



Queensland

Legal Profession Regulation 2007

Subordinate Legislation 2007 No. 153

made under the

Legal Profession Act 2007

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Part 1.1 Preliminary

1 Short title

This regulation may be cited as the *Legal Profession Regulation 2007*.

Note—

The part numbering of this regulation reflects the part numbering of the *Legal Profession Act 2007*. Accordingly, sections in each part of this regulation relate to the corresponding part in the Act. As not every part of the Act has corresponding sections in this regulation, the part numbering of this regulation is not sequential.

2 Commencement

This regulation commences on 1 July 2007.

Part 1.2 Interpretation

3 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

4 Default decision of associate's home jurisdiction

- (1) This section applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, if—
 - (a) section 8(3)(b) of the Act is applicable to the associate; and
 - (b) the home jurisdiction for the associate can be decided under neither subparagraph (i) nor subparagraph (ii) of that paragraph.
- (2) For section 8(3)(b)(iii) of the Act, the home jurisdiction for the associate is to be decided under the following criteria—

- (a) the jurisdiction of the associate's place of residence in Australia;
- (b) if the associate does not have a place of residence in Australia, the jurisdiction of the associate's last place of residence in Australia.

5 Agencies for definition of government legal officer

For section 12(1)(a) of the Act, each of the following is prescribed as an agency—

- (a) the Australian Government Solicitor;
- (b) the Board of Architects of Queensland;
- (c) the Board of Professional Engineers of Queensland;
- (d) the Commission for Children and Young People and Child Guardian;
- (e) the Crime and Misconduct Commission;
- (f) the Office of the Information Commissioner;
- (g) the Office of the Ombudsman;
- (h) the Office of the Queensland Parliamentary Counsel;
- (i) the parliamentary service;
- (j) the Queensland Building Services Authority;
- (k) the Queensland Treasury Corporation;
- (l) the Residential Tenancies Authority;
- (m) the Workers' Compensation Regulatory Authority.

Part 2.2 Reservation of legal work

6 Prescription of legal practice relating to prohibition on engaging in legal practice when not entitled

For section 24(2)(f) of the Act, each of the following is prescribed as legal practice—

- (a) the provision of legal services to the community, or a section of the community, by a community legal service;
- (b) the provision of legal services to Aboriginal or Torres Strait Islander people by a publicly funded, non-profit corporation whose primary purpose is to provide legal services to Aboriginal or Torres Strait Islander people;
- (c) the provision of legal services, by a publicly funded, non-profit corporation (the *representing corporation*) whose primary purpose is to represent a corporation mentioned in paragraph (a) or (b) (the *represented corporation*), to a client of the represented corporation, under an agreement between the representing corporation and the represented corporation.

Part 2.3 Admission of local lawyers

7 Fee to be charged by the board

For section 42 of the Act, a fee for a matter stated in schedule 1 is the fee the board must charge for the matter.

Part 2.4 Legal practice by Australian legal practitioners

8 Completion of periods of supervised legal practice

- (1) For sections 56 and 77 of the Act, completion by a person of a period or periods of supervised legal practice equivalent to the required period of 18 months or 2 years is to be worked out by satisfying the requirements of this section.
- (2) The person satisfies the requirements of this section if the person completes—

- (a) 1 period of supervised legal practice, worked on a full-time basis, that is equal to the required period worked out on a full-time basis; or
 - (b) 1 period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period worked out on a full-time basis; or
 - (c) 2 or more periods of supervised legal practice, worked on either or both of those bases, that together are equal or equivalent to the required period.
- (3) For this section—
- (a) public holidays during a relevant period are to be included as days of supervised legal practice, whether or not the person engaged in legal practice on those days; and
 - (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.
- (4) This section applies to supervised legal practice whether before or after 1 July 2007.

9 Register of local practising certificates

- (1) For section 81(2)(b) of the Act, the particulars mentioned in subsection (2) are prescribed as particulars to be included in a register kept under section 81 of the Act in relation to a local legal practitioner to whom a regulatory authority has granted a local practising certificate, except if the regulatory authority is required by subsection (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows—
- (a) the name of the local legal practitioner;
 - (b) the type of local practising certificate held by the practitioner;
 - (c) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with

- which the practitioner is otherwise engaged in legal practice;
- (d) the contact details of the office of the law practice or other entity in this jurisdiction;
 - (e) by way of separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity—
 - (i) in this jurisdiction; and
 - (ii) in any other jurisdictions in which it has an office, except if the regulatory authority considers those particulars need not be included in relation to an entity that is not a law practice;
 - (f) any other particulars about the practitioner, law practice or other entity that the regulatory authority considers should be included.
- (3) Contact details of an office are the following—
- (a) its street address (the address where the office is physically located);
 - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
 - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A local legal practitioner may, by notice in writing to a regulatory authority, request the authority that it not include any or any stated particulars about the practitioner, law practice or other entity in the register kept by the authority, on the ground that special circumstances warrant the particulars not being publicly available.

Example of special circumstances—

if the safety or well-being of a person would be substantially affected by making the particulars publicly available

- (5) If the regulatory authority to which a notice is given under subsection (4) is satisfied special circumstances exist, the authority is required not to include the particulars concerned in the register, unless it considers the public interest in keeping public access to the particulars outweighs any

individual interest in the particulars not being publicly available.

- (6) Subsection (1) does not limit other information being included in the register at the request or with the consent of the local legal practitioner, including, for example, a special area of legal practice the legal practitioner engages in.

Part 2.7 **Incorporated legal practices and multi-disciplinary partnerships**

10 **Nature of incorporated legal practices**

For section 111(3) of the Act, each of the following is not an incorporated legal practice —

- (a) a community legal service;
- (b) a corporation that provides legal services to Aboriginal or Torres Strait Islander people if the corporation is a publicly funded, non-profit corporation whose primary purpose is to provide legal services to Aboriginal or Torres Strait Islander people;
- (c) a publicly funded, non-profit corporation (the *representing corporation*) whose primary purpose is to represent a corporation mentioned in paragraph (a) or (b) (the *represented corporation*), to a client of the represented corporation, under an agreement between the representing corporation and the represented corporation.

