter 7.

## **Division 4                      Claims about defaults**

### **162      Claims about defaults**

- (1) A person who suffers pecuniary loss because of a default of a law practice to which this part applies may make a claim against the fidelity fund to the law society about the default.
- (2) The claim must be made in the law society approved form.
- (3) The law society may require the person who makes a claim to do either or both of the following—
  - (a) to give further information about the claim or any dispute to which the claim relates;
  - (b) to verify the claim, or any further information, by statutory declaration.

### **163      Time limit for making claims**

- (1) A claim does not lie against the fidelity fund unless the prospective claimant notifies the law society of the default concerned—
  - (a) within 6 months after the prospective claimant becomes aware of the default; or

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63 Corporations Act, chapter 7 (Financial services and markets)

- (b) within a further period allowed by the law society; or
  - (c) if, on appeal to the Supreme Court against the refusal of the law society to allow a further period for the claim, the court allows a further period for making the claim—within the period allowed by the court.
- (2) The Supreme Court or law society may allow a further period mentioned in subsection (1) only if it is 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 the particular case having regard to matters the Supreme Court or law society considers relevant.
- (3) A claim may be made under section 165<sup>64</sup> even though the claim does not lie under subsection (1).

## **164 Advertisements**

- (1) If the law society considers that there has been, or may have been, a default of 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 relating to the default and fixes a final date after which claims relating to the default can not be made.
- (2) The final date fixed by the notice must be a date that is—
- (a) at least 3 months after the date of the first or only publication of the notice; and
  - (b) not more than 1 year after the date of that first or only publication.
- (3) The notice must be published—
- (a) in a newspaper circulating generally throughout Australia; and

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64 Section 165 (Time limit for making claims following advertisement)

- (b) in a newspaper circulating generally in each jurisdiction where the law society believes the law practice has an office or, at any relevant time, had an office; and
  - (c) on the law society Internet site.
- (4) The law society may provide information to persons making inquiries in response to the notice.
  - (5) Apart from extending the period during which claims can be made under this part, if relevant, publication of the 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 decision of any claim.
  - (6) Neither the publication in good faith of the 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 law society or a council member; or
    - (b) the proprietor, editor or publisher of a newspaper; or
    - (c) an Internet service provider or Internet content host; or
    - (d) a person acting at the direction of a person or entity mentioned in paragraph (a), (b) or (c).

## **165 Time limit for making claims following advertisement**

- (1) This section applies if the law society publishes a notice under section 164 fixing a final date after which claims relating to a default of a law practice can not 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 law society; or
  - (c) if the Supreme Court allows a further period after the law society refuses to do so—within the period allowed by the court.

- (3) A claim may be made under subsection (2) even though it would have been barred under section 163<sup>65</sup> had the notice not been published.
- (4) The Supreme Court or law society may allow a further period mentioned in subsection (2) only if it is 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 the particular case having regard to matters the Supreme Court or law society considers relevant.

### **166 Claims not affected by certain matters**

- (1) A claim may be made about a law practice's default despite a change in the status of the practice or the associate concerned after the happening of the act or omission from which the default arose.
- (2) A claim that has been made is not affected by a later change in the status of the practice or associate.
- (3) For this section, a change in status includes—
  - (a) for a partnership—a change in the membership or staffing of, or the dissolution of, the partnership; and
  - (b) for an incorporated legal practice—a change in the directorship or staffing of, or the winding up or dissolution of, the practice; and
  - (c) for an associate who was an Australian legal practitioner—the fact that the associate has ceased to practise or to hold an Australian practising certificate; and
  - (d) for an associate who was an individual—the associate's death.

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65 Section 163 (Time limit for making claims)

**167 Investigation of claims**

The law society may investigate a claim made to it in the same way it may investigate a complaint.

**Division 5 Deciding claims****168 Law society to decide claim**

- (1) The law society may decide a claim by entirely or partly allowing or disallowing it.
- (2) The law society may disallow a claim to the extent that the claim does not relate to a default of a law practice for which the fidelity fund is liable.
- (3) The law society may entirely 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 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
  - (c) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
  - (d) the claimant has unreasonably refused to disclose information or documents to or cooperate with—
    - (i) the law society in the investigation of the claim; or
    - (ii) another entity in the investigation of the claim, including, for example, an investigator or a police officer.
- (4) Subsections (2) and (3) do not limit the law society's power to disallow a claim on another ground.



- (5) Without limiting subsection (2) or (3), the law society may reduce the amount otherwise payable on a claim to the extent the law society considers appropriate if satisfied that the claimant—
- (a) assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (b) unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
  - (c) has unreasonably hindered the investigation of the claim.
- (6) The law society must, in allowing a claim, specify the amount payable.

### **169 Maximum amount allowable**

- (1) The amount payable in relation to a default of a law practice must not be more than the pecuniary loss resulting from the default.
- (2) This section does not apply to costs payable under section 170 or to interest payable under section 171.

### **170 Costs**

- (1) If the law society entirely or partly allows a claim, it must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the law society considers that special circumstances exist warranting—
- (a) a reduction in the amount of costs; or
  - (b) a decision that no amount should be paid for costs.
- (2) If the law society entirely disallows a claim, the law society may order payment of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, if the law society considers it is appropriate to make the order.
- (3) The costs are payable from the fidelity fund.

**171 Interest**

- (1) In deciding the amount of pecuniary loss resulting from a default of a law practice, the law society is to add interest on the amount payable (excluding interest), unless it considers that special circumstances exist warranting—
  - (a) a reduction in the amount of interest; or
  - (b) a decision 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 law society notifies the claimant that the claim has been allowed at the rate specified in or prescribed under a regulation.
- (3) To the extent a regulation does not provide for a rate for subsection (2), interest is to be calculated at the rate of 5% per year.

**172 Reduction of claim because of other benefits**

- (1) A person is not entitled to recover from the fidelity fund any amount equal to amounts, or to the value of other benefits, from other sources relating to the pecuniary loss to which a claim relates—
  - (a) that have already been paid to or received by the person; or
  - (b) that have already been decided and are payable to or receivable by the person; or
  - (c) that the law society believes are likely to be paid to or received by the person; or
  - (d) that the law society believes might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person.
- (2) The law society may, at its absolute discretion, pay to a person the whole or part of an amount mentioned in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 175.<sup>66</sup>

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66 Section 175 (Repayment of surplus amount)

**173 Subrogation**

- (1) On payment from the fidelity fund of a claim, the law society is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against—
  - (a) the associate about whom the claim is made; or
  - (b) the person authorised to administer the estate of the associate about whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in relation to the default, the claim would not be disallowable, entirely or partly, on any of the grounds set out in section 168(3).<sup>67</sup>
- (4) The law society may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the law society brings a proceeding under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceeding.
- (6) The law society may exercise its rights and remedies under this section even though any limitation periods under this part have expired.
- (7) The law society must pay into the fidelity fund any money recovered in exercising its rights and remedies under this section.

**174 Proceedings brought under right of subrogation**

In any proceeding brought in a court under section 173—

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person in relation to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or

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<sup>67</sup> Section 168 (Law society to decide claim)

other person is not a defendant in, or a party to, the proceeding; and

- (b) any defence that would have been available to the practitioner or other person is available to the law society.

### **175 Repayment of surplus amount**

- (1) This section applies if a claimant—
  - (a) receives a payment from the fidelity fund relating to a claim for a default of a law practice; and
  - (b) receives or recovers from another source or sources a payment on account of the pecuniary loss in relation to the default; 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.
- (2) The amount of the surplus is a debt payable by the claimant to the fidelity fund.
- (3) However, the amount payable by the claimant can not be more than the amount the claimant received from the fidelity fund in relation to the claim for the pecuniary loss.

### **176 Notification of delay in making decision**

- (1) If the law society considers that a claim is not likely to be decided within 1 year after the claim was made, the law society must give written notice to the claimant that the claim is not likely to be decided within 1 year after the claim was made.
- (2) The notice must contain a brief statement of reasons for the delay.

### **177 Notification of decision**

After the law society makes a decision mentioned in this division in relation to a claim, the law society must give the claimant an information notice about the decision.

**Division 6****Appeals****178 Appeal against decision on claim**

- (1) A claimant may appeal to the Supreme Court against either of the following decisions of the law society but not a decision to limit the amount payable, or to decline to pay an amount, made under the capping and sufficiency provisions of this jurisdiction—
  - (a) a decision to entirely or partly disallow a claim;
  - (b) a decision to reduce the amount allowed in relation to a claim.
- (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 all or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the law society waives that requirement; and
  - (b) the court may, on application by the law society, stay the appeal pending further action being taken to seek recovery of that amount from other sources.
- (4) The Supreme Court may review the merits of the law society's decision.
- (5) The Supreme Court may—
  - (a) affirm the decision; or
  - (b) if satisfied there are reasons for varying or setting aside the law society's decision—
    - (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 law society under a direction or recommendation of the court.

- (6) For subsection (5), the Supreme Court may make other orders as it considers appropriate.
- (7) However, an order for costs is not 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.

### **179 Appeal against failure to decide claim within 1 year**

- (1) A claimant may appeal to the Supreme Court against a failure of the law society to decide a claim after 1 year after the claim was made.
- (2) An appeal against a failure to decide a claim may be made at any time after the period of 1 year after the claim was made and while the failure continues.
- (3) On an appeal under this section—
  - (a) the appellant must establish that all or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the law society waives that requirement; and
  - (b) the Supreme Court may, on application by the law society, stay the appeal pending further action being taken to seek recovery of that amount from other sources.
- (4) The Supreme Court may decide the appeal—
  - (a) by giving directions to the law society to decide the matter expeditiously and—
    - (i) 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 171,<sup>68</sup> until further order or the decision for the claim; or
    - (ii) otherwise—ordering that, if delay continues in circumstances of a specified kind, interest be paid for a specified period at a specified rate that is

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68 Section 171 (Interest)

higher than the rate applicable under section 171, until further order or the decision for the claim; or

- (b) by deciding not to give a direction or make an order under paragraph (a).
- (5) An order for costs must not 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.

## **180 Proceedings on appeal**

In any proceeding brought in a court under section 178—

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person in relation to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceeding; and
- (b) any defence that would have been available to the practitioner or other person is available to the law society.

## **Division 7 Payments from fidelity fund for defaults**

### **181 Payments for defaults**

- (1) The fidelity fund is to be applied by the law society for compensating claimants in relation to claims allowed under this part for defaults of law practices to which this part applies.
- (2) An amount payable from the fidelity fund in relation to a claim is payable to—
  - (a) the claimant; or
  - (b) another person at the claimant's direction.

**182 Caps on payments**

- (1) A regulation 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 for individual claims or classes of individual claims;
  - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the fidelity fund for 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 are more than the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the fidelity fund under subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the law society 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 proceeding can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the law society to consider payment of a larger amount.

**183 Sufficiency of fidelity fund**

- (1) If the law society believes that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, it may do any or all of the following—
  - (a) postpone all payments relating to all or any class of claims out of the fund;
  - (b) impose a levy under section 157;<sup>69</sup>
  - (c) make partial payments of the amounts of 1 or more allowed claims out of the fund with payment of the balance being a charge on the fund;

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69 Section 157 (Levy for benefit of fidelity 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 law society—
  - (a) must have regard to cases of hardship if it knows relevant information; and
  - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the law society 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 law society may, but need not, revoke the declaration in relation to either all 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 law society made under this section is final and not subject to appeal or review.

## **Division 8                      Claims by law practices or associates**

### **184      Claims by law practices or associates about defaults**

- (1) This section applies to a default of a law practice arising from an act or omission of an associate of the practice.
- (2) A claim may be made under section 162<sup>70</sup> by—
  - (a) the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default; or

- (b) another associate of the law practice, if the other associate suffers pecuniary loss because of the default.

### **185 Claims by law practices or associates about notional defaults**

- (1) This section applies if a default of a law practice arising from an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by 1 or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced, is a *notional default*.
- (3) This part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

## **Division 9 Defaults involving interstate elements**

### **186 Concerted interstate defaults**

- (1) The law society may treat a concerted interstate default as if the default consisted of 2 or more separate defaults—
  - (a) 1 of which is a default to which this part applies, if this jurisdiction is the relevant jurisdiction for 1 or more of the associates involved; and
  - (b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions for 1 or more of the associates involved.
- (2) The law society may treat a claim about a concerted interstate default as if the claim consisted of—
  - (a) 1 or more claims made under this part; and
  - (b) 1 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 relation to 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 law society and the corresponding authority or authorities involved.
- (4) Subsection (3) does not affect the application of the capping and sufficiency requirements of this jurisdiction in relation to the amount payable from the fidelity fund after the claim has been assessed.

### **187 Defaults involving interstate elements if committed by 1 associate only**

- (1) This section applies to a default of a law practice that arises from an act or omission that was committed by only 1 associate of the practice, if the default involves more than 1 of the cases mentioned in section 159(2) to (4).<sup>71</sup>
- (2) The law society may treat the default to which this section applies as if the default consisted of 2 or more separate defaults—
  - (a) 1 of which is a default to which this part applies, if this jurisdiction is the relevant jurisdiction; and
  - (b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions.
- (3) The law society may treat a claim about the default to which this section applies as if the claim consisted of—
  - (a) 1 or more claims made under this part; and
  - (b) 1 or more claims made under a corresponding law or laws.

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<sup>71</sup> Section 159 (Meaning of *relevant jurisdiction*)

- (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 relation to the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or
  - (b) in other shares as agreed by the law society and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of the capping and sufficiency requirements of this jurisdiction in relation to the amount payable from the fidelity fund after the claim has been assessed.

## **Division 10                    Inter-jurisdictional provisions**

### **188     Protocols**

- (1) A regulation may authorise the law society to enter into arrangements (*fidelity protocols*) with corresponding authorities in relation to matters to which this part relates.
- (2) Without limiting subsection (1), a regulation may authorise the making of a fidelity protocol that provides that the law society is taken to have—
  - (a) requested a corresponding authority to act as agent of the law society in specified classes of cases; or
  - (b) agreed to act as agent of a corresponding authority in specified classes of cases.
- (3) A regulation may provide for the amendment, revocation or replacement of a fidelity protocol.
- (4) A fidelity protocol, or an amendment, revocation or replacement of a fidelity protocol, has effect in this jurisdiction only to the extent it is approved under a regulation.

**189 Forwarding claims to corresponding authority in another jurisdiction**

- (1) If a claim is made to the law society about a default of a law practice that appears to be a default to which a corresponding law applies, the law society must give 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 given under a corresponding law to the law society by the corresponding authority, the claim is taken—
  - (a) to have been made under this part; and
  - (b) to have been so made when the claim was received by the corresponding authority.

**190 Investigation of defaults to which this part applies**

- (1) This section applies if a default of a law practice appears to be a default to which this part applies and to have happened—
  - (a) solely in another jurisdiction; or
  - (b) in more than 1 jurisdiction; or
  - (c) in circumstances in which it can not be decided precisely in which jurisdiction the default happened.
- (2) The law society may request a corresponding authority of another jurisdiction, or corresponding authorities of other jurisdictions, to act as agent or agents for the law society, for processing or investigating a claim about the default or aspects of the claim.

**191 Investigation of defaults to which a corresponding law applies**

- (1) This section applies if a default of a law practice appears to be a default to which a corresponding law applies and to have—
  - (a) happened solely in this jurisdiction; or
  - (b) happened in more than 1 jurisdiction including this jurisdiction; or

- (c) happened in circumstances in which it can not be decided precisely in which jurisdiction the default happened.
- (2) The law society may act as agent of a corresponding authority of another jurisdiction, 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 law society agrees to act as agent of a corresponding authority under subsection (2), the law society may exercise any of its functions or powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this part.

## **192 Investigation of concerted interstate defaults**

- (1) This section applies if a concerted interstate default appears to have happened.
- (2) The law society may request a corresponding authority of another jurisdiction, or corresponding authorities of other jurisdictions, to act as agent or agents for the law society, for processing or investigating a claim about the default or aspects of the claim.
- (3) The law society may act as agent of a corresponding authority of another jurisdiction, if requested to do so by the corresponding authority, for processing or investigating a claim about the default or aspects of the claim.
- (4) If the law society agrees to act as agent of a corresponding authority under subsection (3), the law society may perform and exercise any of its functions and powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made entirely under this part.

## **193 Recommendations by law society to corresponding authority**

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

**194 Recommendations to and decisions by law society after receiving recommendations from corresponding authority**

- (1) If a corresponding authority makes recommendations about the decision the law society might make about a claim in relation to which the corresponding authority was acting as agent of the law society, the law society may—
  - (a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
  - (b) disregard the recommendations.
- (2) A corresponding authority can not, as agent of the law society, make a decision about the claim under division 5.<sup>72</sup>

**195 Request to another jurisdiction to investigate aspects of claim**

- (1) The law society may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the law society and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from either of the following may be used and taken into consideration by the law society in the course of dealing with the claim under this part—
  - (a) the corresponding authority;
  - (b) a person or entity authorised, under a corresponding law, by the corresponding authority to conduct the investigation.

**196 Request from another jurisdiction to investigate aspects of claim**

- (1) If a request, made under a corresponding law, is received by the law society from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with

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72 Division 5 (Deciding claims)

under a corresponding law, the law society may conduct the investigation.

- (2) The provisions of this part relating to the investigation of a claim apply, with any necessary changes, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.
- (3) The law society must provide a report on the result of the investigation to the corresponding authority.

### **197 Cooperation with other authorities**

- (1) When dealing with a claim under this part involving an Australian legal practitioner, the law society may consult and cooperate with an entity that has functions or powers under the corresponding law of another jurisdiction in relation to the practitioner.
- (2) For subsection (1), the law society and the entity may exchange information concerning the claim.

## **Division 11 Miscellaneous**

### **198 Interstate legal practitioner becoming authorised to withdraw from local trust account**

- (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) A regulation may do either or both of the following—
  - (a) require the practitioner to notify the law society of the authorisation;
  - (b) require the practitioner to make contributions and levies to the fidelity fund as if the practitioner were a local legal practitioner, including the way a contribution or levy is to be paid.
- (3) Without limiting subsection (2), a regulation may provide for deciding the way in which the notice is to be given and the information or material that is to be included in or to accompany the notice.



- (4) A contravention of a requirement under this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

**199 Application of part to incorporated legal practices**

- (1) *A regulation may provide that specified provisions of this part, and other provisions of this Act, do not apply to incorporated legal practices or apply with specified changes.*
- (2) *For the application to an incorporated legal practice of the provisions of this part and other provisions of this Act, 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 happens 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 this Act.*
- (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 from the law society.*
- (5) *The incorporated legal practice must not engage in legal practice in this jurisdiction if any payment is not made by the due date and while the practice remains in default of subsection (4).*
- (6) *The law society may suspend the local practising certificate of a legal practitioner director of the practice if any payment is not made by the due date.*
- (7) *The amounts payable to the fidelity fund by an incorporated legal practice may be decided by reference to the total number of Australian legal practitioners employed by the practice and other relevant matters.<sup>73</sup>*

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73 This provision had not commenced on or before the reprint date.

**200 Application of part to multi-disciplinary partnerships**

- (1) *A regulation may provide that specified provisions of this part, and other provisions of this Act, do not apply to multi-disciplinary partnerships or apply with specified changes.*
- (2) *For the application to a multi-disciplinary partnership of the provisions of this part and other provisions of this Act, 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 happens 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 this Act.*
- (4) *The amounts payable to the fidelity fund by the legal practitioner partners of a multi-disciplinary partnership may be decided by reference to the total number of Australian legal practitioners employed by the partnership and other relevant matters.<sup>74</sup>*

**201 Application of part to Australian lawyers whose practising certificates have lapsed**

- (1) This section applies if an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed, but does not apply where—
  - (a) the certificate has been suspended or cancelled under this Act or a corresponding law; or
  - (b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted.

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74 This provision had not commenced on or before the reprint date.

- (2) For 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 whenever the first of the following happens—
  - (a) the end of 6 months after the practising certificate actually lapses;
  - (b) the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.

## **Part 8                      Financial arrangements for those who may engage in legal practice in this jurisdiction**

### **Division 1                Preliminary**

#### **202    Main purposes of ch 2, pt 8**

The main purposes of this part are as follows—

- (a) to provide for the making of a regulation requiring particular solicitors to deposit amounts into prescribed accounts;
- (b) to allow the chief executive to enter into agreements with financial institutions, with whom solicitors have deposited amounts under a regulation, for the payment of interest on the trust accounts;
- (c) to establish the Legal Practitioner Interest on Trust Accounts Fund into which amounts received as interest must be paid;
- (d) to ensure the interest paid into the fund, and other moneys received for the fund, do not become part of the consolidated fund;

- (e) to provide for persons to whom or purposes for which amounts may be paid from the fund.

### **203 Definitions for ch 2, pt 8**

In this part—

*fund* means the Legal Practitioner Interest on Trust Accounts Fund established under section 208.<sup>75</sup>

*prescribed account* means an account prescribed under a regulation as an account into which a solicitor must deposit moneys.

*solicitor* means a solicitor to whom the *Trust Accounts Act 1973* applies.

*trust account* means a trust account kept by a solicitor under the *Trust Accounts Act 1973*.

### **204 Relationship with other laws**

The *Trust Accounts Act 1973* provides for the audit of solicitors' trust accounts.

## **Division 2 Prescribed accounts**

### **205 Regulation for prescribed account**

- (1) A regulation may make provision for, and for matters relating to, prescribed accounts.
- (2) Without limiting subsection (1), the regulation may prescribe as follows—
  - (a) a solicitor to whom the regulation applies must deposit an amount into a prescribed account;
  - (b) the way to work out an amount mentioned in paragraph (a), including, for example, on the basis of the minimum amount held by a solicitor in the solicitor's trust account for a calendar month or year;

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<sup>75</sup> Section 208 (Establishment of fund)

- (c) the way in which amounts may be paid to a solicitor from a prescribed account;
  - (d) the way in which the law society may supervise compliance with the regulation.
- (3) If a solicitor contravenes a regulation as mentioned in subsection (2)(a), it is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **206 Deposits to prescribed account**

- (1) No action at law or in equity may lie against any solicitor relating to a matter or thing done by the solicitor for complying with a regulation as mentioned in section 205 that applied to the solicitor.
- (2) However, this section does not affect in any way the rights and remedies of a claimant against the solicitor in the event of negligence or dishonesty of the solicitor in relation to trust money.

## **Division 3 Interest on trust accounts paid to department**

### **207 Arrangement with financial institution**

The chief executive may enter into an arrangement with a financial institution about the financial institution paying interest to the department on—

- (a) prescribed accounts; and
- (b) trust accounts kept by solicitors.

## **Division 4 Legal Practitioner Interest on Trust Accounts Fund**

### **208 Establishment of fund**

- (1) The Legal Practitioner Interest on Trust Accounts Fund is established.

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- (2) Accounts for the fund must be kept as part of the departmental accounts of the department.
  - (3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department used only for amounts received for the fund.
  - (4) Amounts received for the fund include—
    - (a) all interest payable to the department under an arrangement entered into under section 207; and
    - (b) other amounts payable for the fund under an Act.
  - (5) For the *Financial Administration and Audit Act 1977*, the amounts received for the fund are not received or held for the State.

*Note—*

The amounts are other moneys under the *Financial Administration and Audit Act 1977*.

- (6) An amount is payable from the fund only under section 209.
- (7) In this section—

***departmental accounts***, of a department, means the accounts of the department kept under the *Financial Administration and Audit Act 1977*, section 12.<sup>76</sup>

***departmental financial-institution account***, of a department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.<sup>77</sup>

## 209 Payments from fund

- (1) The chief executive may make payments from the fund to or for any of the following—
  - (a) Legal Aid Queensland;
  - (b) the fidelity fund;
  - (c) the Supreme Court Library;

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<sup>76</sup> *Financial Administration and Audit Act 1977*, section 12 (Departmental accounts)

<sup>77</sup> *Financial Administration and Audit Act 1977*, section 18 (Departmental financial-institution accounts)

- (d) the commissioner;
  - (e) a disciplinary body;
  - (f) the board;
  - (g) part of the cost of the regulatory functions of the law society or bar association, including costs associated with implementing this Act whether incurred before or after the commencement of this section;
  - (h) grants approved by the Minister for any of the following purposes—
    - (i) the advancement of law reform;
    - (ii) the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services;
    - (iii) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community;
  - (i) the department for the cost of administering this part and for liabilities of the department attributable to the costs and expenses relating to the fund before or after the commencement of this section.
- (2) Also, the chief executive may make payments from the fund for a grant or matter mentioned in the following if the law society incurred a liability for the grant or matter before the commencement of this section—
- (a) a grant approved under the *Queensland Law Society Act 1952*, section 36N;
  - (b) a matter approved by the Minister under section 36E(b)(iii) of that Act.<sup>78</sup>
- (3) The chief executive must not make a payment under subsection (1) or (2) unless the Minister has decided the

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<sup>78</sup> *Queensland Law Society Act 1952*, section 36N (Functions of grants committee) and section 36E (Distributions from contribution fund)

amount may be paid and has given written authority to the chief executive to pay the amount.

## **210 Minister to decide distribution**

- (1) The Minister must decide—
  - (a) whether a payment is to be made under section 209; and
  - (b) if the Minister decides a payment is to be made, the amount of the payment and any conditions applicable to the payment.
- (2) For subsection (1), the chief executive must make recommendations to the Minister.
- (3) The amount used for each of the following must not be more than the amount prescribed for it under a regulation for this subsection—
  - (a) the fidelity fund as mentioned in section 209(1)(b);
  - (b) grants approved by the Minister as mentioned in section 209(1)(h).

## **211 Submission of budgets**

- (1) To help the Minister in making decisions under section 210, the chief executive may ask a potential beneficiary to prepare and submit a budget to the chief executive, for the period the chief executive directs, concerning the income and expenditure of the potential beneficiary, including projected income and expenditure.
- (2) The budget is to include the information the chief executive directs.
- (3) In particular, the chief executive may require the provision of information about the administration of the potential beneficiary.
- (4) In this section—

*potential beneficiary*, of a payment, means the entity to which or in relation to which a payment would be paid for a purpose mentioned in section 209(1).



## **Part 9**                      **Rules about those who may engage in legal practice in this jurisdiction**

### **Division 1**                **Preliminary**

#### **212**    **Main purposes of ch 2, pt 9**

The main purposes of this part are as follows—

- (a) to promote the maintenance of high standards of professional conduct by providing for legal profession rules to regulate persons who may engage in legal practice, or the practice of foreign law, in this jurisdiction;
- (b) to allow each regulatory authority to provide for administrative matters by providing for administration rules.

#### **213**    **Power to make rules not limited to specific references to provision in other chapters or parts**

- (1) The power to make a legal profession rule or an administration rule is not limited to matters for which this Act specifically authorises the making of a legal profession rule or an administration rule.
- (2) However, the power to make the rule may be limited by an express provision of this part limiting the power.

#### **214**    **Definition for ch 2, pt 9**

In this part—

*legal profession rule* means—

- (a) a solicitors rule; or
- (b) a barristers rule; or
- (c) an incorporated legal practice rule.

## **Division 2                      Legal profession rules**

### **215      Rules to be made by Governor in Council**

- (1) The Governor in Council may make the following—
  - (a) a rule under this Act (a *solicitors rule*) for any aspect of legal practice, including standards of conduct expected of persons who engage or intend to engage—
    - (i) in legal practice in this jurisdiction as a solicitor; or
    - (ii) in legal practice in this jurisdiction as a multi-disciplinary partnership; or
    - (iii) in the practice in this jurisdiction of foreign law as an Australian-registered foreign lawyer;
  - (b) a rule under this Act for any aspect of legal practice, including standards of conduct expected of persons who engage, or intend to engage, in legal practice as a barrister in this jurisdiction (a *barristers rule*);
  - (c) a rule under this Act for any aspect of legal practice, including standards of conduct expected of incorporated legal practices, legal practitioner directors of the practices and employees of the practices who are Australian legal practitioners engaged in providing legal services for the practices (an *incorporated legal practice rule*).
- (2) A legal profession rule may be made in relation to a matter that may be the subject of an administration rule or a society rule.

### **216      Rule may apply to persons generally or by using a defined term involving a legal title**

- (1) A solicitors rule or barristers rule may apply to a person generally or by reference to whether the person is any of the following—
  - (a) a local legal practitioner, interstate legal practitioner or Australian legal practitioner;
  - (b) a local lawyer, interstate lawyer or Australian lawyer.

- (2) An incorporated legal practice rule may apply to an incorporated legal practice, a legal practitioner director of the practice or an employee of the practice who is an Australian legal practitioner engaged in providing legal services for the practice.
- (3) Only a solicitors rule may apply to multi-disciplinary partnerships or Australian-registered foreign lawyers except as mentioned in section 217.

### **217 Particular provision about barristers rule**

A barristers rule may provide for a barrister to be prohibited from any or all of the following—

- (a) engaging in legal practice—
  - (i) otherwise than as a sole practitioner; or
  - (ii) in partnership with any person; or
  - (iii) as the employee of an entity;
- (b) holding office as a legal practitioner director of an incorporated legal practice;
- (c) being a legal practitioner partner in a multi-disciplinary partnership.

### **218 Solicitors rule or barristers rule may apply to government legal officer**

A solicitors rule and barristers rule may provide that a rule applies to a government legal officer.

### **219 Incorporated legal practice rule can not provide for particular matters**

An incorporated legal practice rule can not—

- (a) regulate any services that an incorporated legal practice may provide or regulate conduct, other than services or conduct in connection with—
  - (i) the provision of legal services; or

- (ii) other services in circumstances where a conflict of interest relating to the provision of legal services may arise; or
- (b) regulate the conduct of officers or employees of an incorporated legal practice, other than conduct in connection with—
  - (i) the provision of legal services; or
  - (ii) other services in circumstances where a conflict of interest relating to the provision of legal services may arise.

## **220 Recommendations to the Minister about legal profession rules**

- (1) The law society may make a recommendation to the Minister in relation to—
  - (a) a solicitors rule; and
  - (b) an incorporated legal practice rule.
- (2) The bar association may make a recommendation to the Minister in relation to a barristers rule.
- (3) Without limiting subsection (1)(b), the law society's recommendation about an incorporated legal practice rule may provide for the following—
  - (a) matters that relate to the provision of legal services by or in connection with an incorporated legal practice;
  - (b) professional obligations relating to legal services provided by or in connection with an incorporated legal practice;
  - (c) the provision of other services by an incorporated legal practice in circumstances in which a conflict of interest relating to the provision of legal services may arise.

## **221 Monitoring role of committee**

- (1) The committee may make a recommendation to the Minister in relation to any legal profession rule.

*Note—*

The committee is the Legal Practice Committee established under section 451.

- (2) For subsection (1), the committee is—
  - (a) to monitor the adequacy of each legal profession rule; and
  - (b) to consider any particular matter about which the Minister asks the committee to make a recommendation for a legal profession rule.

## **222 Public notice of proposed legal profession rule**

- (1) A regulatory authority that proposes to make a recommendation about a legal profession rule 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 stated period of not less than 21 days from the date of first publication of the notice.
- (2) The regulatory authority must ensure that a copy of the proposed rule is given to the Minister before the notice is published.
- (3) The regulatory authority must not make a recommendation about the rule before the end of the period stated in the notice for making comments and submissions and must ensure that any comments and submissions received within that period are appropriately considered.
- (4) Subsections (1) to (3) do not apply to a proposed rule that the Minister considers does not warrant publication because of its urgent nature or its minor or technical nature.

## **223 Binding nature of each legal profession rule**

- (1) Each provision of a legal profession rule is binding on a person to whom the provision applies.

- (2) Failure to comply with the provision of the legal profession rule by a person to whom the provision applies—
  - (a) is capable of constituting unsatisfactory professional conduct or professional misconduct; but
  - (b) is not a breach of this Act unless a provision of this Act otherwise provides.

#### **224 Relationship of legal profession rule to this Act and regulation**

- (1) A regulation may be made in relation to any matter for which a legal profession rule may be made.
- (2) A provision of a legal profession rule does not have effect to the extent that it is inconsistent with this Act or a regulation.

#### **225 Relationship of legal profession rule and administration rule**

- (1) A legal profession rule may identify a provision of an administration rule as a provision that the holder of a practising certificate, granted or renewed by the regulatory authority that made the administration rule, must comply with.
- (2) If a provision of an administration rule is identified as mentioned in subsection (1), a contravention of the provision is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **Division 3 Administration rules**

#### **226 Rules other than legal profession rule**

- (1) To the extent a regulatory authority does not have power under another Act or otherwise to make rules for a matter mentioned in subsection (2) and another Act does not prevent a rule being made about the matter, the regulatory authority may make a rule about the matter that applies to—

- (a) Australian legal practitioners, including interstate legal practitioners practising in this jurisdiction; and
  - (b) if the regulatory authority is the law society—an incorporated legal practice or Australian-registered foreign lawyers.
- (2) The matters about which a regulatory authority may make rules are as follows—
- (a) types of practising certificates that the regulatory authority may grant or renew, including, for example, practising certificates for supervised legal practice or unsupervised legal practice by solicitors;
  - (b) the courses of study that an Australian lawyer is required to complete for the following—
    - (i) for the grant of a practising certificate by the law society for unsupervised legal practice;
    - (ii) for the grant of a practising certificate by the bar association for practice as a barrister;
  - (c) matters relating to the courses of study mentioned in paragraph (b) including enrolment procedures, fees payable, minimum course attendance requirements, examinations, assessments and procedures for the review of assessments and appeals against assessments;
  - (d) exempting a person who applies for a practising certificate from the requirement to have completed a course of study mentioned in paragraph (b) given the length and nature of the person's experience in unsupervised practice or practice as a barrister;
  - (e) the legal practice by a person that may constitute supervised legal practice, having regard to—
    - (i) the length and nature of the legal practice engaged in by the person; and
    - (ii) the length and nature of the legal practice engaged in by the person, if any, who supervised the person's legal practice;
  - (f) approved forms to be used for an application to the regulatory authority and the way an approved form is to

*Legal Profession Act 2004*

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be given to the authority, including the time for giving the form to it;

- (g) setting fees, contributions and levies, other than levies imposed by the law society as mentioned in section 157,<sup>79</sup> the payment of the fees, contributions and levies including the levies imposed by the law society under that section, and other matters relating to payments, including the timing and way of making payments;
  - (h) matters relating to other matters that may be approved by the regulatory authority under this Act;
  - (i) matters relating to indemnity against loss arising from claims in relation to every description of civil liability incurred by a local legal practitioner or former local legal practitioner, including a person who was a solicitor at any time before the commencement of this section, in connection with practitioner's practice or in connection with any trust of which the practitioner was a trustee.
- (3) A rule about a matter mentioned in subsection (2) is an **administration rule**, whether or not the rule is made—
- (a) under this section; or
  - (b) if the regulatory authority has power under another Act or otherwise to make the rule for the matter—under that other Act or otherwise.
- (4) An administration rule about a matter mentioned in subsection (2)(i) is an **indemnity rule**.
- (5) This division does not affect a regulatory authority's power under another Act or otherwise to make a rule but a rule made under another Act or otherwise that is an administration rule is taken to be made under this Act.

*Example for subsection (5)—*

If a provision of this Act provides that the right to engage in legal practice is subject to provisions under this Act, the right of practice is subject to a relevant administration rule.

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79 Section 157 (Levy for benefit of fidelity fund)



- (6) To remove any doubt, it is declared that each administration rule is a statutory instrument under the *Statutory Instruments Act 1992*.

*Note—*

Under the *Statutory Instruments Act 1992*, sections 24 and 25,<sup>80</sup> an administration rule may provide for a fee in relation to specified exceptions and factors or different persons or matters.

## **227 Indemnity rule**

- (1) An indemnity rule—
- (a) may authorise or require the regulatory authority to establish and maintain a fund or funds; or
  - (b) may authorise or require the regulatory authority to take out and keep insurance with insurers carrying on insurance business and approved by the authority for the purposes of the insurance; or
  - (c) may require local legal practitioners holding practising certificates granted or renewed by the authority, or a class of certificate holders, to take out and keep insurance with insurers carrying on insurance business and approved by the authority for the purposes of the insurance.
- (2) An indemnity rule—
- (a) may specify the terms and conditions on which indemnity is to be available and any circumstances in which the right to indemnity is to be excluded or modified; and
  - (b) may provide for the management, administration and protection of any fund established and maintained under the indemnity rule, and require certificate holders of practising certificates granted or renewed by the authority, or a class of certificate holders, to make payments to a fund; and

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<sup>80</sup> *Statutory Instruments Act 1992*, sections 24 (Statutory instrument may be of general or limited application) and 25 (Statutory instrument may make different provision for different categories)

- (c) may require certificate holders of practising certificates granted or renewed by the authority, or a class of certificate holders, to make payments by way of premium on any insurance policy taken out and maintained by the authority under the indemnity rule; and
  - (d) may require a local legal practitioner to disclose information about professional indemnity insurance to clients or prospective clients; and
  - (e) may prescribe terms and conditions with which an insurance policy, required by the indemnity rule made for the purposes of subsection (1)(c), must comply; and
  - (f) may authorise the authority to decide the amount of a payment required by the indemnity rule, subject to limits or under the rule; and
  - (g) may authorise the authority or insurer to take a proceeding against a certificate holder or former certificate holder for amounts paid by way of indemnity in connection with a matter in relation to which he or she has failed to comply with the indemnity rule, and may specify circumstances in which the proceeding may be taken; and
  - (h) may empower the regulatory authority to take steps as it considers necessary or expedient to find out whether or not the indemnity rule is being complied with.
- (3) This section does not limit section 226(2)(i).

