

Legal Profession Bill 2007

Explanatory Notes

Objectives of the Bill

The broad objectives of the Bill are:

- to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally; and
- to facilitate the regulation of legal practice on a national basis across State borders.

Reasons for the Bill

The *Legal Profession Act 2004* (LPA) enacted the Government's legal profession reforms in the areas of admission and practice, the reservation of work, the complaints and disciplinary processes, the fidelity fund, external administration, incorporated legal practices and multi-disciplinary partnerships, the registration of foreign lawyers and the financial arrangements for the control and allocation of interest on solicitors' trust accounts.

The LPA is based on the national model laws for the regulation of the legal profession (the model laws) being developed through the Standing Committee of Attorneys-General (SCAG). The aim of the project has been to reduce cross border compliance costs, to remove regulatory barriers to national legal practice and provide a consistent protection of consumers of legal services across jurisdictions.

Some benefits of the model laws include:

- nationally consistent standards for admission to the legal profession;
- recognition of interstate practising certificates;
- a strengthening of complaints and disciplinary processes for lawyers including the local enforcement of interstate disciplinary action;
- nationally consistent trust account requirements;

- nationally consistent costs disclosure requirements;
- nationally consistent criteria for the assessment of costs;
- nationally agreed inter-jurisdictional fidelity fund arrangements;
- new business structure options for legal practices, namely, incorporated legal practices and multidisciplinary practices; and
- nationally agreed regulatory arrangements for foreign lawyers.

The model laws have not been agreed to be adopted wholly or on a uniform basis. Some provisions have been agreed to be uniform. Others have been agreed to be adopted but not on a uniform basis. Others are optional (non-core) because in some areas provisions can differ without impacting on national practice.

The Bill incorporates the LPA and the remaining parts of the national model laws in relation to trust accounts and costs.

The new trust account provisions (part 3.3) will provide for Queensland's part in a scheme for a proposed uniform approach to trust accounts nationally.

The purposes of the model laws trust account provisions are:

- ensuring trust money is held by law practices in a way that protects the interests of persons for whom money is held, both inside and outside this jurisdiction;
- minimising compliance requirements for law practices that provide legal services within and outside this jurisdiction; and
- ensuring the Queensland Law Society (QLS), as the supervising entity, can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

The principal provisions are those which require a law practice which receives trust money in Queensland to maintain a general trust account in Queensland and keep proper trust account records. Because of the inter-jurisdictional issues, there are provisions for determining when trust moneys are received and when they are received in Queensland. The main difference for Queensland practitioners is that controlled moneys (say, those received with the instruction that they be banked to a law practice investment account) will not need to first go through the general trust account, although there is nothing to stop solicitors from continuing to do so.

Under the current legislation, the financial period for trust account audit purposes ends on 31 March each year. While law practices will be able to comply with the new legislation from commencement, the transitional provisions will allow them to continue under the current regulatory regime up until 31 March 2008 to allow for an appropriate lead time.

The new costs provisions build on current requirements relating to costs disclosure, costs agreements, billing and costs assessment. Some important elements include:

- cooperative arrangements among jurisdictions about how inter-jurisdictional issues are to operate,
- a costs disclosure regime that will benefit consumers of legal services;
- provision for the setting aside of unfair costs agreements;
- exceptions for sophisticated clients (such as public companies);
- a requirement for disclosure updates;
- how costs are recoverable;
- regulation of uplift fees;
- prohibition on contingency fees
- billing practices; including requests for itemised bills and interim bills;
- a costs assessment process under the rules of court.

While law practices will be able to comply with the new costs provisions from commencement, the transitional provisions will allow them to continue under the current regulatory regime up until 1 January 2008 to allow for an appropriate lead time.

The Bill also continues some provisions relating to trust accounts and costs previously provided under the *Queensland Law Society Act 1952* (QLSA) (current Bill - clauses 345-347) and the *Trust Accounts Act 1973* (TAA) (current Bill - clause 713).

As drafting of the national model laws was not complete when the LPA was being drafted and SCAG has since approved a number of amendments to the model laws, the Bill has been drafted for greater consistency with the national model laws. SCAG has also agreed that jurisdictions will adopt chapter and part numbering consistent with the NSW and Victorian Acts. This requires some reordering from the LPA.