11 **Prohibition on conduct of managed investment scheme by incorporated legal practice**

Section 112(2) of the Act is declared to be a Corporations legislation displacement provision for the Corporations Act, section 5G, in relation to the Corporations legislation.

Note—

The Corporations Act, section 5G, provides that if a State law declares a provision of State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

12 Notice of termination of provision of legal services

For section 116 of the Act, the prescribed period within which a corporation must give a notice under that section is 14 days after it stops engaging in legal practice in this jurisdiction.

13 Disqualifications and prohibitions

- (1) This section applies to each of the following—
 - (a) an order made under section 132 of the Act disqualifying a corporation from providing legal services in this jurisdiction;
 - (b) an order made under section 133 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice;
 - (c) an order made under section 158 of the Act prohibiting an Australian legal practitioner from being a partner of a stated person.
- (2) The commissioner or law society, or both of them, may publicise an order in any way the commissioner or law society thinks fit.
- (3) The applicant for an order—
 - (a) must, after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
 - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- (4) The notice under subsection (3) for an order made under section 132 of the Act—
 - (a) must state—

- (i) the corporation's name; and
 - (ii) the Australian Company Number (ACN) of the corporation; and
 - (iii) the office or business address of the corporation, as last known to the applicant for the order; and
 - (iv) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subsection (3) for an order made under section 133 or 158 of the Act—
- (a) must state—
 - (i) the person's name; and
 - (ii) the person's address, as last known to the applicant for the order; and
 - (iii) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.

Part 2.8 Legal practice by foreign lawyers

14 Scope of practice

- (1) For section 167(1)(b) of the Act, arbitration proceedings in which—
 - (a) the arbitrator is not required to apply the rules of evidence; and
 - (b) knowledge of Australian law is not essential;

are prescribed as a kind of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services, including appearances.

- (2) For section 167(1)(d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which—
- (a) the provisions of other legislation applying to dispute resolution; or
 - (b) the requirements of a body responsible for dispute resolution; or
 - (c) the provisions of a contract that provides for dispute resolution;

restrict participation in dispute resolution to persons of a stated class that does not include Australian-registered foreign lawyers.

- (3) In this section—

dispute resolution means conciliation, mediation and other forms of consensual dispute resolution.

15 Trust money and trust accounts

For section 174 of the Act—

- (a) the provisions of part 3.3 of the Act and any other provisions of the Act (other than part 3.6 of the Act) relating to trust money and trust accounts; and
- (b) the provisions of part 3.3 and any other provisions of this regulation relating to trust money and trust accounts; and
- (c) any provisions of any legal profession rules relating to trust money and trust accounts;

apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.

16 Application of pt 3.6 of the Act to particular locally registered foreign lawyers

- (1) The purpose of this section is to provide that particular provisions of part 3.6 of the Act apply in relation to a locally registered foreign lawyer practising foreign law in this jurisdiction as an associate of a law practice.
- (2) Section 368 of the Act applies to a locally registered foreign lawyer as if a reference in that section to a local practising certificate were a reference to a local registration certificate within the meaning of section 163 of the Act.
- (3) Section 369 of the Act applies to a locally registered foreign lawyer as if a reference in that section to a local legal practitioner were a reference to a locally registered foreign lawyer.

17 Locally registered foreign lawyers not covered by fidelity fund

- (1) For section 176 of the Act, this section applies to a locally registered foreign lawyer practising foreign law in this jurisdiction otherwise than as an associate of a law practice.
- (2) The foreign lawyer may not practise foreign law in this jurisdiction on behalf of a client unless he or she has provided the client with a disclosure statement in relation to his or her lack of cover by the fidelity fund.
- (3) A disclosure statement under subsection (2) is not valid unless—
 - (a) it is in writing; and
 - (b) it is in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding; and
 - (c) it states that the foreign lawyer is not covered by the fidelity fund in relation to the practice of foreign law in this jurisdiction; and
 - (d) it states that Australian legal practitioners generally are covered by the fidelity fund.

18 Fees for application for grant or renewal of registration as foreign lawyer

For section 181(1)(b) of the Act, the fees are as follows—

- (a) for an application for the grant of registration as a foreign lawyer—\$250;
- (b) for an application for the renewal of registration as a foreign lawyer—\$250.

19 Application for local registration—show cause event

For section 192(2) of the Act, a written statement must be in English.

20 Statutory condition regarding notification of offence

- (1) For section 204(3) of the Act, the person to whom a notice is to be given is the secretary of the law society.
- (2) For subsection (1), the notice may be given to the secretary at Law Society House, 179 Ann Street Brisbane, 4000.

21 Register of locally registered foreign lawyers

- (1) For section 210(2)(b) of the Act, the particulars mentioned in subsection (2) are prescribed as particulars to be included in the register kept under section 210 of the Act in relation to a locally registered foreign lawyer, except if the law society is required by subsection (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows—
 - (a) the name of the foreign lawyer;
 - (b) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
 - (c) the contact details of the office of the partnership or other entity in this jurisdiction;

- (d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity—
 - (i) in this jurisdiction; and
 - (ii) in any other jurisdictions in which it has an office, except if the law society considers those particulars need not be included in relation to an entity that is not a law practice;
 - (e) details of the foreign registration authority or authorities by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries;
 - (f) any other particulars about the lawyer, partnership or other entity the law society considers should be included.
- (3) Contact details of an office are the following—
- (a) its street address (the address where the office is physically located);
 - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
 - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A locally registered foreign lawyer may, by notice in writing to the law society, request the society not to include any or any stated particulars about the lawyer, partnership or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available.
- Example—*
- if the safety or well-being of a person would be substantially affected by making the particulars publicly available
- (5) If the law society is satisfied special circumstances exist, the society is required not to include the particulars concerned in the register unless the society considers that the public interest in keeping public access to the particulars outweighs any individual interest in the particulars not being publicly available.
- (6) Subsection (1) does not limit other information being included in the register at the request or with the consent of the local

legal practitioner, including, for example, a special area of legal practice the legal practitioner engages in.