## **228 Relationship of administration rule to this Act and regulation**

- (1) A regulation may be made in relation to any matter mentioned in section 226(2) for which an administration rule may be made.
- (2) A provision of a regulatory authority's administration rule does not have effect to the extent that it is inconsistent with this Act, a regulation or a legal profession rule relevant to the authority.

- (3) Despite another Act, an administration rule can not provide that contravention of the rule—
- (a) is an offence; or
  - (b) is capable of constituting unsatisfactory professional conduct or professional misconduct.

*Note—*

Under the *Statutory Instruments Act 1992*, section 23<sup>81</sup> a regulation may apply, adopt or incorporate an administration rule.

## **229 Availability of an administration rule**

A regulatory authority must ensure that an up-to-date version of each administration rule is available, without charge, for public inspection—

- (a) at the authority's principal place of business during normal working hours; or
- (b) on the authority's Internet site or an Internet site identified on the authority's Internet site.

# **Part 10 Inter-jurisdictional provisions regarding admission and practising certificates**

## **Division 1 Preliminary**

### **230 Main purpose of ch 2, pt 10**

The main purpose of this part is to provide for the notification of and response to action taken by courts and other regulatory authorities in relation to the admission of persons to the legal

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<sup>81</sup> *Statutory Instruments Act 1992*, section 23 (Statutory instrument may make provision by applying another document)

profession and their right to engage in legal practice in Australia.

### **231 Relationship of this part with ch 3**

This part does not affect a function or power under chapter 3.<sup>82</sup>

## **Division 2                      Notifications to be given to interstate authorities**

### **232 Notification to other jurisdictions about application for admission**

- (1) This section applies to each application for admission.
- (2) The board may give the corresponding authority of another jurisdiction written notice of any of the following to the extent that it is relevant to the corresponding authority's functions or powers—
  - (a) the making of the application;
  - (b) the board's recommendation under section 33<sup>83</sup> in relation to the application;
  - (c) the withdrawal of the application after an investigation or inquiry is made or started, or a suitability report is sought or obtained, in relation to the application or the applicant;
  - (d) the refusal of the Supreme Court to admit the applicant as a legal practitioner under this Act.
- (3) The notice must state the applicant's name and address as last known to the board and may contain other relevant information.

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82 Chapter 3 (Complaints, investigation matters and discipline)

83 Section 33 (Role of the board relating to application for admission)

**233 Notification to other jurisdictions about removal from local roll**

- (1) This section applies if a local lawyer's name is removed from the local roll, except if the removal happens under section 238.<sup>84</sup>
- (2) The Brisbane registrar must give the corresponding authority of each other jurisdiction, and the registrar or other proper officer of the High Court of Australia, written notice of the removal.
- (3) The notice must state the following—
  - (a) the lawyer's name and address as last known to the Brisbane registrar;
  - (b) the date the lawyer's name was removed from the roll;
  - (c) the reason for removing the lawyer's name;
  - (d) other information prescribed under a regulation for this section.

**234 Law society and bar association to notify other jurisdictions about actions by it**

- (1) Subsection (2) applies if—
  - (a) a regulatory authority takes any of the following actions in relation to an Australian lawyer—
    - (i) a refusal to grant or renew a local practising certificate for the lawyer;
    - (ii) a cancellation or suspension of the lawyer's local practising certificate; or
  - (b) the lawyer successfully appeals against the taking of an action mentioned in paragraph (a).
- (2) The regulatory authority must give the regulatory authorities of other jurisdictions written notice of the action taken or the result of the appeal.

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<sup>84</sup> Section 238 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction)

- (3) The notice must state each of the following—
  - (a) the lawyer's name and address as last known to the regulatory authority for this jurisdiction;
  - (b) particulars of—
    - (i) the action taken and the reasons for it; or
    - (ii) the result of the appeal;
  - (c) other relevant information that the authority considers should be included in the notice.
- (4) The regulatory authority may give the regulatory authorities of other jurisdictions 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**

#### **235      Lawyer to give notice of removal in another jurisdiction**

- (1) If a local lawyer's name has been removed from an interstate roll, the lawyer must give the Brisbane registrar written notice of the removal.

Maximum penalty—100 penalty units.

- (2) If a local legal practitioner's name has been removed from an interstate roll, the practitioner must give the relevant regulatory authority written notice of the removal.

Maximum penalty—100 penalty units.

- (3) This section does not apply if the name has been removed from an interstate roll under a corresponding law to section 238.

#### **236      Lawyer to give notice of removal in foreign country**

- (1) If a local lawyer's name has been removed from a foreign roll, the lawyer must give each regulatory authority written notice of the removal.

Maximum penalty—200 penalty units.

- (2) If a local legal practitioner's name has been removed from a foreign roll, the practitioner must give the relevant regulatory authority written notice of the removal.

Maximum penalty for subsection (2)—200 penalty units.

### **237 Provisions relating to requirement to notify**

- (1) A notice to be given under this division by a local lawyer or local legal practitioner must—
- (a) state his or her name and address; and
  - (b) identify the roll from which his or her name has been removed; and
  - (c) state the date of the removal; and
  - (d) be accompanied by a copy of any official notification given to him or her in connection with the removal.
- (2) A contravention of section 235 or 236, including failing to comply with subsection (1) in relation to the notice for those sections, is capable of constituting unsatisfactory professional conduct or professional misconduct.

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

### **238 Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction**

- (1) This section applies if the Brisbane registrar is satisfied that—
- (a) a local lawyer's name has been removed from an interstate roll; and
  - (b) no order under section 240(1)(a) is, at the time of that removal, in force in relation to the lawyer's name.
- (2) The Brisbane registrar must remove, or arrange with another registrar for the removal of, the lawyer's name from the local roll.

- (3) The Brisbane registrar may, but need not, give the lawyer written notice of the date on which the registrar proposes to remove the name from the local roll.
- (4) The Brisbane registrar must give the former local lawyer written 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 Brisbane 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 section 32.<sup>85</sup>

**239 Peremptory cancellation of local practising certificate following removal of name from interstate roll**

- (1) This section applies if—
  - (a) a person's name is removed from an interstate roll; and
  - (b) the person is the holder of a local practising certificate; and
  - (c) no order under section 240(1)(b) is, at the time of that removal, in force in relation to the person's local practising certificate.
- (2) The relevant regulatory authority must cancel the local practising certificate.
- (3) The relevant regulatory authority may, but need not, give the person notice of the date on which it proposes to cancel the local practising certificate.
- (4) The relevant regulatory authority must 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 applying for a local practising certificate at a later time.

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85 Section 32 (Application for admission under this Act as a legal practitioner)



**240 Order for non-removal of name or non-cancellation of practising certificate**

- (1) If an Australian lawyer reasonably expects that the lawyer's name will be removed from an interstate roll, the lawyer may apply to the Supreme Court for either or both of the following orders (each of which is a *prevention order*)—
  - (a) an order that the lawyer's name not be removed from the local roll under section 238;
  - (b) an order that the lawyer's local practising certificate not be cancelled under section 239.
- (2) After hearing the application, the Supreme Court may—
  - (a) refuse to make the prevention order; or
  - (b) make the prevention order if it is satisfied that—
    - (i) the lawyer's name is likely to be removed from the interstate roll; and
    - (ii) the reason for the removal of the lawyer's name from the interstate roll will not involve disciplinary action or the possibility of disciplinary action.
- (3) A prevention order may be made subject to any conditions the court considers appropriate and remains in force for the period stated in it.
- (4) The court may revoke a prevention order, including on its own initiative.
- (5) If a prevention order is revoked, either or both of sections 238 and 239, as relevant, apply as if the lawyer's name were removed from the interstate roll on the day the revocation takes effect.
- (6) Nothing in this section affects action being taken in relation to the lawyer under another provision of this Act.

**241 Show cause procedure for removal of local lawyer's name from local roll following removal in foreign country**

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

- (2) The relevant regulatory authority may serve on the local 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 local lawyer does not satisfy the regulatory authority that the lawyer's name should not be removed from the local roll, the authority may apply to the Supreme Court for an order that the lawyer's name be removed from the local roll.
- (4) On hearing the application made under this section, the Supreme Court may order the local lawyer's name be removed from the local roll or refuse to make the order.
- (5) The local lawyer is entitled to appear before and be heard by the Supreme Court at a hearing about an application under this section.

**242 Local authority may give information to other local authority**

- (1) A local authority that receives information from an authority of another jurisdiction under provisions of a corresponding law that correspond to this part may give the information to any other local authority.
- (2) In this section—  
*local authority* means an entity relevant to this jurisdiction that has functions or powers under this Act.

## **Chapter 3            Complaints, investigation matters and discipline**

### **Part 1                Preliminary**

#### **Division 1           Preliminary**

##### **243    Main purposes of ch 3**

The main purposes of this chapter are as follows—

- (a) to provide for the discipline of the legal profession;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints by consumers of the services of the legal profession.

#### **Division 2           Key concepts**

##### **244    Meaning of *unsatisfactory professional conduct***

*Unsatisfactory professional conduct* includes conduct of an Australian legal practitioner happening 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.

*Note—*

See section 614<sup>86</sup> for how this term is defined for complaints made under the *Queensland Law Society Act 1952* that are to be dealt with under this Act.

##### **245    Meaning of *professional misconduct***

- (1) *Professional misconduct* includes—

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86 Section 614 (Basis of complaint mentioned in ss 256 or 613(2))

- (a) unsatisfactory professional conduct of an Australian legal practitioner, if 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 happening in connection with the practice of law or happening 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 or for the grant or renewal of a local practising certificate.

*Note—*

See section 614 for how this term is defined for complaints made under the *Queensland Law Society Act 1952* that are to be dealt with under this Act.

## **246 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limiting section 244 or 245, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of a relevant law;
- (b) charging of excessive legal costs in connection with the practice of law;
- (c) conduct for which a court has convicted an Australian lawyer of—
  - (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.

## **247 Meaning of *respondent***

A *respondent* is any of the following—

- (a) if a complaint is made about an Australian legal practitioner to whom this chapter applies—the practitioner;
- (b) if a complaint is made about a law practice employee in relation to conduct to which this chapter applies—the law practice concerned and the law practice employee;
- (c) otherwise—a person to whom this chapter applies and about whom the commissioner, on his or her own initiative, starts an investigation under section 265.<sup>87</sup>

## **Division 3 Application of this chapter**

### **248 Application of chapter to lawyers, former lawyers and former practitioners**

- (1) This chapter applies to Australian lawyers and former Australian lawyers in relation to conduct happening 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 changes.
- (2) This chapter applies to former Australian legal practitioners in relation to conduct happening 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 changes.
- (3) In this section—

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<sup>87</sup> Section 265 (Referral by commissioner to law society or bar association)

*former Australian legal practitioner* includes a person who was a solicitor or barrister in this jurisdiction before the commencement of this section but is not a local legal practitioner on the commencement.

## **249 Practitioners to whom this chapter applies**

This chapter applies to an Australian legal practitioner for conduct to which this chapter applies, whether or not—

- (a) the practitioner is a local lawyer; or
- (b) the practitioner holds a local practising certificate; or
- (c) the practitioner holds an interstate practising certificate; or
- (d) the practitioner resides or has an office in this jurisdiction; or
- (e) if a complaint is made about the practitioner—the complainant resides, works or has an office in this jurisdiction.

## **250 Conduct to which this chapter applies—generally**

- (1) Subject to subsection (3), this chapter applies to conduct of an Australian legal practitioner happening in this jurisdiction whether before or after the commencement of this section.
- (2) Also, this chapter applies to an Australian legal practitioner's conduct happening outside this jurisdiction, whether or not the conduct was engaged in before or after the commencement of this section, but only—
  - (a) if the conduct is part of a course of conduct that happened partly in this jurisdiction and partly in another jurisdiction, and either—
    - (i) the corresponding authority of each other jurisdiction in which the conduct happened consents to it being dealt with under this Act; or
    - (ii) the practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to it being dealt with under this Act; or

- (b) if the conduct happened in Australia but entirely outside this jurisdiction and the practitioner is a local lawyer or a local legal practitioner, and either—
  - (i) the corresponding authority of each jurisdiction in which the conduct happened consents to it being dealt with under this Act; or
  - (ii) the practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to it being dealt with under this Act; or
- (c) if the conduct happened entirely or partly outside Australia and the practitioner is a local lawyer or a local legal practitioner.
- (3) This chapter does not apply to conduct happening in this jurisdiction if—
  - (a) the commissioner consents to the conduct being dealt with under a corresponding law; or
  - (b) the Australian legal practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to the conduct being dealt with under a corresponding law.
- (4) Subsection (3) does not apply if the conduct is not capable of being dealt with under a corresponding law.
- (5) The commissioner may give consent for subsection (3)(a), and may do so conditionally or unconditionally.

*Note—*

Although this Act may deal with conduct that happened before the commencement, if the matter had started to be heard by the solicitors complaints tribunal before the commencement of the *Queensland Law Society Act 1952*, section 5P, that section provides that the hearing continues under provisions of that Act.

## **251 Conduct to which this chapter applies—insolvent under administration, serious offences and tax offences**

- (1) This chapter applies to the following conduct of a local legal practitioner whether happening in Australia or elsewhere or whether engaged in before or after the commencement of this section—

- (a) conduct for which a court has convicted the practitioner for—
    - (i) a serious offence; or
    - (ii) a tax offence; or
    - (iii) an offence involving dishonesty;
  - (b) conduct of the practitioner as or in becoming an insolvent under administration;
  - (c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.
- (2) This section has effect despite anything in section 250.

## **252 Chapter also applies to law practice employees**

- (1) This chapter applies to the conduct of a law practice employee in relation to the relevant practice whether or not—
  - (a) the conduct is part of a course of conduct that happened partly in this jurisdiction and partly in another jurisdiction; or
  - (b) the conduct was engaged in before or after the commencement of this section.
- (2) Also, this chapter applies to former law practice employees in relation to conduct happening while they were law practice employees in the same way as it applies to persons who are law practice employees, and so applies with necessary changes.
- (3) In this section—

*former law practice employee* includes a person who was a law practice employee in this jurisdiction before the commencement of this definition but is not a law practice employee on the commencement.



## **Division 4                      Commissioner's obligations for complaints**

### **253      Duty to deal with complaints efficiently and expeditiously**

The commissioner must, under this Act, deal with complaints as efficiently and expeditiously as is practicable.<sup>88</sup>

### **254      Duty to inform complainant about action taken for complaint**

- (1) The commissioner must keep a complainant informed about the way the complaint is dealt with.
- (2) Without limiting subsection (1), the commissioner must give the complainant—
  - (a) notice of the receipt of the complaint by the commissioner; and
  - (b) a copy of any discipline application made because of the complaint; and
  - (c) written notice of a decision of a disciplinary body relating to the complaint.
- (3) This section is subject to section 480.<sup>89</sup>

## **Part 2                              Making complaints**

### **255      Conduct about which complaint may be made**

- (1) A complaint may be made under this chapter about—
  - (a) an Australian legal practitioner's conduct to which this chapter applies; or
  - (b) the conduct of a law practice employee to which this chapter applies.

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<sup>88</sup> See section 261 (Commissioner may delay dealing with complaint).

<sup>89</sup> Section 480 (Prohibited publication about hearing of a disciplinary application)

- (2) A complaint may be made under this chapter about conduct happening outside this jurisdiction, but the complaint must not be dealt with under this chapter unless this chapter is or becomes applicable to the conduct.

## **256 Making a complaint**

- (1) Subject to subsection (4), an entity may make a complaint in the approved form to the commissioner about the conduct of an Australian legal practitioner or law practice employee, including, for example, an entity that—
- (a) is or was a client of the law practice; or
  - (b) is the relevant regulatory authority.
- (2) However for a government legal officer, only the following entities may make a complaint about the conduct of the officer in relation to the government work engaged in by the officer—
- (a) an Australian legal practitioner;
  - (b) a relevant regulatory authority;
  - (c) the chief executive officer, however expressed, of the department or agency in which the officer is a government legal officer or, if the chief executive officer may delegate that power, a delegate.
- (3) The complaint must—
- (a) identify the complainant; and
  - (b) if possible, identify the person about whom the complaint is made; and
  - (c) describe the alleged conduct the subject of the complaint.
- (4) The approved form for a complaint may only be approved by the commissioner.
- (5) The commissioner may accept a complaint made in writing other than in the approved form.

**257 Further information and verification**

- (1) The commissioner may, by written notice to a complainant, require the complainant to do 1 or more of the following—
  - (a) give further information about the complaint;
  - (b) verify the complaint, or any further information, by statutory declaration;
  - (c) sign an approved form that acknowledges the waiver of legal professional privilege as mentioned in section 313.<sup>90</sup>
- (2) The notice must state a date, that is reasonable, by which the complainant must comply with the notice.
- (3) The commissioner may extend the time for the complainant to comply with subsection (1) on application by the complainant whether before or after the date stated in the notice.

**258 Complaints made over 3 years after conduct concerned**

- (1) This section applies if a complaint is received by the commissioner more than 3 years after the conduct happened that is the subject of the complaint, including conduct that happened before the commencement of this section.
- (2) The commissioner may—
  - (a) refer the complaint to mediation; or
  - (b) dismiss the complaint unless the commissioner decides that—
    - (i) it is just and fair to deal with the complaint having regard to the extent of, and reasons for, the delay; or
    - (ii) the complaint involves conduct of the following type and it is in the public interest to deal with the complaint—

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90 Section 313 (Waiver of legal professional privilege or benefit of duty of confidentiality)

- (A) conduct of an Australian legal practitioner that the commissioner considers may be professional misconduct; or
  - (B) conduct of a law practice employee that the commissioner considers may be misconduct of the employee in relation to the relevant practice.
- (3) The commissioner must give an information notice to—
    - (a) if the commissioner dismisses the complaint—the complainant; or
    - (b) if the commissioner makes a decision mentioned in subsection (2)(b)(i) or (ii)—the respondent.
  - (4) For working out whether it is more than 3 years since conduct that is the subject of the complaint happened, the commissioner must calculate from the last day that the conduct happened.
  - (5) This section does not limit the commissioner’s power to dismiss a complaint under section 259.
  - (6) This section is subject to 614.<sup>91</sup>

## **259 Summary dismissal of complaints**

- (1) The commissioner may dismiss a complaint for 1 or more of the following reasons—
  - (a) the commissioner has given the complainant a notice under section 257 and, within the time stated in the notice or under an extension under that section, the complainant has not complied with the notice;
  - (b) the complaint does not disclose conduct that the commissioner considers may be—
    - (i) conduct to which this chapter applies; or
    - (ii) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner or

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91 Section 614 (Basis of complaint mentioned in ss 256 or 613(2))

misconduct of a law practice employee in relation to the relevant practice;

- (c) the commissioner considers the complaint is vexatious, misconceived, frivolous or lacking in substance;
  - (d) the conduct complained about has been the subject of a previous complaint that has been dismissed or dealt with, and the commissioner considers that the complaint discloses no reason to reconsider the matter;
  - (e) it is not in the public interest to deal with the complaint having regard to the fact that the name of the Australian legal practitioner to whom the complaint relates has already been removed from each Australian roll in which he or she was enrolled.
- (2) The commissioner may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the commissioner forms the view that the complaint requires no further investigation.
- (3) If a complaint is dismissed for the reason mentioned in subsection (1)(a), the dismissal does not prevent the complainant from making a fresh complaint under section 256.<sup>92</sup>
- (4) In this section—
- previous complaint* includes—
- (a) a complaint under the *Queensland Law Society Act 1952* if the complaint was made under that Act before the commencement of this definition; and
  - (b) a complaint made to the bar association if the complaint was made before that commencement.

## **260 Withdrawal of complaints**

- (1) The complainant may withdraw the complaint by notice to the commissioner.

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92 Section 256 (Making a complaint)

- (2) If the notice about the withdrawal is oral, the commissioner must do each of the following unless the complainant gives the commissioner written confirmation of the withdrawal—
  - (a) make a written record of the withdrawal;
  - (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 commissioner.
- (3) However, the withdrawal of the complaint does not prevent action being taken on a complaint by another person, or by the commissioner on the commissioner's own initiative.
- (4) In this section—

*withdrawal* of a complaint includes withdrawal of some only or part only of the matters that form the subject of the complaint.

## **261 Commissioner may delay dealing with complaint**

- (1) The commissioner may delay dealing with a complaint for 1 or more of the following reasons—
  - (a) the complainant has asked for a delay and the commissioner considers the request reasonable;
  - (b) for a complaint about an Australian legal practitioner—the practitioner is under investigation in this jurisdiction or another jurisdiction and, under this Act or a corresponding law of that other jurisdiction, the practitioner's name may be removed from the local roll or interstate roll;
  - (c) the matter that is the subject of the complaint is being or about to be dealt with in another way;
  - (d) the commissioner considers that it is in the public interest to delay dealing with the complaint.
- (2) Subsection (1) applies despite sections 18 and 253.<sup>93</sup>

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93 Sections 18 (Timing for doing things) and 253 (Duty to deal with complaints efficiently and expeditiously)

## **Part 3                                      Mediation for complaints involving consumer dispute**

### **262      Definition for ch 3, pt 3**

In this part—

*consumer dispute* means a dispute between a person and a law practice about conduct of—

- (a) an Australian legal practitioner to the extent the commissioner considers that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct; or
- (b) a law practice employee to the extent the commissioner considers that the dispute does not involve an issue of misconduct in relation to the relevant practice.

### **263      Mediation of complaint involving consumer dispute solely**

- (1) This section applies to a complaint that involves a consumer dispute.
- (2) The commissioner may—
  - (a) suggest to the complainant and the respondent that they enter into a process of mediation; and
  - (b) refer the matter to the relevant regulatory authority to see if the authority may help in the mediation or otherwise in the resolution of the complaint.
- (3) The commissioner is then not required to take further action on the complaint.

### **264      Mediation of hybrid complaint**

- (1) This section applies to a complaint that involves both of the following—
  - (a) a consumer dispute;
  - (b) an issue of unsatisfactory professional conduct or professional misconduct by an Australian legal

practitioner or of misconduct by a law practice employee in relation to the relevant practice.

- (2) The commissioner may—
  - (a) suggest to the complainant and the respondent that they enter into a process of mediation; and
  - (b) refer the matter to the relevant regulatory authority to see if the authority may help in the mediation or otherwise in the resolution of the complaint.
- (3) The complaint must continue to be dealt with under this chapter after or during the mediation or attempt at mediation.

## **Part 4**

### **Starting investigations based on complaint or without a complaint**

#### **265 Referral by commissioner to law society or bar association**

- (1) This section applies if—
  - (a) a complaint is received by the commissioner and is not dismissed under section 258(2)(b) or 259 or withdrawn under section 260;<sup>94</sup> or
  - (b) a complaint is withdrawn under section 260 but the commissioner has continued to investigate the matter on the commissioner's own initiative; or
  - (c) the commissioner believes that an investigation about a matter (an *investigation matter*) should be started into the conduct of an Australian legal practitioner or a law practice employee.
- (2) The commissioner may refer the complaint or the investigation matter to the relevant regulatory authority.

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<sup>94</sup> Section 258 (Complaints made over 3 years after conduct concerned), 259 (Summary dismissal of complaints) or 260 (Withdrawal of complaints)



- (3) The referral may state a date by which the regulatory authority is to report to the commissioner about the complaint or investigation matter and directions to the authority about the way in which the authority is to conduct the investigation.
- (4) The commissioner may extend the date for the report but may require the authority to give the commissioner an interim report.
- (5) At any time while the regulatory authority is carrying out its investigation, including after the commissioner is given an interim report, the commissioner may give directions or further directions about the way in which the authority is to conduct the investigation.

**266 Commissioner investigating a complaint or investigation matter**

- (1) The commissioner must investigate a complaint or an investigation matter if the commissioner is satisfied—
  - (a) it is inconsistent with the public interest for the relevant regulatory authority to investigate the complaint or investigation matter; or
  - (b) it is in the public interest for the commissioner to investigate the complaint or investigation matter.
- (2) Also, the commissioner must investigate a complaint or investigation matter that is not mentioned in subsection (1) but is not referred to a regulatory authority under section 265(2).<sup>95</sup>
- (3) If the commissioner considers it appropriate to start or continue an investigation into a complaint or investigation matter that was referred to a a regulatory authority under section 265(2), the commissioner may do so by giving a written notice of the commissioner’s decision to the authority.
- (4) A regulatory authority given a notice under subsection (3) must give to the commissioner all documents relating to the investigation into the complaint or investigation matter.

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95 Section 265 (Referral by commissioner to law society or bar association)

**267 Australian lawyer to be notified of complaint or investigation matter**

- (1) The entity carrying out an investigation as mentioned in section 265 or 266<sup>96</sup> must ensure that written notice of the following is given to the respondent—
  - (a) the making of the complaint or investigation matter;
  - (b) the nature of the complaint or investigation matter;
  - (c) the identity of the complainant;
  - (d) action taken by the entity in relation to the complaint or investigation matter before giving the notice.
- (2) Also, the notice must advise the respondent that the respondent may make submissions to the entity by a stated date that is reasonable.
- (3) Despite section 18,<sup>97</sup> the entity may delay giving the respondent notice under subsection (1) until—
  - (a) the entity considers notice of the complaint or investigation matter will not prejudice the investigation of the complaint or investigation matter; or
  - (b) the complainant complies with a notice given under section 257(1).<sup>98</sup>

**268 Role of law society or bar association**

- (1) If a complaint or investigation matter is referred to a regulatory authority, it must investigate the complaint or investigation matter and report to the commissioner about the complaint or matter by the stated date or a later date stated in an extension.
- (2) For subsection (1), the authority may investigate a complaint or investigation matter by an investigator investigating the complaint or matter and presenting evidence to the authority for its consideration and report.

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96 Section 265 (Referral by commissioner to law society or bar association) or 266 (Commissioner investigating a complaint or investigation matter)

97 Section 18 (Timing for doing things)

98 Section 257 (Further information and verification)

- (3) However, the investigator must be an investigator appointed because of a nomination by the authority.
- (4) The report must—
  - (a) be in an approved form approved by the commissioner; and
  - (b) include a recommendation about whether a proceeding before a disciplinary body in relation to the complaint or investigation matter should be started.
- (5) Without limiting the matters to which the authority may have regard when making a recommendation as mentioned in subsection (4)(b), the authority may have regard to the following—
  - (a) the public interest in the complaint or investigation matter being heard and decided by a disciplinary body;
  - (b) the likelihood of a finding of unsatisfactory professional conduct or professional misconduct against the Australian legal practitioner or of misconduct of the law practice employee in relation to the relevant practice;
  - (c) any other action or proceeding that may have started or finished in relation to the conduct the subject of the complaint or investigation matter or to the same practitioner or law practice employee.
- (6) If the authority recommends making a discipline application, the report must also include a draft of the application and the evidence to support the application.

## **269 Powers for investigations**

- (1) The entity carrying out an investigation as mentioned in section 265 or 266<sup>99</sup> may, for the investigation—
  - (a) require an Australian legal practitioner who is the subject of the investigation—

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<sup>99</sup> Section 265 (Referral by commissioner to law society or bar association) or 266 (Commissioner investigating a complaint or investigation matter)

*Legal Profession Act 2004*

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- (i) to give the entity, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or
    - (ii) to appear before the entity at a stated reasonable time and place; or
    - (iii) to produce to the entity within a stated reasonable time any document in the practitioner's custody, possession or control that the practitioner is entitled at law to produce; or
  - (b) engage a costs assessor to report on the reasonableness of an Australian legal practitioner's bill of costs.
- (2) Subject to subsection (6), the practitioner must comply with a requirement under subsection (1)(a).  
Maximum penalty—50 penalty units.
- (3) If the practitioner fails to comply with the requirement, the entity may give the practitioner written notice that if the failure continues for a further 14 days after the notice is given the practitioner may be dealt with for professional misconduct.
- (4) If notice under subsection (3) is given and the failure continues for the 14 day period—
- (a) the practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and
  - (b) the entity may bring a charge of professional misconduct against the practitioner.
- (5) In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.
- (6) An Australian legal practitioner may refuse to give the entity an explanation of a matter being investigated if—
- (a) the practitioner satisfies the entity that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the practitioner; or

- (b) the explanation would tend to incriminate the practitioner.

## **270 Submissions by respondent**

- (1) A respondent given a notice under section 267<sup>100</sup> may, by the date stated in that notice, make written submissions to the commissioner or the stated relevant regulatory authority about the complaint or investigation matter.
- (2) At the request of the respondent or the authority, the commissioner may substitute a later date by which submissions may be made.
- (3) The commissioner or authority must consider the submissions made before the stated date or any later date before deciding whether to make a discipline application relating to the complaint or investigation matter.

## **271 Referral of matters for cost assessment**

For the purpose of investigating a complaint, the entity carrying out an investigation as mentioned in section 265 or 266<sup>101</sup> may refer a matter to a costs assessor for assessment of costs charged or claimed by a law practice.

## **272 Regulation may provide for covering cost of costs assessor under s 269 or 271**

A regulation may provide for the way in which the cost of a costs assessor under section 269 or 271 is to be met, including requiring an amount to be paid before the costs assessment or by recovering the amount of the assessment as a debt.

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100 Section 267 (Australian lawyer to be notified of complaint or investigation matter)

101 Section 265 (Referral by commissioner to law society or bar association) or 266 (Commissioner investigating a complaint or investigation matter)

## **Part 5                      Discipline**

### **Division 1                Decision of commissioner**

#### **273      Decision of commissioner after investigation**

As the commissioner considers appropriate in relation to a complaint or investigation matter that has been or continues to be investigated, the commissioner may start a proceeding under this part before a disciplinary body.

#### **274      Dismissal of complaint**

- (1) The commissioner may dismiss the complaint or investigation matter if satisfied that—
  - (a) there is no reasonable likelihood of a finding by a disciplinary body of—
    - (i) for an Australian legal practitioner—either unsatisfactory professional conduct or professional misconduct; or
    - (ii) for a law practice employee—misconduct in relation to the relevant practice; or
  - (b) it is in the public interest to do so.
- (2) The commissioner must give the respondent and any complainant written notice about the commissioner's decision to dismiss the complaint or investigation matter.

#### **275      Record of decision**

The commissioner must cause a record of his or her decision about a complaint or an investigation matter, together with reasons for the decision, to be kept for each complaint or investigation matter dealt with under this division.

## Division 2                      Proceedings in disciplinary body

### 276      Starting proceeding before a disciplinary body

- (1) The commissioner may apply—
  - (a) to the tribunal for an order against an Australian legal practitioner in relation to a complaint against the legal practitioner or an investigation matter; or
  - (b) to the committee for an order—
    - (i) against an Australian legal practitioner in relation to a complaint against the legal practitioner or an investigation matter; or
    - (ii) against a law practice employee in relation to a complaint against the employee or an investigation matter involving the employee.
- (2) An application under subsection (1) is a *discipline application*.

### 277      Hearings

The disciplinary body must hear and decide each allegation stated in the discipline application.

### 278      Variation of discipline application

- (1) The disciplinary body may, on the commissioner's application, vary a discipline application by omitting allegations or including additional allegations, if the body is satisfied that it is reasonable to do so having regard to all the circumstances.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary a discipline application, the disciplinary body must have regard to whether varying the application will affect the fairness of the proceeding.
- (3) A variation to include an additional allegation is not precluded merely because the alleged conduct happened more than 3 years before the variation is made, including conduct that happened before the commencement of this section.

**279 Joinder**

A disciplinary body may, subject to its rules, order the joinder of more than 1 discipline application involving the same Australian legal practitioner or law practice employee or different Australian legal practitioners or law practice employees.

**Division 3 Decisions of disciplinary bodies****280 Decisions of tribunal about an Australian legal practitioner**

- (1) This section applies if, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct.
- (2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—
  - (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 cancelled or suspended for a stated period;
  - (c) an order that a local practising certificate not be issued to the practitioner until the end of a stated period;
  - (d) an order that—
    - (i) imposes stated conditions on the practitioner's practising certificate issued or to be issued under this Act; and
    - (ii) imposes the conditions for a stated 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;
  - (f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
    - (i) employ or continue to employ the practitioner in a law practice in this jurisdiction; or
    - (ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.
- (3) The tribunal may, under this subsection, make 1 or more of the following—
- (a) an order recommending that the name of the Australian legal practitioner be removed under a corresponding law from an interstate roll;
  - (b) an order that the practitioner's interstate practising certificate be cancelled or suspended under a corresponding law;
  - (c) an order that an interstate practising certificate not be, under a corresponding law, granted to the practitioner until the end of a stated period;
  - (d) an order that—
    - (i) stated conditions be imposed under a corresponding law on the practitioner's interstate practising certificate; and
    - (ii) the conditions be imposed for a stated period; and
    - (iii) specifies the time, if any, after which the practitioner may apply under the corresponding law for the conditions to be amended or removed.
- (4) The tribunal may, under this subsection, make 1 or more of the following—
- (a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than \$100 000;
  - (b) a compensation order;

- (c) an order that the practitioner undertake and complete a stated course of further legal education;
  - (d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;
  - (e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;
  - (f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;
  - (g) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;
  - (h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
  - (i) an order that the practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;
  - (j) an order that the practitioner must not apply for a local practising certificate for a stated period.
- (5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).
- (6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.
- (7) The tribunal may find a person guilty of unsatisfactory professional conduct even though the discipline application alleged professional misconduct.

**281 Orders to be filed in Supreme Court and information notices to be given to parties etc.**

- (1) This section applies to the Brisbane registrar after the tribunal makes an order under section 280 or 286 or part 6<sup>102</sup> in relation to a discipline application, including a discipline application that the tribunal dealt with on an appeal from the committee under section 293.<sup>103</sup>
- (2) The Brisbane registrar must—
  - (a) file the order in a Supreme Court registry; and
  - (b) give the parties in relation to the discipline application a copy of the order and an information notice about the final decision about the discipline application; and
  - (c) give the Minister a copy of the order.
- (3) On being filed, the order is an order of the Supreme Court and may be enforced accordingly.
- (4) Subsection (3) is subject to section 287.<sup>104</sup>

**282 Decisions of committee about discipline application**

- (1) This section applies if, after a committee has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner or law practice employee, the committee is satisfied—
  - (a) for the practitioner—that the practitioner is guilty of unsatisfactory professional conduct; or
  - (b) for the employee—that the employee is guilty of misconduct in relation to the relevant practice.
- (2) The committee may make 1 or more of the following in relation to an Australian legal practitioner—

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102 Section 280 (Decisions of tribunal about an Australian legal practitioner) or 286 (Costs) or part 6 (Compensation orders)

103 Section 293 (Appeal to tribunal against committee's decision)

104 Section 287 (Other remedies not affected)

*Legal Profession Act 2004*

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- (a) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
  - (b) an order that the practitioner pay a penalty of a stated amount, not more than \$10 000;
  - (c) a compensation order;
  - (d) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;
  - (e) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;
  - (f) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
  - (g) an order that the practitioner seek advice from a person nominated by the relevant regulatory authority in relation to the practitioner's management of engaging in legal practice.
- (3) Also, the committee may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (2), as assessed in or under the order or as agreed.
- (4) For a law practice employee, the committee may order that the law practice concerned or no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
- (a) continue to employ or employ the employee in a law practice in this jurisdiction; or
  - (b) employ or continue to employ the employee in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.
- (5) In this section—
- law practice employee* includes a person who was a law practice employee.

**283 Orders to be filed in Supreme Court and information notices to be given to parties etc.**

- (1) This section applies after the committee makes an order under section 282 or 286 or part 6<sup>105</sup> in relation to a discipline application.
- (2) The commissioner must—
  - (a) give the other party or parties in relation to the discipline application a copy of the order and an information notice about the final decision about the discipline application; and
  - (b) give the Minister a copy of the order.
- (3) If there is no appeal from the decision within the 28 days allowed for the appeal, the commissioner must file the order in a Supreme Court registry.
- (4) On being filed, the order is an order of the Supreme Court and may be enforced accordingly.
- (5) Subsection (4) is subject to section 287.<sup>106</sup>

**284 Interlocutory and interim orders**

- (1) A disciplinary body may make an interlocutory or interim order as it considers appropriate before making its final decision about a discipline application.
- (2) Without limiting subsection (1), an order under section 280 or 282 may be made as an interlocutory or interim order.