The Bill also includes a number of miscellaneous amendments that have been developed in light of experience with the LPA. They include:

- tightening the reservation of legal work exemption for property agents and motor dealers;
- adjustments from the model to ensure the Australian-registered foreign lawyer provisions are compliant with the General Agreement on Trade in Services.
- providing for the legal profession rules to be made by the regulatory authorities, subject to notification by the Minister;
- ensuring that administration rules specifying educational requirements comply with competition principles and better describe the matters that they relate;
- providing for the QLS to be able to make legal profession rules prohibiting Australian legal practitioners and Australian-registered foreign lawyers from engaging in mortgage financing and activities and practices in relation to mortgage financing;
- ensuring indemnity rules apply appropriately to incorporated legal practices;
- clarifying the responsibilities of the Legal Services Commissioner (LSC), the QLS and Bar Association of Queensland (BAQ) for the investigation and prosecution of persons for engaging (or holding themselves out as being entitled to engage) in legal practice when not so entitled;
- providing that a relevant authority can require an individual for whom a health assessment report is required to meet the cost where the report is adverse to the individual;
- improved notification requirements on practitioners in relation to disciplinary action in other and foreign jurisdictions;
- specifically permitting the discipline register to include unsatisfactory professional conduct as well as professional misconduct;
- expanding the LSC's investigation powers by providing for the commission to be able to require information to be provided to complement current powers (including powers of entry);
- providing for financial institutions (ADIs) to provide information concerning trust account investigations, external examinations and external interventions without charge;

- providing for a law practice's principal to be liable for the practice's contravention of the Act unless the principal establishes certain defences (a core uniform provision from the national model);
- tightening the protection of complainants concerning defamation;
- omitting the requirement that supervised training for admission be no more than one year as unnecessary where one year traineeships have been implemented under the admission rules and as inappropriate where a trainee may not have satisfied all the required competencies for admission within the year;
- providing for government legal officers who are Australian lawyers to be able to witness documents in certain circumstances;
- omitting an unnecessary notice requirement under previous section 70;
- facilitating volunteers practising certificates being issued;
- requiring practitioners to return their practising certificates when they are cancelled;
- providing that it is not a breach of the Act for a newly admitted practitioners who have applied for practising certificates to engage in legal practice while waiting for their certificates to issue;
- ensuring the Commission can ask the complainant to sign a waiver of a duty of confidentiality where the current provision only refers to a waiver of legal professional privilege;
- providing for consistent use of the terms "information" and "documents" in clause 492;
- recognising that third parties can give fully informed consent to the waiver of the duty of confidentiality to enable the practitioner to disclose the relevant information;
- allowing an investigating entity to delay giving the respondent practitioner notice of the complaint until such time as it has analysed the substance of the complaint and identified those conduct issues which may amount to either "unsatisfactory professional conduct" or "professional misconduct";
- allowing the Minister to approve payment from the Legal Practitioner Interest on Trust Accounts Fund to the Department of Justice and Attorney-General for transitional expenditure in 2004/2005 in connection with the implementation of the LPA;

- clarifying the operation of previous section 48IC of the QLSA (clauses 345-347) in relation to the cap on solicitors' fees in speculative personal injury proceeding matters;
- limiting the obligation on relevant entities to report suspected offences to matters coming to attention in the course of the administration of the Act;
- providing, as under the TAA, in relation to annual returns to the public trustee about trust money or property held by the law practice where the person legally entitled is not known to the law practice and extending the requirement to other trust money and property in certain circumstances where entitlement cannot be ascertained;
- providing indemnity for members of the Legal Practitioners Admissions Board and giving the board the power to delegate responsibility for certain day-to-day expenditure and financial activities to the Chair or the Chief Executive of the QLS; and
- abolishing the Solicitors Complaints Tribunal.

Achievement of the Objectives

The Bill achieves its objectives for the most part by adopting provisions from the national model bill and provisions to give effect to the proposed policy outcomes described.

Estimated Cost for Government Implementation

The proposals in the Bill represent minimal additional cost to the arrangements already in place under the LPA.

Consistency with Fundamental Legislative Principles

Fundamental legislative principle issues raised by the Bill are dealt with in three parts below:

- (a) issues previously considered in the context of the Legal Profession Bill 2003 by the Scrutiny of Legislation Committee (Scrutiny Committee) or in the Explanatory Notes;
- (b) issues previously considered in the context of the Legal Profession Bill 2004 by the Scrutiny Committee or in the Explanatory Notes;
- (c) new issues under the Bill.

Current section references to equivalent provisions under previous legislation are included.