22 Refund of fees

- (1) For section 215 of the Act, this section applies if registration of a foreign lawyer is suspended or cancelled during its currency unless the suspension or cancellation is the result of a complaint or disciplinary matter.
- (2) A portion of the amount of each fee paid in relation to the registration is payable to the foreign lawyer.
- (3) The portion is to be decided by the law society after considering the number of days for which—
 - (a) the registration had effect; and
 - (b) the registration was suspended or cancelled.

Part 3.2 Manner of legal practice

23 Government legal officers and application of legal profession rules

- (1) This section has effect for section 229 of the Act.
- (2) This section applies if a provision of the solicitors rules or the barristers rules states the rules apply, or a provision of the rules applies, to a government legal officer however the application is expressed.
- (3) The provision does not have effect in relation to a government legal officer unless the officer holds a local practising certificate granted by the regulatory authority that made the rules.
- (4) Also, a provision of the solicitors rules or the barristers rules does not have effect in relation to a government legal officer who holds a local practising certificate granted by the regulatory authority that made the rules if compliance with the provision would involve the officer committing an act contrary to, or failing to do an act for a purpose of, another

Act that applies to the officer because of his or her employment or appointment in an entity mentioned in section 12(1) of the Act or section 5.

24 Prohibition on law practice and its associates acting as real estate agents for related transactions

- (1) This section also has effect for section 229 of the Act.
- (2) A law practice must not provide legal services to a person relating to a transaction if the law practice has provided services, as a PAMDA licensee or interstate real estate agent, to the person for the transaction.

Example for subsection (2)—

If a local legal practitioner holds a PAMDA licence and is the real estate agent for the sale of a house, neither the practitioner nor a law practice of which the practitioner is an associate may provide legal services to the seller or purchaser of the house or to an entity that provides financing.

- (3) In this section—

interstate real estate agent means a person who, under a corresponding law within the meaning of the *Property Agents and Motor Dealers Act 2000*, may lawfully perform functions under that corresponding law that a PAMDA licensee may perform under the *Property Agents and Motor Dealers Act 2000*.

law practice includes an associate of the law practice.

PAMDA licensee see section 24(7) of the Act.

25 Relationship of administration rules to regulation

- (1) This section has effect for section 233 of the Act.
- (2) A regulatory authority may not set a fee under an administration rule for the grant or renewal of a practising certificate that differs according to whether the legal practitioner is a member of the regulatory authority.

Part 3.3 Trust money and trust accounts

Division 1 Trust money and trust accounts

26 Operation of div 1

This division has effect for part 3.3 of the Act, and accordingly applies to a law practice in relation to—

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in—
 - (i) this jurisdiction; and
 - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received;

unless the money is dealt with under the corresponding law of a jurisdiction in which the practice has an office.

27 Definitions for div 1

In this division—

BSB number means the number assigned to identify a particular branch of a particular ADI.

Note—

BSB number is an abbreviation for Bank State Branch number.

matter description means a brief phrase or expression assigned by a law practice to describe a matter.

matter reference means a number or other reference assigned by a law practice to identify a matter.

trust money means trust money in relation to which this division for the time being applies, as mentioned in section 26.

28 Application of ss 29–32

Sections 29 to 32 apply if a law practice keeps trust records, including records relating to controlled money, by means of a computerised accounting system.

29 Copies of trust records to be printed

- (1) The law practice must print a paper copy of trust records as follows—
 - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;
 - (b) reconciliation statements prepared under section 44 are to be printed as at the end of each named month;
 - (c) lists of trust ledger accounts and their balances are to be printed monthly as at the end of each named month;
 - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;
 - (e) trust ledger accounts, the controlled money movement records and the trust transfer journal are to be printed before they are archived or deleted from the system;
 - (f) trust ledger accounts and controlled money account details are to be printed on request by and provided to an investigator.
- (2) The trust records printed monthly as at the end of a named month under subsection (1)(a) to (d) must be printed within 15 working days after the end of the named month.
- (3) The paper copies printed under subsection (1) are to be kept by the law practice, except if they are printed on request under that subsection.

- (4) The electronic copy of the trust account cash books under subsection (1)(a) is to be kept by the law practice.

30 Chronological record of information to be made

- (1) The law practice must keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following—
- (a) client name;
 - (b) client address;
 - (c) matter reference;
 - (d) matter description;
 - (e) ledger account number or other descriptor.
- (2) The record is to be kept by the law practice.

31 Requirements regarding computer accounting systems

- (1) The law practice must ensure its computerised accounting system is not capable of accepting, in relation to a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a way that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice must ensure the system is not capable of deleting a trust ledger account unless—
- (a) the balance of the account is zero and all outstanding cheques have been presented; and
 - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure any entry in a record produced in a permanent form appears in chronological sequence.
- (4) The law practice must ensure each page of each printed record is numbered sequentially or is printed in a way that no page can be extracted.

- (5) The law practice must ensure its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this division to be included in trust records.

32 Back-ups

The law practice must ensure—

- (a) a back-up copy of all records required by this division is made not less frequently than once each month; and
- (b) each back-up copy is kept by the law practice; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

33 Establishment of general trust account—Act, s 247

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this section, but must, after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have a general trust account that satisfies those requirements.
- (2) A general trust account satisfies the requirements of this section if—
 - (a) the account is established in this jurisdiction, before or after 1 July 2007, with an approved ADI; and
 - (b) the account is and is to be kept in this jurisdiction; and
 - (c) the name of the account includes—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and

- (ii) the expression ‘law practice trust account’ or ‘law practice trust a/c’; and
- (d) the account is of a kind that is for the time being approved by the law society.
- (3) Subsection (2)(c) does not apply to an account established in this jurisdiction before 1 July 2007.
- (4) Subsection (2)(c)(ii) does not require the repetition of the words ‘law practice’ if those words form part of the name or business name of the law practice.

34 Receiving of trust money

- (1) This section applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made—
 - (a) after the trust money is received, except as provided by paragraph (b); or
 - (b) for trust money received by direct deposit—after the law practice receives or accesses notice or confirmation, in written or electronic form, of the deposit from the ADI concerned.