**285 Compliance with decisions**

- (1) To the extent an entity has a function or power under this Act relevant to an order of a disciplinary body, the entity must—

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105 Section 282 (Decisions of committee about discipline application) or 286 (Costs) or part 6 (Compensation orders)

106 Section 287 (Other remedies not affected)

- (a) give effect to an order made under section 280(2), 282(2) or 284;<sup>107</sup> and
  - (b) enforce an order made under section 280(4) or (6), 282(2) or (3) or 284 so far as the order relates to the legal practice of, or other matters affecting, the Australian legal practitioner concerned in this jurisdiction.
- (2) The commissioner must ensure that entities having functions or powers under a corresponding law of another jurisdiction are notified of the making and contents of—
- (a) an order of the tribunal made under section 280(3) or 284 in relation to that corresponding law; and
  - (b) an order of the body made under section 280(4) or (6), 282(2) or (3) or 284 so far as the order relates to the legal practice of, or other matters affecting, the Australian legal practitioner concerned in that other jurisdiction.
- (3) If the tribunal makes an order recommending that the name of an Australian legal practitioner be removed from the local roll, the Brisbane registrar must remove, or arrange with another registrar for the removal of, the name from the local roll.

## **286 Costs**

- (1) A disciplinary body must make an order requiring a person whom it has found guilty to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.
- (2) A disciplinary body may make an order requiring a person whom it has not found guilty to pay costs, including costs of the commissioner and the complainant, if the disciplinary body is satisfied that—
  - (a) the sole or principal reason why the proceeding was started in the disciplinary body was the person's failure

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<sup>107</sup> Section 280 (Decisions of tribunal about an Australian legal practitioner), 282 (Decisions of committee about discipline application) or 284 (Interlocutory and interim orders)

- to cooperate with the commissioner or a relevant regulatory authority; or
- (b) there is some other reason warranting the making of an order in the particular circumstances.
- (3) Without limiting subsection (2), a disciplinary body that makes an order under section 284 may make a further order requiring an Australian legal practitioner, in relation to whom the order under section 284 relates, to pay costs in relation to the order.
- (4) A disciplinary body may make an order requiring the commissioner to pay costs, but may do so only if it is satisfied that—
- (a) the Australian legal practitioner or law practice employee is not guilty; and
- (b) the body considers that special circumstances warrant the making of the order.
- (5) An order for costs—
- (a) may be for a stated amount; or
- (b) may be for an unstated amount but must specify the basis on which the amount must be decided.
- (6) An order for costs may specify the terms on which costs must be paid.
- (7) In this section—

*guilty* means guilty of unsatisfactory professional conduct or professional misconduct, or of misconduct in relation to a relevant practice, as mentioned in section 280(1) or 282(1).<sup>108</sup>

## **287 Other remedies not affected**

- (1) This part does not affect any other remedy available to a complainant.
- (2) Also, the findings or an order of a disciplinary body are not binding on a court or decision-making entity in any other

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<sup>108</sup> Section 280 (Decisions of tribunal about an Australian legal practitioner) or 282 (Decisions of committee about discipline application)

proceeding under which the complainant is seeking the other remedy.

## **Part 6 Compensation orders**

### **Division 1 Preliminary**

#### **288 Meaning of *compensation order***

A *compensation order* is 1 or more of the following—

- (a) an order that a law practice can not recover or must repay all or a stated part of the amount that the law practice charged a complainant for stated legal services;
- (b) an order discharging a lien possessed by a law practice in relation to a stated document or class of documents;
- (c) an order that a law practice carry out stated work for a stated person without a fee or for a stated fee;
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss because of conduct that has been found to be—
  - (i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or
  - (ii) misconduct of a law practice employee in relation to the relevant practice.

### **Division 2 Compensation orders**

#### **289 Compensation order relating to pecuniary loss**

- (1) Unless the parties agree, a compensation order that is the type of order mentioned in section 288(d) must not be made unless the disciplinary body making the order is satisfied—



- (a) if there is a complainant in relation to the discipline application—that the complainant has suffered pecuniary loss because of the conduct concerned; and
  - (b) that it is in the interests of justice that an order of that type be made.
- (2) Also, a compensation order of the type mentioned in section 288(d) for a pecuniary loss for which the relevant complainant has received or is entitled to receive either of the following must not be made—
- (a) compensation under an order that has been made by a court;
  - (b) compensation from the fidelity fund, or a fund of another jurisdiction under a corresponding law of that jurisdiction, if a claim for payment from the fidelity fund or other fund has been made or decided.

## **290 Effect of compensation order**

- (1) A compensation order preventing recovery of an amount of the type mentioned in section 288(a) is effective even if a proceeding to recover the amount, or any part of it, has been started by or for the law practice.
- (2) A compensation order requiring repayment of an amount of the type mentioned in section 288(a) is effective even if a court has ordered payment of the amount, or an amount of which it is part, in a proceeding brought by or for the law practice.
- (3) A compensation order requiring payment of an amount more than \$7 500 by way of monetary compensation of the type mentioned in section 288(d) must not be made unless the complainant and the law practice both consent to the order.

## **291 Other remedies not affected**

The recovery of an amount awarded by a compensation order does not affect any other remedy available to a complainant, but an amount so awarded must be taken into account in another proceeding by or for the complainant in relation to the same loss.

## **Part 7**

# **Appeals from decisions of disciplinary bodies**

### **292 Appeal may be made to Court of Appeal from tribunal's decision**

- (1) The following may appeal a decision of the tribunal to the Court of Appeal—
  - (a) a party dissatisfied with the tribunal's decision;
  - (b) the Minister.
- (2) The appeal is by way of a rehearing on the evidence given in the matter before the tribunal.
- (3) However, subsection (2) does not prevent the Court of Appeal from giving leave to introduce further evidence, whether fresh, additional or substituted, if the court considers the further evidence may be material to the appeal.
- (4) The appeal must be made—
  - (a) if the appeal is being made by the Minister—within 28 days after a copy of the tribunal's order is given to the Minister; or
  - (b) otherwise—within 28 days after the tribunal's order is made.

### **293 Appeal to tribunal against committee's decision**

- (1) A party dissatisfied with a final decision of the committee about a discipline application may appeal to the tribunal against the decision within 28 days after the day the information notice mentioned in section 283(2)<sup>109</sup> is given to the party.
- (2) If a party appeals to the tribunal against the decision of the committee, the appeal is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the committee may be given on the appeal.

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109 Section 283 (Orders to be filed in Supreme Court and information notices to be given to parties etc.)

- (3) On an appeal under this section, the tribunal may make an order as it considers appropriate to decide the discipline application.

**294 Appeal to Court of Appeal in relation to a decision of committee**

- (1) This section applies to a decision of the committee that, under section 283(4), has become an order of the Supreme Court.
- (2) A person may, with the leave of the Court of Appeal, appeal against the order by appealing to that court.
- (3) The appeal is by way of a rehearing on the evidence given in the matter before the committee.
- (4) However, subsection (3) does not prevent the Court of Appeal from giving leave to introduce further evidence, whether fresh, additional or substituted, if the court considers the further evidence may be material to the appeal.

## **Part 8 Publication of disciplinary actions**

**295 Definition for ch 3, pt 8**

In this part—

*disciplinary action* means—

- (a) the making of an order by a court or the tribunal that finds an Australian legal practitioner guilty of professional misconduct under this Act or under a corresponding law; or
- (b) any of the following actions under this Act or under a corresponding law, following a finding by a court or the tribunal of professional misconduct by an Australian legal practitioner—
  - (i) the removal of the practitioner's name from a local roll or interstate roll;

- (ii) the cancellation or suspension of the practising certificate of the practitioner;
  - (iii) the refusal to issue a practising certificate to the practitioner;
  - (iv) the appointment of a manager or a receiver for the law practice concerned; or
- (c) the making of an order by the committee under section 282(4).<sup>110</sup>

## **296 Discipline register**

- (1) The commissioner must keep a register (the *discipline register*) about the following—
- (a) disciplinary action taken under this Act against an Australian legal practitioner or in relation to a law practice employee;
  - (b) disciplinary action taken under a corresponding law against an Australian legal practitioner who is or was admitted under this Act as a legal practitioner or practising in this jurisdiction, when the conduct that is the subject of the disciplinary action happened.
- (2) The discipline register must include—
- (a) the full name of the person against whom the disciplinary action was taken and the law practice who employs or employed the person; and
  - (b) the person's business address or former business address; and
  - (c) for an Australian legal practitioner—the practitioner's home jurisdiction; and
  - (d) particulars of the disciplinary action taken; and
  - (e) other particulars prescribed under a regulation.
- (3) The discipline register may—

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110 Section 282 (Decisions of committee about discipline application)

- (a) be kept in a form decided by the commissioner, including forming part of other registers; and
  - (b) include other information, including, for example, the date and jurisdiction of the person's first admission to the legal profession.
- (4) The discipline register must be available for public inspection on—
- (a) the Internet site of the commissioner; or
  - (b) an Internet site identified on the Internet site of the commissioner.
- (5) Information recorded in the discipline register may be given to members of the public in another way approved by the commissioner.
- (6) The commissioner may cause any error in or omission from the discipline register to be corrected.
- (7) The requirement to keep the discipline 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.

## **297 Other means of publicising disciplinary action**

- (1) The commissioner may publicise disciplinary action taken against a person in any way the commissioner considers appropriate.
- (2) Nothing in this section affects the provisions of this part relating to the discipline register.

## **298 Disciplinary action taken because of infirmity, injury or illness**

- (1) Disciplinary action taken against a person because of infirmity, injury or mental or physical illness is not to be recorded in the discipline register or otherwise publicised under this part.
- (2) Subsection (1) does not apply if the disciplinary action involves—

- (a) the cancellation or suspension of the person's practising certificate; or
- (b) a refusal to issue a practising certificate to the person or to renew the person's practising certificate; or
- (c) a regulation of the person's right to engage in legal practice;

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

### **299 Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the discipline register.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the commissioner under section 297, the result of the appeal or review must be publicised in the same way by the commissioner.

### **300 Liability for publicising disciplinary action**

- (1) No liability is incurred by a protected person in relation to anything done or omitted to be done in good faith for the purpose of—
  - (a) publicising disciplinary action taken against a person or relating to a law practice; or
  - (b) performing the functions or exercising the powers of the commissioner under this part; or
  - (c) keeping, publishing or enabling access to the discipline register.
- (2) Without limiting subsection (1), no liability, including liability in defamation, is incurred by a protected person publishing in good faith—
  - (a) information about disciplinary action—

- (i) recorded in the discipline register; or
  - (ii) otherwise publicised by the commissioner under this part; or
  - (b) matter containing that information; or
  - (c) a fair report or summary of that information.
- (3) In this section—
- protected person*** means—
- (a) the State; or
  - (b) the commissioner; or
  - (c) a regulatory authority; or
  - (d) a person responsible for keeping a record about disciplinary action, or information about disciplinary action, under a corresponding law; or
  - (e) an Internet service provider or Internet content host; or
  - (f) a person acting at the direction of the State or any person or body mentioned in paragraphs (b) to (d).

### **301 General provisions about disclosure of information**

- (1) The provisions of this part are subject to any order made by any of the following if the order regulates the disclosure of information—
- (a) a disciplinary body in relation to disciplinary action taken under this part;
  - (b) a corresponding tribunal in relation to disciplinary action taken under a corresponding law;
  - (c) a court of this or another jurisdiction.
- (2) However, despite the order mentioned in subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken and the law practice who employs or employed the person, and the kind of disciplinary action taken—
- (a) must be recorded in the discipline register; and

- (b) may be otherwise publicised under this part.
- (3) Section 592<sup>111</sup> is subject to this part.

## **Part 9 Inter-jurisdictional provisions**

### **302 Protocols**

- (1) The commissioner may enter into arrangements (*cross-border protocols*) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than 1 jurisdiction.
- (2) In particular, a cross-border protocol may provide for—
  - (a) principles to help in deciding where conduct happens, either generally or in stated classes of cases; and
  - (b) giving and receiving consent for conduct happening in a jurisdiction to be dealt with under a law of another jurisdiction; and
  - (c) procedures to be adopted for requesting and conducting the investigation of an aspect of complaints or investigation matters under this part.

### **303 Request to another jurisdiction to investigate complaint or investigation matter**

- (1) The commissioner may request a corresponding authority to arrange for the investigation of an aspect of a complaint or an investigation matter that is being dealt with by the commissioner and to give the commissioner 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;

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111 Section 592 (Offence of improper disclosure of information)



may be used and considered by the commissioner and a disciplinary body in the course of dealing with the discipline application under this chapter.

### **304 Request from another jurisdiction to investigate complaint**

- (1) This section applies in relation to a request received by the commissioner from a corresponding authority to arrange for the investigation of an aspect of a complaint under a corresponding law being dealt with under that law.
- (2) The commissioner may conduct the investigation or authorise another entity to conduct it.
- (3) The provisions of this chapter relating to the investigation of a complaint or investigation matter apply, with any necessary changes, in relation to the investigation that is the subject of the request.
- (4) The commissioner must give a report on the result of the investigation to the corresponding authority.
- (5) In this section—

*complaint under a corresponding law* means a matter (however described) under a corresponding law that corresponds to a complaint or investigation matter.

### **305 Sharing of information with corresponding authorities**

- (1) The commissioner may give information to a corresponding authority about—
  - (a) a complaint or investigation matter made under this chapter; and
  - (b) any action taken in relation to a complaint or investigation matter made under this chapter, including a decision of a disciplinary body in relation to a discipline application.
- (2) However, the commissioner must enter into an arrangement with the corresponding authority before providing information to the corresponding authority.
- (3) The arrangement must include the following—

- (a) the purposes for which the corresponding authority is given the information;
- (b) how the corresponding authority will protect the privacy of the information.

### **306 Cooperation with corresponding authorities**

- (1) When dealing with a complaint or investigation matter relating to an Australian legal practitioner or law practice, the commissioner may consult and cooperate with another person or body who or which has powers under the corresponding law of another jurisdiction in relation to the practitioner or law practice.
- (2) For subsection (1), the commissioner and the other person or body may exchange information concerning the complaint or investigation matter.

### **307 Compliance with orders made under corresponding laws**

- (1) Entities having relevant functions or powers under this Act must—
  - (a) give effect to any order of a corresponding tribunal or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
  - (b) enforce any order of a corresponding tribunal or other corresponding authority made under a corresponding law so far as the order relates to the legal practice in this jurisdiction of the Australian legal practitioner or law practice concerned.
- (2) If a corresponding tribunal makes an order recommending that the name of a person be removed from the roll of this jurisdiction or of rolls of other jurisdictions, the Brisbane registrar must remove, or arrange with another registrar for the removal of, the name from the local roll.
- (3) If a corresponding tribunal makes an order that a local Australian legal practitioner pay a penalty, or pay an amount under a compensation order under a corresponding law, a

copy of the order may be filed in the Supreme Court and the order may be enforced as if it were an order of the court.

### **308 Other powers or functions not affected**

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

## **Part 10 Miscellaneous**

### **309 Information about complaints procedure**

The commissioner must—

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

### **310 Performance criteria**

- (1) The commissioner must develop performance criteria relating to the handling of complaints under this chapter.
- (2) The commissioner must include the relevant criteria in the commissioner's annual report under this Act, together with an assessment of the commissioner's performance against the criteria in the period to which the report relates.

### **311 Annual and other reports to the Minister**

- (1) By 31 October after the end of each financial year, the commissioner must give to the Minister a report for the immediately preceding financial year.
- (2) The report must deal with the system established under this Act for dealing with complaints.

- (3) Also the Minister may, by written notice, ask the commissioner to provide a report at any time for a period stated in the Minister's request about the system or about an aspect of the system stated in the notice.
- (4) If the Minister makes a request under subsection (3), the commissioner must comply with the request and give the relevant report to the Minister by the date stated in the notice.
- (5) The commissioner may include other matters the commissioner considers appropriate in a report under this section, including, for example, recommendations about the system.
- (6) The Minister must table in the Legislative Assembly a report given to the Minister under subsection (1), within 14 days after receiving the report.

### **312 Confidentiality of client communications**

- (1) An Australian legal practitioner must comply with a requirement under this chapter, or chapter 6, part 2,<sup>112</sup> to answer a question or to produce information or a document, despite any duty of confidentiality about a communication between the legal practitioner and a client, but only if the client is the complainant or consents to its disclosure.
- (2) A provision of an agreement with a client in settlement of a matter that involves conduct that may be the subject of a complaint under this chapter is not enforceable to prevent the client disclosing, or consenting to the disclosure of, information for an investigation of the complaint, whether or not the complaint has been withdrawn, or an investigation matter.
- (3) It is a reasonable excuse for the Australian legal practitioner not to comply with a requirement mentioned in subsection (1) if complying with the requirement might tend to incriminate the practitioner.

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112 Chapter 6 (Establishment of entities for this Act, and related matters), part 2 (Disciplinary tribunal)

**313 Waiver of legal professional privilege or benefit of duty of confidentiality**

- (1) This section applies if a person signs a document waiving the person's legal professional privilege, or the benefit of a duty of confidentiality, about a matter (the *waived matter*) the subject of a complaint or an investigation matter.
- (2) An Australian legal practitioner can not refuse to disclose to the commissioner or relevant regulatory authority any information about the waived matter on the grounds of legal professional privilege or the duty of confidentiality.
- (3) However, the Australian legal practitioner may refuse to disclose the information on the grounds that it might tend to incriminate the practitioner.

## **Chapter 4 External intervention**

### **Part 1 Preliminary**

**314 Main purposes of ch 4**

- (1) The main purposes of this chapter are as follows—
  - (a) to ensure that an appropriate range of options is available for intervention in the business and professional affairs of lawyers, including foreign lawyers, for the purpose of protecting—
    - (i) the interests of the general public; and
    - (ii) the interests of clients; and
    - (iii) the interests of lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients;
  - (b) to ensure that interventions happen in a way that minimises adverse consequences for the lawyers concerned and their clients.

- (2) It is intended that interventions happen consistently with—
- (a) similar interventions in other jurisdictions, especially where a law practice operates in this jurisdiction and 1 or more other jurisdictions; and
  - (b) chapter 2, part 5.<sup>113</sup>

*Note—*

This chapter—

- (a) applies to all law practices, regardless of whether they are incorporated under the Corporations Act; and
- (b) is intended to apply so that it, rather than the Corporations Act or the *Bankruptcy Act 1966* (Cwlth), applies in relation to the winding up of trust property and the carrying on of a law practice.

### 315 Definitions for ch 4

In this chapter—

***external intervener for a law practice*** means a person appointed as any of the following under this chapter—

- (a) a supervisor of trust money received by a law practice;
- (b) a manager for a law practice;
- (c) a receiver for a law practice.

***external intervention*** means the appointment of, and the exercise of the functions and powers of, a supervisor of trust money received by a law practice, or a manager or receiver for a law practice, under this chapter.

***regulated property***, of a law practice, means the following—

- (a) trust money received, receivable or held by, or under the control of, the practice;
- (b) other property received or receivable for another person by the practice in providing legal services;
- (c) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a) or (b);

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<sup>113</sup> Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 5 (Legal practice by incorporated legal practices)

- (d) documents or records of any description relating to anything mentioned in paragraph (a), (b) or (c);
- (e) any means by which any records that are mentioned in paragraph (d) and not written may be reproduced in writing.

### **316 Application of ch 4**

- (1) This chapter does not apply to the holder of a current local practising certificate granted or renewed by the bar association.
- (2) A regulation may provide whether or not, and if so to what extent, this chapter applies to an interstate legal practitioner.
- (3) Also this chapter applies, with any necessary changes, to an Australian-registered foreign lawyer in the same way as it applies to a law practice.

### **317 Application of chapter to other persons**

This chapter applies, with any necessary changes, to each of the following in the same way as it applies to a law practice—

- (a) a former law practice or former Australian legal practitioner;
- (b) the executor, original or by representation, or administrator for the time being relating to a deceased Australian legal practitioner or of his or her estate;
- (c) the administrator, receiver or receiver and manager, of the property of an incorporated legal practice;
- (d) the liquidator of an incorporated legal practice that is being or has been wound up.

## Part 2 Starting external interventions

### 318 Circumstances warranting external intervention

External intervention in relation to a law practice may take place in any of the following circumstances—

- (a) if a legal practitioner associate involved in the practice has died, ceases to be an Australian legal practitioner, has become an insolvent under administration or is in prison;
- (b) if the partnership that constitutes a law firm has been wound up or dissolved;
- (c) if an incorporated legal practice—
  - (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) if the law society believes that the practice—
  - (i) is not dealing adequately with trust money or is not properly attending to the affairs of the practice; or
  - (ii) has committed a serious irregularity, or a serious irregularity has happened, in relation to trust money or the affairs of the practice; or
  - (iii) has failed properly to account in a timely way to any person for trust money received by the practice for that person; or
  - (iv) has failed properly to make a payment of trust money when required to do so by a person entitled to that money or entitled to give a direction for payment; or
  - (v) is in breach of a regulation with the result that the record-keeping for the practice's trust account is inadequate; or
  - (vi) has been or is likely to be convicted of an offence relating to trust money; or



- (vii) is the subject of a complaint relating to trust money received by the practice; or
  - (viii) has failed to comply with any requirement of an investigator, an ILP investigator or an external examiner, under a relevant law; or
  - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money received by the practice or for properly winding up the affairs of the practice;
- (e) if the law society believes proper cause exists in relation to the practice that warrants external intervention other than a cause mentioned in paragraphs (a) to (d).

### **319 Decision regarding external intervention**

- (1) This section applies if the law society becomes aware that 1 or more of the circumstances mentioned in section 318 exist in relation to a law practice and decides that, having regard to the interests of the clients, owners and employees of the practice and to other matters that it considers appropriate, external intervention is warranted.
- (2) The law society may—
- (a) appoint a supervisor of trust money received by the law practice, if the law society considers—
    - (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) appoint a manager for the law practice, if the law society considers—
    - (i) that the practice is or may be a viable business concern; and
    - (ii) that, for this to happen, there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

- (c) appoint a receiver for the law practice, if the law society considers—
  - (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 law society may make further appointments under subsection (2) in relation to the law practice and for that purpose may revoke a previous appointment with effect from a date or event specified by it.
- (4) A further appointment may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original appointment was made and whether or not any further circumstances have come into existence in relation to the law practice after the original appointment was made.
- (5) An appointment of an external intervener for a law practice may be made in relation to the practice generally or may be limited in any way the law society considers appropriate, including, for example, to matters connected with a particular legal practitioner associate, legal office or subject-matter.

## **Part 3                      Supervisors**

### **320      Appointment of supervisor**

- (1) This section applies if the law society decides to appoint a supervisor of trust money received by a law practice.
- (2) The law society must, in a law society approved form, appoint a person as the supervisor who is—
  - (a) an Australian legal practitioner; or
  - (b) a person holding accounting qualifications with experience in trust accounts of law practices.

- (3) The supervisor may, but need not, be an employee of the law society.
- (4) The instrument of appointment must—
  - (a) identify the law practice and the supervisor; and
  - (b) indicate that the external intervention is by way of appointment of a supervisor; and
  - (c) specify the term of the appointment; and
  - (d) specify any conditions imposed by the law society at the time of making the appointment; and
  - (e) specify reporting requirements, if any, to be observed by the supervisor.
- (5) However, before appointing someone as the supervisor of trust money received by a law practice, the law society must enter into an agreement with that person about the following—
  - (a) the fees payable by way of remuneration to the person for carrying out duties as the supervisor in relation to the external intervention;
  - (b) the legal costs and expenses that may be incurred by the person as the supervisor in relation to the external intervention.

### **321 Notice of appointment**

After appointing a person as the supervisor of trust money received by a law practice, the law society must give a copy of the notice of appointment of the supervisor to each of the following—

- (a) the practice;
- (b) another person authorised to operate a trust account of the practice;
- (c) any external examiner appointed under a relevant law to examine the practice's trust records;
- (d) each financial institution with which a trust account of the practice is kept;

- (e) a person whom the law society believes should be given a copy of the notice.

### **322 Effect of service of notice of appointment**

- (1) After a financial institution is given a copy of the notice of appointment of the supervisor and until the appointment is terminated, the financial institution must ensure that no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made—
  - (a) by cheque or other instrument drawn on that account signed by the supervisor; or
  - (b) by the supervisor by means of electronic or Internet banking facilities; or
  - (c) under an authority to withdraw or transfer funds from the account signed by the supervisor.
- (2) After a person, other than the supervisor or a financial institution, is given a copy of the notice of appointment of the supervisor 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.

Maximum penalty—100 penalty units.

- (3) The supervisor may, for subsection (1)(b), enter into arrangements with a financial institution for withdrawing money from a trust account of the law practice by means of electronic or Internet banking facilities.
- (4) If an amount is withdrawn or transferred in contravention of subsection (1), that amount may be recovered from the financial institution concerned by the supervisor as a debt and, if recovered, must be paid into a trust account of the law practice.

**323 Role of supervisor**

- (1) The supervisor of trust money received by a law practice has the powers and duties of the practice in relation to the trust money, including powers—
  - (a) to receive trust money on behalf of the practice; and
  - (b) to open and close trust accounts.
- (2) For performing the functions of a supervisor, the supervisor may do any or all of the following—
  - (a) enter and remain on premises used by the law practice in connection with its engaging in legal practice;
  - (b) require the practice or an associate or former associate of the practice, or another person having control of documents relating to trust money received by the practice, to give the supervisor—
    - (i) access to the documents that the supervisor reasonably requires; and
    - (ii) information relating to the trust money that the supervisor reasonably requires;
  - (c) operate equipment or facilities on the premises, or require a person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;
  - (d) take possession of any relevant material and retain it for as long as may be necessary;
  - (e) secure any relevant material found on the premises against interference, if the material can not be conveniently removed;
  - (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt, in a law society approved form, and—
  - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give the receipt to the occupier or person; or

- (b) otherwise—leave the receipt 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.
- (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.
- (7) For this section, the supervisor is declared to be a public official for the *Police Powers and Responsibilities Act 2000*.

*Note—*

The *Police Powers and Responsibilities Act 2000*, section 14(3) states—  
If a public official asks, a police officer may help the public official perform the public official's functions under the authorising law.

### **324 Records of law practice under supervision**

- (1) The supervisor of trust money received by a law practice must keep records of the supervisor's dealings with the trust money.
- (2) The records kept under subsection (1) must be kept—
  - (a) separately from records relating to dealings with trust money before the supervisor's appointment; and
  - (b) separately from the affairs of another law practice in relation to which the supervisor is also a supervisor; and
  - (c) in the way prescribed under a regulation.

### **325 Termination of supervisor's appointment**

- (1) The appointment of a supervisor of trust money received by a law practice terminates in the following circumstances—
  - (a) the term of the appointment comes to an end;
  - (b) the appointment of a manager for the practice takes effect;

- (c) the appointment of a receiver for the practice takes effect;
  - (d) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
  - (e) a termination of the appointment by the law society takes effect.
- (2) The law society may, by written notice to the supervisor, terminate the supervisor's appointment on or after a day stated in the notice.
- (3) The law society must give a copy of the notice under subsection (2) to the persons originally given a copy of the notice of appointment.

## **Part 4                      Managers**

### **326      Appointment of manager**

- (1) This section applies if the law society decides to appoint a manager for a law practice.
- (2) The law society must, in a law society approved form, appoint a person as the manager who is an Australian legal practitioner holding an unrestricted practising certificate.
- (3) The manager may, but need not, be an employee of the law society.
- (4) The instrument of appointment must—
- (a) identify the law practice and the manager; and
  - (b) indicate that the external intervention is by way of appointment of a manager for the law practice; and
  - (c) specify the term of the appointment; and
  - (d) specify any conditions imposed by the law society when the appointment is made; and
  - (e) specify reporting requirements, if any, to be observed by the manager.

- (5) However, before appointing someone as the manager of a law practice, the law society must enter into an agreement with that person about the following—
- (a) the fees payable by way of remuneration to the person for carrying out duties as the manager for the external intervention;
  - (b) the legal costs and expenses that may be incurred by the person as the manager for the external intervention.

### **327 Notice of appointment**

After appointing a person as the manager for a law practice, the law society must give a copy of the notice of appointment of the manager to each of the following—

- (a) the practice;
- (b) another person authorised to operate any trust account of the practice;
- (c) any external examiner appointed by the practice under a relevant law to examine the practice's trust records;
- (d) each financial institution with which any trust account of the practice is kept;
- (e) another person whom the law society believes should be given a copy of the notice.

### **328 Effect of service of notice of appointment**

- (1) After a law practice is given a notice of appointment of the manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or mentioned in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

Maximum penalty—100 penalty units.

- (2) After a financial institution is given a notice of appointment of the manager for the law practice and until the appointment is terminated, the financial institution must ensure that no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made—



- (a) by cheque or other instrument drawn on that account signed by the manager, or by a receiver appointed for the practice; or
  - (b) by the manager, or by a receiver appointed for the practice, by means of electronic or Internet banking facilities; or
  - (c) under an authority to withdraw or transfer funds from the account signed by the manager, or by a receiver appointed for the practice.
- (3) After a person is given a notice of appointment of the manager for the 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.

Maximum penalty—100 penalty units.

- (4) Subsection (3) does not apply to a legal practitioner associate mentioned in subsection (1), a financial institution or the manager or receiver for the practice.
- (5) The manager may, for subsection (2)(b), enter into arrangements with a financial institution for withdrawing money from a trust account of the law practice by means of electronic or Internet banking facilities.
- (6) If an amount is withdrawn or transferred in contravention of subsection (2), that amount may be recovered from the financial institution concerned by the manager, or a receiver for the law practice, as a debt and, if recovered, must be paid into a trust account of the law practice.

### **329 Role of manager**

- (1) The 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—

*Legal Profession Act 2004*

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- (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) starting, continuing, defending or settling any proceeding; and
    - (ii) receiving, retaining and disposing of property;
  - (c) accepting instructions from new clients and transacting any business on their behalf, including—
    - (i) starting, continuing, defending or settling any proceeding; and
    - (ii) receiving, retaining and disposing of regulated property of the law practice;
  - (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;
  - (e) entering into, executing or performing any agreement;
  - (f) dealing with trust money under this Act;
  - (g) winding up the affairs of the practice.
- (2) For performing the functions of the manager for the law practice, the manager may do any or all of the following—
- (a) enter and remain on premises used by the law practice in connection with its engaging in legal practice;
  - (b) require the practice or an associate or former associate of the practice, or another person having control of client files and associated documents, including documents relating to trust money received by the practice, to give the manager—
    - (i) access to the documents that the manager reasonably requires; and
    - (ii) information relating to client matters that the manager reasonably requires;
  - (c) operate equipment or facilities on the premises, or require a person on the premises to operate equipment

- or facilities on the premises, for a purpose relevant to the manager's appointment;
- (d) take possession of any relevant material and retain it for as long as may be necessary;
  - (e) secure any relevant material found on the premises against interference, if the material can not be conveniently removed;
  - (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.
- (3) If the manager takes something from the premises, the manager must issue a receipt, in a law society approved form, and—
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give the receipt to the occupier or person; or
  - (b) otherwise—leave the receipt 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.
- (5) For this section, the manager is declared to be a public official for the *Police Powers and Responsibilities Act 2000*.

### **330 Records and accounts of law practice under management**

- (1) The manager for a law practice must keep records and accounts relating to the management of the practice.
- (2) The records must be kept—
  - (a) separately from the management of the affairs of the law practice before the manager's appointment; and
  - (b) separately from the affairs of another law practice that the manager is managing; and
  - (c) in the way prescribed under a regulation.

**331 Deceased estates**

- (1) It is the duty of the manager for a law practice to cooperate with the legal personal representative relating to a deceased legal practitioner associate of the practice for the orderly winding up of the estate.
- (2) The manager is not, in the performance of functions or the exercise of powers as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from performing functions or exercising powers 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, functions and powers are not affected by the death.

**332 Termination of manager's appointment**

- (1) The appointment of a manager for a law practice terminates in the following circumstances—
  - (a) the term of the appointment comes to an end;
  - (b) the appointment of a receiver for the practice takes effect, if the terms of the receiver's appointment indicate that the receiver is authorised to exercise the functions and powers of a manager;
  - (c) the manager has wound up the affairs of the practice;
  - (d) a termination of the appointment by the law society takes effect.
- (2) The law society may, by written notice to the manager, terminate the manager's appointment on or after a day stated in the notice.
- (3) In the circumstances mentioned in subsection (1)(a), (b) and (d), the former manager must, after the termination, transfer and deliver the regulated property and client files of the law practice to—

- (a) if there is another external intervener for the law practice—the other external intervener; or
  - (b) otherwise—the practice.
- (4) However, the former manager need not transfer the regulated property and client files of the law practice under subsection (3) unless the manager's expenses for the external intervention have been paid by the law society.
- (5) The law society must give a copy of the notice under subsection (2) to the persons originally given a copy of the notice of appointment.

## **Part 5                      Receivers**

### **333      Appointment of receiver**

- (1) This section applies if the law society decides to appoint a receiver for a law practice.
- (2) The law society must, in the law society approved form, appoint a person as receiver who is—
- (a) an Australian legal practitioner; or
  - (b) a person holding accounting qualifications with experience in the trust accounts of law practices.
- (3) The receiver may, but need not, be an employee of the law society.
- (4) The instrument of appointment must—
- (a) identify the law practice and the receiver; and
  - (b) indicate that the external intervention is by way of appointment of a receiver; and
  - (c) specify any conditions imposed by the law society when the appointment is made; and
  - (d) specify reporting requirements, if any, to be observed by the receiver.

- (5) However, before appointing someone as the receiver of a law practice, the law society must enter into an agreement with that person about the following—
- (a) the fees payable by way of remuneration to the person for carrying out duties as the receiver for the external intervention;
  - (b) the legal costs and expenses that may be incurred by the person as the receiver for the external intervention.

### **334 Notice of appointment**

After appointing a receiver for a law practice, the law society must give a copy of the notice of appointment to each of the following—

- (a) the practice;
- (b) any person authorised to operate a trust account of the practice;
- (c) any external examiner appointed to examine the practice's trust records;
- (d) each financial institution with which a trust account of the practice is kept;
- (e) a person whom the law society believes should be given a copy of the notice.

### **335 Effect of service of notice of appointment**

- (1) After a law practice is given a copy of the notice of appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or mentioned in the notice must not participate in the affairs of the practice.

Maximum penalty—100 penalty units.

- (2) After a financial institution is given a copy of the notice of appointment of the receiver for the law practice and until the appointment is terminated, the financial institution must ensure that no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made—

- (a) by cheque or other instrument drawn on that account signed by the receiver, or by a manager appointed for the practice; or
  - (b) by the receiver, or by a manager appointed for the practice, by means of electronic or Internet banking facilities; or
  - (c) under an authority to withdraw or transfer funds from the account signed by the receiver, or by a manager appointed for the practice.
- (3) After a person is given a copy of the notice of appointment of the receiver for the law practice, other than a financial institution or a receiver or manager for the 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.

Maximum penalty—100 penalty units.

- (4) The receiver may, for subsection (2)(b), enter into arrangements with a financial institution for withdrawing money from a trust account of the law practice by means of electronic or Internet banking facilities.
- (5) If an amount is withdrawn or transferred in contravention of subsection (2), that amount may be recovered from the financial institution concerned by the receiver, or a manager for the practice, as a debt and, if recovered, is to be paid into a trust account of the law practice.

### **336 Role of receiver**

- (1) The role of a receiver for a law practice is—
- (a) to be the receiver of regulated property of the law 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 law society may, in a law society approved form, 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 1 or more Australian legal practitioners who hold unrestricted practising certificates, specified in the approved form, to carry on the legal practice on behalf of the receiver.
- (3) Subject to a direction given by the law society and stated in the approved form, the person authorised to carry on a legal practice has all the powers of a manager under this chapter and is taken to have been appointed as the manager for the law practice.
- (4) The law society may, by written notice to the receiver, terminate an authorisation to carry on a legal practice granted under this section.

### **337 Records and accounts of law practice under receivership**

- (1) The receiver for a law practice must keep records and accounts relating to the management of the practice.
- (2) The records must be kept—
  - (a) separately from the management of the affairs of the practice before the appointment of the receiver; and
  - (b) separately from the affairs of another law practice that the receiver is managing; and
  - (c) in a way prescribed under a regulation.

### **338 Power of receiver to take possession of regulated property**

- (1) The receiver for a law practice may take possession of regulated property of the law 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 considers appropriate.
- (5) An order under subsection (4) operates to authorise the receiver, or a person authorised by the receiver, 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 return anything seized under this section if it transpires that it is not regulated property of the law practice.
- (7) For an order under subsection (4), the receiver and a person authorised by the receiver are declared to be a public officials for the *Police Powers and Responsibilities Act 2000*.