Note—

In other jurisdictions, provisions similar to this subsection may include the statement that the receipt must be made out as soon as practicable after receiving the trust money. Under section 18 of the Act, if no time is provided or allowed for doing something under the Act, the thing is to be done as soon as practicable. So, by this section, the receipt must be made out as soon as practicable after the trust money is received.

- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out the particulars are recorded by computer program in the trust account receipts cash book.
- (5) For subsection (4), the required particulars are as follows—

- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression 'trust account' or 'trust a/c';
 - (h) the name of the person who made out the receipt;
 - (i) the number of the receipt.
- (6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

35 Deposit records for trust money

- (1) This section applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record—
 - (a) the date of the deposit;
 - (b) the amount of the deposit;

- (c) whether the deposit consists of cheques, notes or coins, and the amount of each;
- (d) for each cheque—
 - (i) the name of the drawer of the cheque; and
 - (ii) the name and branch, or BSB number, of the ADI on which the cheque is drawn; and
 - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

36 Direction for non-deposit of trust money in general trust account

For section 248(3) of the Act, the prescribed period for which a written direction mentioned in section 248(1)(a) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

37 Payment by cheque

- (1) This section applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) A cheque—
 - (a) must be made payable to or to the order of a stated person or persons and not to bearer or cash; and
 - (b) must be crossed ‘not negotiable’; and
 - (c) must include—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression ‘law practice trust account’ or ‘law practice trust a/c’.

- (3) A cheque must be signed—
 - (a) by an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly.
- (4) A written record of the required particulars (including a record in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (5) If, at the time the cheque is issued, the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For subsections (4) and (5), the required particulars are as follows—
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.

- (7) Written records relating to payments by cheque, including cheque requisitions, must be kept in the order in which the cheques were issued.
- (8) Subsection (2)(c) does not apply to an account established in this jurisdiction before 1 July 2007.
- (9) Subsection (2)(c)(ii) does not require the repetition of the words 'law practice' if those words form part of the name or business name of the law practice.
- (10) In this section—
associate means an associate of the law practice.
authorised means authorised by the law practice to sign cheques drawn on the general trust account.

38 Payment by electronic funds transfer

- (1) This section applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (4) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be

kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.

- (5) For subsections (3) and (4), the required particulars are as follows—
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and relevant BSB number;
 - (d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer, including transfer requisitions, must be kept in the order in which the transfers were effected.
- (7) In this section—

associate means an associate of the law practice.

authorised means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

39 Recording transactions in trust account cash books

A law practice that keeps a general trust account must keep the following trust account cash books—

- (a) a trust account receipts cash book in accordance with section 40;

- (b) a trust account payments cash book in accordance with section 41.

40 Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in relation to each receipt of trust money—
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the purpose for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in relation to receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in relation to a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

41 Trust account payments cash book

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in relation to each payment of trust money by cheque—

- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in relation to each payment of trust money by electronic funds transfer—
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in relation to payments must be recorded in the order in which the payments are made.

- (4) The particulars in relation to a payment must be recorded within 5 working days counting from and including the day the payment was made.

42 Recording transactions in trust ledger accounts

- (1) A law practice that keeps a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account—
 - (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in relation to each receipt of trust money for the matter—
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the name of the person from whom the money was received;
 - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by cheque—
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;

- (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by electronic funds transfer—
 - (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in relation to each transfer of trust money effected by a journal entry—
 - (a) the date of the transfer;
 - (b) the amount transferred;
 - (c) the journal reference number;
 - (d) the name of the other trust ledger account from which or to which the money was transferred;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in relation to a receipt, payment or transfer of trust money must be recorded within 5 working days counting

from and including the day the receipt was made out, the payment was made or the transfer was effected.

- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

43 Journal transfers

- (1) Trust money may be transferred by journal entry from 1 trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if—
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
 - (b) subsection (2) is complied with.
- (2) The transfer must be authorised in writing—
- (a) by an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly; or
 - (c) by an external intervener for the practice.
- (3) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (4) The following particulars must be recorded in the trust account transfer journal in relation to each transfer of trust money by journal entry—
- (a) the date of the transfer;
 - (b) the trust ledger account from which the money is transferred, including its identifying reference;
 - (c) the trust ledger account to which the money is transferred, including its identifying reference;
 - (d) the amount transferred;

- (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (5) Journal pages or entries must be consecutively numbered.
- (6) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.
- (7) In this section—

associate means an associate of the law practice.

authorised means authorised by the law practice or an external intervener for the practice to effect, direct or give authority for the transfer of trust money by journal entry from 1 trust ledger account in the practice's trust ledger to another trust ledger account in the trust ledger.

44 Reconciliation of trust records

- (1) A law practice that keeps 1 or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing—
 - (a) a statement—
 - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
 - (ii) showing the date the statement was prepared; and
 - (b) a statement—
 - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
 - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
 - (iii) showing the date the statement was prepared.

- (3) The statements must be prepared within 15 working days after the end of the month concerned.
- (4) The statements must be kept by the law practice.

45 Trust ledger account in name of law practice or legal practitioner associate

- (1) A law practice must not keep a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this section.
- (2) A law practice may keep in its trust ledger—
 - (a) a trust ledger account in the practice's name, but only for aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
 - (b) a trust ledger account in a legal practitioner associate's name, but only in relation to money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) If subsection (2)(a) applies, the law practice must ensure the money in the trust ledger account is withdrawn from the general trust account not later than 1 month after the day on which the money was transferred to the trust ledger account.
- (4) If subsection (2)(b) applies, the law practice must ensure the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

46 Notification requirements regarding general trust accounts

- (1) Within 14 days after establishing a general trust account, a law practice must give the law society written notice of that fact.
- (2) A law practice—

- (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner—
- (i) to sign cheques drawn on a general trust account of the practice; or
 - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;
- must give the law society written notice of that fact, including the name and address of the associate or practitioner and indicating, for an associate, whether the associate is an employee of the practice; and
- (b) during July of each year, must give the law society written notice of the associates and Australian legal practitioners, including their names and addresses, who are authorised, as at 1 July of that year—
- (i) to sign cheques drawn on a general trust account of the practice; or
 - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Within 14 days after the closure of a general trust account kept by it, a law practice must give the law society written notice of that fact.
- (4) A notice under this section given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this section—
- law practice** includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

47 Keeping controlled money accounts

- (1) For section 251(4) of the Act, a controlled money account must be kept under an account name that includes the following particulars—
 - (a) the name of the law practice concerned;
 - (b) the expression ‘controlled money account’ or the abbreviation ‘CMA’ or ‘CMA/c’;
 - (c) other particulars that are sufficient to identify the purpose of the account and to distinguish the account from any other account kept by the law practice.
- (2) This section does not apply to an account established in this jurisdiction before 1 July 2007.

48 Receipt of controlled money

- (1) This section applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out—
 - (a) after the controlled money is received, except as provided by paragraph (b); or
 - (b) for controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation, in written or electronic form, of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For subsection (5), the required particulars are as follows—

- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
 - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression 'controlled money receipt';
 - (i) the name of the person who made out the receipt;
 - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

49 Deposit of controlled money

For section 251(5) of the Act, the prescribed period for which a written direction mentioned in section 251(1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

50 Withdrawal of controlled money must be authorised

- (1) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of—
 - (a) an authorised principal of the law practice; or
 - (b) if a principal mentioned in subsection (1)(a) is not available—
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For subsections (2) and (3), the required particulars are as follows—
 - (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) for a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, for a payment to an ADI, the name or BSB number

- of the ADI and the name of the person receiving the benefit of the payment;
- (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) particulars sufficient to identify the purpose for which the payment was made;
 - (g) the person or persons effecting, directing or authorising the withdrawal.
- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (6) In this section—

associate means an associate of the law practice.

authorised means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

51 Register of controlled money

- (1) A law practice that receives controlled money must keep a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be kept for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information—
 - (a) the name of the person on whose behalf the controlled money is held;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter;
 - (d) any changes to the information mentioned in paragraphs (a) to (c).

- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account—
 - (a) the date the controlled money was received;
 - (b) the number of the receipt;
 - (c) the date the money was deposited in the controlled money account;
 - (d) the name of and other details clearly identifying the controlled money account;
 - (e) the amount of controlled money deposited;
 - (f) details of the deposit sufficient to identify the deposit;
 - (g) interest received;
 - (h) details of any payments from the controlled money account, including the particulars required to be recorded under section 50.
- (5) With the exception of interest and other income received in relation to controlled money, particulars of receipts and payments must be entered in the register after the controlled money is received by the law practice or any payment is made.
- (6) Interest and other income received in relation to controlled money must be entered in the register after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information, including ADI statements and notifications of interest received, relating to controlled money.
- (8) Within 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month—
 - (a) containing a list of the practice's controlled money accounts showing—
 - (i) the name, number and balance of each account in the register; and
 - (ii) the name of the person on whose behalf the controlled money in each account was held; and

- (iii) a short description of the matter to which each account relates; and
- (b) showing the date the statement was prepared.

52 Information to be recorded about transit money

- (1) This section has effect for section 253 of the Act.
- (2) A law practice must, in relation to transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

53 Trust account statements

- (1) A law practice must give a trust account statement to each person for whom or on whose behalf trust money, other than transit money, is held or controlled by the law practice or an associate of the practice.
- (2) For trust money in relation to which the law practice is required to keep a trust ledger account, the practice must give a separate statement for each trust ledger account.
- (3) For controlled money in relation to which the law practice is required to keep a record of controlled money movements, the practice must give a separate statement for each record.
- (4) For trust money subject to a power given to the law practice or an associate of the practice in relation to which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must give a separate statement for each record.
- (5) A trust account statement is to contain particulars of—
 - (a) all the information required to be kept under this division in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
- (6) A trust account statement is to be given—
 - (a) after completion of the matter to which the ledger account or record relates; or

- (b) after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
 - (c) except as provided by subsection (7), after 30 June in each year.
- (7) The law practice is not required to give a trust account statement under subsection (6)(c) in relation to a ledger account or record if at 30 June—
- (a) the ledger account or record has been open for less than 6 months; or
 - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
 - (c) a trust account statement has been given within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must keep a copy of a trust account statement given under this section.

54 Trust account statements for sophisticated clients

- (1) Section 53 does not apply to a sophisticated client to the extent to which the client directs the law practice not to give trust account statements under that section.

Note—

See section 300 of the Act for the definition *sophisticated client*.

- (2) If the sophisticated client directs the law practice to give trust account statements on a basis different from that prescribed by section 53, the law practice must give those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (3) The law practice must keep a copy of a trust account statement provided under this section.

55 Register of Investments

- (1) This section applies if trust money mentioned in section 238(3) of the Act is invested by a law practice for or on behalf of a client, but this section does not itself confer power to make investments.
- (2) The law practice must keep a register of investments of trust money.
- (3) The register must record the following information in relation to each investment—
 - (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person's address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;
 - (f) the date the investment was made;
 - (g) particulars sufficient to identify the source of the investment, including, for example—
 - (i) a reference to the relevant trust ledger; and
 - (ii) a reference to the written authority to make the investment; and
 - (iii) the number of the cheque for the amount to be invested;
 - (h) details of any documents evidencing the investment;
 - (i) details of any interest received from the investment or credited directly to the investment;
 - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (4) This section does not require particulars to be recorded in the register if the particulars are required by this regulation to be recorded elsewhere.

56 Trust money subject to specific powers

- (1) This section has effect for section 254 of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep the following in a way that enables the dealings to be clearly understood—
 - (a) a record of all dealings with the money to which the practice or associate is a party;
 - (b) all supporting information in relation to the dealings.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

57 Register of powers and estates in relation to trust money

- (1) A law practice must keep a register of powers and estates in relation to which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or 1 or more associates of the practice, in relation to trust money.
- (2) The register of powers and estates must record—
 - (a) the name and address of the donor and date of each power; and
 - (b) the name and date of death of the deceased in relation to each estate of which the law practice or associate is executor or administrator.