### **339 Power of receiver to take delivery of regulated property**

- (1) If the receiver for a law practice believes that another person is under an obligation, or will later be under an obligation, to deliver regulated property of the law practice to the practice, the receiver may, by written notice, 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 of the law practice to the practice, the person must deliver the property to the receiver.

Maximum penalty—100 penalty units.

- (3) A document signed by the receiver acknowledging the receipt of regulated property of the law practice delivered to the

receiver is as valid and effectual as if it had been given by the law practice.

### **340 Power of receiver to deal with regulated property**

- (1) This section applies if the receiver for a law practice acquires or takes possession of regulated property of the law practice.
- (2) The receiver may deal with the regulated property in a way in which the law practice might lawfully have dealt with the property.

### **341 Power of receiver to require documents or information**

- (1) The receiver for a law practice may require a person who is an associate or former associate of the practice, or a person having control of documents relating to the practice, to give the receiver either or both of the following—
  - (a) access to documents that the receiver reasonably requires;
  - (b) information that the receiver reasonably requires.
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) When making the requirement, the receiver must warn the person it is an offence to fail to give the information unless the person has a reasonable excuse.
- (4) It is, for example, a reasonable excuse for an individual to fail to comply with the requirement if complying with the requirement would tend to incriminate the person.

### **342 Examinations**

- (1) The Supreme Court may, on application of the receiver for a law practice or on its own initiative, make an order directing that an associate or former associate of the practice, or another person, appear before the court for examination on oath or

affirmation in relation to the regulated property of the law practice.

- (2) On an examination of a person under this section, the person must answer all questions that the court allows to be put to the person.

Maximum penalty—200 penalty units.

- (3) An individual is not excused from answering a question on the ground that the answer might tend to incriminate the person.
- (4) However if, before answering the question, the individual objects on the ground that answering may tend to incriminate the individual and that ground is established, the answer is not admissible in evidence, and derivative evidence is not admissible, against the individual in any proceeding for an offence, other than—
- (a) an offence against a relevant law; or
- (b) a proceeding for perjury.

- (5) In this section—

*derivative evidence* means any information, document or other evidence obtained as a direct or indirect result of the evidence given by an individual mentioned in subsection (4).

*proceeding for perjury* means a criminal proceeding in which the false or misleading nature of the evidence is in question.

### **343 Lien for costs on regulated property of the law practice**

- (1) This section applies if—
- (a) a receiver has been appointed for a law practice; and
- (b) a legal practitioner associate of the practice claims a lien for costs on the regulated property of the law practice.
- (2) The receiver may serve on the legal practitioner associate a written notice requiring the associate to give the receiver within a stated period of not less than 1 month—
- (a) particulars sufficient to identify the regulated property; and
- (b) a detailed bill of costs.

- (3) If the legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not start until the access is given.
- (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.

### **344 Regulated property of a law practice is not to be attached**

Regulated property of a law practice for which a receiver has been appointed, including regulated property held by the receiver, is not liable to be taken, levied on or attached under any judgment, order or process of any court or another process.

### **345 Recovery of regulated property where there has been a breach of trust etc.**

- (1) This section applies if regulated property of the law practice, including regulated property under its control, has, before or after the appointment of a receiver for the practice, been taken by, paid 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 another person any or 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 taking, payment or transfer 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

*Legal Profession Act 2004*

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- (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.
- (3) If the receiver recovers an amount mentioned in subsection (2) from the transferee, the transferee stops being liable for the amount to another person.
- (4) 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 relation to 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 amount of that money from the prospective plaintiff.
- (5) 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 any consideration provided by the debtor for the discharge.
- (6) A person authorised by the law society to do so may give a certificate in relation to all or any of the following—
  - (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 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.
- (7) If the receiver brings a proceeding under subsection (2), (4) or (5), a certificate given under subsection (6) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

### **346 Improperly destroying property etc.**

- (1) Unless a person has a reasonable excuse for doing so, the person must not conceal regulated property of a law practice—
- (a) for which a receiver has been appointed; or
  - (b) in relation to which the person ought reasonably to have known that a receiver would be appointed.

Maximum penalty—200 penalty units.

- (2) In this section—
- conceal regulated property* includes the following—
- (a) destroy regulated property;
  - (b) remove regulated property from 1 place to another;
  - (c) deliver regulated property into the possession, or place regulated property under the control, of someone else other than the receiver.

### **347 Deceased estates**

- (1) It is the duty of the receiver for a law practice to cooperate with the legal personal representative relating to a deceased legal practitioner associate of the practice for the orderly winding up of the estate.

- (2) The receiver is not, in the performance of functions or exercise of powers as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from performing functions or exercising powers 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, functions and powers are not affected by the death.

### **348 Termination of receiver's appointment**

- (1) The appointment of a receiver for a law practice terminates in the following circumstances—
  - (a) the term of the appointment, if any, comes to an end;
  - (b) a termination of the appointment by the law society takes effect.
- (2) The law society may, by written notice, terminate the receiver's appointment on or after a day stated in the notice.
- (3) After a receiver's appointment terminates, the former receiver must transfer and deliver the regulated property of the law practice to—
  - (a) another external intervener for the law practice appointed within 14 days after the day the termination takes effect; or
  - (b) the practice, if another external intervener is not appointed as mentioned in paragraph (a) and paragraph (c) does not apply; or
  - (c) another person under arrangements approved by the law society, if it is not practicable to transfer and deliver the regulated property to the practice.
- (4) However, the former receiver need not transfer and deliver regulated property of the law practice under subsection (3) unless the receiver's expenses for the external intervention have been paid by the law society.

- (5) The law society must give a copy of the notice under subsection (2) to all persons originally given a copy of the notice of appointment.

## **Part 6                      General**

### **349      Conditions on appointment of external intervener for a law practice**

- (1) The appointment of an external intervener for a law practice is subject to—
- (a) conditions imposed by the law society at the time of appointment as mentioned in sections 320, 326 and 333,<sup>114</sup> including an amendment of a condition during the appointment; and
  - (b) new conditions imposed by the law society during the appointment; and
  - (c) conditions imposed under a regulation.
- (2) In relation to the appointment of an external intervener for a law practice, the law society may do any of the following—
- (a) impose new conditions during the term of the appointment;
  - (b) revoke or vary a condition mentioned in subsection (1)(a) or imposed under subsection (1)(b).
- (3) This section is not limited by a power to appoint a person as an external intervener for a law practice under another division.
- (4) If there is any inconsistency in relation to a condition imposed at any time by the law society and a condition imposed under a regulation, the condition imposed under a regulation prevails to the extent of the inconsistency.

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114 Section 320 (Appointment of supervisor), 326 (Appointment of manager) and 333 (Appointment of receiver)



**350 Status of acts of external intervener for a law practice**

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of any proceeding, or 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.

**351 Eligibility for reappointment or authorisation**

A person who has been appointed as an external intervener for a law practice is eligible for re-appointment as an external intervener for the practice, whether the later appointment is made as the same type of external intervener for the law practice or another type.

**352 Appeal against appointment**

- (1) The following persons may appeal to the Supreme Court 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) another person whose interests may be adversely affected by the appointment.
- (2) The appeal is to be started as follows—
  - (a) if a copy of the notice of appointment is not required to be given to the person who proposes to appeal—within 7 days after a copy of the notice of appointment is given to the law practice;
  - (b) otherwise—within 7 days after a copy of the notice of appointment is given to the person who proposes to appeal.

**353 Directions of Supreme Court**

On application by any of the following, the Supreme Court may give directions about the functions and powers of an external intervener for a law practice or a matter affecting an external intervention—

- (a) an external intervener for the law practice;
- (b) a principal of the law practice;
- (c) the law society;
- (d) another person affected by the external intervention.

**354 Requirement for financial institution to disclose and permit access to accounts**

- (1) An external intervener for a law practice may require a financial institution at which the practice has or had an account to do either or both of the following—
  - (a) disclose each account of the law practice that the intervener believes may be relevant to the practice's affairs;
  - (b) permit copies to be made or extracts taken from the account.
- (2) Subsection (1) applies despite any rule of law to the contrary.

**355 Fees, legal costs and expenses**

- (1) An external intervener for a law practice is entitled to be paid all of the following under an agreement entered into with the law society about the external intervention—
  - (a) fees by way of remuneration;
  - (b) the legal costs and expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on application of the law society, be taxed or assessed.
- (3) The fees and costs are payable by and recoverable from the law practice.

- (4) Fees and costs not paid to the external intervener by the law practice are payable from the fidelity fund to the extent that the external intervention related to a default for which the fidelity fund was, or may be, liable.
- (5) The law society may recover any unpaid fees and costs from the law practice.
- (6) An amount of fees and costs paid by or recovered from the law practice after they have been paid from the fidelity fund is to be paid to the fidelity fund.

### **356 Reports by external intervener for law practice**

- (1) An external intervener for a law practice must give written reports under any reporting requirements to be observed by the external intervener under the conditions applying to the appointment.
- (2) If the appointment is not subject to specific reporting requirements, the external intervener must give written reports to the law society as follows—
  - (a) when required at any time by the law society;
  - (b) at the termination of the appointment.
- (3) Also, the external intervener must keep the law society informed of the progress of the external intervention, including by reporting to the law society about significant events happening, or a significant state of affairs existing, in connection with the intervention or other matters relating to the intervention.
- (4) Nothing in this section affects another reporting obligation that may exist in relation to the law practice concerned.
- (5) A regulation may prescribe matters to be included in a report.

### **357 Confidentiality for external intervener for law practice**

- (1) A person who is or was an external intervener for a law practice, or a person who helped the external intervener in the intervention, must not disclose information obtained as a result of the appointment or external intervention except so far as is necessary for exercising the functions or powers of a

person who is or was an external intervener for the law practice.

- (2) However, the person may disclose information to any of the following—
- (a) a court, tribunal or other person acting judicially;
  - (b) the law society or a regulatory authority of another jurisdiction;
  - (c) the commissioner;
  - (d) an officer of, or an Australian legal practitioner instructed by, any of the following in relation to a proceeding, inquiry or other matter pending or contemplated arising out of the external intervention—
    - (i) the law society or another regulatory authority of another jurisdiction;
    - (ii) the Commonwealth or a State;
    - (iii) an authority of the Commonwealth or a State;
  - (e) a member of the police service or police force of any jurisdiction if, at the time of the disclosure, the person believes 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;
  - (f) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
  - (g) a client or former client of the law practice concerned if the information relates to the client or former client;
  - (h) another external intervener for the law practice, or an Australian legal practitioner or accountant employed by that other intervener;
  - (i) an external examiner appointed under a relevant law and exercising powers in relation to the trust records of the law practice concerned.

## **Chapter 5 Practice of foreign law by foreign lawyers<sup>115</sup>**

### **Part 1 Preliminary**

#### **358 Main purpose of ch 5**

*The main purpose of this chapter is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for regulation of the practice of foreign law in this jurisdiction by foreign lawyers as a recognised aspect of legal practice in this jurisdiction.*

#### **359 Definitions for ch 5**

*In this chapter—*

***Australia** includes the external Territories.*

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

***commercial legal presence** means an interest in a law practice practising foreign law.*

***foreign law practice** means a partnership or corporate entity that is entitled to engage in legal practice in a foreign country.*

***foreign registration authority** means an entity in a foreign country having the function, conferred by the law of the foreign country, of registering persons to engage in legal practice in the foreign country.*

***local registration certificate** means a registration certificate given or issued under this chapter.*

***overseas-registered foreign lawyer** means an individual who is properly registered to engage in legal practice in a foreign country by the foreign registration authority for the country.*

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115 Chapter 5 (sections 358–411) had not commenced on or before the reprint date.

*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 under legislation for engaging in legal practice in that country.

### **360 Chapter does not apply to Australian legal practitioners**

- (1) *This chapter 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 chapter requires or enables an Australian legal practitioner, including an Australian legal practitioner who is also a government legal officer or an overseas-registered foreign lawyer, to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.*
- (3) *Although this chapter does not apply to a government legal officer engaged in government work, who is not an Australian legal practitioner, it does not prevent a government legal officer engaged in government work from registering under this chapter.*

## **Part 2 Practice of foreign law**

### **361 Requirement for registration**

- (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.*

*Maximum penalty—200 penalty units.*

- (2) *However, a person does not contravene subsection (1) if the person is a foreign lawyer—*
- (a) *who—*
    - (i) *practises foreign law in this jurisdiction for 1 or more continuous periods that is or are not more than 1 year; or*
    - (ii) *is subject to a restriction imposed under the Migration Act 1958 (Cwlth) that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and*
  - (b) *who—*
    - (i) *does not maintain an office for the purpose of practising foreign law in this jurisdiction; or*
    - (ii) *does not have a commercial legal presence in this jurisdiction.*

**362 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction**

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

**363 Scope of practice**

- (1) *An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction—*
- (a) *doing work, or transacting business, concerning the law of a foreign country if the lawyer is registered by the foreign registration authority for the country;*
  - (b) *legal services, including appearances, in relation to an arbitration proceeding of a kind prescribed under a regulation;*
  - (c) *legal services, including appearances, in relation to a proceeding before a body other than a court, being a proceeding 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 mentioned in paragraph (a) is essential;*

- (d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed under a regulation.*
- (2) Nothing in this chapter 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.*

### **364 Form of practice**

- (1) An Australian-registered foreign lawyer may, subject to any conditions attaching to the foreign lawyer's registration, practise foreign law—*
  - (a) on the foreign lawyer's own account; or*
  - (b) in partnership with 1 or more Australian-registered foreign lawyers or 1 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 member 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 mentioned in subsection (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.*

**365 Application of Australian professional ethical and practice standards**

- (1) *An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, constitute professional misconduct or unsatisfactory professional conduct.*
- (2) *Chapter 3<sup>116</sup> 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 happened, but is no longer an Australian-registered foreign lawyer (in which case chapter 3 applies as if the person were an Australian-registered foreign lawyer);*

*and so applies as if references in chapter 3 to an Australian legal practitioner were references to a person of that kind.*
- (3) *A regulation may make provision in relation to the application, with or without changes, of the provisions of chapter 3 for the purposes of this section.*
- (4) *Without limiting the matters that may be taken into account in deciding whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account—*
  - (a) *whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;*

- (b) *whether the person contravened the subsection wilfully or without reasonable excuse.*
- (5) *Without limiting another provision of this section or the orders that may be made under chapter 3 as applied by this section, the following orders may be made under that chapter as applied by this section—*
- (a) *an order that a person’s registration under this Act as a foreign lawyer be cancelled;*
- (b) *an order that a person’s registration under a corresponding law as a foreign lawyer be cancelled.*

### **366 Designation**

- (1) *An Australian-registered foreign lawyer may use only the following designations—*
- (a) *the lawyer’s own name;*
- (b) *a title or business name that 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 1 or more Australian-registered foreign lawyers and 1 or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers.*
- Examples for paragraph (d)—*
- *solicitors and locally-registered foreign lawyers*
  - *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 another document used in this jurisdiction to identify the*

*lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and*

- (b) the lawyer has provided the law society with acceptable evidence that the lawyer is a principal of the foreign law practice.*
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as mentioned 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.*

### **367 Letterhead and other identifying documents**

- (1) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.*
- (2) Subsection (1) is satisfied if the lawyer includes in the public document the words—*
  - (a) 'registered foreign lawyer' or 'registered foreign practitioner'; and*
  - (b) 'entitled to practise foreign law only'.*
- (3) An Australian-registered foreign lawyer may, but need not, include any or all of the following on any public document—*
  - (a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;*
  - (b) a description of himself or herself, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in section 366.*
- (4) In this section—*

*public document* includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

### **368 Advertising**

- (1) *An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the law society or by law on the practice of law by an Australian legal practitioner that are relevant to the practice of law in this jurisdiction.*
- (2) *Without limiting subsection (1), an Australian-registered foreign lawyer must not advertise, or use any description on the lawyer's letterhead or another 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 a regulation.*

### **369 Foreign lawyer employing Australian legal practitioner**

- (1) *An Australian-registered foreign lawyer may employ 1 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 do either of the following—*
  - (a) *provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer;*

- (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 1 other partner is an Australian legal practitioner.*
- (6) *Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer can not be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.*

### **370 Trust money and trust accounts**

- (1) *Subject to this section, the Trust Accounts Act 1973 and provisions under this Act relating to requirements about trust money and trust accounts apply to Australian-registered foreign lawyers in the same way as they apply to Australian legal practitioners.*
- (2) *For subsection (1), a regulation may make provision in relation to the application, with or without changes, of the provisions of the Trust Accounts Act 1973 and this Act relating to trust money and trust accounts.*
- (3) *In this section—*  
*money includes money other than in this jurisdiction.*

### **371 Professional indemnity insurance**

*An Australian-registered foreign lawyer who practises foreign law in this jurisdiction must have professional indemnity insurance that conforms with any requirements prescribed under a regulation.*

**372 Fidelity cover**

*A regulation may provide that provisions of chapter 2, part 7<sup>117</sup> apply to prescribed classes of Australian-registered foreign lawyers and so apply with any changes specified in the regulation.*

**Part 3 Local registration of foreign lawyers generally****373 Local registration of foreign lawyers**

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

**374 Duration of registration**

- (1) *Registration as a locally-registered 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 locally-registered 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 locally-registered foreign lawyer has not been decided by the following 1 July, the registration—*
  - (a) *continues in force on and from that 1 July until the law society renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and*

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117 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 7 (Fidelity cover)

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

**375 Local registered foreign lawyer is not officer of Supreme Court**

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

**Part 4 Application for grant or renewal of local registration**

**376 Application for grant or renewal of registration**

*An overseas-registered foreign lawyer may apply to the law society for the grant or renewal of registration as a locally-registered foreign lawyer.*

**377 Manner of application**

- (1) *An application for the grant or renewal of registration as a locally-registered foreign lawyer must be—*
  - (a) *made in the law society approved form; and*
  - (b) *accompanied by the fees prescribed under a regulation.*
- (2) *The prescribed fees must not be greater than the maximum fees for a local practising certificate.*
- (3) *The law society may require the applicant to pay any reasonable costs and expenses incurred by it in considering the application, including, for example, costs and expenses of making inquiries and obtaining information or documents about the applicant's entitlement to be registered.*
- (4) *The fees and costs must not include any component for compulsory membership of any professional association.*
- (5) *The law society approved form may require the applicant to disclose—*

- (a) *matters that may affect the applicant's eligibility for the grant or renewal of registration; and*
  - (b) *particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.*
- (6) *The law society approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.*
- (7) *The law society approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular way need not be disclosed for the purposes of the current application.*

**378 Requirements regarding applications for the grant or renewal of registration**

- (1) *An application for the grant of registration as a locally-registered foreign lawyer must state the applicant's educational and professional qualifications.*
- (2) *An application for the grant or renewal of registration as a locally-registered foreign lawyer must—*
- (a) *state that the applicant is registered to engage in legal practice by 1 or more specified foreign registration authorities in 1 or more foreign countries; and*
  - (b) *state that the applicant is not an Australian-registered foreign lawyer; and*
  - (c) *state that the applicant is not the subject of any disciplinary proceeding in Australia or a foreign country, including any preliminary investigations or action that might lead to a disciplinary proceeding in his or her capacity as—*
    - (i) *an overseas-registered foreign lawyer; or*
    - (ii) *an Australian-registered foreign lawyer; or*
    - (iii) *an Australian legal practitioner; and*
  - (d) *state that the applicant is not a party in any pending criminal or civil proceeding in Australia or a foreign*



- country that is likely to result in disciplinary action being taken against the applicant; and*
- (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and*
  - (f) state that the applicant is not, as a result of any criminal, civil or disciplinary proceeding in Australia or a foreign country—*
    - (i) otherwise personally prohibited from carrying on the practice of law in any place or bound by any undertaking not to carry on the practice of law in any place; and*
    - (ii) subject to any special conditions in carrying on any practice of law in any place; and*
  - (g) specify any special conditions imposed in Australia or a foreign country as a restriction on the practice of law by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and*
  - (h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities that the law society considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and*
  - (i) 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.*
- (3) The application must, if the law society so requires, be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that—*
- (a) verifies the applicant's educational and professional qualifications; and*

- (b) verifies the applicant's registration by the authority to practise law in the foreign country concerned and the date of registration; and*
- (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that the authority believes 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 law society so requires, certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.*
- (5) The law society may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the law society.*
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the law society.*

## **Part 5**                                        **Grant or renewal of local registration**

### **379 Grant or renewal of local registration**

- (1) The law society must consider an application that has been made for the grant or renewal of registration as a locally-registered foreign lawyer and may—*
  - (a) grant or refuse to grant the registration; or*
  - (b) renew or refuse to renew the registration.*
- (2) If the law society grants or renews the registration, the law society must give the applicant a registration certificate or a notice of renewal.*
- (3) A notice of renewal may be in the form of a new registration certificate or another form the law society considers appropriate.*

- (4) *If the law society decides not to grant or renew the registration, or imposes a condition on the registration that the applicant has not agreed to as part of the grant or renewal of the registration—*
- (a) *the law society must give the person an information notice about the law society's decision; and*
  - (b) *the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*

**380 Requirement to grant or renew registration if criteria satisfied**

- (1) *The law society must grant an application for registration as a locally-registered foreign lawyer if the law society—*
- (a) *is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and*
  - (b) *considers an effective system exists for regulating the practice of law in 1 or more of the foreign countries; and*
  - (c) *considers the applicant is not, as a result of a criminal, civil or disciplinary proceeding in any of the foreign countries, subject to either of the following that would make it inappropriate to register the person—*
    - (i) *any undertakings concerning the practice of law in any of the foreign countries;*
    - (ii) *any special conditions in carrying on the practice of law in any of the foreign countries; and*
  - (d) *is satisfied the applicant demonstrates an intention—*
    - (i) *to practise foreign law in this jurisdiction; and*
    - (ii) *to establish an office or a commercial legal presence in this jurisdiction within the period prescribed under a regulation after registration; and*
  - (e) *is satisfied there is no other reasonable ground for refusing the application.*

- (2) *The law society must grant an application for renewal of an applicant's registration, unless the law society refuses renewal under section 381.*
- (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.*

### **381 Refusal to grant or renew registration**

- (1) *The law society may refuse to consider an application that purports to be an application for the grant or renewal of registration as a locally-registered foreign lawyer if the application is not made under this Act.*
- (2) *The law society may refuse to grant or renew an applicant's registration if—*
  - (a) *the application is not accompanied by, or does not contain, the information required under this chapter; or*
  - (b) *the applicant has contravened this Act or a corresponding law; or*
  - (c) *the applicant has contravened an order of the disciplinary body 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 under this Act about professional indemnity insurance; or*
  - (g) *the applicant has failed to pay any expenses of external intervention payable under this Act.*
- (3) *The law society may refuse to grant or renew an applicant's registration if the regulatory authority of another jurisdiction has under a corresponding law—*
  - (a) *refused to grant or renew the applicant's registration; or*

- (b) *suspended or cancelled the applicant's registration.*
- (4) *The law society may refuse to grant registration if 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 law society may refuse to renew registration if 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 law society; and*
  - (b) *how long ago the offence was committed; and*
  - (c) *the person's age when the offence was committed.*
- (6) *The law society may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.*
- (7) *If the law society refuses to grant or renew an application for registration as a locally-registered foreign lawyer under this section—*
- (a) *the law society must give the person an information notice about the law society's decision; and*
  - (b) *the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*
- (8) *Nothing in this section affects the operation of part 7.<sup>118</sup>*

## **Part 6**                      **Amendment, cancellation or suspension of local registration**

### **382**      **Application of ch 5, pt 6**

*This part does not apply to a show cause event in relation to which the law society may exercise a power under part 7.<sup>119</sup>*

### **383**      **Grounds for amending, cancelling or suspending registration**

*Each of the following is a ground for amending, cancelling or suspending a person's registration as a locally-registered foreign lawyer—*

- (a) the registration was obtained because of incorrect or misleading information;*
- (b) the person otherwise contravened any of the requirements mentioned in section 378;<sup>120</sup>*
- (c) a disciplinary body or a corresponding disciplinary body has ordered the amendment, cancellation or suspension of the person's registration as an Australian-registered foreign lawyer;*
- (d) a foreign registration authority has cancelled or suspended the person's registration to engage in the practice of a foreign law in a foreign country because of any criminal, civil or disciplinary proceeding against the person;*
- (e) the person's registration to engage in the practice of a foreign law in a foreign country has lapsed;*
- (f) the person has not established an office to practise foreign law or a commercial legal presence in this jurisdiction within the period prescribed under a regulation after registration was granted;*

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119 Part 7 (Special powers in relation to local registration—show cause events)

120 Section 378 (Requirements regarding applications for the grant or renewal of registration)

- (g) *the person, having ceased to have an office or commercial legal presence in this jurisdiction after registration was granted, has not had an office or a commercial legal presence in this jurisdiction for a period prescribed under a regulation;*
- (h) *the person has become an insolvent under administration;*
- (i) *another ground that the law society considers is reasonable for amending, cancelling or suspending the person's registration.*

### **384 Amending, cancelling or suspending registration**

- (1) *If the law society believes a ground exists to amend, cancel or suspend a person's registration in this jurisdiction as a locally-registered foreign lawyer (the **proposed action**), the law society must give the person a notice (the **show cause notice**) that states—*
  - (a) *the proposed action and—*
    - (i) *if the proposed action is to amend the person's registration—the proposed amendment; or*
    - (ii) *if the proposed action is to suspend the person's registration—the proposed suspension period; and*
  - (b) *the grounds for proposing to take the proposed action; and*
  - (c) *an outline of the facts and circumstances that form the basis for the law society's belief; and*
  - (d) *an invitation to the person to make written representations to the law society, within a specified time of not less than 28 days, why the proposed action should not be taken.*
- (2) *If, after considering all written representations made within the stated time or, in its discretion, after the stated time, the law society still believes a ground exists to take the proposed action, the law society may—*
  - (a) *if the show cause notice stated the proposed action was to amend the person's registration—amend the*

- registration in the way stated, or in another way the law society is satisfied will be less onerous for the person; or*
- (b) if the show cause notice stated the proposed action was to cancel the person's registration—cancel the registration or suspend the registration for a period; or*
  - (c) if the show cause notice stated the proposed action was to suspend the registration for a stated period—suspend the registration for a period no longer than the stated period or amend the registration in the way the law society is satisfied is appropriate because of written representations.*
- (3) If the law society decides to amend, cancel or suspend the person's registration—*
- (a) the law society must give the person an information notice about the law society's decision; and*
  - (b) the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*

**385 Operation of amendment, cancellation or suspension of registration**

- (1) This section applies if a decision is made to amend, cancel or suspend a person's registration under section 384.*
- (2) Subject to subsections (3) and (4), the amendment, cancellation or suspension of the person's registration takes effect on the later of the following—*
  - (a) the day that the information notice about the decision is given to the person;*
  - (b) the day stated in the information notice.*
- (3) If the person's registration is amended, cancelled or suspended because the person has been convicted of an offence—*
  - (a) the Supreme Court may, on application of the person, order that the amendment, cancellation or suspension be stayed until—*



- (i) *the end of the time to appeal against the conviction; or*
    - (ii) *if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and*
  - (b) *the amendment, cancellation or suspension does not have effect during any period for which the stay is in force.*
- (4) *If the person’s registration is amended, cancelled or suspended 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 person’s registration is restored as if it had merely been suspended.*

### **386 Other ways of amending or cancelling registration**

- (1) *This section applies if—*
- (a) *a locally-registered foreign lawyer requests the law society to amend or cancel the person’s registration and the law society proposes to give effect to the request; or*
  - (b) *the law society proposes to amend a locally-registered foreign lawyer’s registration—*
    - (i) *only for a formal or clerical reason or in another way that does not adversely affect the person’s interests; and*
    - (ii) *the person agrees in writing to the amendment.*
- (2) *The law society may amend or cancel the registration as mentioned in subsection (1) by written notice given to the person.*
- (3) *Section 384<sup>121</sup> does not apply to an amendment or cancellation under this section.*

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121 Section 384 (Amending, cancelling or suspending registration)

**387 Relationship of this part with ch 3**

*Nothing in this part prevents the law society from making a complaint under chapter 3<sup>122</sup> about a matter to which this part relates.*

**Part 7 Special powers in relation to local registration****388 Applicant for local registration if show cause event happened after first registration as overseas-registered foreign lawyer**

- (1) *This section applies if—*
  - (a) *a person is applying for registration as a locally-registered 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 applicant must give the law society a written statement, as required under a regulation—*
  - (a) *about the show cause event; and*
  - (b) *explaining why, despite the event, the applicant is suitable to be a locally-registered foreign lawyer.*
- (3) *However, the applicant need not give a statement under subsection (2) if the applicant has previously given the law society a statement under this section, or a notice and statement under section 389, for the event stating why, despite the event, the applicant is, or continues to be, a suitable person to be a locally-registered foreign lawyer.*
- (4) *A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.*

**389 Requirement if show cause event**

- (1) *This section applies to a show cause event that happens in relation to a locally-registered foreign lawyer.*
- (2) *The locally-registered foreign lawyer must give the law society both of the following—*
  - (a) *within 7 days after the day of the event—notice, in the law society approved form, that the event happened;*
  - (b) *within 28 days after the day of the event—a written statement explaining why, despite the event, the person is a suitable person to be a locally-registered foreign lawyer.*
- (3) *A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.*
- (4) *However, if a written statement is provided after the 28 days mentioned in subsection (2)(b), the law society may accept the statement and take it into consideration.*

**390 Refusal, cancellation or suspension of local registration—failure to show cause**

- (1) *The law society may refuse to grant or renew, or may cancel or suspend, registration as a locally-registered foreign lawyer if the applicant for registration or the locally-registered foreign lawyer—*
  - (a) *is required by section 388 or 389<sup>123</sup> to give a written statement relating to a matter to the law society and the person has not done so; or*
  - (b) *has given a written statement under section 388 or 389 but the law society does not consider that the person has shown in the statement that the person is suitable to be a locally-registered foreign lawyer.*

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123 Section 388 (Applicant for local registration if show cause event happened after first registration as overseas-registered foreign lawyer) or 389 (Requirement if show cause event)

- (2) *For subsection (1)(b), a written statement accepted by the law society as mentioned in section 389(4) is taken to have been given under section 389.*
- (3) *If the law society decides to refuse to grant or renew registration as, or to cancel or suspend the registration of, a locally-registered foreign lawyer—*
  - (a) *the law society must give the person an information notice about the decision; and*
  - (b) *the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*

### **391 Restriction on making further applications**

- (1) *If the law society decides under this part to cancel a person's registration as a locally-registered foreign lawyer, the law society may also decide that the person is not entitled to apply for registration under this chapter for a stated period of not more than 5 years.*
- (2) *A person in relation to whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this chapter during the period specified in the decision.*
- (3) *If the law society makes a decision under this section—*
  - (a) *the law society must give the person an information notice about the decision; and*
  - (b) *the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*

### **392 Relationship of this part with chs 3 and 7**

- (1) *The law society has and may exercise powers under chapter 3, part 4, and chapter 7, part 2, in relation to a matter under this part, as if the matter were the subject of a complaint under chapter 3.*

- (2) *Accordingly, the provisions of chapter 3, part 4, and chapter 7, part 2, apply in relation to a matter under this part, and so apply with any necessary changes.*
- (3) *Nothing in this part prevents the law society from making a complaint under chapter 3 about a matter to which this part relates.*

## **Part 8**                      **Further provisions relating to local registration**

### **393**    **Immediate suspension of registration**

- (1) *This section applies, despite sections 384 and 385,<sup>124</sup> if the law society considers it necessary in the public interest to immediately suspend a person's registration as a locally-registered foreign lawyer.*
- (2) *The law society may immediately suspend the person's registration for any of the following reasons, whether they happened before or after the commencement of this section—*
  - (a) *the locally-registered foreign lawyer has become an insolvent under administration;*
  - (b) *the locally-registered foreign lawyer has been convicted of a serious offence or tax offence;*
  - (c) *a ground exists on which the certificate could be cancelled or suspended under section 384.<sup>125</sup>*
- (3) *The law society suspends the person's registration by giving an information notice to the person about the law society's decision to suspend.*
- (4) *The information notice must also state that the person may make written representations to the law society about the suspension.*

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124 Sections 384 (Amending, cancelling or suspending registration) and 385 (Operation of amendment, cancellation or suspension of registration)

125 Section 384 (Amending, cancelling or suspending registration)

- (5) *Subject to subsection (8), the person's registration continues to be suspended until the earlier of the following—*
- (a) *the time at which the law society informs the person of the law society's decision by information notice under section 384;*
  - (b) *the end of 56 days after the information notice is given to the person under this section.*
- (6) *If the person makes written representations to the law society about the suspension, the law society must consider the written representations.*
- (7) *The law society may revoke the suspension at any time, whether or not because of written representations made to it by the person.*
- (8) *Also, the law society may apply to the Supreme Court for an order extending the period of the suspension and, if the court considers it appropriate and the suspension has not ended under subsection (5), the court may extend the period of the suspension for a further period of not more than a further 56 days after the date of the court order.*
- (9) *The law society must give the person an information notice about its decision to apply under subsection (8) for an order extending the period of the suspension.*

**394 Surrender of local registration certificate and cancellation of registration**

- (1) *A locally-registered foreign lawyer may surrender the person's local registration certificate to the law society.*
- (2) *If a local registration certificate is surrendered, the law society may cancel the registration.*

**395 Automatic cancellation of registration on grant of practising certificate**

*A person's registration as a locally-registered foreign lawyer is taken to be cancelled if the person becomes an Australian legal practitioner.*

**396 Cancellation or suspension of registration not to affect disciplinary processes**

*The cancellation or suspension of a person's registration as a locally-registered foreign lawyer does not affect any disciplinary processes in relation to matters happening before the cancellation or suspension.*

**397 Return of local registration certificate on amendment, suspension or cancellation of registration**

- (1) *This section applies if a person's registration as a locally-registered foreign lawyer is amended, cancelled or suspended.*
- (2) *The law society may—*
  - (a) *give the person a notice requiring the person to return the registration certificate or notice of renewal to the law society in the way stated in the notice within a stated period of 14 days; or*
  - (b) *include in an information notice that the law society must give to the person under this chapter a further notice requiring the person to return the registration certificate or notice of renewal to the law society in the way stated in the notice within a stated period of not less than 14 days.*
- (3) *The person must comply with the requirement, unless the person has a reasonable excuse.*

*Maximum penalty—50 penalty units.*
- (4) *The law society must return the registration certificate or notice of renewal to the person—*
  - (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.*

## **Part 9**                      **Conditions on registration**

### **398**    **Conditions generally**

*The registration of a person as a locally-registered foreign lawyer is subject to the following—*

- (a) any conditions imposed by the law society;*
- (b) any statutory conditions imposed under this Act or another Act;*
- (c) any conditions imposed under chapter 3<sup>126</sup> or under provisions of a corresponding law that correspond to chapter 3.*

### **399**    **Conditions imposed by law society**

- (1) The law society may impose conditions on a person's registration as a locally-registered foreign lawyer—*
  - (a) when the registration is granted or renewed; or*
  - (b) at any time during the currency of the registration.*
- (2) A condition imposed under this section—*
  - (a) may be about any matter in relation to which a condition could be imposed on a local practising certificate or any other matter agreed to by the person; and*
  - (b) must be reasonable and relevant.*
- (3) The law society must not impose a condition under subsection (2)(a) that is more onerous than a condition that it would impose on a local practising certificate of a local legal practitioner in the same or similar circumstances.*
- (4) The law society may revoke a condition imposed by it under this section and, under this chapter, may amend the condition.*



**400 Statutory condition regarding notification of offence**

- (1) *It is a statutory condition of a person's registration as a locally-registered foreign lawyer that the person must give notice, in a law society approved form, to the law society if the person is—*
- (a) *convicted of an offence that would have to be disclosed in relation to an application for registration as a locally-registered foreign lawyer; or*
  - (b) *charged with a serious offence.*
- (2) *The notice must be given to the law society within 7 days after the conviction or the day the person is charged.*
- (3) *A legal profession rule may specify the person to whom, or the address to which, the notice is to be given or sent.*
- (4) *This section does not apply to an offence to which part 7<sup>127</sup> applies.*

**401 Conditions imposed by regulation**

*A regulation may make provision in relation to an Australian-registered foreign lawyer, including, for example—*

- (a) *imposing conditions on the registration of persons as locally-registered foreign lawyers or any class of locally-registered foreign lawyers; or*
- (b) *authorising conditions to be imposed on the registration of persons as locally-registered foreign lawyers or any class of locally-registered foreign lawyers.*

**402 Compliance with conditions**

*A locally-registered foreign lawyer must not contravene a condition to which the person's registration is subject.*

*Maximum penalty—50 penalty units.*

## **Part 10**                      **Interstate-registered foreign lawyers**

### **403**    **Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction**

- (1) *This chapter 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 any conditions imposed by the law society under section 404,<sup>128</sup> and any conditions imposed under a legal profession rule as mentioned under that section; and*
  - (b) *is to the greatest 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 more onerous conditions prevail to the extent of the inconsistency.*
- (4) *An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a way that is not authorised by this Act or in contravention of any condition mentioned in this section.*

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128 Section 404 (Additional conditions on practice of interstate-registered foreign lawyers)

- (5) *A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.*

**404 Additional conditions on practice of interstate-registered foreign lawyers**

- (1) *The law society may impose any condition on the interstate-registered foreign lawyer's practice of foreign law in this jurisdiction that it may impose under this Act in relation to a locally-registered foreign lawyer.*
- (2) *Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.*
- (3) *Conditions imposed under this section or a legal profession rule must not be more onerous than conditions applying to locally-registered foreign lawyers in the same or similar circumstances.*
- (4) *If the law society imposes a condition under subsection (1)—*
- (a) *the law society must give the interstate-registered foreign lawyer an information notice about the law society's decision; and*
  - (b) *the person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the person.*

## **Part 11 Miscellaneous**

**405 Consideration and investigation of applicants and holders**

- (1) *To help it consider whether or not to grant, renew, suspend or cancel registration under this chapter, or impose conditions on a person's registration under this chapter, the law society may—*

- (a) *ask an applicant or locally-registered foreign lawyer for any further documents or information the law society requires; or*
  - (b) *make any investigations or inquiries it considers appropriate.*
- (2) *Each of the following is a ground for making an adverse decision in relation to action being considered by the law society—*
- (a) *a failure to produce documents or information under this section;*
  - (b) *a failure to cooperate with the law society in its investigations or inquiries under this section when asked to do so.*

#### **406 Register of locally-registered foreign lawyers**

- (1) *The law society must keep a register of the names of locally-registered foreign lawyers.*
- (2) *The register must—*
  - (a) *state any conditions imposed by it on a locally-registered foreign lawyer's registration; and*
  - (b) *otherwise include the particulars prescribed under a regulation.*
- (3) *The register may be kept in the way the law society decides.*
- (4) *The register must be available for inspection, without charge, at the law society's office during normal business hours.*

#### **407 Publication of information about locally-registered foreign lawyers**

*The law society may publish, in circumstances that it considers appropriate, the names of persons registered by it as locally-registered foreign lawyers and any relevant particulars concerning those persons.*

**408 Supreme Court orders about conditions**

- (1) *The law society may apply to the Supreme Court for an order that an Australian-registered foreign lawyer not contravene a condition imposed under this chapter.*
- (2) *The Supreme Court may make any order it considers appropriate relating to the application.*

**409 Exemption by law society**

- (1) *The law society may exempt an Australian-registered foreign lawyer, or class of Australian-registered foreign lawyers, from compliance with a specified provision under this Act that would otherwise apply to the Australian-registered foreign lawyer or class of Australian-registered foreign lawyers.*
- (2) *An exemption may be granted unconditionally or subject to conditions stated in writing.*
- (3) *The law society may revoke or vary a condition imposed under this section or impose new conditions.*

**410 Membership of professional association**

- (1) *An Australian-registered foreign lawyer is not required to join any professional association.*
- (2) *However, subsection (1) does not prevent an Australian-registered foreign lawyer joining a professional association if the person is eligible to do so.*

**411 Refund of fees**

- (1) *A regulation may provide for the refund of a portion of a fee paid in relation to registration as a locally-registered foreign lawyer if the registration is cancelled or suspended during its currency.*
- (2) *Without limiting subsection (1), a regulation may state—*
  - (a) *the circumstances in which a refund is to be made; and*
  - (b) *the amount of the refund or the way in which the amount of the refund is to be decided.*

## **Chapter 6            Establishment of entities for this Act, and related matters**

### **Part 1                Legal Services Commissioner**

#### **Division 1           Preliminary**

##### **412    Main purposes of ch 6, pt 1**

The main purposes of this part are to establish the Legal Services Commissioner and to provide for matters relevant to the commissioner.

#### **Division 2           Appointment**

##### **413    Legal Services Commissioner**

There is to be a Legal Services Commissioner.

##### **414    Appointment**

- (1) The Governor in Council may appoint a person as the commissioner by gazette notice.
- (2) Before recommending a person for appointment as the commissioner, the Minister must be satisfied that the appointee—
  - (a) is familiar with the nature of the legal system and legal practice; and
  - (b) possesses appropriate qualities of independence, fairness and integrity.
- (3) The Minister may recommend a person who is not an Australian lawyer.
- (4) The commissioner is appointed under this Act and not under the *Public Service Act 1996*.

**415 Term of appointment**

- (1) The commissioner holds office for the term, not longer than 5 years, stated in the gazette notice and may be reappointed.
- (2) However, a person must not be reappointed if the total of the person's term of appointment would be more than 10 years.

**416 Remuneration and conditions**

- (1) The commissioner is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The commissioner holds office—
  - (a) on the conditions stated in this Act; and
  - (b) on other conditions decided by the Minister.
- (3) In this section—

*commissioner* includes a person appointed to act as commissioner under section 417.

**417 Acting commissioner**

- (1) The Governor in Council may appoint a person to act as commissioner—
  - (a) during a vacancy in the office; or
  - (b) during any period, or during any periods, when the commissioner is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.
- (2) The person appointed to act as commissioner must be eligible for appointment as commissioner.

**418 Termination of appointment**

- (1) The Governor in Council may end the appointment of the commissioner if the commissioner—
  - (a) becomes incapable of performing the commissioner's functions because of physical or mental incapacity; or
  - (b) is an insolvent under administration; or

- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the commissioner were an officer of the public service.
- (2) The Governor in Council must end the appointment of the commissioner if the commissioner is convicted of a serious offence or an offence against a relevant law.

#### **419 Resignation of commissioner**

- (1) The commissioner may resign by giving a signed notice of resignation to the Minister.
- (2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

### **Division 3 Functions**

#### **420 Functions**

- (1) The commissioner has the functions conferred or imposed on the commissioner under this Act or another Act.
- (2) The commissioner may appear, by Australian legal practitioner or government legal officer, and be heard by the Supreme Court in relation to the court's jurisdiction, or an exercise of the court's power, under a relevant law.

### **Division 4 Legal Services Commission**

#### **421 Establishment of commission**

- (1) The Legal Services Commission (the *commission*) is established.
- (2) The commission consists of the commissioner and the staff of the commission.
- (3) The commissioner controls the commission.



**422 Staff and other resources**

- (1) The chief executive must provide the commission with the resources the chief executive considers appropriate for the commissioner to discharge the commissioner's functions effectively and efficiently.
- (2) The commission may, with the chief executive's approval, consult with, employ and remunerate the Australian lawyers, accountants, auditors or other professionals the commissioner considers necessary to properly perform the commissioner's functions.
- (3) For subsection (1) or (2), a public service officer may be seconded to the commission.
- (4) In this section—

*resources* includes office accommodation and equipment, staff and administrative support.

*staff*, in relation to the commission, means the staff that the chief executive provides under subsection (1) and a person employed under subsection (2).

**423 Preservation of rights if public service officer appointed or engaged**

- (1) A public service officer who is appointed to an office under this part is entitled to retain all existing and accruing rights as if service in that office were a continuation of service as a public service officer.
- (2) If the person stops holding that office for a reason other than misconduct, the person—
  - (a) is entitled to be employed as a public service officer; and
  - (b) is to be employed on the classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had continued in employment as a public service officer.

**424 Preservation of rights if person becomes public service officer**

- (1) On the appointment of a person holding office under this part as a public service officer, the person's service under this part must be regarded as service as a public service officer.
- (2) Subsection (1) does not apply to the commissioner if the person is guilty of misconduct in office as commissioner.

**425 Preservation of rights if public service officer seconded**

- (1) A public service officer seconded as mentioned in section 422(3)<sup>129</sup>—
  - (a) is entitled to the person's existing and accruing rights as if employment as a member of the staff of the commission were a continuation of employment as a public service officer; and
  - (b) may apply for positions, and be employed in, the public service as if the person were a public service officer.
- (2) When the secondment ends, the person's employment on secondment as a member of the staff of the commission is employment of the same nature in the public service for working out the person's rights as a public service officer.
- (3) If the secondment ended for a reason other than misconduct, the person is entitled to be employed—
  - (a) as a public service officer; and
  - (b) on the same, or a higher, classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had not been seconded.

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129 Section 422 (Staff and other resources)

## **Division 5                      Miscellaneous matters about the commissioner**

### **426      Delegation**

- (1) The commissioner may delegate the commissioner's powers under this Act, other than this power of delegation, to an appropriately qualified member of the staff of the commission.
- (2) In this section—  
*appropriately qualified*, includes having the qualifications, experience or standing appropriate to the exercise of the power.

### **427      Arrangements with regulatory authority about copies of documents**

If, under this Act, a regulatory authority must give a document to the commissioner, the regulatory authority may, in an electronic way, give the document to the commissioner if the commissioner has entered into an arrangement with the regulatory authority about giving documents to the commissioner in that way.

## **Part 2                              Disciplinary tribunal**

### **Division 1                      Preliminary**

#### **428      Main purpose of ch 6, pt 2**

The main purpose of this part is to establish the Legal Practice Tribunal to deal with matters it is empowered to deal with under this Act.

## **Division 2                      Establishment of Legal Practice Tribunal and related matters**

### **429      Establishment, members and chairperson of tribunal**

- (1) The Legal Practice Tribunal is established.
- (2) The members of the tribunal are the Supreme Court judges.
- (3) The Chief Justice is the chairperson of the tribunal.
- (4) The tribunal is constituted by any 1 of its members.

### **430      Way tribunal is to operate**

- (1) The chairperson is to allocate the work of the tribunal.
- (2) The tribunal, as constituted by any 1 of its members, may sit in more than 1 place at the same time.

### **431      Jurisdiction**

The tribunal's jurisdiction is to hear and decide a discipline application made to the tribunal.

### **432      Powers**

- (1) The tribunal may do all things necessary or convenient to be done for exercising its jurisdiction.
- (2) Without limiting subsection (1), the tribunal has the powers conferred on it under this Act or another Act.

### **433      Rule-making power**

- (1) The Governor in Council may, on the recommendation of the chairperson, make rules for the practice and procedure of the tribunal (*tribunal rules*).
- (2) The tribunal rules may make provision for the practice and procedure of the committee.
- (3) The tribunal rules are subordinate legislation.

**434 Practice directions**

- (1) To the extent a matter about the tribunal's procedure is not provided for by this Act or the tribunal rules, the matter may be dealt with by directions under this section.
- (2) The chairperson may issue directions of general application about the tribunal's procedures.
- (3) The chairperson may delegate the chairperson's power under subsection (2) to another member of the tribunal.
- (4) A member constituting the tribunal may issue particular directions for a hearing.

**435 Registrar**

The registrar of the tribunal, as constituted by any 1 of its members, is the registrar for the Supreme Court district in which the tribunal is hearing the discipline application.

**436 Tribunal's seal**

- (1) The tribunal must have a seal for each Supreme Court district.
- (2) Each seal must be judicially noticed.
- (3) The registrar for each Supreme Court district is to have custody of the seal for the district.

**Division 3 Panels, members of panels and related matters****437 Establishment of panels for helping the tribunal**

- (1) The following are established—
  - (a) the lay panel;
  - (b) the practitioner panel.
- (2) The practitioner panel is to consist of both barristers and solicitors.

- (3) One member of the lay panel and 1 member of the practitioner panel are to sit with the tribunal and help the tribunal in hearing and deciding a discipline application.
- (4) However, if a panel member disqualifies himself or herself as mentioned in section 443(2),<sup>130</sup> the tribunal may continue with the relevant hearing if the tribunal member considers it appropriate to do so.

### **438 Appointment of panel member**

- (1) The members of the panels are to be appointed under this Act by the Governor in Council.
- (2) A person is eligible for appointment as a member of the lay panel only if the person—
  - (a) has high level experience and knowledge of consumer protection, business, public administration or another relevant area; and
  - (b) is not, and has not been, an Australian lawyer, foreign lawyer or otherwise legally qualified; and
  - (c) has not been convicted of a serious offence or an offence against a relevant law, including before the commencement of this section; and
  - (d) is not an insolvent under administration.
- (3) A person is eligible for appointment as a member of the practitioner panel only if the person—
  - (a) is an Australian legal practitioner who has held a practising certificate for at least 5 years; and
  - (b) has not been convicted of a serious offence or an offence against a relevant law, including before the commencement of this section; and
  - (c) is not an insolvent under administration.
- (4) A member holds office for a term of not longer than 5 years stated in the instrument of appointment.

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130 Section 443 (Disclosure of interests)

- (5) For subsection (3)(a), in relation to any part of the 5 year period before the commencement of this section, a barrister is not required to have held a practising certificate for that part of the period if the barrister was practising as a barrister during that period.

#### **439 Remuneration and appointment conditions of panel members**

- (1) A member of the lay panel is entitled to be paid the remuneration and allowances decided by the Governor in Council for sitting with the tribunal in relation to hearing and deciding a discipline application.
- (2) It is a condition of a lay member's appointment that if the member's appointment is terminated under section 440, the member is not entitled to any remuneration or allowances applicable to any sitting after the date of the termination.
- (3) To the extent that the conditions are not provided for by this Act, a member of the lay panel or practitioner panel holds office on the conditions decided by the Governor in Council.

#### **440 Termination of appointment**

- (1) The Governor in Council may end the appointment of a panel member if the panel member—
- (a) becomes incapable of performing the member's functions because of physical or mental incapacity; or
  - (b) is an insolvent under administration; or
  - (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service.
- (2) The Governor in Council must terminate the appointment of a panel member if the member—
- (a) is convicted of a serious offence or an offence against a relevant law; or
  - (b) for a member of the lay panel—becomes an Australian lawyer or otherwise legally qualified; or

- (c) for a member of the practitioner panel—stops holding a practising certificate.

#### **441 Resignation of members**

- (1) A panel member may resign by giving a signed notice of resignation to the Minister.
- (2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

### **Division 4                      Role of tribunal members and panel members**

#### **442 Role of members**

- (1) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.
- (2) The role of a tribunal member and panel member includes professionally and efficiently performing the functions of the tribunal assigned or given to the member under this Act or another Act.
- (3) Each tribunal member and panel member must comply with the procedures and policies implemented by the chairperson for the tribunal's adjudicative operations.

#### **443 Disclosure of interests**

- (1) If a tribunal member, or a panel member helping the tribunal, becomes aware that the member has a conflict of interest about a proceeding before the tribunal, the member must disclose the issue giving rise to the conflict—
  - (a) if the member is the chairperson—to the parties to the proceeding; or
  - (b) otherwise—to the chairperson and the parties to the proceeding.
- (2) After making the disclosure, the member must disqualify himself or herself.



- (3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.
- (4) If the person who is disqualified is a panel member, the tribunal member may decide it is appropriate to proceed with the hearing with only 1 panel member.

## **Division 5                      Constitution of tribunal for hearings**

### **444      Constitution of tribunal for hearing**

- (1) For hearing and deciding a discipline application made to the tribunal, the tribunal is constituted by a tribunal member.
- (2) However, although panel members do not constitute the tribunal, the tribunal member is to be helped by 2 panel members chosen by the Brisbane registrar and approved by the tribunal member.
- (3) The panel members mentioned in subsection (2) must consist of—
  - (a) a lay panel member; and
  - (b) 1 of the following members—
    - (i) if the complaint is about the conduct of a person who, at the time of performing the acts or omitting to do the acts constituting the conduct complained of, was a barrister or, in the opinion of the tribunal member, was engaged in legal practice in the manner of a barrister—a member of the practitioner panel who is a barrister;
    - (ii) otherwise—a member of the practitioner panel who is a solicitor.
- (4) The registrar must keep a record of the name of the tribunal member for each hearing, the names of the panel members helping the tribunal and the discipline application for which the hearing is held.

## **Division 6                      Other provisions**

### **445      Institution of proceedings by the commissioner**

The commissioner may bring a proceeding under this part for the imposition or enforcement of a penalty.

### **446      Contempt of tribunal**

- (1) The tribunal has, for itself, the tribunal members and the panel members, all the protection, powers, jurisdiction and authority the Supreme Court has for that court in relation to contempt of court.
- (2) The tribunal must comply with the *Uniform Civil Procedure Rules 1999* relating to contempt of court, with necessary changes.
- (3) The registrar may apply to the tribunal for an order that a person be committed to prison for contempt of the tribunal.
- (4) The tribunal's jurisdiction to punish a contempt of the tribunal may be exercised on the tribunal's own initiative.

### **447      Conduct that is contempt and an offence**

If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

### **448      Protection of members etc.**

- (1) A tribunal member or panel member has, in the performance of the member's duties as a member, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.
- (2) A person representing a person before the tribunal has the same protection and immunity as an Australian legal practitioner appearing for a party in a proceeding in the Supreme Court.

- (3) A person appearing before the tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.
- (4) A document produced at, or used for, a tribunal hearing has the same protection it would have if produced before the Supreme Court.

## **Part 3                      Legal Practice Committee**

### **Division 1                  Preliminary**

#### **449      Main purpose of ch 6, pt 3**

The main purpose of this part is to establish the Legal Practice Committee to deal with matters it is empowered to deal with under this Act.

#### **450      Definitions for ch 6, pt 3**

In this part—

*barrister* means a local legal practitioner who holds a current practising certificate to practise as a barrister.

*solicitor* means a local legal practitioner who holds a current local practising certificate to practise as a solicitor.

### **Division 2                  Establishment, membership of committee, functions and powers**

#### **451      Establishment of committee**

The Legal Practice Committee is established.

**452 Committee members**

- (1) The committee is to consist of the following members appointed by the Governor in Council—
  - (a) a chairperson;
  - (b) 2 solicitors;
  - (c) 2 barristers;
  - (d) 2 lay members.
- (2) Before recommending a person for appointment as the chairperson, the Minister must be satisfied that the person has high level experience and knowledge of the legal system and legal practice.
- (3) For choosing someone to recommend for appointment under subsection (1)(b), the Minister may invite nominations from the law society.
- (4) For choosing someone to recommend for appointment under subsection (1)(c), the Minister may invite nominations from the bar association.
- (5) Before recommending a person for appointment under subsection (1)(d), the Minister must be satisfied that the person has high level experience and knowledge of consumer protection, business, public administration or another relevant area but is not an Australian lawyer or otherwise legally qualified.

**453 Term of appointment**

The appointment of a member of the committee is for the term stated in the member's appointment.

**454 Functions and powers of committee**

- (1) The committee has the functions provided for under this Act.
- (2) The committee has all the powers necessary or convenient for performing its functions.

**455 Administrative support**

The commissioner must provide administrative support for the committee, including secretariat support.

**Division 3 Provisions about committee members****456 Eligibility for membership**

A person can not become a member of the committee if the person—

- (a) has been convicted of a serious offence or an offence against a relevant law; or
- (b) is an insolvent under administration.

**457 Termination of office**

- (1) The Governor in Council may terminate the appointment of a committee member if the member—
  - (a) becomes incapable of performing the member's functions because of physical or mental incapacity; or
  - (b) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service.
- (2) The Governor in Council must end the appointment of a committee member if the member—
  - (a) is convicted of a serious offence or an offence against a relevant law; or
  - (b) is an insolvent under administration; or
  - (c) if the person was appointed because the person was a solicitor—the person stops being a solicitor; or
  - (d) if the person was appointed because the person was a barrister—the person stops being a barrister; or
  - (e) if the person was appointed as a lay member—the person becomes an Australian lawyer or otherwise legally qualified.

**458 Resignation of committee member**

- (1) A committee member may resign by giving a signed notice of resignation to the Minister.
- (2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

**459 Deputy chairperson**

- (1) The committee members must appoint a member, other than the chairperson, as the deputy chairperson of the committee.
- (2) The appointment of the deputy chairperson may be for a time decided by the committee but not for longer than the deputy chairperson's term of appointment as a member.

**460 Remuneration and allowances of lay members**

A lay member of the committee is entitled to be paid the remuneration and allowances decided by the Governor in Council.

**Division 4 Provisions about committee performing advisory functions****461 Application of ch 6, pt 3, div 4**

This division applies to the committee in performing its advisory functions under this Act.<sup>131</sup>

**462 Conduct of business**

Subject to this division, the committee may conduct its business, including its meetings, in the way it considers appropriate.

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131 See section 221 (Monitoring role of committee) which provides that the committee has certain functions in relation to advising the Minister about the legal profession rules.

**463 Time and place of meeting**

- (1) Committee meetings are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by at least the number of members forming a quorum for the committee.
- (3) In the absence of the chairperson, the deputy chairperson may exercise the powers of the chairperson under this section.

**464 Quorum**

A quorum for the committee is 4 members.

**465 Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the committee at which the chairperson is present.
- (2) If the chairperson is absent from a committee meeting, but the deputy chairperson is present, the deputy chairperson is to preside.
- (3) If the chairperson and deputy chairperson are both absent from a committee meeting, including because of a vacancy in the office, a member chosen by the members present is to preside at the committee meeting.

**466 Conduct of meetings**

- (1) A question at a committee meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The committee may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a committee meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the committee, even if it is not passed at a committee meeting, if—
  - (a) a majority of the committee members give written agreement to the resolution; and
  - (b) notice of the resolution is given under procedures approved by the committee.

#### **467 Minutes**

- (1) The committee must keep—
  - (a) minutes of its meetings; and
  - (b) a record of any resolutions made under section 466(6).
- (2) Subsection (3) applies if a resolution is passed at a committee meeting by a majority of the members present.
- (3) If asked by a member who voted against the passing of the resolution, the committee must record in the minutes of the meeting that the member voted against the resolution.

#### **468 Disclosure of interests**

- (1) This section applies to a committee member (the *interested person*) if—
  - (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the committee; and
  - (b) the interest could conflict with the proper performance of the interested person's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a committee meeting.



- (3) Unless the committee otherwise directs, the interested person must not—
  - (a) be present when the committee considers the issue; or
  - (b) take part in a decision of the committee about the issue.
- (4) The interested person must not be present when the committee is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a committee member is not present at a committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the member were present; the remaining persons present are a quorum of the committee for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded in the committee's minutes.

## **Division 5                      Provisions applying to committee for hearings**

### **469      Constitution of committee for hearing**

- (1) The chairperson must make arrangements about constituting the committee for hearing and deciding discipline applications.

- (2) For hearing and deciding a discipline application made to the committee, the committee is constituted by—
  - (a) the chairperson; and
  - (b) a member of the committee who is a local legal practitioner chosen by the chairperson; and
  - (c) a lay member of the committee chosen by the chairperson.
- (3) In choosing a local legal practitioner as mentioned in subsection (2), the chairperson must choose a person who is—
  - (a) if the discipline application is about the conduct of a person who, at the time of performing the acts or omitting to do the acts constituting the conduct complained of, was a barrister or, in the opinion of the chairperson, was engaged in legal practice in the manner of a barrister—a barrister; or
  - (b) otherwise—a solicitor.
- (4) The chairperson is to preside at the hearing of a matter referred to the committee.
- (5) In this section—

*chairperson* includes the deputy chairperson.

**470 Conduct of committee for hearing and deciding discipline applications**

- (1) To the extent a matter about the committee's procedure is not provided for by this Act or the tribunal rules, the matter may be dealt with by directions under this section.
- (2) The chairperson may issue directions of general application about the committee's procedures.
- (3) The members constituting the committee may issue particular directions for a hearing.

**471 Disclosure of interests**

- (1) If a member of the committee becomes aware that the member has a conflict of interest about a discipline application made to

the committee, the member must disclose the issue giving rise to the conflict—

- (a) if the member is the chairperson—to the parties to the proceeding in relation to the discipline application; or
  - (b) otherwise—to the chairperson and the parties to the proceeding.
- (2) After making the disclosure, the member must disqualify himself or herself.
  - (3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.
  - (4) If the parties agree, the remaining members of the committee may continue with hearing and deciding the discipline application.
  - (5) However, if the parties do not agree as mentioned in subsection (4), the hearing of the discipline application must stop and the committee must be reconstituted to hear and decide the discipline application.
  - (6) If the committee can not be reconstituted under subsection (5), the discipline application is to be transferred to the tribunal under the tribunal rules.

#### **472 Protection of members etc.**

- (1) A committee member has, in the performance of the member's duties as a member of the committee hearing and deciding a discipline application, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.
- (2) A person representing a person before the committee has the same protection and immunity as an Australian legal practitioner appearing for a party in a proceeding in the Supreme Court.
- (3) A person appearing before the committee as a witness has the same protection as a witness in a proceeding in the Supreme Court.

- (4) A document produced at, or used for, a hearing of the committee has the same protection it would have if produced before the Supreme Court.

## **Part 4                      Provisions applying to each disciplinary body**

### **Division 1                Parties to proceedings**

#### **473      Parties**

- (1) The parties to a proceeding in a disciplinary body for a discipline application are—
- (a) the respondent in relation to the complaint or investigation matter; and
  - (b) the commissioner.
- (2) The parties are entitled to appear at the hearing of the application.
- (3) The complainant is entitled to appear at the hearing in relation to—
- (a) those aspects of the hearing that relate to a request by the complainant for a compensation order; and
  - (b) other aspects of the hearing, but only if the disciplinary body grants leave to the complainant to appear in relation to them.
- (4) The disciplinary body may grant leave to another person to appear at the hearing if the disciplinary body is 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 a government legal officer.
- (6) In this section—

*Australian legal practitioner* means a person to whom chapter 3 applies as mentioned in section 248.<sup>132</sup>

## **Division 2                    Conduct of proceedings**

### **474    Public hearings**

- (1) A hearing before a disciplinary body must be open to the public, unless the disciplinary body directs that the hearing or a part of the hearing be closed to the public.
- (2) A disciplinary body may not direct that a hearing or a part of a hearing 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.

### **475    Procedure for hearing by a disciplinary body**

- (1) When conducting a hearing, a disciplinary body—
  - (a) must comply with natural justice; and
  - (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
  - (c) is not bound by the rules of evidence; and
  - (d) may inform itself of anything in the way it considers appropriate.
- (2) Subsection (1) is subject to another provision of this Act that states a particular way the disciplinary body must conduct the hearing.

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<sup>132</sup> Section 248 (Application of chapter to lawyers, former lawyers and former practitioners)

**476 Recording evidence**

- (1) A disciplinary body for a discipline application may decide whether or not a proceeding before it is to be recorded under the *Recording of Evidence Act 1962*.
- (2) Subject to an order made under section 480<sup>133</sup> and the requirements of the *Recording of Evidence Act 1962*, anyone is entitled to obtain a copy of the record under that Act.

**477 Disciplinary body may proceed in absence of party or may adjourn hearing**

- (1) At a hearing, a disciplinary body may proceed in the absence of a party if it reasonably believes the party has been given sufficient notice of the hearing.
- (2) A disciplinary body may adjourn the hearing from time to time.

**478 Matter may be decided on affidavit evidence**

If a disciplinary body receives in evidence an affidavit of 1 party, the disciplinary body may decide all or part of a discipline application or any relevant fact on the evidence given in the affidavit—

- (a) with the written consent of the other party; or
- (b) if the other party does not appear and—
  - (i) the party filing the affidavit has given the other party a copy of the affidavit and the name of the person making the affidavit is included in a list of documents given to the other party under the tribunal rules; or
  - (ii) appropriate enquiries have been made as to the other party's whereabouts and, in all the circumstances, it is reasonable for the matter to be decided in that party's absence.

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133 Section 480 (Prohibited publication about hearing of a disciplinary application)

**479 Standard of proof**

- (1) If an allegation of fact is not admitted or is challenged when a disciplinary body is hearing a discipline application, the body may act on the allegation if the body is satisfied on the balance of probabilities that the allegation is true.
- (2) For subsection (1), the degree of satisfaction required varies according to the consequences for the relevant Australian legal practitioner or law practice employee of finding the allegation to be true.
- (3) In this section—

*Australian legal practitioner* means a person to whom chapter 3 applies as mentioned in section 248.<sup>134</sup>

**480 Prohibited publication about hearing of a disciplinary application**

- (1) A disciplinary body for a discipline application, either before, during or immediately after a hearing, may make an order prohibiting the publication of information stated in the order that relates to the discipline application, the hearing or an order of the disciplinary body.
- (2) A person must not contravene an order under subsection (1).  
Maximum penalty—200 penalty units.
- (3) A person must not publish or allow someone else to publish—
  - (a) a question disallowed by the disciplinary body at the hearing; or
  - (b) an answer given to a question disallowed by disciplinary body at the hearing.Maximum penalty—200 penalty units.
- (4) Also, the disciplinary body may make an order prohibiting—
  - (a) the issue of the entire or part of a copy of the record made under the *Recording of Evidence Act 1962*; or

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<sup>134</sup> Section 248 (Application of chapter to lawyers, former lawyers and former practitioners)

- (b) the publication of the entire or part of a copy of the record made under that Act.
- (5) A person must not contravene an order under subsection (4).  
Maximum penalty—200 penalty units.
- (6) In this section—  
*publish* includes publish on radio, television or the Internet.  
*record* includes make an audio recording.

### **Division 3                      Powers of disciplinary body**

#### **481      Power to disregard procedural lapses**

- (1) A disciplinary body may order that a failure by the commissioner to observe a procedural requirement in relation to a complaint, investigation matter or discipline application must be disregarded, if the disciplinary body is satisfied that the parties to the hearing have not been prejudiced by the failure.
- (2) This section applies whether the failure happened—
  - (a) before the making of the discipline application resulting from the complaint or investigation matter; or
  - (b) after the making of the discipline application.
- (3) Subsection (1) does not limit the disciplinary body's power to disregard a failure by another person to observe a procedural requirement.

#### **482      Directions for hearings**

- (1) A disciplinary body may issue directions in relation to a hearing before the disciplinary body.
- (2) The disciplinary body may issue the directions—
  - (a) on the body's own initiative; or
  - (b) at the request of a party, or a person granted leave to appear at the hearing; or



- (c) at the request of another person who has a sufficient interest in—
  - (i) the hearing; or
  - (ii) another matter arising out of or relating to the hearing.
- (3) Subsection (1) is subject to the tribunal rules, and directions under section 434.<sup>135</sup>

### **483 Attendance notice**

- (1) A disciplinary body may, on application of a party to a hearing or on its own initiative, by written notice given to a person (an *attendance notice*), require the person to attend the hearing at a stated time and place to give evidence or to produce stated documents or things.
- (2) A person given an attendance notice must not fail, without reasonable excuse—
  - (a) to attend as required by the notice; or
  - (b) to continue to attend as required by the disciplinary body until excused from further attendance.

Maximum penalty—100 penalty units.

- (3) Also at a hearing, a person appearing as a witness must not—
  - (a) fail to take an oath or make an affirmation when required by the disciplinary body; or
  - (b) fail, without reasonable excuse, to answer a question the person is required to answer by the disciplinary body; or
  - (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—100 penalty units.

- (4) It is a reasonable excuse for an individual to fail to answer a question or produce a document or other thing, if answering

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135 Section 434 (Practice directions)

the question or producing the document or other thing might tend to incriminate the individual.

#### **484 Authentication of documents**

- (1) A document relating to a proceeding for a discipline application requiring authentication by a disciplinary body is sufficiently authenticated if it is signed by the tribunal member or the registrar for the proceeding, or the chairperson or deputy chairperson of the committee.
- (2) However, the tribunal rules may require that a document issued by the tribunal is stamped with the tribunal's seal.
- (3) Judicial notice must be taken of the signature of—
  - (a) a tribunal member or the registrar that appears on a document issued by the tribunal; or
  - (b) the chairperson or deputy chairperson of the committee that appears on a document issued by the tribunal.

### **Division 4 Offences**

#### **485 False or misleading information**

A person must not state anything to a disciplinary body that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

#### **486 False or misleading documents**

- (1) A person must not give to a disciplinary body a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
  - (a) informs the disciplinary body, to the best of the person's ability, how the document is false or misleading; and

- (b) gives the correct information to the disciplinary body if the person has, or can reasonably obtain, the correct information.

## **Part 5                      Legal Practitioners Admissions Board**

### **Division 1                      Preliminary**

#### **487      Main purpose of ch 6, pt 5**

The main purpose of this part is to establish the Legal Practitioners Admissions Board to deal with matters it is empowered to deal with under this Act.

#### **488      Definitions for ch 6, pt 5**

In this part—

*barrister* means a local legal practitioner who holds a current local practising certificate to practise as a barrister.

*solicitor* means a local legal practitioner who holds a current local practising certificate to practise as a solicitor.

### **Division 2                      Establishment and membership of board**

#### **489      Establishment of board**

The Legal Practitioners Admissions Board is established.

#### **490      Members of board**

- (1) The board is to consist of the following members—
- (a) 2 solicitors and 2 barristers;

- (b) 1 solicitor nominated by the law society;
  - (c) 1 barrister nominated by the bar association;
  - (d) the Brisbane registrar;
  - (e) a person nominated by the Minister.
- (2) The Chief Justice must appoint the members of the board, other than the Brisbane registrar or the Minister's nominee.
- (3) A person mentioned in subsection (1)(a), (b) or (c) must not be appointed unless the Chief Justice is satisfied the person is an Australian lawyer of at least 5 years standing, including before the commencement of this section.
- (4) If the law society or bar association fails to nominate a member within 14 days after being requested to do so by the Chief Justice, the Chief Justice may appoint any person whom the Chief Justice considers suitable to represent the interests of the law society or the bar association as a member of the board and the nomination is taken to have been made by the law society or bar association.
- (5) An appointment under this section must be for no longer than 1 year but a person may be reappointed.

### **Division 3                      Board's functions and powers**

#### **491      Functions and powers of board etc.**

- (1) The board has the functions provided for under this Act and the admission rules.
- (2) The board has all the powers necessary or convenient for performing its functions.
- (3) Fees payable to the board under section 42<sup>136</sup> are not moneys payable to the Supreme Court Library Committee under the *Supreme Court Library Act 1968*, section 11.<sup>137</sup>

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136 Section 42 (Fees payable)

137 *Supreme Court Library Act 1968*, section 11 (Fees received from Barristers' Board and Solicitors' Board)

- (4) The board is a statutory body for the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

#### **492 Administrative support of the board**

- (1) The law society must provide administrative support for the board, including secretariat support.
- (2) Under an agreement with the law society, the board must pay the law society for the administrative support from fees received by the board.

### **Division 4 Provisions about board members**

#### **493 Term of appointment**

A member of the board, other than the Brisbane registrar, holds office for the term stated in the member's appointment.

#### **494 Chairperson and deputy chairperson**

- (1) The member of the board appointed by the Chief Justice as chairperson is the chairperson of the board.
- (2) The board members must appoint a member, other than the chairperson, as the deputy chairperson of the board.
- (3) The appointment of the deputy chairperson may be for a time decided by the board but not for longer than the deputy chairperson's term of appointment as a member.

#### **495 Eligibility for membership**

A person can not become a board member if the person—

- (a) is an insolvent under administration; or
- (b) has been convicted of a serious offence; or
- (c) has been convicted of an offence against this Act.

**496 Termination of appointment**

- (1) The Chief Justice may end the appointment of a board member if the member is absent without the board's permission from 3 consecutive meetings of the board of which proper notice has been given.
- (2) The Chief Justice must end the appointment of a board member if the member—
  - (a) is an insolvent under administration; or
  - (b) is convicted of a serious offence; or
  - (c) is convicted of an offence against a relevant law; or
  - (d) if the person was appointed because the person was a solicitor—stops being a solicitor; or
  - (e) if the person was appointed because the person was a barrister—stops being a barrister.
- (3) In this section—

*meeting* means the following—

  - (a) if the member does not attend—a meeting with a quorum present;
  - (b) if the member attends—a meeting with or without a quorum present.

**497 Resignation of board member**

- (1) A board member, other than the Brisbane registrar, may resign by giving a signed notice of resignation to the Chief Justice.
- (2) A notice of resignation under subsection (1) takes effect when the notice is given to the Chief Justice or, if a later time is stated in the notice, the later time.

**Division 5 Board business****498 Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

**499 Times and places of meetings**

- (1) Board meetings are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by the Chief Justice or at least the number of members forming a quorum for the board.
- (3) In the absence of the chairperson, the deputy chairperson may exercise the powers of the chairperson under this section.

**500 Quorum**

A quorum for the board is 4 members.

**501 Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting, but the deputy chairperson is present, the deputy chairperson is to preside.
- (3) If the chairperson and deputy chairperson are both absent from a board meeting, including because of a vacancy in the office, a member chosen by the members present is to preside at the board meeting.