58 Withdrawing trust money for legal costs

- (1) This section prescribes, for section 258(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in either subsection (3) or (4).
- (3) The law practice may withdraw the trust money—
 - (a) if—

- (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
 - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
 - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and
 - (b) if, before effecting the withdrawal, the practice gives or sends to the person—
 - (i) a request for payment, referring to the proposed withdrawal, or
 - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money—
- (a) if the practice has given the person a bill relating to the money; and
 - (b) if—
 - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
 - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
 - (iii) the money otherwise becomes legally payable.
- (5) Instructions mentioned in subsection (3)(a)(ii)—
- (a) if given in writing, must be kept as a permanent record; or
 - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.

- (6) For subsection (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

59 Keeping of trust records

- (1) This section has effect for section 261 of the Act for the keeping, in a permanent form, of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records are to be kept for a period of 7 years after—
- (a) for a trust record mentioned in paragraphs (a) to (m) of the definition *trust records* in section 237(1) of the Act—the only or the last transaction entry in the trust record; or
 - (b) for any other trust record—finalisation of the matter to which the trust record relates.
- (3) This section does not apply to a written direction mentioned in section 248(1)(a) or 251(1) of the Act.

Note—

Sections 36 and 49 provide for periods for keeping written directions mentioned in sections 248(1)(a) and 251(1) of the Act.

60 Keeping other records and information

- (1) A record kept under section 30 is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this division to be kept by a law practice is to be kept for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This section does not apply to records to which section 36, 49 or 59 applies.

61 Statements regarding receipt or holding of trust money

- (1) The law society may, by notice given under this section, require a law practice to give the authority a statement—

- (a) stating whether or not the practice has during a period stated in the notice by the authority received or held trust money; and
 - (b) if it has received or held trust money during that period, stating to which of the following categories the trust money belongs—
 - (i) general trust money, being trust money other than that mentioned in subparagraphs (ii) to (iv);
 - (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given so as to apply in relation to 1 or more periods (whether they happen annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may state the time by which, or the period during which, the requirement is to be complied with.
- (4) A notice is given to—
- (a) a particular law practice by sending the notice by post to the practice; or
 - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice—
- (a) must comply with a requirement imposed on it under this section and must do so by the time or during the period stated in the notice for compliance; and
 - (b) must not include in the statement any information that is false or misleading in a material particular.

62 Requirement for external examinations

If the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records for that year are not required to be externally examined.

63 Law practice closing down, closing office or ceasing to receive or hold trust money

- (1) A law practice that holds trust money must give the law society at least 14 days written notice of its intention—
 - (a) to cease to exist as a law practice; or
 - (b) to cease to engage in legal practice in this jurisdiction; or
 - (c) to cease to practise in a way that involves it receiving trust money.
- (2) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the law society—
 - (a) written notice of that fact; and
 - (b) if the practice has not given a notice under subsection (1) within the previous 28 days, a notice that complies with that subsection.
- (3) A notice under this section must include particulars sufficient to identify—
 - (a) a law practice's general trust accounts and controlled money accounts; and
 - (b) trust money controlled by the practice, or by an associate, under a power; and
 - (c) trust money invested by the practice.
- (4) In this section—

law practice includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

64 Law society or commissioner may give information to professional accounting association

For section 266(5) of the Act, definition *professional accounting association*, the National Institute of Accountants ACN 004 130 643 is prescribed.

65 Appointment and qualifications of external examiner

For section 267(3)(a) of the Act, each of the following is prescribed as a qualification or experience that an individual must have to be appointed as an external examiner—

- (a) the individual must be registered as an auditor under the Corporations Act;
- (b) the individual must be a member of CPA Australia Ltd ACN 008 392 452 and be entitled to use the letters ‘CPA’ or ‘FCPA’;
- (c) the individual must be a member of The Institute of Chartered Accountants in Australia ARBN 084 642 571 and be entitled to use the letters ‘CA’ or ‘FCA’;
- (d) the individual must—
 - (i) be a member of the National Institute of Accountants ACN 004 130 643 and be entitled to use the letters ‘MNIA’, ‘FNIA’, ‘PNA’ or ‘FPNA’; and
 - (ii) have completed a tertiary course of study in accounting with an auditing component from an institute prescribed under the Corporations Act, section 1280(2);
- (e) the individual must be a person who the chief executive considers has appropriate qualifications as an auditor under the Corporations Act.

66 Approved forms to be used in carrying out external examination

For section 273(2)(b) for the Act, an external examiner’s report on an external examination is to be in the law society approved form for that purpose.

67 Chief executive ensuring compliance relating to trust accounts

- (1) The chief executive may by written notice to the law society ask it to provide the chief executive with information stated in

the notice before the end of a reasonable period stated in the notice.

- (2) The notice must relate to information about amounts in trust accounts.
- (3) The law society must comply with the request stated in the notice by the end of the stated period.

Division 2 Prescribed accounts

68 Purposes of div 2

The main purposes of this division are as follows—

- (a) to state what is a prescribed account for section 284 of the Act, definition *prescribed account*;
- (b) to have effect for section 285 of the Act by providing for, and for matters relating to, prescribed accounts.

69 Prescribed account

An account kept by the chief executive at a financial institution at which trust accounts are kept for deposits by law practices under part 3.3, division 6, of the Act is a prescribed account.

70 Amount required to be held in a prescribed account

- (1) A law practice must keep at least the minimum amount on deposit in a prescribed account.
- (2) The minimum amount applying to a law practice at any time during a calendar year is the amount that is two-thirds of the law practice's lowest combined balance at any time during the previous calendar year.
- (3) The minimum amount worked out under subsection (2) is to be rounded down to the nearest \$100.
- (4) The amount a law practice must keep on deposit in a prescribed account to comply with this section must be

deposited into a prescribed account from a trust account kept by the law practice.

- (5) However, subsection (1) does not apply to a law practice during a calendar year if the law practice's combined balance at any time during the previous calendar year was less than \$3000.
- (6) This section applies subject to sections 74 to 76.

71 Working out a law practice's trust account balance at a particular time

- (1) A law practice's trust account balance at a particular time is—
 - (a) if the law practice is keeping only 1 trust account—the balance in the trust account at the time; or
 - (b) if the law practice is keeping 2 or more trust accounts—the total of the balances in the trust accounts at the time.
- (2) However, for working out a law practice's trust account balance at a particular time, the balance in a trust account kept by the law practice for the exclusive benefit of a particular person or persons is not to be included.