**502 Conduct of meetings**

- (1) A question at a board meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a board meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
  - (a) a majority of the board members gives written agreement to the resolution; and
  - (b) notice of the resolution is given under procedures approved by the board.

### **503 Minutes**

- (1) The board must keep—
  - (a) minutes of its meetings; and
  - (b) a record of any resolutions made under section 502(6).
- (2) Subsection (3) applies if a resolution is passed at a board meeting by a majority of the members present.
- (3) If asked by a member who voted against the passing of the resolution, the board must record in the minutes of the meeting that the member voted against the resolution.

### **504 Disclosure of interests**

- (1) This section applies to a board member (the *interested person*) if—
  - (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a board meeting.



- (3) Unless the board otherwise directs, the interested person must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (4) The interested person must not be present when the board is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the board is considering whether to give a direction under subsection (3) about the interested person; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a board member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the member were present;  
the remaining persons present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded in the board's minutes.

## **Division 6                      Miscellaneous**

### **505      Application of particular Acts to board**

To remove any doubt, it is declared that the board is a public authority for the purposes of—

- (a) the *Freedom of Information Act 1992*; and
- (b) the *Ombudsman Act 2001*.

## Part 6                      Queensland Law Society Incorporated

### Division 1                  Preliminary

#### 506      Purposes of ch 6, pt 6

- (1) The main purpose of this part is to continue in existence the Queensland Law Society Incorporated.
- (2) The main purpose is to be achieved in part by providing for the council.

#### 507      Definitions for ch 6, pt 6

In this part—

*appointed member*, for the council, see section 514(2)(a).

*council meeting* means a meeting of the council under this part.

*council member* means a member of the council, including the following—

- (a) a presidential member;
- (b) an immediate past president as mentioned in section 514.<sup>138</sup>

*presidential member* means a person who is the president, deputy president or vice-president of the law society.

*society rule* see section 525.

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138 Section 514 (Council of the law society)

**Division 2****Constitution and related matters  
about the law society****508 Establishment of Queensland Law Society**

- (1) The body corporate in existence immediately before the commencement of this section by the name of the Queensland Law Society Incorporated is continued in existence under that name but may refer to itself or be referred to as the Queensland Law Society.
- (2) The law society—
  - (a) is a body corporate; and
  - (b) has perpetual succession; and
  - (c) has a common seal; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts and persons acting judicially must take judicial notice of the imprint of the law society's seal appearing on a document and, until the contrary is proved, must presume the seal was properly affixed.

**509 Functions of the law society**

The law society's functions are—

- (a) to perform the functions conferred on the law society under this Act; and
- (b) to manage the affairs, income and property of the law society for the purposes and benefit of the law society; and
- (c) to perform other functions given to the law society under another Act.

**510 General powers of the law society**

- (1) The law society has all the powers of an individual and may, for example—
  - (a) enter into contracts; and

- (b) acquire, hold, dispose of, and deal with property; and
  - (c) appoint agents and attorneys; and
  - (d) engage consultants; and
  - (e) fix charges, and other terms, for services and other facilities it supplies; and
  - (f) do anything else necessary or convenient to be done for its functions.
- (2) Without limiting subsection (1), the law society has the powers given to it under this Act or another Act.
  - (3) However, the law society's powers are subject to any limitations under this Act or another Act.
  - (4) The law society may exercise its powers inside or outside Queensland.
  - (5) Without limiting subsection (4), the law society may exercise its powers outside Australia.

### **511 Status of the law society because of its establishment in Act**

- (1) The law society is a statutory body for the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>139</sup> sets out the way in which the law society's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.
- (3) The law society—
  - (a) does not represent the State; and
  - (b) is not entitled to any immunities or privileges of the State.

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<sup>139</sup> *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

**512 Delegation**

- (1) The law society may delegate its powers under this Act to—
  - (a) an Australian lawyer who is a council member; or
  - (b) a committee that includes at least 1 council member who is an Australian lawyer; or
  - (c) an Australian lawyer who is a member of the law society's staff; or
  - (d) an Australian lawyer; or
  - (e) another person that the law society considers is an appropriate person to exercise the powers of the law society proposed to be delegated.
- (2) A delegation of a power may permit the subdelegation of the power.
- (3) However, a subdelegation must be made in a way allowed under a society rule.
- (4) This section does not limit the power of the law society to make a society rule relating to delegations and subdelegations that may be made under this section.

**Division 3 Membership of law society****513 Membership of law society**

- (1) The law society consists of the individuals who, from time to time, are enrolled as members of it.
- (2) The following individuals are eligible to be enrolled as members of the law society—
  - (a) an individual who is entitled to engage in legal practice in this jurisdiction or is an Australian-registered foreign lawyer;
  - (b) an individual who is a member of a class specified under a society rule as persons who are appropriate to be members of the law society;

- (c) an individual whom the council considers is a fit and proper person to be a member having regard to that person's involvement with the legal profession.

## **Division 4                      Council and its membership and officers of the law society**

### **514      Council of the law society**

- (1) There is to be a council of the law society.
- (2) The council is to consist of not less than 7 and not more than 12 council members, namely—
  - (a) an Australian legal practitioner appointed by the Minister (the *appointed member*); and
  - (b) the president, any deputy president and the vice-president of the law society as mentioned in section 515; and
  - (c) members of the law society, elected or appointed under a society rule.
- (3) Each of the council members is to hold office for a term of 2 years and is eligible for re-election or reappointment under a society rule.
- (4) In addition to the members under subsection (2), a person who is the immediate past president of the law society is, without further appointment, a council member for a term of not longer than 1 year after the person stops being the president.
- (5) This section is subject to section 515.

### **515      President, deputy president and vice-president of the law society**

- (1) Subject to subsection (4), the law society is to have a president, a deputy president and a vice-president, each of whom is to be elected or appointed under a society rule.
- (2) The term of office for the president of the law society is 1 year.

- (3) If, at the end of the president's term of office, a person is the deputy president, that person is to assume the office of president.
- (4) When the deputy president assumes the office of president, a vacancy exists in the office of deputy president and that office must not be filled until the next election or appointment of all officers of the law society under a society rule.
- (5) Subject to subsections (2) to (4), the term of office of the presidential members is 2 years and each of those presidential members is to be eligible for re-election or reappointment.

**516 Dealing with casual vacancy**

- (1) This section applies despite a society rule about filling a casual vacancy in the office of presidential member or elected council member.
- (2) If a vacancy happens in relation to the appointed member, the Minister must appoint another person who is an Australian lawyer to be the appointed member until the term of office of the previous appointed member ends.

**517 No defect because of vacancy**

The performance of a function or the exercise of a power of the law society is not affected by the fact that at the time of the performance or exercise a vacancy existed in the membership of the council or that the election or appointment of a council member was defective.

**518 Secretary and other staff of the law society**

The law society may appoint a secretary and other members of the staff of the law society as it may consider necessary.

## **Division 5                      Council meetings**

### **519      Conduct of business at meetings**

- (1) Subject to this division, the law society may conduct its business and proceedings at council meetings in the way it decides.
- (2) The council meetings must be held at the place and at the time decided by a presidential member.
- (3) However, the council must meet at least 6 times a year.

### **520      Presiding at meetings**

- (1) The president is to preside at council meetings at which the president is present.
- (2) If the president is not present at a council meeting, the deputy president is to preside.
- (3) If both the president and deputy president are not present at a council meeting, the vice-president is to preside.
- (4) If no presidential member is present at a council meeting, a member chosen by the council members present at the meeting is to preside.

### **521      Quorum**

- (1) A quorum of the council consists of a majority of council members for the time being holding office.
- (2) A council meeting at which a quorum is present may perform the functions and exercise the powers of the law society.

### **522      Conduct of council meetings**

- (1) A question at a council meeting is decided by a majority of the votes of the council members present.
- (2) Each council member present at a council meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.



- (3) A council member present at a council meeting who abstains from voting is taken to have voted for the negative.
- (4) The council may hold its meetings, or allow council members to take part in its meetings, by using any technology that reasonably allows council members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A council member who takes part in a council meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the council, even if it is not passed at a council meeting, if—
  - (a) notice of the resolution is given under a society rule; and
  - (b) a majority of the council members gives written agreement to the resolution.

## **523 Minutes**

The council must keep—

- (a) minutes of the council's meetings; and
- (b) a record of resolutions made under section 522(6).

## **524 Disclosure of interest**

- (1) This section applies to a council member (the *interested member*) if—
  - (a) the member has a personal interest, or a direct or indirect financial interest, in an issue being considered, or about to be considered, by the council; and
  - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a council meeting.

- (3) Unless the council otherwise directs, the interested member must not—
  - (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council about the issue.
- (4) The interested member must not be present when the council is considering whether to give a direction under subsection (3).
- (5) If there is another council member who must, under subsection (2), also disclose an interest in the issue, the other council member must not—
  - (a) be present when the council is considering whether to give a direction under subsection (3) about the interested member; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a council member is not present at a council meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the council member were present;the remaining council members present are a quorum of the council for considering or deciding the issue, or for considering or deciding whether to give the direction, at the council meeting.
- (7) A disclosure under subsection (2) must be recorded in the minutes of the council meeting.

## **Division 6                      Law society may make rule**

### **525      Rule**

- (1) The law society may make a rule (the *society rule*) for the following purposes—

- (a) to define, and carry out, the objects of the law society;
  - (b) for the regulation and good government of the law society and its members;
  - (c) to provide for the way of electing or appointing the presidential members and other council members, and filling a vacancy of a council member, other than an appointed member or person appointed because the person is the immediate past president;
  - (d) the regulation of council meetings and the conduct of its business;
  - (e) the custody and use of the law society's common seal;
  - (f) the admission, re-admission, resignation, and expulsion of members of the law society;
  - (g) to fix fees, levies and subscriptions in relation to membership of the law society and to recover unpaid fees, levies and subscriptions;
  - (h) to waive compliance with a society rule, in whole or in part, absolutely or conditionally, in relation to a member or a class of members.
- (2) A society rule must be made by resolution of the council.

### **526 Notice by Minister about law society making a rule**

- (1) A society rule has no effect unless the Minister notifies the making of the rule.
- (2) The notice is subordinate legislation.

### **527 Availability of a society rule**

The law society must ensure that an up-to-date version of each society rule is available, without charge, for public inspection—

- (a) at the law society's principal place of business during normal working hours; or
- (b) on the law society's Internet site or an Internet site identified on the authority's Internet site.

**Division 7****Miscellaneous****528 Starting proceedings**

- (1) The secretary, or another person authorised by resolution of the law society, may start, carry on and defend any proceeding in the name of the law society.
- (2) In any proceeding on behalf of the law society, it is not necessary to prove the election or appointment of the presidential members, another council member or the secretary.

**529 Recovery of unpaid amount**

- (1) This section applies if there is a charge under a relevant law and the charge or part of the charge is not paid by a person required under the relevant law to pay it.
- (2) The law society may recover from the person the charge, or the part of the charge, not paid as a debt.
- (3) In this section—  
*charge* includes—
  - (a) a contribution, due, fee, levy, or subscription that becomes payable on or after the commencement of this section; and
  - (b) a contribution, due, fee, fine, levy, or subscription that became payable before the commencement of this section.

## Chapter 7      Suitability reports and investigations

### Part 1            Suitability reports

#### Division 1        Preliminary

##### 530      Main purpose of ch 7, pt 1

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

##### 531      Definitions for ch 7, pt 1

In this part—

*commissioner of police* means the commissioner of the police service.

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

*Note*—

A person granted interstate registration would be an interstate-registered foreign lawyer under this Act.

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

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

*registration* means local registration or interstate registration.

*relevant authority* means—

- (a) for an applicant for admission—the board; or
- (b) for an applicant for the grant or renewal of a local practising certificate or local registration, for the holder

of a local practising certificate or for a locally-registered foreign lawyer—the relevant regulatory authority.

***subject person*** means—

- (a) an applicant for admission; or
- (b) an applicant for the grant or renewal of a local practising certificate; or
- (c) the holder of a local practising certificate; or
- (d) an applicant for registration as a locally-registered foreign lawyer; or
- (e) a locally-registered foreign lawyer.

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

## **Division 2                      Police reports**

### **532      Relevant authority may ask for police report**

- (1) A relevant authority may ask the commissioner of police for a written report about whether a subject person has any convictions for offences.
- (2) However, a regulatory authority must not ask for a report about a local legal practitioner or a locally-registered foreign lawyer unless the authority considers it appropriate.
- (3) Subsection (2) applies to the regulatory authority in relation to a local legal practitioner whether or not the practitioner is applying for the renewal of the local practising certificate or applying for another practising certificate.
- (4) The commissioner of police must give the report to the authority.
- (5) The report must contain only information in the possession of the commissioner of police or to which the commissioner has access.

## **Division 3                    Health assessments**

### **533     Health assessment**

- (1) This section applies if a relevant authority believes a subject person may have a material physical or mental infirmity that may make the person unsuitable to engage in legal practice in this jurisdiction.
- (2) The relevant authority may require the subject person to undergo a health assessment by a person appointed by the relevant authority.
- (3) If the relevant authority decides to require the health assessment, the authority must give the subject person an information notice about the decision to require the assessment that includes—
  - (a) the name and qualifications of the person appointed by the authority to conduct the assessment; and
  - (b) a stated date, and a stated time and place, for the assessment that must be reasonable having regard to the circumstances of the subject person as known to the relevant authority.
- (4) The stated date must be no sooner than 28 days after the information notice is given to the subject person.
- (5) The subject person may appeal to the Supreme Court against the decision within 28 days after the day the information notice is given to the subject person.

### **534     Appointment of health assessor**

- (1) The relevant authority may appoint 1 or more appropriately qualified persons (*health assessors*) to conduct all or part of a health assessment under this division of a subject person.
- (2) At least 1 health assessor must be a registered medical practitioner.
- (3) If the relevant authority considers the subject person's criminal history is relevant to the assessment, the authority may disclose the history to the health assessor.

- (4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.
- (5) Before appointing a person as a health assessor, the relevant authority must be satisfied the person does not have a personal or professional connection with the subject person that may prejudice the way in which the person conducts the assessment.
- (6) In this section—  
*appropriately qualified*, in relation to a registered medical practitioner or other person conducting a health assessment, includes having the qualifications, experience, skills or knowledge appropriate to conduct the assessment.

### **535 Health assessment report**

- (1) A health assessor conducting all or part of a health assessment of a subject person must prepare a report about the assessment (*health assessment report*).
- (2) The health assessment report must include—
  - (a) the health assessor's findings as to any material physical or mental infirmity of the subject person and the extent, if any, to which the infirmity may make the person unsuitable to engage in legal practice; and
  - (b) if the health assessor finds the person has a material physical or mental infirmity that may make the person unsuitable to engage in legal practice, the health assessor's recommendations, if any, as to a condition—
    - (i) the Supreme Court could impose on the person's admission under this Act as a legal practitioner that would make, or would be likely to make, the person suitable to engage in legal practice, despite the infirmity; or
    - (ii) the relevant authority could impose on the person's practising certificate or local registration that would make, or would be likely to make, the person suitable to engage in legal practice, despite the infirmity.



- (3) The health assessor must give the health assessment report to the relevant authority and a copy to the subject person.

### **536 Payment for health assessment and report**

The relevant authority that appoints a health assessor to conduct all or part of a health assessment is liable for the cost of the assessment conducted by, and the report prepared by, the health assessor.

### **537 Use of health assessment report**

- (1) A report about a subject person is not admissible in any proceeding, and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceeding.
- (2) Subsection (1) does not apply in relation to—
  - (a) a proceeding relating to an application by the subject person for admission under this Act as a local practitioner, for local registration, for admission to the legal profession in another jurisdiction or for interstate registration; or
  - (b) a proceeding on an appeal by the subject person against a decision of a relevant authority of this or another jurisdiction—
    - (i) refusing to grant or renew a practising certificate or registration; or
    - (ii) imposing conditions on a practising certificate or registration; or
    - (iii) amending or cancelling a practising certificate or registration.
- (3) Subsection (1) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in a proceeding with the consent of—
  - (a) the health assessor who prepared the report; and
  - (b) the subject person to whom the report relates.
- (4) In this section—

**report** means a health assessment report prepared under this division or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

## **Division 4                    General**

### **538    Confidentiality of suitability report**

- (1) A member, officer, employee or agent of a relevant authority must not, directly or indirectly, disclose to anyone else a suitability report, or information in a suitability report, given to the relevant authority.

Maximum penalty—200 penalty units.

- (2) A member, officer, employee or agent of the board does not contravene subsection (1) if—
- (a) disclosure of the suitability report or information in it to someone else is authorised by the board to the extent necessary to perform a function or exercise a power under this Act relating to an application for admission; or
  - (b) disclosure of the report or information in it is made to the corresponding authority for the board of another jurisdiction in which the person has applied for admission under this Act as a legal practitioner; or
  - (c) the disclosure is made with the consent of the person to whom it relates and, in the case of a health assessment, the health assessor; or
  - (d) the disclosure is otherwise required or permitted by law.
- (3) A member, officer, employee or agent of a regulatory authority does not contravene subsection (1) if—
- (a) disclosure of the suitability report or information in it to someone else is authorised by the regulatory authority to the extent necessary to perform a function or exercise a power under this Act in relation to—
    - (i) an application for the grant or renewal of a local practising certificate or for the grant or renewal of local registration; or

*Legal Profession Act 2004*

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- (ii) the imposition or proposed imposition of conditions on a local practising certificate or local registration; or
    - (iii) the amendment, cancellation or suspension, or the proposed amendment, cancellation or suspension, of a local practising certificate or local registration; or
  - (b) disclosure of the suitability report or information in it is made to the regulatory authority of another jurisdiction when the person to whom it relates is an applicant for the grant or renewal of a practising certificate or the grant or renewal of interstate registration, or the holder of an interstate practising certificate or an interstate-registered foreign lawyer, under a corresponding law of the other jurisdiction; or
  - (c) the disclosure is made with the consent of the person to whom it relates and, in the case of a health assessment, the health assessor; or
  - (d) the disclosure is otherwise required or permitted by law.
- (4) The relevant authority must ensure a suitability report is destroyed after—
- (a) the application concerned is finally decided or is withdrawn; or
  - (b) other action relating to the imposition of conditions on a practising certificate or local registration, or the amendment, cancellation or suspension of a practising certificate or local registration, is taken or a decision is taken not to proceed with any other action.
- (5) Subsection (1) does not apply to information in a suitability report if that information was given or obtained by the relevant authority other than as part of the suitability report.

*Example for subsection (5)—*

A suitability report may contain information that an applicant may have already disclosed, including name, address, or some information about previous convictions or a previous disqualification from being a lawyer.

**539 Operation of ch 7, pt 1**

- (1) Nothing in this part authorises the board to seek a suitability report about—
  - (a) an applicant for the grant or renewal of a local practising certificate; or
  - (b) the holder of a local practising certificate.
- (2) Nothing in this part authorises a relevant authority to seek a suitability report about an applicant for admission.

**Part 2                      Investigators and their powers****Division 1                      Preliminary****540 Main purpose of ch 7, pt 2**

The main purpose of this part is to provide for powers for audits or for investigations of complaints or investigation matters.

**541 Definitions for ch 7, pt 2**

In this part—

*investigation* means an investigation of a complaint or investigation matter.

*investigator* means a person appointed under section 542 as an investigator.

**Division 2                      Investigators****542 Appointment, qualifications etc. of investigators**

- (1) The commissioner may appoint any of the following persons as an investigator—

- (a) a member of the staff of the commission or a consultant to the commissioner as mentioned in section 422(2);<sup>140</sup>
  - (b) a person nominated for appointment as an investigator by a regulatory authority.
- (2) However, the commissioner may appoint a person as an investigator only if the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
  - (3) An investigator nominated by a regulatory authority may only exercise the power of an investigator in relation to an audit or investigation by the regulatory authority or when directed by the commissioner to conduct an audit or investigate a matter.
  - (4) If, under this Act, a regulatory authority may conduct an audit or investigate a complaint or investigation matter, an investigator nominated by the regulatory authority may conduct the audit or investigate the complaint or investigation matter.
  - (5) This section does not limit the power of a regulatory authority to delegate powers to a person who is an investigator nominated by the regulatory authority.
  - (6) An investigator nominated by a regulatory authority is not employed, and is not entitled to payments, under this Act or the *Public Service Act 1996*.

### **543 Appointment conditions and limit on powers**

- (1) An investigator holds office on any conditions stated in—
  - (a) the investigator's instrument of appointment; or
  - (b) a signed notice given to the investigator; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers under this Act.

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140 Section 422 (Staff and other resources)

- (3) In this section—

*signed notice* means a notice signed by the commissioner.

#### **544 Issue of identity card**

- (1) The commissioner must issue an identity card to each investigator.
- (2) The identity card must—
  - (a) contain a recent photo of the investigator; and
  - (b) contain a copy of the investigator's signature; and
  - (c) identify the person as an investigator under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

#### **545 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an investigator must—
  - (a) produce the investigator's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 549(1)(b) or (2).<sup>141</sup>

#### **546 When investigator ceases to hold office**

- (1) An investigator ceases to hold office if any of the following happens—

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141 Section 549 (Power to enter places)

- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the investigator ceases to hold office;
  - (c) the investigator's resignation under section 547 takes effect.
- (2) Subsection (1) does not limit the ways an investigator may stop holding office.
- (3) In this section—
- condition of office* means a condition on which the investigator holds office.

#### **547 Resignation**

An investigator may resign by signed notice given to the commissioner.

#### **548 Return of identity card**

A person who ceases to be an investigator must return the person's identity card to the commissioner within 21 days after ceasing to be an investigator unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Division 3                      Entry to places**

#### **549 Power to enter places**

- (1) An investigator may enter a place if—
- (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is a place of business where an Australian lawyer is generally engaged in legal practice, other than a

residence, and the place is open for carrying on business or otherwise open for entry.

- (2) For the purpose of asking the occupier of a place for consent to enter, an investigator may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) In this section—

*place of business* includes a place where a government legal officer is generally engaged in government work.

*residence* includes a part of a place of business where a person resides.

## **550 Entry with consent**

- (1) This section applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 549(1)(a).
- (2) Before asking for the consent, the investigator must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the investigator may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the investigator consent to enter the place and exercise powers under this part; and



- (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the investigator must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **551 Application for warrant**

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example for subsection (4)—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **552 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence about a matter that is the subject of a complaint or investigation matter that the investigator is investigating under this Act; and
  - (b) the evidence is at the place or, within the next 7 days, will be at the place.

- (2) The warrant must state—
- (a) the place to which the warrant applies; and
  - (b) that a stated investigator may, with necessary and reasonable help and force—
    - (i) enter the place and another place necessary for entry to the place; and
    - (ii) exercise the investigator's powers under this part; and
  - (c) particulars of the matter that is the subject of the complaint or investigation matter that the magistrate considers appropriate in the circumstances; and
  - (d) the name of the person about whom the complaint is made or who is the subject of the investigation matter, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the date and time of the warrant's issue; and
  - (i) the date, within 14 days after the warrant's issue, the warrant ends.

**553 Application by electronic communication and duplicate warrant**

- (1) An application under section 551<sup>142</sup> may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the investigator considers it necessary because of—
- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the investigator's remote location.

- (2) The application—
  - (a) may not be made before the investigator prepares the written application under section 551(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the investigator, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or
  - (b) otherwise—
    - (i) the magistrate must tell the investigator the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the investigator must complete a form of warrant, including by writing on it—
      - (A) the magistrate's name; and
      - (B) the date and time the magistrate issued the warrant; and
      - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***) is a duplicate of, and as effectual as, the original warrant.
- (6) The investigator must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 551(2) and (3); and

- (b) if the investigator completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
  - (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
 

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does limit section 551.
- (10) In this section—
 

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 554 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant or in compliance with section 551, 552 or 553<sup>143</sup> unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
 

*warrant* includes a duplicate warrant mentioned in section 553(5).

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143 Section 551 (Application for warrant), 552 (Issue of warrant) or 553 (Application by electronic communication and duplicate warrant)

**555 Warrants—procedure before entry**

- (1) This section applies if an investigator named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the investigator's identity card, or having the identity card displayed, as mentioned in section 545(1);<sup>144</sup>
  - (b) give the person a copy of the warrant;
  - (c) tell the person the investigator is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 553(5).

**Division 4 Powers of investigators after entry****556 General powers of investigator after entering places**

- (1) This division applies to an investigator who enters a place.
- (2) However if an investigator, under section 549(2),<sup>145</sup> enters a place to ask the occupier's consent to enter premises, this division applies to the investigator only if the consent is given or the entry is otherwise authorised.

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144 Section 545 (Production or display of identity card)

145 Section 549 (Power to enter places)

- (3) For performing an investigator's function under this Act, an investigator may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
  - (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document at the place;
  - (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division.

#### **557 Power to require reasonable help or information**

- (1) An investigator may require the occupier of the place, or a person at the place, to give the investigator—
  - (a) reasonable help to exercise a power under this part; or
  - (b) information to help the investigator in conducting the investigation.
- (2) When making a requirement under subsection (1), the investigator must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

## **Division 5                      Power of investigators to seize evidence**

### **558      Seizing evidence at place entered under s 549**

- (1) An investigator, who enters a place with the consent of the occupier as mentioned in section 549(1)(a), may seize a thing at the place if—
  - (a) the investigator believes the thing is evidence that is relevant to the investigation being conducted by the investigator; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (2) An investigator, who enters a public place as mentioned in section 549(1)(b), may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.
- (3) An investigator, who enters a place under a warrant as mentioned in section 549(1)(c), may seize the evidence for which the warrant was issued.
- (4) An investigator, who enters a place of business as mentioned in section 549(1)(d), may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.
- (5) The investigator may also seize anything else at the place if the investigator believes—
  - (a) the thing is evidence of unsatisfactory professional conduct or professional misconduct of an Australian lawyer, misconduct of a law practice employee or an offence against a relevant law; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

**559 Securing seized things**

Having seized a thing, an investigator may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

**560 Tampering with seized things**

If an investigator restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the investigator's approval.

Maximum penalty—100 penalty units.

**561 Powers to support seizure**

- (1) To enable a thing to be seized, an investigator may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
  - (a) must be made by written notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.
- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.



- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—100 penalty units.

## **562 Receipt for seized things**

- (1) After an investigator seizes a thing, the investigator must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt having regard to the thing's nature, condition and value.

## **563 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the investigator who seized the thing—
- (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
- (a) subsection (1)(a) does not require the investigator to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the investigator to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**564 Dealing with forfeited things etc.**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the commissioner as the commissioner considers appropriate.
- (2) Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

**565 Return of seized things**

- (1) If a seized thing has not been forfeited, the investigator must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding involving the thing are started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing has been forfeited, the investigator must immediately return a thing seized as evidence to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

**566 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an investigator must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## Division 6                      General enforcement matters

### 567      Notice of damage

- (1) This section applies if—
  - (a) an investigator damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an investigator damages property.
- (2) The investigator must promptly give written notice of particulars of the damage to the person who appears to the investigator to be the owner of the property.
- (3) If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the investigator's or other person's control, the investigator may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the investigator reasonably believes is trivial.
- (6) In subsection (2)—

*owner*, of property, includes the person in possession or control of it.

### 568      Compensation

- (1) A person may claim compensation from the commissioner if the person incurs loss or expense because of the exercise or purported exercise of a power under division 3, 4 or 5.<sup>146</sup>
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under division 3, 4 or 5.

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146 Division 3 (Entry to places), 4 (Powers of investigators after entry) or 5 (Power of investigators to seize evidence)

- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

**569 False or misleading information**

A person must not state anything to an investigator that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**570 False or misleading documents**

- (1) A person must not give to an investigator a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
  - (a) informs the investigator, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the investigator if the person has, or can reasonably obtain, the correct information.

**571 Obstructing investigators**

- (1) A person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—
  - (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and

- (b) the investigator considers the person's conduct is an obstruction.
- (3) In this section—  
*obstruct* includes hinder and attempt to obstruct.

**572 Impersonation of investigators**

A person must not pretend to be an investigator.

Maximum penalty—100 penalty units.

**Division 7**                    ***Provisions about investigations relating to incorporated legal practices***<sup>147</sup>

**573 Definition for ch 7, pt 2, div 7**

*In this division—*

***ILP investigator*** means any of the following persons who conduct an audit or investigation to which this division applies—

- (a) *the commissioner;*
- (b) *the law society;*
- (c) *an investigator other than an investigator appointed because of a nomination by the bar association.*

**574 Application of division to audits and investigations**

- (1) *This division applies to each of the following—*
  - (a) *an audit conducted under section 107;*<sup>148</sup>
  - (b) *an investigation under a relevant law relating to the trust accounts of an incorporated legal practice;*

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147 Chapter 7, part 2, division 7 (sections 573–578) had not commenced on or before the reprint date.

148 Section 107 (Commissioner or law society may audit incorporated legal practice)

- (c) *an investigation relating to a complaint made under this Act involving legal services provided by an incorporated legal practice, however that complaint is expressed.*
- (2) *This section does not limit the powers under chapter 3<sup>149</sup> in relation to a legal practitioner director, or an associate, of an incorporated legal practice.*
- (3) *A person conducting an audit or investigation to which this division applies may exercise the powers set out in this part for the audit or investigation.*
- (4) *For subsection (3), in addition to the matters mentioned in section 552(1),<sup>150</sup> a magistrate may issue a warrant for a place if the magistrate is satisfied that an ILP investigator has been unreasonably refused entry to the place for an audit as mentioned in subsection (1)(a) and the provisions of this part about warrants apply with necessary changes.*
- (5) *A regulation may provide for how the provisions about warrants apply in relation to the issue of a warrant for an audit, and related matters.*

### **575 Examination of persons**

- (1) *An ILP investigator has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by the Australian Securities and Investments Commission Act 2001 (Cwlth), part 3, division 2.<sup>151</sup>*
- (2) *The Australian Securities and Investments Commission Act 2001 (Cwlth), part 3, division 2, applies to and in relation to the exercise of those powers with the necessary changes, including the following changes—*
- (a) *a reference to the Australian Securities and Investments Commission, however expressed, is taken to be a reference to an ILP investigator;*

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149 Chapter 3 (Complaints, investigation matters and discipline)

150 Section 552 (Issue of warrant)

151 *Australian Securities and Investments Commission Act 2001 (Cwlth), part 3 (Investigations and information-gathering), division 2 (Examination of persons)*

- (b) *a reference to a matter that is being or is to be investigated under part 3, division 1<sup>152</sup> of that Act is taken to be a reference to a matter that is being or is to be investigated by an ILP investigator;*
  - (c) *a reference in section 19<sup>153</sup> 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 an inspector is taken to be a reference to an ILP investigator;*
  - (e) *a reference to a prescribed form is taken to be a reference to an approved form that is approved by the commissioner.*
- (3) *The Australian Securities and Investments Commission Act 2001 (Cwlth), sections 22(2) and (3), 25(2) and (2A), 26 and 27<sup>154</sup> do not apply in relation to the exercise of the powers conferred on an ILP investigator under this section.*

## **576 Inspection of books**

- (1) *An ILP investigator has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by the Australian Securities and Investments Commission Act 2001 (Cwlth), sections 30(1), 34 and 37 to 39.<sup>155</sup>*
- (2) *Those provisions apply in relation to the exercise of those powers, with the necessary changes, including the following changes—*

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152 *Australian Securities and Investments Commission Act 2001 (Cwlth), part 3 (Investigations and information-gathering), division 1 (Investigations)*

153 *Australian Securities and Investments Commission Act 2001 (Cwlth), section 19 (Notice requiring appearance for examination)*

154 *Australian Securities and Investments Commission Act 2001 (Cwlth), sections 22 (Examination to take place in private), 25 (Giving to other persons copies of record), 26 (Copies given subject to conditions) and 27 (Record to accompany report)*

155 *Australian Securities and Investments Commission Act 2001 (Cwlth), sections 30 (Notice to produce books about affairs of body corporate or registered scheme), 34 (ASIC may authorise persons to require production of books), 37 (Powers where books produced or seized), 38 (Powers where books not produced) and 39 (Power to require person to identify property of body corporate)*

- (a) *a reference to the Australian Securities and Investments Commission, however expressed, is taken to be a reference to an ILP 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 ILP investigator or a person authorised by the ILP investigator who is an officer or employee of the ILP investigator;*
- (e) *a reference in section 37 of that Act to a proceeding is taken to be a reference to an audit or investigation to which this division applies or an examination under section 575.*

### **577 Power to hold hearings**

- (1) *An ILP investigator may hold hearings for the purposes of audit or investigation to which this division applies or an examination under section 575.*
- (2) *The Australian Securities and Investments Commission Act 2001 (Cwlth), sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted)<sup>156</sup> apply in relation to a hearing with any necessary changes, including the following changes—*
  - (a) *a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to an ILP investigator;*

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<sup>156</sup> *Australian Securities and Investments Commission Act 2001 (Cwlth), sections 52 (General discretion to hold hearing in public or private), 56 (Who may be present when hearing takes place in private), 58 (Power to summon witnesses and take evidence), 59 (Proceedings at hearings) and 60 (ASIC to take account of evidence and submissions)*



- (b) *a reference to a member or staff member is taken to be a reference to an ILP investigator, or a person authorised by an ILP investigator who is an officer or employee of the ILP investigator;*
- (c) *a reference to a prescribed form is taken to be a reference to a form approved by an ILP investigator.*

### **578 Failure to comply with investigation**

*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 an ILP investigator, or a person authorised by the authority, in the exercise of powers conferred by this division;*
- (b) *a contravention by an Australian legal practitioner of any condition imposed by an ILP investigator in the exercise of powers conferred by this division;*
- (c) *a failure by a legal practitioner director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following—*
  - (i) *any requirement made by an ILP investigator, or a person authorised by the ILP investigator, in the exercise of powers conferred by this division;*
  - (ii) *any condition imposed by an ILP investigator in the exercise of powers conferred by this division.*

## Chapter 8      Miscellaneous matters

### Part 1                      Jurisdiction of the Supreme Court

#### 579      Inherent jurisdiction of Supreme Court

- (1) The inherent jurisdiction and power of the Supreme Court in relation to the control and discipline of local lawyers and local legal practitioners is not affected by anything in this Act.
- (2) The inherent jurisdiction and power—
  - (a) extends to an interstate legal practitioner under section 78;<sup>157</sup> and
  - (b) may be exercised by making any order that a disciplinary body may make under this Act.

#### 580      Jurisdiction of Supreme Court

- (1) The Supreme Court must hear and decide each application and appeal made to it under this Act and may make the order it considers appropriate for the application or appeal.
- (2) Subsection (1) is subject to a provision that states the orders that may be made by the court on an application or appeal.
- (3) This section does not limit section 579.
- (4) An Australian lawyer is entitled to appear before and be heard by the Supreme Court at a hearing about an application or appeal as mentioned in subsection (1) that is made in relation to the lawyer under this Act.

#### 581      Injunctions

- (1) This section applies if a person (the *subject person*) has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

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157 Section 78 (Interstate legal practitioner is officer of Supreme Court)

*Legal Profession Act 2004*

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- (a) an offence against a relevant law; or
  - (b) attempting to contravene a relevant law; or
  - (c) aiding, abetting, counselling or procuring a person to contravene a relevant law; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a relevant law; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, an offence against a relevant law by a person; or
  - (f) conspiring with others to contravene a relevant law.
- (2) On application by the commissioner or the relevant regulatory authority for the subject person, the Supreme Court may grant an injunction, on terms the court considers appropriate—
- (a) restraining the subject person from engaging in the conduct; and
  - (b) if the court considers it desirable to do so—requiring the subject person to do any act or thing.
- (3) If an application under subsection (2) has been made, the Supreme Court may, if the court decides it to be appropriate, grant an injunction by consent of all the parties to the proceeding, whether or not the court is satisfied that subsection applies.
- (4) If the Supreme Court considers it desirable to do so, the court may grant an interim injunction pending its decision of an application under subsection (2).
- (5) The Supreme Court may discharge or vary an injunction granted under subsection (2) or (4).
- (6) The Supreme Court's power to grant an injunction restraining the subject person from engaging in conduct may be exercised whether or not—
- (a) it appears to the court that the subject person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) the subject person has previously refused or failed to do that act or thing; or

- (c) there is an imminent danger of substantial damage to anyone if the subject person refuses or fails to do that act or thing.
- (7) The Supreme Court must not require the commissioner or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

## **582 Hearing and deciding particular action without a jury**

- (1) This section applies if an action in relation to any description of civil liability arising out of the business of practising as an Australian legal practitioner is before a court and any person who may be made liable in that action is indemnified under a contract of insurance under a relevant law.
- (2) If, apart from this section, the action may be heard and decided by a jury in that court, the action must be heard and decided by a judge without a jury.

## **Part 2 Suspected offences, particular associates and other matters**

### **583 Duty of relevant entities to report suspected offences**

- (1) This section applies if a relevant entity suspects a person has committed an offence, other than an offence against the *Trust Accounts Act 1973* that the relevant entity considers is of a minor nature.
- (2) The relevant entity must—
  - (a) report the suspected offence to an appropriate authority; and
  - (b) make available to the appropriate authority the documents and information relevant to the suspected offence in the relevant entity's possession or under its control or other documents that, after it has made the report, come into the entity's possession or under its control.

- (3) However, if the relevant entity suspects only because of an allegation by a person and the suspected offence is not in relation to a relevant law, the relevant entity may advise the person as follows—
  - (a) that the relevant entity is not going to report the suspected offence to an appropriate authority;
  - (b) that if the person wishes to pursue the matter of the suspected offence, the person should raise it with an appropriate authority.
- (4) For this section but subject to subsections (5) and (6), it is immaterial how the relevant entity gained the information that caused it to suspect that the person has committed an offence, including whether or not the relevant entity obtained information or a document—
  - (a) after a complaint or an investigation; or
  - (b) before the commencement of this section.
- (5) The obligation under subsection (2)(a) does not apply to a suspicion formed on the basis of documents or information that may be subject to privilege, or information derived from documents or information subject to privilege, unless the person to whom the privilege attaches gives written consent to the relevant entity to report the suspected offence under that provision.
- (6) The obligation under subsection (2)(b) does not apply to documents or information that may be subject to privilege, or information derived from documents or information subject to privilege, unless the person to whom the privilege attaches gives written consent to the relevant entity to make available to the appropriate authority the documents or information under that provision.
- (7) A relevant entity may apply to the Supreme Court for a declaration as to whether documents or information are subject to privilege.
- (8) The commissioner must develop guidelines relating to obligations under this section for the commission and for relevant entities.

- (9) To remove any doubt, it is declared that the relevant entity is not under an obligation to make inquiries for subsection (1) in relation to information before it in order to have reasonable grounds about a concern so that the concern is a suspicion about something, or to decide whether the suspicion is correct.
- (10) In this section—
- appropriate authority* includes the following—
- (a) the commissioner of police;
  - (b) the Crime and Misconduct Commission;
  - (c) the director of public prosecutions;
  - (d) the chief executive of a department in which a government legal officer is employed;
  - (e) a person in another jurisdiction corresponding to a person mentioned in paragraph (a), (b), (c) or (d).
- offence* means an offence against either of the following—
- (a) an Act;
  - (b) a law of the Commonwealth or another jurisdiction.
- privilege* means legal professional privilege or another privilege.
- relevant entity* means—
- (a) the commissioner; or
  - (b) a regulatory authority.

**584 Associate who is proscribed person or has been convicted of serious offence etc.**

- (1) A local legal practitioner must not have a person as an associate if the practitioner knows the person is either of the following unless the associate is approved by the relevant regulatory authority—
- (a) a proscribed person;
  - (b) a person who has been convicted of a serious offence and does not hold a current local practising certificate or current interstate practising certificate.

- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) The relevant regulatory authority may, on application, approve an associate for the purposes of this section.
- (4) An approval under this section may be subject to specified conditions.
- (5) If the regulatory authority refuses an application mentioned in subsection (3) or imposes a condition on the approval—
  - (a) the authority must give the applicant an information notice about the decision to refuse the application or to impose the condition; and
  - (b) the applicant may appeal to the Supreme Court against the refusal or imposition of the condition within 28 days after the day the information notice is given to the applicant.
- (6) A proscribed person, or a person convicted of a serious offence, must not seek to become an associate of a local legal practitioner unless the person first informs the practitioner that the person is a proscribed person or about the conviction.

Maximum penalty—200 penalty units.

- (7) In this section—

***associate***, of a local legal practitioner, means—

- (a) a person, other than an Australian legal practitioner, who is a partner of the local legal practitioner in a business that includes the local legal practitioner's practice; or
- (b) a person, other than an Australian legal practitioner, who shares the receipts of the local legal practitioner's practice; or
- (c) a person who is an employee of the local legal practitioner's practice.

***proscribed person*** means either of the following—

- (a) a person whose name has been removed from an Australian roll, whether before or after the commencement of this definition, other than a roll switcher;

- (b) a person who is currently suspended from legal practice in Australia.

***roll switcher*** means—

- (a) a person whose name was, before the commencement of this definition, removed from the roll of barristers at the person's request in order for the person's name to be added to the roll of solicitors; or
- (b) a person whose name was, before the commencement of this definition, removed from the roll of solicitors at the person's request in order for the person's name to be added to the roll of barristers.

### **585 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by a person or, if the penalty is expressed to be for this section, the expressed penalty.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove that—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.



- (5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.
- (6) This section applies to a person who is an executive officer of a corporation that is an incorporated legal practice and a legal practitioner director of the practice in addition to any other provision that applies to the person in the person's capacity as a legal practitioner director of that practice.
- (7) A defence available to a person under this section is available to a person mentioned in subsection (6) in the person's capacity as an executive officer but not in the person's capacity as a legal practitioner director.
- (8) In this section—

*executive officer*, for a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

## **586 Offences are summary offences**

An offence against this Act is a summary offence.

## **587 Limitation on time for starting summary proceeding**

A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

## **588 Appointments and authority**

The following must be presumed unless a party to the proceeding under a relevant law, by reasonable notice, requires proof of it—

- (a) the appointment of the Minister, the chief executive, the commissioner, a panel member, a committee member, a member of the board, a registrar, the Brisbane registrar or an investigator;
- (b) the authority of a person mentioned in paragraph (a) or the law society or bar association to do anything under this Act.

### **589 Signatures**

A signature purporting to be that of any of the following persons is evidence of the signature that it purports to be—

- (a) the Minister;
- (b) the chief executive;
- (c) the commissioner;
- (d) a tribunal member;
- (e) the chairperson or deputy chairperson of the committee;
- (f) the chairperson of the board;
- (g) the Brisbane registrar or another registrar;
- (h) an investigator;
- (i) the President of the law society or the bar association.

### **590 Evidentiary aids—documents**

A document purporting to be a copy of a person's admission under this Act as a legal practitioner, a person's practising certificate or another document about a person made or given under this Act, is evidence of the admission, practising certificate or other document and of the matters contained in it.

## Part 3                      Other matters

### 591      **Information sharing among entities with functions under Act**

- (1) This section applies to each of the following (each of which is an *entity*)—
  - (a) the board;
  - (b) the law society;
  - (c) the bar association;
  - (d) the commissioner.
- (2) An entity that holds a document or information (the *information holder*) about a person may allow another entity (the *information seeker*) access to the document or give the information to the information seeker if—
  - (a) the information holder considers allowing the access or giving the information is consistent with the information holder's or information seeker's functions under a relevant law; and
  - (b) allowing the access or giving the information is done under a written arrangement between the information holder and information seeker as mentioned in subsection (3).
- (3) An entity must have a written arrangement with another entity providing for the way in which the entity, as an information holder, and its officers may, under subsection (2), allow access to a document or give information to the other entity, as an information seeker, and its officers.
- (4) Despite subsection (2), the information holder may not allow access to a suitability report about a person, or give information about a person in a suitability report, in contravention of section 538(1).<sup>158</sup>

*Note—*

Section 538 states when the board or a regulatory authority may disclose a suitability report or information in a suitability report.

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158 Section 538 (Confidentiality of suitability report)

- (5) This section does not limit a provision of this Act that expressly allows an entity to give stated information to another entity, including, for example, a report of an audit as mentioned in section 107.<sup>159</sup>

## **592 Offence of improper disclosure of information**

- (1) A person who discloses information obtained in the administration of this Act commits an offence, unless the disclosure is—
- (a) authorised or required by this Act or another Act; or
  - (b) made in connection with the administration of this Act; or
  - (c) made with the consent of the person to whom the information relates; or
  - (d) made in connection with a legal proceeding under a relevant law or any report of a proceeding, including a proceeding before a disciplinary body relating to a discipline application; or
  - (e) made with other lawful excuse.

Maximum penalty—200 penalty units.

- (2) For the purposes of and without limiting subsection (1), a person who receives information directly or indirectly from a corresponding authority is taken to have obtained the information in the administration of this Act.
- (3) This section does not apply to the following disclosures of information—
- (a) a disclosure that does not identify or help in identifying—
    - (i) a complainant; or
    - (ii) an Australian legal practitioner or law practice employee, who is the subject of a complaint or an investigation matter, or a law practice that employs the legal practitioner or employee; or

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<sup>159</sup> Section 107 (Commissioner or law society may audit incorporated legal practice)

- (iii) a person associated with the complainant, Australian legal practitioner, law practice employee or law practice;
- (b) a disclosure by an investigator to the commissioner and, if the investigator was nominated by a regulatory authority, to the regulatory authority.
- (4) This section is not limited by another provision of this Act—
  - (a) allowing an entity to disclose information; or
  - (b) requiring an entity to protect information.
- (5) In this section—
 

*Australian legal practitioner* means a person to whom chapter 3 applies as mentioned in section 248.<sup>160</sup>

### **593 Protection from liability**

- (1) An Act official is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an Act official, the liability attaches instead to the State.
- (3) This section does not apply to an act done, or omission made, for which liability is excluded under section 300, 448 or 472.<sup>161</sup>
- (4) In this section—
 

*Act official* means—

  - (a) the commissioner or the staff of the commission; or
  - (b) an investigator involved in the conduct of an audit or investigation under chapter 3;<sup>162</sup> or
  - (c) a disciplinary body, any member of the disciplinary body or a panel member; or

<sup>160</sup> Section 248 (Application of chapter to lawyers, former lawyers and former practitioners)

<sup>161</sup> Section 300 (Liability for publicising disciplinary action), 448 (Protection of members etc.) or 472 (Protection of members etc.)

<sup>162</sup> Chapter 3 (Complaints, investigation matters and discipline)

- (d) the Brisbane registrar and other registrars; or
- (e) a mediator to whom a matter is referred under chapter 3; or
- (f) a regulatory authority; or
- (g) an external intervener; or
- (h) a member of the staff of an entity mentioned in paragraphs (b) to (g).

*civil liability* includes a liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

#### **594 Approved forms**

- (1) A form may be approved under this Act.
- (2) The form may be approved by—
  - (a) if the form is to be used for an application to or another purpose relating to the Supreme Court—the rules committee within the meaning of the *Supreme Court of Queensland Act 1991*, section 118C;<sup>163</sup> or
  - (b) if the form is to be used for an application to or another purpose relating to a disciplinary body—the chairperson of the tribunal for the tribunal, and the committee for the committee; or
  - (c) if the form is to be used for an application to or another purpose relating to a regulatory authority, however described—the regulatory authority; or
  - (d) if the form is to be used for a purpose relating to the commissioner—the commissioner; or
  - (e) if the form is to be used for an application to or another purpose relating to the board—the board; or

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<sup>163</sup> *Supreme Court of Queensland Act 1991*, section 118C (Rules Committee)

- (f) if the form is to be used in relation to a matter dealt with under chapter 2, part 8<sup>164</sup>—the chief executive.
- (3) If a provision provides that an approved form may provide for a matter, however expressed, the provision does not limit other matters that may be included in the form.
- (4) Subsection (2) is subject to a provision that expressly provides who may approve a form.

### **595 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made—
  - (a) authorising the Brisbane registrar to give to a regulatory authority of this jurisdiction or another jurisdiction the date of a person's admission under this Act as a legal practitioner and other relevant information about the person's admission; and
  - (b) imposing a penalty, not exceeding 20 penalty units, for a contravention of a regulation; and
  - (c) providing for fees; and
  - (d) allowing a law practice that is a sole practitioner to continue to engage in legal practice after the death of the sole practitioner and applying the provisions of this Act to the law practice and the employees of that practice.
- (3) A regulation mentioned in subsection (2)(c) may be made—
  - (a) prescribing fees and costs payable as mentioned in the regulation, including, for example, fees and costs payable for matters dealt with by the Supreme Court or an entity established under this Act; and
  - (b) providing for the refund or remission of fees and costs.
- (4) A regulation may provide that a contravention of the regulation is capable of constituting unsatisfactory

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164 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 8 (Financial arrangements for those who may engage in legal practice in this jurisdiction)





commencement of this section may be relevant to a proceeding relating to a contravention of section 24 or 25.<sup>166</sup>

- (2) Also, an act or omission that happened before that commencement may be relevant to whether conduct after that commencement is unsatisfactory professional conduct or professional misconduct.
- (3) In this section—  
*contravention* includes an alleged contravention.

### **599 Offences committed before the commencement**

- (1) The law society may continue or complete a proceeding that the council of the society started before the commencement of this section under the Queensland Law Society Act, section 5D<sup>167</sup> but the law society must not start a proceeding under that section after the commencement.
- (2) If the law society had investigated a matter but had not started a proceeding in relation to the matter before the commencement of this section, and the law society considers the matter should be dealt with by the commissioner under subsection (3), the law society must give to the commissioner all reports of its investigations for the matter and relevant evidence.
- (3) The commissioner may start a proceeding under the Legal Practitioners Act, section 19<sup>168</sup> in relation to a contravention of that section that happened before the repeal of that section.
- (4) This section does not limit the *Acts Interpretation Act 1954*, section 42.<sup>169</sup>

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166 Section 24 (Prohibition on engaging in legal practice when not entitled) or 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

167 *Queensland Law Society Act 1952*, section 5D (Institution of proceedings by council)

168 Legal Practitioners Act, section 19 (Conveyancing how prohibited)

169 *Acts Interpretation Act 1954*, section 42 (Any person may prosecute etc.)

### **Division 3                      Transitional provisions relating to ch 2, pt 3 (Admission of legal practitioners)**

#### **600      Application for admission made before commencement but not heard by Supreme Court before commencement**

- (1) This section applies to each of the following (each of which is an *existing application*)—
  - (a) an application for admission as a barrister or as a solicitor made by a person before the commencement of this section that has not been heard by the Supreme Court before the commencement;
  - (b) a motion before the commencement by a person under the Legal Practitioners Act, section 41 or 42,<sup>170</sup> as in force at the time of the motion, that has not been dealt with by the court before the commencement.
- (2) The existing application is to be dealt with by the court and the board as an application for admission under section 32,<sup>171</sup> including, for example, accepting any advertising done in relation to an existing application as advertising under this Act.
- (3) However, if the fees for an application for admission under section 32 are more than the fees for the existing application and the applicant has paid the fees for the existing application, no more fees are payable for the existing application.
- (4) Suitability matters in relation to a person may be considered in relation to an existing application.

#### **601      References in other Acts to applicant for admission as a barrister or as a solicitor**

In an Act, a reference to an applicant or application for admission as a barrister or for admission as a solicitor,

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170 Legal Practitioners Act, section 41 (Admission of certain solicitors as barristers) or 42 (Admission of certain barristers as solicitors)

171 Section 32 (Application for admission under this Act as a legal practitioner)

whether or not by reference to the admission rules, is a reference to an applicant or application for admission as a legal practitioner.

## **Division 4                      Transitional provisions relating to ch 2, pt 4 (Legal practice by Australian legal practitioners)**

### **602      Purpose of div 4**

- (1) The main purpose of this division is to provide for the transition from the system operating in Queensland before the commencement of this section to the system that is to operate after the commencement of chapter 2, part 4, namely before the commencement of this section—
  - (a) persons who practised in the manner of a solicitor (*solicitors*) were required to hold practising certificates under the Queensland Law Society Act, as in force immediately before the commencement of this section, that were issued, generally speaking, for a financial year; and
  - (b) persons who practised in the manner of a barrister (*barristers*) were not required to hold any practising certificates.
- (2) The main purpose is to be achieved by making different arrangements for solicitors and barristers, including, for example—
  - (a) provisions that require a solicitor's practising certificate, issued under the Queensland Law Society Act as in force before the commencement of section 603, relating to the financial year starting on 1 July 2004 to be taken to be a local practising certificate under this Act; and
  - (b) provisions that commence on the commencement of this section that will allow persons who wish to obtain a practising certificate from the bar association relating to the financial year starting on 1 July 2004, to apply before the commencement of chapter 2, part 4 and for

the application to be dealt with under that part despite the fact the part has not commenced.

- (3) To achieve this purpose, until the commencement of section 508,<sup>172</sup> a reference in a provision of this Act to the law society, or to a regulatory authority that includes the law society, includes the law society as established at the time of the commencement of this section, if the context permits.

### **603 Actions before commencement that continue to have effect**

- (1) This section applies to an action taken, however described, by—
- (a) the law society, or its council or secretary, in relation to a person or the person's practising certificate before the commencement of this section, other than an action dealt with in another section of this division; or

*Examples of actions for paragraph (a)—*

- the grant of a practising certificate or the renewal of a person's practising certificate
  - the imposition of a condition on a person's practising certificate as granted or issued
  - the cancellation or suspension of a person's practising certificate.
- (b) the solicitor's complaints tribunal or the clerk of the tribunal in relation to a person whether the tribunal's or clerk's action is taken before or after that commencement.

*Example of actions for paragraph (b)—*

The tribunal orders that the practitioner be suspended from practice or pays an amount of money.

- (2) The action, and any rights or entitlements the person has in relation to that action, continue to have effect under this Act subject to—

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172 Section 508 (Establishment of Queensland Law Society)

- (a) any conditions stated in a document by which the action was taken in relation to the person, or in a notice given to the person about the action; and
- (b) this Act.

*Examples for subsection (2)—*

1. A practising certificate issued under the Queensland Law Society Act for the financial year starting on 1 July 2004 is taken to be a local practising certificate under this Act.
  2. If a person's practising certificate is cancelled before the commencement and the person had a right of appeal against that decision before the commencement, the person may appeal under this Act.
- (3) To the extent of any inconsistency among provisions applying to the action, this Act prevails.
  - (4) For subsections (2) and (3)—
    - (a) if the action, right or entitlement involves an appeal to the Supreme Court or a proceeding before the court was started before the commencement—without limiting the power of the Supreme Court, the court may direct how that action, right, entitlement or proceeding should be continued; or
    - (b) otherwise—a regulation made under section 643<sup>173</sup> may provide for the way the action, right or entitlement is to continue under this Act.
  - (5) In this section—
 

*action* includes appointment of a costs assessor, cancellation or suspension of a practising certificate, decision and order.

## **604 Applications to law society outstanding at the commencement**

- (1) This section applies if a person has applied for a grant or renewal of a practising certificate under the Queensland Law Society Act, as in force immediately before the commencement of this section, relating to the financial year

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173 Section 643 (Transitional regulation-making power)

beginning on 1 July 2004 but the law society did not, before the commencement—

- (a) grant or renew the practising certificate; or
  - (b) give the person notice that the person's application is refused.
- (2) The law society must continue to deal with the application under the Queensland Law Society Act as in force immediately before the commencement.
- (3) For subsection (2), a provision of the Queensland Law Society Act as in force immediately before the commencement that is repealed, and rules made under that Act, continue to have effect.
- (4) To remove any doubt, it is declared that any appeal about a decision in relation to an application, or refusal of an application, that is not started before the commencement is to be dealt with under this Act as mentioned in section 603(2).
- (5) Within 28 days after the commencement, a person mentioned in subsection (1) must give the law society a written statement—
  - (a) about any show cause event in relation to the person that happened after the person was first admitted as a barrister, barrister and solicitor, legal practitioner, solicitor or solicitor and barrister, under an Act of this or another jurisdiction; and
  - (b) explaining why, despite the event, the applicant is a suitable person to hold, or continue to hold, a local practising certificate.
- (6) Subsection (5) applies whether or not the person has been granted a practising certificate, the person's practising certificate has been renewed, or the law society must continue to deal with the person's application.
- (7) The law society must give a copy of a statement under subsection (5) to the commissioner.
- (8) A contravention of subsection (5) is capable of constituting unsatisfactory professional conduct or professional misconduct.

**605 Barristers**

- (1) The purpose of this section is to make arrangements in relation to the grant of practising certificates by the bar association that are different from the arrangements for the law society under sections 603 and 604 by, for example—
  - (a) allowing persons who wish to obtain a practising certificate from the bar association relating to the financial year starting on 1 July 2004 to apply for the grant of a practising certificate before the commencement of section 44;<sup>174</sup> and
  - (b) persons who apply before that commencement, and other persons who apply before 28 days after that commencement for the grant of a practising certificate from the bar association relating to the financial year beginning on 1 July 2004, to practise as a barrister until this section provides otherwise or expires.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 17<sup>175</sup>—
  - (a) a person who wishes to apply, before the commencement of section 44, for the grant of a practising certificate from the bar association relating to the financial year starting on 1 July 2004 may do so under chapter 2, part 4<sup>176</sup> even though that part, other than section 83,<sup>177</sup> has not commenced; and
  - (b) the bar association may deal with the application under chapter 2, part 4 and do other things for the purposes of dealing with the application even though that part, other than section 83,<sup>178</sup> has not commenced.

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174 Section 44 (Main purposes of ch 2, pt 4)

175 *Acts Interpretation Act 1954*, section 17 (Exercise of powers between enactment and commencement)

176 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 4 (Legal Practice by Australian Legal Practitioners)

177 Section 83 (Regulatory authority may charge reasonable fees)

178 Section 83 (Regulatory authority may charge reasonable fees)

- (3) Despite the commencement of sections 24 and 25,<sup>179</sup> on and after the day of commencement of those sections (the **commencement day**), those sections do not apply to a person who, immediately before the commencement day, lawfully engaged in legal practice in this jurisdiction as a barrister, if the person—
- (a) has applied to the bar association for a practising certificate at any time before 28 days after the commencement day, whether the application was made before or after the commencement day; and
  - (b) the person engages in legal practice only to the extent that a person who is, after the commencement day, a barrister under this Act could engage in legal practice in this jurisdiction under this Act.
- (4) A person who has applied for the grant of a practising certificate as mentioned in subsection (3)(a) is, on and after the commencement of section 44, taken to be the holder of a current practising certificate from the bar association until the earliest of the following happens—
- (a) the bar association grants a practising certificate to the person;
  - (b) the bar association refuses to grant a practising certificate to the person;
  - (c) a regulation, made under section 643,<sup>180</sup> provides subsection (3) no longer has effect.
- (5) This section expires 6 months after section 44 commences.

### **606 Professional indemnity insurance as mentioned in s 50(3)**

- (1) This section applies until a regulation commences that states the requirements for professional indemnity insurance complying with this Act, as mentioned in section 50(3).<sup>181</sup>

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179 Sections 24 (Prohibition on engaging in legal practice when not entitled) and 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

180 Section 643 (Transitional regulation-making power)

181 Section 50 (Professional indemnity insurance)



- (2) For a practising certificate granted or renewed by the law society, indemnity insurance under the indemnity rule as in force immediately before the commencement of this section is the professional indemnity insurance that complies with this Act as required by section 50(3).<sup>182</sup>
- (3) For a practising certificate granted or renewed by the bar association, insurance of a kind approved or arranged by the bar association before the commencement is the professional indemnity insurance that complies with this Act as required by section 50(3).
- (4) To remove any doubt, it is declared that a barrister must be covered by professional indemnity insurance that complies with this Act as required by section 50(3) on and after the commencement.

## **Division 5                      Transitional provisions relating to ch 2, pt 7 (Fidelity cover)**

### **607      Amounts payable to and from the fidelity fund before commencement**

- (1) This section applies to an amount that was payable into, or was payable from, the fidelity fund as it existed immediately before the commencement of this section.
- (2) If the amount is payable into the fidelity fund and is received by the law society after the commencement, the amount must be paid into the fidelity fund.
- (3) If the amount was payable from the fidelity fund before the commencement but was not paid before the commencement, it may be paid from the fidelity fund after the commencement.
- (4) Also, if an amount becomes payable in relation to a default happening before the commencement, the amount may be paid from the fidelity fund after the commencement.

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182 Section 50 (Professional indemnity insurance)

- (5) For subsection (4), *default* has the meaning applicable at the time that the act or omission constituting the default happened.

### **608 Delegation to committee of management before commencement**

- (1) This section applies to a delegation as mentioned in the Queensland Law Society Act, section 18, as in force immediately before the repeal of that section.
- (2) Despite section 154,<sup>183</sup> the delegation continues to have effect as if it were a valid delegation under this Act by the law society to the persons who constituted the committee of management immediately before the commencement and may be amended by the law society.
- (3) Also, the delegation may be revoked by the law society.

### **609 Claims for acts or omissions happening before commencement**

- (1) If a person made a claim against the fidelity fund as it existed before the commencement of this section in relation to an act or omission also before the commencement, the claim is to be dealt with under the repealed part and the law governing the liability of the fidelity fund, and the amount of the reimbursement, is the law as in force immediately before the commencement.
- (2) If the person did not make a claim against the fidelity fund as it existed before the commencement in relation to an act or omission also before the commencement, the claim may be made under this Act but the law governing the liability of the fidelity fund, and the amount of the reimbursement, is the law as in force immediately before the commencement.
- (3) To remove any doubt, it is declared that the liability of the fidelity fund and the amount of the reimbursement is not affected by provisions of chapter 2, part 7 that provide that part 7 does not apply to defaults mentioned in that provision.

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<sup>183</sup> Section 154 (Law society may delegate its powers in relation to the fidelity fund to a committee of management)

- (4) However if section 183<sup>184</sup> applies, the amount of a reimbursement may be dealt with in the same way as a payment from the fidelity fund after the commencement.
- (5) In this section—  
*repealed part* means the Queensland Law Society Act, part 3,<sup>185</sup> as in force immediately before the commencement.

## **Division 6                      Transitional provisions relating to ch 2, pt 9 (Rules about those who may engage in legal practice in this jurisdiction)**

### **610      Continuation of rules of the law society**

- (1) This section applies to the rules of the law society as in force immediately before the commencement of this subsection, including rules made under the Queensland Law Society Act, section 5A or 46,<sup>186</sup> as in force immediately before the commencement, including the indemnity rules.
- (2) Subject to subsection (5), the rules continue to have effect as subordinate legislation made under this Act and the Queensland Law Society Act even if the rules would have otherwise expired under the Queensland Law Society Act or the *Statutory Instruments Act 1992*, but the rules as continued may only be amended or repealed as mentioned in subsection (4).
- (3) After the commencement of this subsection and despite the *Queensland Law Society Rule 1987*, rule 100(4), there is no need for a certificate issued and signed by autographical or mechanical means, as mentioned in the rule, to be initialled by the secretary or deputy secretary in order for that certificate to have full force and be valid.

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184 Section 183 (Sufficiency of fidelity fund)

185 Queensland Law Society Act, part 3 (Legal Practitioners' Fidelity Guarantee Fund)

186 Queensland Law Society Act, section 5A (Rules) or 46 (Governor in Council may make rules for purposes of this Act)

- (4) A regulation made under section 643<sup>187</sup> may—
- (a) provide for the way a particular provision of the rules operates under this Act; or
  - (b) amend a provision of the rules; or
  - (c) repeal the rules, or part of the rules that continues to have effect under this section.

*Note* for subsection (4)—

When a legal profession rule, administration rule or law society rule is made about a matter, a regulation may need to be made to amend or repeal a provision of the rules that is continued and deals with that matter.

- (5) Without limiting subsection (4)—
- (a) the *Queensland Law Society Rule 1987*, sections 82, 83, 114 and 121 are repealed; and
  - (b) a reference in the *Queensland Law Society Rule 1987* to a practising certificate includes a practising certificate that, as mentioned in section 603,<sup>188</sup> is taken to be a local practising certificate.
- (6) The following rules made under the Queensland Law Society Act, as in force immediately before the commencement of this subsection, do not stop having effect on 30 June 2004 but continue to have effect, despite section 5A(9) of that Act and the *Statutory Instruments Act 1992*—
- (a) the *Queensland Law Society (Indemnity) Rule 1987*;
  - (b) the *Queensland Law Society Rule 1987*.
- (7) This section expires 1 year after subsection (1) commences.

## **611 Bar association rules**

- (1) This section applies to the bar association in relation to it making a recommendation as mentioned in section 220(2).<sup>189</sup>

187 Section 643 (Transitional regulation-making power)

188 Section 603 (Actions before commencement that continue to have effect)

189 Section 220 (Recommendations to the Minister about legal profession rules)

- (2) The bar association need not comply with section 222<sup>190</sup> in relation to a recommendation to make a rule that is a remaking of the bar association's rules as in force immediately before the commencement of this section, with only necessary changes, if the President of the bar association advises the Minister in writing to that effect.
- (3) This section expires 3 months after its commencement.

## **Division 7                      Transitional provisions relating to ch 3 (Complaints, investigation matters and discipline)**

### **612      Complaints made to the council before commencement but not finally dealt with before that time**

- (1) This section applies to a complaint that—
  - (a) was made by a person to the council under the Queensland Law Society Act, section 5E as in force before the commencement of this section; and
  - (b) has not been withdrawn or finally dealt with in a way mentioned in section 5J of that Act before the commencement.
- (2) The complaint is a complaint under this Act and the commissioner may deal with it in a way that the commissioner considers appropriate.
- (3) For subsection (2), the council must give to the commissioner—
  - (a) written notice about each complaint; and
  - (b) if the commissioner, by written notice to the council, asks for a copy of a particular complaint or other documents that the council possesses relating to a complaint—a copy of the complaint or documents.
- (4) The law society must give the commissioner access to any complaint, and documents relating to a complaint.

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190 Section 222 (Public notice of proposed legal profession rule)

- (5) The commissioner may refer a complaint to the law society under section 265<sup>191</sup> unless the complaint relates to a government legal officer engaged in government work.
- (6) This section is subject to the Queensland Law Society Act, sections 5EA and 5P.<sup>192</sup>

**613 Complaints made to the legal ombudsman before commencement but not finally dealt with before that time**

- (1) The purpose of this section is to provide for the commencement of chapter 6, part 1<sup>193</sup> before the commencement of section 256.<sup>194</sup>
- (2) This section applies to the following—
  - (a) a complaint made by a person under the Queensland Law Society Act before the commencement of this section, including a complaint mentioned in section 6AF of that Act, that has not been finally dealt with before the commencement of this section;
  - (b) a complaint made after the commencement of this section and before section 256 commences about a person who engages in legal practice in the manner of a barrister or solicitor.
- (3) Before the commencement of section 256, as the commissioner considers appropriate, the commissioner may—
  - (a) do any preparatory work in relation to a complaint mentioned in subsection (2); and
  - (b) for a complaint mentioned in subsection (2)(a)—perform functions and exercise powers under the Queensland Law Society Act, part 2B as if that part had not been repealed and a reference in

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191 Section 265 (Referral by commissioner to law society or bar association)

192 Queensland Law Society Act, sections 5EA (Complaints after commencement) and 5P (Application of part)

193 Chapter 6 (Establishment of entities for this Act, and related matters), part 1 (Legal Services Commissioner)

194 Section 256 (Making a complaint)

that part to the legal ombudsman were a reference to the commissioner.

#### **614 Basis of complaint mentioned in ss 256 or 613(2)**

- (1) This section applies to the following—
  - (a) a complaint made after the commencement of this section in relation to conduct of an Australian lawyer or a law practice employee that happened before that commencement;
  - (b) a complaint mentioned in section 613(2).
- (2) The complaint is to be dealt with under this Act but, subject to a regulation under section 643,<sup>195</sup> the commissioner may change the way the commissioner deals with the complaint if—
  - (a) the commissioner considers the change appropriate because the complaint was made before section 256 commenced or applied to conduct that happened before that commencement; and
  - (b) the change is to prevent duplication or unreasonable delay.
- (3) For subsection (2), in relation to the conduct of an Australian lawyer who was a solicitor at the time the conduct happened, references in this Act to unsatisfactory professional conduct and professional misconduct are to be read as if they were defined as follows—

***professional misconduct*** means professional misconduct or malpractice within the meaning of the Queensland Law Society Act.

***unsatisfactory professional conduct*** means unprofessional conduct or practice within the meaning of the Queensland Law Society Act.

- (4) For subsection (2), in relation to the conduct of an Australian lawyer who was a barrister at the time the conduct happened, references in this Act to unsatisfactory professional conduct

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195 Section 643 (Transitional regulation-making power)

and professional misconduct are to be read as if they were defined as follows—

*professional misconduct* means professional misconduct according to the law applied by the Supreme Court when exercising its inherent jurisdiction to deal with the conduct of a barrister before the commencement of this section.

*unsatisfactory professional conduct* means unsatisfactory professional conduct according to the law applied by the Supreme Court when exercising its inherent jurisdiction to deal with the conduct of a barrister before the commencement of this section.

## **Division 8                      Transitional provisions relating to matters that are to continue as external interventions under ch 4 (External intervention)**

### **615 Continuation of appointment under the Queensland Law Society Act, repealed pt 2C to continue as appointment under ch 4**

- (1) The purpose of this section is to provide for the continuation of the appointment of a person appointed under repealed part 2C involving the law practice of a legal practitioner (however the appointment is expressed) if the appointment had not ended before the commencement.
- (2) If the person was appointed under repealed section 10, the person is taken to be appointed as a supervisor of trust money received by the law practice in relation to which the appointment was made.
- (3) If the person is appointed under repealed section 11, the law society must give the person a written direction stating whether the person is taken to be appointed as a supervisor of trust money received by the law practice, or is taken to be appointed as the manager for the law practice, in relation to which the appointment was made.
- (4) If the law society gives the person a written notice stating the person is taken to be appointed as a supervisor of trust money



received by the law practice, the person is taken to be appointed as a supervisor of trust money received by the law practice in relation to which the appointment was made.

- (5) If the law society gives the person a written notice stating the person is taken to be appointed as the manager for the law practice, the person is taken to be appointed as the manager for the law practice in relation to which the appointment was made.
- (6) If the person is appointed under repealed section 11A, the person is taken to be appointed as a receiver for the law practice in relation to which the appointment was made.
- (7) For subsections (2) to (6), the law society may give written directions, or further written directions, to a person about how the person may proceed under this Act as a supervisor, manager or receiver for the relevant law practice.
- (8) A direction may be given under subsection (7) even if the Supreme Court appointed the person under repealed part 2C, but subsection (5) does not prevent a person making an application under section 353<sup>196</sup> for a direction of the Supreme Court, including in relation to a direction given under subsection (7).
- (9) If a document, or a copy of a document, relating to the appointment of a person under repealed part 2C was required under that part to be given to an entity before the commencement and the appointment has not ended before the commencement, the law society must give the entity notice that the appointment is to proceed as an external intervention under this Act and other information the law society considers relevant.
- (10) In this section—

***repealed part 2C*** means the Queensland Law Society Act, part 2C, as in force immediately before the commencement of this section.

***repealed section 10*** means the Queensland Law Society Act, section 10, as in force immediately before the commencement of this section.

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196 Section 353 (Directions of Supreme Court)

*repealed section 11* means the Queensland Law Society Act, section 11, as in force immediately before the commencement of this section.

*repealed section 11A* means the Queensland Law Society Act, section 11A, as in force immediately before the commencement of this section.

## **Division 9                      Transitional provisions relating to ch 6 generally (Establishment of entities for this Act, and related matters)**

### **616      Records of Solicitors' Board and Barristers' Board**

- (1) The board, and the previous Solicitors' Board and Barristers' Board, must enter into arrangements in relation to the records of the previous Solicitors' Board and Barristers' Board.
- (2) For subsection (1), the records may be given to the law society in its role of providing administrative support to the board.

### **617      Provisions that require person to be barrister at commencement for particular reasons**

- (1) This section applies despite a provision requiring a person to hold a practising certificate granted or renewed by the bar association in order for the person to be appointed to an entity mentioned in chapter 6 in the capacity of a barrister.
- (2) A person whose name appears on the roll of barristers, as kept by the Supreme Court and as in existence immediately before the commencement of this section, may be appointed to the entity in the capacity of a barrister.

**Division 10**                      **Transitional provisions relating to  
ch 6 (Establishment of entities for  
this Act, and related matters), pt 6  
(Queensland Law Society  
Incorporated)**

**618**      **Definitions for ch 8, pt 5, div 10**

In this division—

*re-enacted provision* means a repealed provision that has been re-enacted, including with changes, as a provision in chapter 6, part 6.<sup>197</sup>

*repealed provision* means a provision of the Queensland Law Society Act as in force immediately before the commencement of this section that is not in force as a provision of that Act after the commencement.

*start of the new council* means the constitution under this Act of the council for the financial year that starts on 1 July 2005 by the declaration of the persons elected for the council for that year.

**619**      **Things done under remade provisions continue to have effect**

A thing continues to have effect as if the thing had been done under this Act if the thing—

- (a) expressly or impliedly was authorised or required to be done under a repealed provision; and
- (b) was in force immediately before the repeal; and
- (c) can be done under a re-enacted provision.