72 Law practice's prescribed account balance at a particular time

A law practice's prescribed account balance at a particular time is the amount the law practice keeps on deposit in a prescribed account at the time.

73 Law practice's combined balance at a particular time

A law practice's combined balance at a particular time is the total of the following at the time—

- (a) the law practice's trust account balance;
- (b) the law practice's prescribed account balance.

74 Withdrawal from prescribed account to operate trust account

- (1) A law practice may withdraw an amount the law practice is keeping on deposit in a prescribed account in order to operate a trust account and keep the trust account in credit.
- (2) Subsection (1) applies even though the law practice's prescribed account balance after the withdrawal is less than the minimum amount required under section 70.
- (3) After making the withdrawal, the law practice is not required to make further deposits into a prescribed account in order to comply with section 70(1) unless, for 30 consecutive days, the law practice's combined balance is at least the amount of the law practice's lowest combined balance at any time during the previous calendar year.
- (4) In this section, a reference to a law practice withdrawing an amount from a prescribed account is a reference to—
 - (a) the law practice withdrawing the amount from the prescribed account under arrangements agreed between the chief executive and the financial institution; or
 - (b) the chief executive paying the amount from the prescribed account to the law practice.

75 Requirement at start of each calendar year

From 1 to 20 January in a calendar year, a law practice is taken to be complying with section 70 if the law practice's prescribed account balance is at least the amount that the law practice's prescribed account balance was, on 31 December in the previous calendar year, required to be.

76 Starting practice as a law practice

- (1) Section 70 does not apply to a law practice until 21 January in the year after the calendar year in which the law practice starts practice.
- (2) Subsection (1) applies to a law practice whether the law practice started or starts practice before or after 1 July 2007.

77 Chief executive ensuring compliance relating to prescribed accounts

- (1) The chief executive may by written notice to the law society ask it to provide the chief executive with information stated in the notice before the end of a reasonable period stated in the notice.
- (2) The notice must relate to information about prescribed accounts.
- (3) The law society must comply with the request stated in the notice by the end of the stated period.

Division 3 Matters relating to trust money and trust accounts**78 Exemptions relating to stated requirement of pt 3.3**

- (1) For section 298(2)(g) of the Act, the law society may exempt a law practice from complying with all or any of the stated requirements of this part.
- (2) The law society may grant an exemption on any conditions the law society considers appropriate.
- (3) Also, the law society may, at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

Part 3.4 Costs disclosure and assessment**79 When does a matter have a substantial connection with this jurisdiction**

For part 3.4 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances—

- (a) the client is a natural person and is resident in this jurisdiction;
- (b) the client is a body corporate and—
 - (i) the client carries on its business activities principally in this jurisdiction; or
 - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction;
- (d) the legal services provided or to be provided relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with—
 - (i) the conveyance or transfer of real property located in this jurisdiction; or
 - (ii) court proceedings in this jurisdiction.

80 Exceptions to requirement for disclosure

For section 311(1)(f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 308 or 309(1) of the Act is not required—

- (a) the client is an overseas-registered foreign lawyer, or a foreign law practice, within the meaning of part 2.8 of the Act;
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth or a State.

81 Additional disclosure—settlement of litigious matters

- (1) This section has effect for section 312 of the Act if there is more than 1 law practice acting on behalf of a client.
- (2) A law practice that negotiates the settlement of a litigious matter on behalf of the client (the *negotiating practice*) may ask any other law practice acting on behalf of the client to give

information needed for a disclosure under section 312(1) of the Act and state when the information is required (being a day and time that is reasonable in the circumstances).

- (3) A law practice asked to give information under subsection (2) must comply with the request.
- (4) However, if the negotiating practice has retained another law practice to act on behalf of the client, the only information required to be given by the other law practice under subsection (3) is a reasonable estimate of the amount of legal costs payable to the other law practice if the matter is settled.
- (5) A law practice given information by another law practice under this section is entitled to rely on the information when complying with section 312 of the Act.

82 Interest on unpaid legal costs

- (1) This section has effect for section 321(3) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 321 of the Act.
- (2) The rate is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.
- (3) In this section—

Cash Rate Target means the percentage (or maximum percentage) stated by the Reserve Bank of Australia as the Cash Rate Target.

relevant date means the date the bill was given by the law practice concerned.

Part 3.5 Professional indemnity insurance

83 Requirements for professional indemnity insurance

- (1) This section has effect for section 353(3) of the Act.

- (2) Professional indemnity insurance complies with the Act in relation to a practising certificate granted by the bar association if—
 - (a) the insurance is for at least \$1.5m inclusive of defence costs; and
 - (b) the insurance—
 - (i) complies with a requirement under an indemnity rule made by the bar association; or
 - (ii) is provided by an insurer approved by the bar association.
- (3) Professional indemnity insurance complies with the Act in relation to a practising certificate granted by the law society if the insurance—
 - (a) is for at least \$1.5m inclusive of defence costs; and
 - (b) complies with a requirement under an indemnity rule made by the law society.

84 Caps on payments

- (1) This section has effect for section 396 of the Act.
- (2) The maximum amount that may be paid from the fidelity fund for a single claim is \$200000.
- (3) The maximum aggregate amount that may be paid from the fidelity fund for all claims made in relation to a single law practice is \$2m.

Part 3.6 Fidelity cover

85 Application of pt 3.6 of the Act

- (1) This section has effect for section 357 of the Act.
- (2) Part 3.6 of the Act, and this part, apply to a community legal service as if it were a law practice.

- (3) Each of the following is taken to be of an associate of a law practice for subsection (2)—
- (a) an Australian legal practitioner who is an employee of a community legal service and, as an employee, is engaged in legal practice for the service;
 - (b) an Australian legal practitioner who is not an employee of a community legal service but is a volunteer at the service and, as a volunteer, is engaged in legal practice for the service.