**620**      **Re-enacting does not affect legal personality etc.**

- (1) The re-enacting of a repealed provision as a re-enacted provision does not—

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<sup>197</sup> Chapter 6 (Establishment of entities for this Act, and related matters), part 6 (Queensland Law Society Incorporated)

- (a) affect the legal personality or identity of the Queensland Law Society Incorporated or the council; or
  - (b) affect a right, entitlement or liability of the law society, the council or anyone else; or
  - (c) make any legal proceeding by or against the law society or the council defective.
- (2) Without limiting subsection (1), the re-enacting of a repealed provision as a re-enacted provision does not affect any right, entitlement, liability or benefit the law society or the council would have had or enjoyed.
- (3) In addition, but without limiting subsection (1), if a legal proceeding might have been continued or started by or against the law society or the council immediately before the commencement of this section, it may be continued or started by or against the law society under this Act.
- (4) This section is subject to section 599.<sup>198</sup>

### **621 Re-enacting does not affect existing legal relationships**

Without limiting section 620(1), the re-enacting of a repealed provision as a re-enacted provision—

- (a) does not place the law society or the council in breach of contract or otherwise make it guilty of a civil wrong; and
- (b) does not make the law society or the council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
- (c) is not taken to fulfil a condition—
  - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
  - (ii) requiring an amount to be paid before its stated maturity; and

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198 Section 599 (Offences committed before the commencement)

- (d) does not release a surety or other obligee, entirely or partly, from an obligation.

**622 Powers exercised by law society or council before commencement**

- (1) If, under a power under a repealed provision, the law society or the council started to deal with a matter and had not finalised it before the commencement of this section, the matter may continue to be dealt with and finalised by the law society under this Act.
- (2) This section is subject to another provision of this Act that specifically provides for how a matter may be dealt with.

**623 Membership of the council if no more than 12 members, etc.**

- (1) This section applies if, immediately before the commencement of this section, there are no more than 12 persons who are council members, not including the person who is a council member because the person is the immediate past president.
- (2) Each of those members continues to be a council member on the same conditions applying to the member before the commencement of this section except that the members hold office until the start of the new council.
- (3) If the person who is the immediate past president is a council member immediately before the commencement of this section, the immediate past president continues to be a council member on the same conditions applying to the immediate past president before the commencement except that the member holds office until the start of the new council.

**624 Membership of the council if more than 12 members, etc.**

- (1) This section applies if, immediately before the commencement of this section, there are more than 12 persons who are council members, not including the person who is a council member because the person is the immediate past president.

- (2) Despite section 514,<sup>199</sup> the persons continue to be council members (the *continuing council members*) and they continue on the same conditions applying to them before the commencement except that they hold office until the start of the new council.
- (3) If the person who is the immediate past president is a council member immediately before the commencement, the immediate past president continues to be a council member on the same conditions applying to the immediate past president immediately before the commencement except that the member holds office until the start of the new council.
- (4) If a continuing council member stops holding office for any reason and at that time there are still more than 12 continuing council members, despite any society rule the contrary, another person is not to be appointed to the council in place of the continuing council member who stops holding office.

## **625 Presidential members**

A person who, immediately before the commencement of this section, was the president, deputy president or vice-president and continues to be a member of the council under section 623 or 624, continues to be the president, deputy president or vice-president of the law society on the same conditions applying to the person immediately before the commencement except that the member holds office until the start of the new council.

## **626 Society rule continues to apply to vacation of office**

A person's council membership that continues under this division may be vacated under a society rule providing for the way membership of the council is vacated, including a rule that continues to have effect as mentioned in section 610.<sup>200</sup>

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199 Section 514 (Council of the law society)

200 Section 610 (Continuation of rules of the law society)

**627 Delegation by the law society**

- (1) A delegation by the law society to any person, made under a repealed provision before the commencement of this section and in force immediately before that commencement, continues to have effect as if the delegation had been made under section 512.
- (2) However, if the delegation is to a person as a member of the council and that person is no longer a council member after the commencement of this section, the delegation ends.

**Division 11 Transitional provisions relating to the Legal Practitioners Act****628 Main purposes of ch 8, pt 5, div 11**

The main purposes of this division are to provide for the repeal of provisions of the Legal Practitioners Act and for transitional provisions relating to provisions of the Legal Practitioners Act that are repealed.

**629 Amendment and relocation of the Legal Practitioners Act, s 58**

Schedule 2 amends the Legal Practitioners Act, section 58<sup>201</sup> and relocates that provision to schedule 3 of this Act.

**630 Effect of relocation**

- (1) The Legal Practitioners Act, section 58, as amended and relocated to schedule 3, has effect as a provision of this Act.
- (2) Admission rules of the type mentioned in the *Supreme Court of Queensland Act 1991*, section 118(2A) may provide for the way in which schedule 3 has effect as a provision of this Act.
- (3) This section, and schedule 3, expire 1 year after the commencement of this section.

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201 Legal Practitioners Act, section 58 (Qualifications for admission)

**631 Accounts kept by society under the Legal Practitioners Act, s 51**

- (1) This section applies to the accounts kept by the law society as required under the Legal Practitioners Act, section 51(11)<sup>202</sup> (*section 51 accounts*).
- (2) On 1 July 2004, the section 51 accounts and any investment of moneys from those accounts vest in the chief executive for the purposes of chapter 2, part 8.<sup>203</sup>
- (3) A financial institution at which a section 51 account is kept must amend its documents to reflect the fact that the account has vested in the chief executive.
- (4) The law society must ensure that a financial institution at which a section 51 account is kept does all that is necessary to give effect to subsections (2) and (3).
- (5) When a section 51 account vests in the chief executive, for this Act, it is a prescribed account for the person to whom the account relates.
- (6) For the *Financial Administration and Audit Act 1977*, section 51 accounts vested in the chief executive are not held for the State.
- (7) On the commencement of this section, the Legal Practitioners Act, part 7<sup>204</sup> expires.

**632 Repeal of remaining provisions of Legal Practitioners Act**

The *Legal Practitioners Act 1995*<sup>205</sup> is repealed.

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202 Legal Practitioners Act, section 51 (Solicitors trust accounts etc.)

203 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 8 (Financial arrangements for those who may engage in legal practice in this jurisdiction)

204 Legal Practitioners Act, part 7 (Provisions from Legal Assistance Act 1965)

205 The *Legal Practitioners Act 1995* was previously the *Legal Practitioners Act Amendment Act 1968*, No. 45.



**633 References to Legal Practitioners Act and related matters**

- (1) In an Act or document, a reference to the *Legal Practitioners Act 1995* may, if the context permits, be taken to be a reference to this Act.
- (2) A reference in an Act, other than an Act amended by this Act, to any of the following may, if the context permits, be read as a reference to an Australian lawyer—
  - (a) legal practitioner;
  - (b) solicitor;
  - (c) solicitor and barrister;
  - (d) barrister;
  - (e) counsel;
  - (f) lawyer.
- (3) However if, under that reference, a person is entitled to engage in legal practice in this jurisdiction, the reference is to be read subject to sections 24 and 25<sup>206</sup> of this Act and the person must be an Australian legal practitioner who may engage in legal practice in this jurisdiction or a government legal officer engaged in government work.
- (4) Subsection (3) does not affect the appointment of a person before the commencement of this subsection if the appointment was valid when made.

**634 References to other Acts etc.**

- (1) This section applies to an Act or document that refers to an Act mentioned in the Legal Practitioners Act, section 62(1) or (2)<sup>207</sup> as in force immediately before the commencement of this section (a *previous Act*).
- (2) To the extent that section 62(1) or (2) had effect in relation to an Act or document and a previous Act was taken to refer to a corresponding provision of the Legal Practitioners Act, the

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206 Sections 24 (Prohibition on engaging in legal practice when not entitled) and 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

207 Legal Practitioners Act, section 62 (References to certain Acts and provisions)

Act or document is taken to refer to a corresponding provision of this Act.

### **635 Appeals under Legal Practitioners Act**

- (1) This section applies if a person may appeal in relation to a matter under the Legal Practitioners Act.
- (2) An appeal started, but not decided, before the commencement of this section, may be dealt with or continue to be dealt with under the Legal Practitioners Act as if that Act had not been repealed.
- (3) A decision that could have been appealed except for the repeal of the Legal Practitioners Act may be the subject of an appeal under this Act to the Supreme Court.
- (4) For an appeal under this section, the Supreme Court may give directions about the way in which the appeal is to proceed.

## **Division 12 Transitional provisions relating to the Queensland Law Society Act**

### **636 Main purposes of ch 8, pt 5, div 12**

The main purposes of this division are to provide for—

- (a) the expiry or repeal of provisions of the Queensland Law Society Act at different times in a way that integrates with the commencement of provisions of this Act; and
- (b) transitional provisions relating to provisions of the Queensland Law Society Act that are repealed.

### **637 Repeals relating to solicitors complaints tribunal under Queensland Law Society Act**

- (1) This section applies on the repeal of the Queensland Law Society Act, part 2A, divisions 1, 2, 3, 4, 5 and 6, and sections 6AC, 6AD and 6ADA.

- (2) The members of the solicitors complaints tribunal under the Queensland Law Society Act stop holding office as members of the tribunal despite section 6AC<sup>208</sup> of that Act.
- (3) The members of the solicitors complaints tribunal are not entitled to any payments, remuneration or allowances for a period after the members stop holding office.
- (4) The person who is the clerk of the solicitors complaints tribunal immediately before the repeal must, immediately after that repeal, give all documents held at that time by the clerk or tribunal to the commissioner, other than documents under the Queensland Law Society Act, section 6ZAB.
- (5) A regulation may provide for how the commissioner must deal with the documents given to the commissioner under subsection (4) to protect confidentiality, including creating an offence for unauthorised disclosures.
- (6) Also, a regulation may provide for a person to apply to the Supreme Court for an order that allows the commissioner to disclose information, including by giving the person access to or a copy of a document.

**638 Repeals relating to legal ombudsman under the Queensland Law Society Act**

- (1) The Queensland Law Society Act, part 2B, is repealed and, on the repeal, the legal ombudsman goes out of office despite section 6AJ<sup>209</sup> of that Act.
- (2) The legal ombudsman is not entitled to any payments, remuneration or allowances for a period after the ombudsman goes out of office.
- (3) However, the person who, immediately before that repeal, was the legal ombudsman must give to the commissioner or make available to the commissioner all documents held by the ombudsman at the repeal.
- (4) A regulation may provide for how the commissioner must deal with the documents given to the commissioner under

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208 Queensland Law Society Act, section 6AC (Duration of appointment)

209 Queensland Law Society Act, section 6AJ (Duration of appointment)

subsection (3) to protect confidentiality, including creating an offence for unauthorised disclosures.

**639 Report by the commissioner for 2003-2004 financial year**

The commissioner must report to the Minister about the discharge of the legal ombudsman's functions during the financial year ending on 30 June 2004.

**640 Further amendment of Queensland Law Society Act**

Schedule 4 further amends the Queensland Law Society Act.

**Division 13 Transitional provisions for, and repeal of, the Legal Profession Act 2003**

**641 Transitional provisions relating to appointment of Legal Services Commissioner under the Legal Profession Act 2003**

If, at the commencement of this section, a person is appointed as the Legal Service Commissioner under the repealed *Legal Profession Act 2003*, the person is taken to be appointed under this Act on the same conditions applying to the person before the commencement.

**642 Repeal of Legal Profession Act 2003**

The Legal Profession Act 2003 No. 97 is repealed.

**Division 14 Regulation-making power for transitional purposes**

**643 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature—

- (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the change—
    - (i) from the operation of a relevant law, or another Act in relation to the legal profession, as in force before the commencement of this section to the operation of a relevant law, or another Act in relation to the legal profession, as in force from time to time after that commencement; or
    - (ii) from the operation of a relevant law, or another Act in relation to the legal profession, as in force from time to time after the commencement of this section to the operation of a relevant law, or another Act in relation to the legal profession, as in force from time to time after that commencement; and
  - (b) for which this Act does not make provision or sufficient provision.
- (2) Without limiting subsection (1), the power to make a transitional regulation includes the power to provide for changes under this Act to the law at different times.
  - (3) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this section.
  - (4) A transitional regulation must declare it is a transitional regulation.
  - (5) This section and any transitional regulation expire 1 year after the commencement of this section.

**Schedule 2      Amendments of Legal  
Practitioners Act 1995,  
section 58**

section 629

- 9      Section 58, as amended—**  
*relocate* to schedule 3 of this Act.

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**Schedule 3      Legal Practitioners Act 1995,  
section 58 as amended and  
relocated**

sections 629 and 630(1)

**58      Qualifications for admission**

(1) Notwithstanding any Act or law or rule of court made under any Act or law, any person—

- (a) who is a British subject; and
- (b) who is of good fame; and
- (c) who is an officer within the meaning of this section and has—
  - (i) obtained at a university or at the Queensland Institute of Technology a degree in law approved by the board; or
  - (ii) completed the solicitors' board examinations before the commencement of section 628;<sup>210</sup>

and has completed a period of 10 years service as prescribed by subsection (2) or, in the case of a person who, before the commencement of the *Legal Practitioners Acts Amendment Act 1977*, has commenced at a university a course leading to a degree in law, has completed a period of 5 years service as prescribed by that subsection; and

- (d) who has complied with the rules of court relating to—
  - (i) the sticking up, delivery and advertising of notices of intention to apply for admission;
  - (ii) the delivery of certificates of passing or completion of, the relevant examinations;
  - (iii) the filing and delivery of affidavits relating to compliance with the rules of court;

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<sup>210</sup> Section 628 (Main purposes of ch 8, pt 5, div 11)

**Schedule 3 (continued)**

- (iv) the payment of fees; and
- (e) who has filed in the Supreme Court office at Brisbane—
  - (i) an affidavit declaring the extent of his or her compliance with this section;
  - (ii) a certificate or certificates referred to in subsection (5) providing evidence that the person has completed the service prescribed by this subsection and subsection (2);
 shall be entitled to be admitted to practise as a legal practitioner.
- (2) The period of service to be completed for the purposes of subsection (1)—
  - (a) shall be served as a clerk (which term shall include any appointment of a higher grade than that of clerk) in 1 or more of the following offices—
    - (i) the solicitor-general's office;
    - (ii) the crown solicitor's office;
    - (iii) the public defender's office;
    - (iv) the department;
    - (vi) the office of the parliamentary counsel;
    - (vii) a registry of the Supreme Court;
    - (viii) a registry of the District Court;
    - (ix) the public trust office and any branch of the public trust office;
    - (x) an office of a clerk of a Magistrates Court;
    - (xi) the office of the director of public prosecutions;
    - (xii) the legal aid commission;
  - (b) may include service wholly before or wholly after, or partly before and partly after the passing of the *Legal Practitioners Act Amendment Act 1968*;
  - (c) need not be continuous service;



## Schedule 3 (continued)

- (d) may if the board directs include service in the defence force of the Commonwealth but not so as to reduce the period of actual service to less than 6 years in the case of a person required by subsection (1) to have completed a period of 10 years service and to less than 3 years in the case of a person required by that subsection to have completed a period of 5 years service.
- (3) A person who is entitled to be admitted to practise as a legal practitioner under subsection (1) shall not be required to serve or have served under any articles of clerkship or to complete or have completed any period of practical training other than the period of service referred to in subsection (1).
- (4) The admission rules are subject to this section.
- (5) For the purposes of this section, a certificate purporting to be signed by a chief executive or by the director of legal aid under the *Legal Aid Queensland Act 1997* stating that a person referred to in the certificate has completed a period of service described in the certificate is evidence.
- (6) In this section—
  - officer* means—
    - (a) an officer under the *Public Service Act 1996*; or
    - (b) a member of the staff of the legal aid commission.

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## Schedule 4      **Amendment of Queensland Law Society Act 1952**<sup>211</sup>

section 640

### **12      Part 2A, division 6A, before section 6ZA—**

*insert—*

#### **‘6ZAA Definitions for div 6A**

*‘In this division—*

*clerk of the tribunal means the Brisbane registrar.*

*cost assessor means a person whose name, immediately before the commencement of this definition, appeared on the tribunal’s register of costs assessors.*

#### **‘6ZAB Clerk of tribunal to hand over register of assessors and related document**

*‘The person who is the clerk of the solicitors complaints tribunal immediately before the commencement of this section must, after that commencement, give to the clerk of the tribunal the tribunal’s register of costs assessors and all related documents.’.*

### **14      Part 2A, divisions 1, 2, 3, 4, 5 and 6 and sections 6AC, 6AD and 6ADA—**

*omit.*

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211 Schedule 4, amendments 12 and 14 had not commenced on or before the reprint date.

## Schedule 5      Dictionary

section 4

*administration rule* see section 226(3).

*admission rules* see section 28.

*admitted to the legal profession* means—

- (a) in relation to another jurisdiction—admission by the Supreme Court of another jurisdiction under a corresponding law as any of the following but does not include the grant or issue of a practising certificate under a corresponding law—
  - (i) a lawyer;
  - (ii) a legal practitioner;
  - (iii) a barrister;
  - (iv) a solicitor;
  - (v) a barrister and solicitor;
  - (vi) a solicitor and barrister; or
- (b) otherwise—means a person admitted under this Act as a legal practitioner or a person admitted to the legal profession of another jurisdiction.

*admitted under this Act as a legal practitioner*, in relation to a person, means each of the following persons but does not include the grant or issue of a practising certificate under this Act or another Act to the person—

- (a) a person in relation to whom the Supreme Court has made an order admitting the person as a legal practitioner, and who has signed the local roll, as mentioned in section 38;
- (b) a person whose name, immediately before the commencement of section 38, appeared on the roll of barristers as kept by the Supreme Court and as in existence immediately before the commencement;

## Schedule 5 (continued)

- (c) a person whose name, immediately before the commencement of section 38, appeared on the roll of solicitors as kept by the Supreme Court and as in existence immediately before the commencement.

**amend**, in relation to a practising certificate or registration as a foreign lawyer, includes—

- (a) impose a condition on the certificate or registration; and  
(b) amend or revoke a condition already imposed on the certificate or registration.

**applicant for admission** see section 28.

**application for admission** see section 32.

**appointed member**, for the council, see section 507.

**approved form** see section 594.

**associate**, of a law practice, see section 11(1).

**Australia**, for chapter 5, see section 359.

**Australian law**, for chapter 5, see section 359.

**Australian lawyer** see section 5(1).

**Australian legal practitioner** see section 6(1).

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

**bar association** means the Bar Association of Queensland (ACN 009 717 739).

**barrister**—

- (a) for chapter 6, part 3—see section 450; and  
(b) for chapter 6, part 5—see section 488; and  
(c) otherwise—see section 8.

**barristers rule** see section 215(1)(b).

## Schedule 5 (continued)

**board** means the Legal Practitioners Admissions Board established under section 489.

**Brisbane registrar** means the registrar under the *Supreme Court of Queensland Act 1991* for the Brisbane Supreme Court district.

**capping and sufficiency provisions**, for chapter 2, part 7, see section 144.

**certificate holder** means—

- (a) for a current local practising certificate or current interstate practising certificate—the person who is named in the certificate as the person to whom the certificate has been granted or in relation to whom the certificate has been renewed; or
- (b) for a practising certificate that is cancelled—the person who was the holder of the certificate when it was current.

**change** includes change by way of an addition, alteration, omission or substitution.

**claim**, for chapter 2, part 7, see section 144.

**claimant**, for chapter 2, part 7, see section 144.

**commercial legal presence**, for chapter 5, see section 359.

**commission** see section 421.

**commissioner** means a person holding the appointment of the Legal Services Commissioner.

**commissioner of police**, for chapter 7, part 1, see section 531.

**committee** means the Legal Practice Committee established under section 451.

**committee member** means a person holding an appointment to the committee under section 452.

**compensation order** see section 288.

**complaint** means a complaint made under section 256.

## Schedule 5 (continued)

***concerted interstate default***, for chapter 2, part 7, see section 144.

***conditions*** means conditions, limitations or restrictions.

***conduct*** means conduct whether consisting of an act or omission.

***consumer dispute*** for chapter 3, part 3, see section 262.

***conviction*** see section 15(1).

***corporation*** see section 86.

***corresponding authority*** means—

- (a) an entity with functions or powers under a corresponding law; or
- (b) when used in the context of an entity with functions or powers under this Act—an entity with corresponding functions or powers under a corresponding law.

***corresponding disciplinary body*** means—

- (a) a court or tribunal having functions or powers under a corresponding law that correspond to any of the functions or powers of a disciplinary body; or
- (b) the Supreme Court of another jurisdiction exercising—
  - (i) its inherent jurisdiction or powers for controlling or disciplining any Australian lawyers; or
  - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction about 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

**Schedule 5 (continued)**

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 that corresponds to this Act, the law declared under that regulation for that 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 jurisdiction, a previous law applying to legal practice in the other jurisdiction.

***corresponding tribunal*** means—

- (a) a court or tribunal having functions and powers under a corresponding law, that correspond to a disciplinary body's functions and powers under this Act; or
- (b) the Supreme Court of another jurisdiction exercising—
  - (i) its inherent jurisdiction or powers for controlling or disciplining Australian lawyers; or
  - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction about Australian lawyers.

***costs*** includes disbursements.

***costs assessor*** see the *Queensland Law Society Act 1952*, section 3.<sup>212</sup>

***council*** means the council of the law society as mentioned in section 514.

***council meeting*** see section 507.

***council member*** see section 507.

***default***, in relation to a law practice, see section 144.

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212 *Queensland Law Society Act 1952*, section 3 (Definitions)

## Schedule 5 (continued)

**director** see section 86.

**disciplinary action** see section 295.

**disciplinary body** means either of the following entities to which the commissioner makes a discipline application—

- (a) the tribunal;
- (b) the committee, other than the committee exercising advisory functions as mentioned in chapter 6, part 3, division 4.

**discipline application** see section 276.

**discipline register** see section 296.

**dishonesty** includes fraud.

**disqualified person** means any of the following persons whether the thing that has happened to the person happened before or after the commencement of section 85—

- (a) a person whose name has, whether or not at his or her own request, been removed from an Australian roll and whose name has not been restored or entered on that roll or who has not subsequently been admitted to the legal profession under a relevant law or corresponding law;
- (b) a person whose practising certificate has been cancelled or suspended under a relevant law 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 a practising certificate under a relevant law or corresponding law, and to whom a practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under a relevant law or corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal



## Schedule 5 (continued)

practitioner from being a partner of the person in a business that includes the provision of legal services;

- (f) a person who is the subject of an order under section 109 or 139,<sup>213</sup> or under a provision of a corresponding law that corresponds to section 109 or 139.

**employee**, of an entity, means a person who is employed or engaged under a contract of service or contract for services in or by the entity whether or not—

- (a) the person works full time, part time, or on a temporary or casual basis; or
- (b) the person is a law clerk or article clerk.

**engaged in government work**, in relation to a government legal officer, see section 10(2).

**engage in legal practice** includes practise law.

**external examiner** means a person—

- (a) appointed, or taken to be appointed, under the *Trust Accounts Act 1973*, section 14, 15, 21 or 22; or
- (b) appointed under the *Queensland Law Society Act 1952*, section 31.

**external intervener for a law practice** see section 315.

**external intervention** see section 315.

**fidelity fund** means the Legal Practitioners' Fidelity Guarantee Fund established under the *Queensland Law Society Act 1952*, part 3,<sup>214</sup> as continued in existence under section 147.

**foreign country** means—

- (a) a country other than Australia; or

213 Section 109 (Disqualification from managing incorporated legal practice) or 139 (Prohibition on partnership with particular partner who is not an Australian legal practitioner)

214 *Queensland Law Society Act 1952*, part 3 (Legal Practitioners' Fidelity Guarantee Fund)

## Schedule 5 (continued)

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

*foreign law* means the following—

- (a) for chapter 5—the law of a foreign country;
- (b) otherwise—a law of a foreign country that corresponds to the relevant provisions of this Act, and includes a law of a foreign country that is declared under a regulation to correspond to this Act.

*foreign law practice*, for chapter 5, see section 359.

*foreign registration authority*, for chapter 5, see section 359.

*foreign roll* means an official roll of lawyers (whether admitted, practising or otherwise) kept in a foreign country, but does not include a roll prescribed under a regulation for this definition.

*fund*, for chapter 2, part 8, see section 203.

*government legal officer* see section 10.

*health assessment report* see section 535.

*health assessor* see section 534.

*home jurisdiction* see section 12.

*ILP authority* means—

- (a) the commissioner; or
- (b) the law society; or
- (c) the commissioner and the law society acting jointly under an arrangement made between the commissioner and law society.

*ILP investigator* see section 573.

*in-house legal services* mean legal services provided to a corporation by a person employed by the corporation concerning a proceeding or transaction to which the corporation, or a related body corporate, is a party.

*incorporated legal practice* see section 85.

## Schedule 5 (continued)

***incorporated legal practice rule*** see section 215(1)(c).

***indemnity rule*** see section 226(4).

***information notice*** see section 16.

***insolvent under administration*** means—

- (a) a person who is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth) or the provisions of a foreign law that correspond to that Act; or
- (b) a person who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part IX or the provisions of a foreign law that correspond to that Act, if the debt agreement has not ended or has not been terminated.

***interstate lawyer*** see section 5(3).

***interstate legal practitioner*** see section 6(3).

***interstate practising certificate*** means a 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 registration***, for chapter 7, part 1, see section 531.

***interstate roll*** means a roll of lawyers kept under a corresponding law.

***investigation*** see section 541.

***investigation matter*** see section 265.

## Schedule 5 (continued)

**investigator** see section 541.

**jurisdiction** means a State or Territory of the Commonwealth.

**law firm** means a partnership consisting only of—

- (a) Australian legal practitioners; or
- (b) 1 or more Australian legal practitioners and 1 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) an incorporated legal practice; or
- (d) a multi-disciplinary partnership.

**law practice employee** means an employee of a law practice engaged in the activities associated with the practice, other than an Australian legal practitioner who is an employee of the practice.

**law society** means the Queensland Law Society Incorporated established under the *Queensland Law Society Act 1952*, section 4, as continued in existence under section 508.

**law society approved form** means a form approved under section 594 by the law society.

**lay associate**, of a law practice, see section 11(3).

**lay panel** means the panel established under section 437(1)(a).

**legal practice**, for chapter 7, part 1, see section 531.

**Legal Practitioners Act**, for chapter 8, part 5, see section 597.

**legal practitioner associate**, of a law practice, see section 11(2).

**legal practitioner director** means—

## Schedule 5 (continued)

- (a) a director of an incorporated legal practice who is an Australian legal practitioner and who holds an unrestricted practising certificate; or
- (b) a person who purports to be a person mentioned in paragraph (a) but whose appointment as a director was invalid or is declared invalid.

**legal practitioner partner**, in relation to a multi-disciplinary partnership, means a partner of the multi-disciplinary partnership who is an Australian legal practitioner holding an unrestricted practising certificate.

**legal profession rule** see section 214.

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

**levy** see section 157.

**local lawyer** see section 5(2).

**local legal practitioner** see section 6(2).

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

**local practising certificate** means a practising certificate, or another document that is evidence of the renewal of a practising certificate, granted by the law society under a relevant law or by the bar association under this Act.

**local registration**, for chapter 7, part 1, see section 531.

**local registration certificate**, for chapter 5, see section 359.

**local roll** see section 38(1).

**local trust account** means a trust account kept under a relevant law.

**managed investment scheme** has the same meaning as in the Corporations Act, chapter 5C.

**manager**, for a law practice, means a person appointed under section 326 as the manager for the law practice.

## Schedule 5 (continued)

***misconduct***, of a law practice employee, means misconduct, whether consisting of an act or omission, by the law practice employee.

***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 under a regulation as 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 a loan; or
- (c) receiving or dealing with payments under the loan;

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

***multi-disciplinary partnership*** see section 123.

***officer*** means—

- (a) in relation to a company within the meaning of the Corporations Act—an officer as defined in section 9 of that Act; or
- (b) in relation to another body corporate prescribed under a regulation—a person prescribed under a regulation to be an officer.

***overseas-registered foreign lawyer***, for chapter 5, see section 359.

***panel member*** means a person holding an appointment to the lay panel or the practitioner panel under chapter 6, part 2, division 3.

***pecuniary loss***, in relation to a default of a law practice, see section 144.

## Schedule 5 (continued)

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

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

***practise foreign law*** see section 359.

***practising certificate*** means a practising certificate granted under this Act or a corresponding law.

***practitioner panel*** means the panel established under section 437(1)(b).

***prescribed account*** see section 203.

***presidential member*** see section 507.

***principal***, of a law practice, see section 11(4).

***professional misconduct***—

- (a) for dealing with a complaint about conduct that happened before the commencement of section 614—see that section and section 245; or
- (b) otherwise—see section 245.

***professional obligations***, of an Australian lawyer, 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 the lawyer must observe.

***quashing a conviction*** see section 15(2).

***Queensland Law Society Act***, for chapter 8, part 5, see section 597.

***receiver***, for a law practice means a person appointed under section 333 as the receiver for the law practice.

***re-enacted provision***, for chapter 8, part 5, division 10, see section 618.

## Schedule 5 (continued)

**registered**, for chapter 5, see section 359.

**registrar** see the *Supreme Court of Queensland Act 1991*, schedule 2.

**registration**, for chapter 7, part 1, see section 531.

**regulated property**, of a law practice, see section 315.

**regulatory authority** means—

- (a) in relation to another jurisdiction—
  - (i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority; 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; or
- (b) otherwise—the law society or the bar association.

**related body corporate** see section 86.

**relevant authority**, for chapter 7, part 1, see section 531.

**relevant jurisdiction** see section 159.

**relevant law** means—

- (a) this Act; or
- (b) the *Legal Practitioners Act 1995* as in force at any time before or after the commencement of this definition; or
- (c) the *Queensland Law Society Act 1952* as in force at any time before or after the commencement of this definition; or
- (d) the *Trust Accounts Act 1973* as in force at any time before or after the commencement of this definition.

**relevant practice** means legal services provided by a law practice.

**relevant regulatory authority** see section 45.



## Schedule 5 (continued)

**repealed provision**, for chapter 8, part 5, division 10, see section 618.

**respondent**, for chapter 3, see section 247.

**serious offence** see section 14.

**show cause event**, in relation to a person, means—

- (a) a conviction for a serious offence or tax offence, whether or not—
  - (i) the offence was committed in or outside this jurisdiction; or
  - (ii) the offence was committed while the person was engaging in legal practice as an Australian lawyer or was practising foreign law as an Australian-registered foreign lawyer; or
  - (iii) other persons are prohibited from disclosing the identity of the offender; or
- (b) becoming an insolvent under administration.

**society rule** see section 507.

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

**solicitor**—

- (a) for chapter 2, part 8—see section 203; and
- (b) for chapter 6, part 3—see section 450; and
- (c) for chapter 6, part 5—see section 488; and
- (d) otherwise—see section 9.

**solicitors complaints tribunal** see the *Queensland Law Society Act 1952*, section 3.

**solicitors rule** see section 215(1)(a).

**staff**, in relation to the office of the commissioner or the commission, see section 422.

**start of the new council**, for chapter 8, part 5, division 10, see section 618.

## Schedule 5 (continued)

**subject person**, for chapter 7, part 1, see section 531.

**suitability matter**, in relation to a person, see section 13.

**suitability report**, for chapter 7, part 1, see section 531.

**supervised legal practice** means legal practice by a person—

- (a) as an employee of a law practice if—
  - (i) a least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or
- (b) as a partner in a law firm if—
  - (i) at least 1 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 mentioned in subparagraph (i); or
- (c) in a capacity approved under an administration rule.

**supervisor**, of trust money received by a law practice, means a person appointed under section 320 as the supervisor of trust money received by the law practice.

**Supreme Court**, for chapter 2, part 3, see section 28.

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

**this jurisdiction** means this State.

**tribunal** means the Legal Practice Tribunal established under section 429.

**tribunal member** means a member of the tribunal constituting the tribunal to hear and decide a discipline application.

## Schedule 5 (continued)

*tribunal rules* see section 433.

*trust account* see section 203.

*unrestricted practising certificate* means—

- (a) a local practising certificate that, as mentioned in section 59(1)(b), states the certificate holder may engage in unsupervised legal practice; or
- (b) an interstate practising certificate that—
  - (i) is not subject to a condition similar to a condition that may be stated in a local practising certificate as mentioned in section 59(1)(a); and
  - (ii) does not limit, or is not subject to a condition that limits, the certificate holder to practise as, in or the manner of, a barrister.

*unsatisfactory professional conduct*—

- (a) for dealing with a complaint about conduct that happened before the commencement of section 614—see that section and section 244; or
- (b) otherwise—see section 244.

*unsupervised legal practice* means legal practice engaged in by an Australian legal practitioner who is entitled to engage in legal practice as a solicitor and whose practising certificate is not subject to a condition that allows the practitioner only to engage in supervised legal practice as a solicitor.

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	434
3 Key . . . . .	434
4 Table of reprints . . . . .	435
5 List of legislation . . . . .	435
6 List of annotations . . . . .	435

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2004. Future amendments of the Legal Profession Act 2004 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

## 5 List of legislation

### **Legal Profession Act 2004 No. 11**

date of assent 31 May 2004

ss 1–2, ch 1, ss 83, 213, ch 2 pt 9 div 3, ch 6 pt 1, pt 2 divs 1–3, pt 3 divs 1–3, pt 5 divs 1–4, ss 586–587, ch 8 pt 3, pt 5 div 1, ss 602, 605, 610(3), (6), 613, 617, 638, ch 8 pt 5 divs 13–14, sch 5 commenced on date of assent (see s 2(1))

ss 220(2), 611 commenced 18 June 2004 (2004 SL No. 83)

ch 2 s 43, ch 2 pts 5–6, ch 2 ss 199–200, ch 5, ch 7 pt 2 div 7, sch 4 amds 12, 14 of the Queensland Law Society Act 1952 not yet proclaimed into force (see s 2)

remaining provisions commenced 1 July 2004 (2004 SL No. 106)

Note—(1) This Act contains a provision that was relocated from the Legal Practitioners Act 1995 (commenced 1 July 2004) (2004 No. 11 s 630(1))

(2) s 58 was relocated to the Legal Profession Act 2004 into sch 3 (commenced 1 July 2004) (2004 No. 11 s 630(1))

(3) s 58 and sch 3 expire 1 July 2005 (2004 No. 11 s 630(3))

amending legislation—

### **Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2, pt 7A**

date of assent 24 June 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2004 (see s 2(1))

## 6 List of annotations

### **Defaults relating to financial services or investments**

s 161 amd 2004 No. 13 s 99B

### **Chapter also applies to law practice employees**

s 252 amd 2004 No. 13 s 99C

### **Application of ch 4**

s 316 amd 2004 No. 13 s 99D

### **Functions and powers of board etc.**

prov hdg amd 2004 No. 13 s 99E(1)

s 491 amd 2004 No. 13 s 99E(2)

### **Administrative support of the board**

s 492 amd 2004 No. 13 s 99F

**CHAPTER 8—MISCELLANEOUS MATTERS****Approved forms**

s 594      amd 2004 No. 13 s 99G

**PART 4—AMENDMENT OF ACTS**

pt hdg      om R1 (RA s 7(1)(k))

**Acts amended in sch 1**

s 596      om R1 (RA s 40)

**PART 5—TRANSITIONAL, SAVINGS AND REPEAL PROVISIONS****Barristers**

s 605      exp 1 January 2005 (see s 605(5))

**Continuation of rules of the law society**

s 610      exp 1 July 2005 (see s 610(7))

**Bar association rules**

s 611      exp 18 September 2004 (see s 611(3))

**Effect of relocation**

s 630      exp 1 July 2005 (see s 630(3))

**Transitional regulation-making power**

s 643      exp 31 May 2005 (see s 643(5))

**SCHEDULE 1—ACTS AMENDED**

om R1 (RA s 40)

**SCHEDULE 2—AMENDMENTS OF LEGAL PRACTITIONERS ACT 1995,  
SECTION 58**

amd R1 (RA s 40)

**SCHEDULE 3—LEGAL PRACTITIONERS ACT 1995, SECTION 58 AS  
AMENDED AND RELOCATED**

sch      exp 1 July 2005 (see s 630(3))

**Qualifications for admission**

s 58      (prev Legal Practitioners Act 1995 s 58)  
amd 1974 No. 5 s 3; 1977 No. 28 s 3; 1984 No. 95 s 34(1)(a); 1990 No. 80 s 3  
sch 1; 1991 No. 3 s 4.3; 1991 No. 97 s 3 sch 2; 1993 No. 32 s 3 sch 1; 1995  
No. 58 s 4 sch 1; 1996 No. 37 s 147 sch 2; 2000 No. 46 s 3 sch; 2004  
No. 11 s 629 sch 2  
reloc 2004 No. 11 s 629 sch 2  
exp 1 July 2005 (see s 630(3))

**SCHEDULE 4—AMENDMENT OF QUEENSLAND LAW SOCIETY ACT 1952**

amd R1 (RA s 40)