86 Contribution to fidelity fund

- (1) For section 368(4)(b) of the Act, the following are the classes of local legal practitioners to whom section 368 of the Act does not apply—
- (a) all local legal practitioners who are employees of a community legal service and—
 - (i) whose practising certificates are subject to a condition that the practitioner may engage in legal practice only as an employee of a community legal service or as an employee and volunteer of a community legal service; and
 - (ii) who, in relation to legal practice at the community legal service as an employee, pay an amount of \$50 to the law society for the fidelity fund for the financial year to which the practitioner's certificate relates;
 - (b) all local legal practitioners who are volunteers of a community legal service and whose practising certificates are subject to a condition that the practitioner may engage in legal practice only as a volunteer at a community legal service;
 - (c) all government legal officers whose practising certificates—
 - (i) are subject to a condition that the officer may engage in legal practice other than as a government legal officer engaged in government work; and

- (ii) provide that the legal practice, that is not engaging in government work, is limited to legal practice as a volunteer at a community legal service;
- (d) all legal aid lawyers whose practising certificates—
 - (i) are subject to a condition that the lawyer may engage in legal practice other than as a lawyer performing duties under the *Legal Aid Queensland Act 1997*; and
 - (ii) provide that the legal practice, that is not performing duties under the *Legal Aid Queensland Act 1997*, is limited to legal practice as a volunteer at a community legal service.
- (2) Each payment to the law society for the fidelity fund under this section is an amount that may be lawfully paid into the fidelity fund.
- (3) In this section—

legal aid lawyer has the meaning given by the *Legal Aid Queensland Act 1997*.

87 Fidelity protocols

- (1) This section has effect for section 402 of the Act.
- (2) The law society may enter into fidelity protocols with corresponding authorities in relation to any of the following matters—
 - (a) the forwarding of claims, or copies of claims, under section 403 of the Act and corresponding laws;
 - (b) the making and acceptance of requests to act as agent under part 3.6 of the Act and corresponding laws;
 - (c) the processing or investigation of claims or aspects of claims as agent under part 3.6 of the Act and corresponding laws.
- (3) A fidelity protocol may be amended, revoked or replaced by agreement of the parties to it.

88 Interstate legal practitioner becoming authorised to withdraw from local trust account—notification

- (1) This section has effect for section 412 of the Act and applies to an interstate legal practitioner who, whether alone or with a cosignatory, becomes authorised to withdraw money from a local trust account of a law practice.
- (2) The interstate legal practitioner must notify the law society of the authorisation.
- (3) The notice must include the following particulars—
 - (a) the interstate legal practitioner’s name;
 - (b) the jurisdiction in which the practitioner’s only or most recent current Australian practising certificate was granted;
 - (c) the practitioner’s principal business address;
 - (d) details of the local trust account, including the following—
 - (i) the name of the law practice operating the account;
 - (ii) the practice’s principal business address;
 - (iii) the name of the ADI with which the account is held;
 - (iv) the names of any other signatories to the account;
 - (e) the date on which the practitioner became authorised to withdraw money from the trust account.
- (4) The practitioner must notify the law society of any change to the particulars mentioned in subsection (3).
- (5) A notice under this section must be in writing and must be sent to the business address of the law society before the end of the period of 7 days starting on the day the practitioner becomes authorised to withdraw money from the local trust account or the change happens.

Part 4.6 Investigations

89 Covering cost of assessment under s 443 or 444 of the Act

- (1) This section has effect for section 445 of the Act.
- (2) The commissioner may, by written notice to a complainant, require the complainant—
 - (a) to pay an amount to the commissioner, before a costs assessment is undertaken, to cover the cost of the costs assessor; or
 - (b) to agree, before a costs assessment is undertaken, to pay the commissioner the cost of the costs assessor if the result of the assessment is that the costs charged or claimed by the relevant law practice are not to be reduced or are not to be reduced by at least 15%.
- (3) The commissioner may, by written notice to a law practice, require it to pay the cost of a costs assessor if the result of the cost assessment is that the costs charged or claimed by the law practice are to be reduced by at least 15%.

Part 4.11 Publicising disciplinary action

90 Discipline register

For 472(2)(e) of the Act, the following are prescribed as particulars to be included in the discipline register for a person against whom disciplinary action was taken—

- (a) the date and jurisdiction of the person's first and each later admission to the legal profession;
- (b) the person's date of birth.

Part 5.1 Preliminary (for chapter 5 of the Act—External intervention)

91 Application of ch 5 of the Act, s 495

For section 495 of the Act, chapter 5 of the Act applies to an interstate legal practitioner other than an interstate legal practitioner who practices in the manner of a barrister.

Schedule 1 Fees

section 7

| | \$ |
|--|--------|
| 1 Board's consideration of an application for admission to the legal profession under section 39(2) of the Act. | 246.00 |
| 2 Application for approval of academic qualifications attained in a foreign country under rule 8 of the admission rules | 85.00 |
| 3 Application for approval of legal training requirements completed in a foreign country under rule 9 of the admission rules | 170.00 |
| 4 Notice of traineeship under rule 9I of the admission rules | 42.00 |
| 5 Examination fee for a board examination under rule 34 of the admission rules | 122.00 |
| 6 Statement, provided by the board, of results obtained in board examinations | 37.00 |
| 7 Application for the board's consent to enter into articles of clerkship. | 42.00 |

Schedule 2 Dictionary

section 3

BSB number, for part 3.3, see section 27.

combined balance see section 73.

community legal service means a corporation that is a community legal service under the *Personal Injuries Proceedings Act 2002*, section 67A(2).

matter description, for part 3.3, see section 27.

matter reference, for part 3.3, see section 27.

non-profit corporation means a corporation formed for a purpose other than financial gain for its members.

prescribed account balance see section 72.

publicly funded, in relation to a corporation, means the corporation obtains most of its funding from public sources.

trust account balance see section 71.

trust money, for part 3.3, see section 27.

volunteer, at a community legal service, means a person who provides legal services for the community legal service under an arrangement that does not entitle the person to be paid an amount of money for the service or services provided by the person.

ENDNOTES

- 1 Made by the Governor in Council on 28 June 2007.
- 2 Notified in the gazette on 29 June 2007.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.