Legal Profession Bill 2003 - Scrutiny Committee

The following are extracts from the Alert Digest (No 1 of 2004) about matters considered by a previous Scrutiny Committee about provisions of the Legal Profession Bill 2003 and for which there are equivalent provisions in the current Bill. In each case, the Scrutiny Committee noted the then Minister's response.

Meaning of legal practice (current Bill - clause 24)

“Is the legislation unambiguous and drafted in a sufficiently clear and precise way?”

- **clause 20**

3. Clause 20 is a key provision of the bill that provides that an individual must not engage in legal practice in Queensland unless the individual is an Australian legal practitioner. A maximum penalty of 300 penalty units (\$22,500) or 2 years imprisonment is provided for breach.
4. The previous committee sought information from the Attorney as to why the key term “legal practice” is not defined in the bill.
5. The Attorney's response was as follows:

The bill relies on the meaning of the term at common law. This is consistent with the approach proposed as part of the national mode laws being adopted through the Standing Committee of Attorneys-General. Some reasons for this approach (rather than listing categories of legal work) included:

- *Under National Competition Policy principles, each listed category of work would need to be adequately justified as requiring reservation.*
- *The common law option, uniformly adopted, may allow for the development of a common jurisprudence on what constitutes legal practice.*
- *Although listing specific types of reserved work would provide clarity to guide legal practitioners and other service providers, agreement on items that should be contained in a detailed list was problematic and this approach might prove inflexible over time.*

The approach is consistent with the current position in Queensland. Section 19 of the Legal Practitioners Act provides for limited list approach prohibiting persons (other than solicitors or barristers) for fee or reward drawing or preparing "any conveyance or other deed or instrument in writing relating to any real estate or any proceedings in law or equity". However, prosecutions tend to be based on the wider common law approach under section 39 of the Queensland Law Society Act 1952 for practising as a solicitor without a practising certificate. Requests for exemption from the reservation of work provisions for any emerging area of practice or occupational group could be considered on its merits.

6. The committee notes the Attorney's response."

Investigation powers (current Bill – parts 6.3 – 6.5)

“Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?

- **clauses 342 to 365 inclusive**

14. The previous committee noted that the bill confers upon investigators powers of entry which extend beyond situations where the occupier consents or a warrant has been obtained. The committee further noted that once entry has been effected, the bill confers on investigators a wide range of additional powers.

15. The previous committee drew to the attention of Parliament the nature and the extent of these entry and post-entry powers.

16. The Attorney's response was as follows:

“The Bill also provides that an investigator may enter a place if 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. As stated in the explanatory notes:

"This power is considered to be justified on the basis that it is limited to the lawyer's usual place of business. Lawyers are effectively licensed under a practising certificate scheme and as a consequence must accept that they are subject to conduct rules and complaints and disciplinary processes. A complaint may not always disclose the seriousness of the misconduct that may ultimately be uncovered through an investigation. Without a more general

power of entry, there is concern that a practitioner may withdraw consent to entry if the investigator is getting close to discovering evidence of misconduct or an offence, which evidence may be destroyed before a warrant can be obtained."

The post entry powers are reasonable for use in the investigation of a conduct complaint given the seriousness of disciplinary action that can result from conduct charges or an offence under the Act.

17. The committee notes the Attorney's response."

Immunities (current Bill - clauses 137, 138 and 475)

“Does the legislation the legislation confer immunity from proceeding or prosecution without adequate justification?

clauses 114, 115, 216, 229, 267 and 291

18. The previous committee noted that several clauses of the bill confer immunity on persons. The committee did not object to the immunities granted by cls.229, 267 and 291.

19. The previous committee referred to Parliament the question of whether the grants of immunity contained in cls.114, 115 and 216 were appropriate in the circumstances.

20. The Attorney's response was as follows:

It is reasonable that QLS receivers, Corporations Act administrators and external administrators should be protected for acts in good faith for the purposes of carrying out orders of the court in relation to incorporated legal practices under the Act. Similarly, it is reasonable, where the Act requires the publication of professional misconduct of other disciplinary action, for persons implementing those requirements in good faith not to be exposed to legal action for prosecution in defamation

21. The committee notes the Attorney's response."

Legal Profession Bill 2003 – Explanatory notes

Other breaches of the fundamental legislative principles addressed with a justification in the explanatory notes for the Legal Profession Bill 2003 were as follows:

- (a) under the incorporated legal practice provisions, providing that the actions of others are capable of being unsatisfactory professional conduct or professional misconduct by the legal practitioner director (current Bill - clause 118);
- (b) providing that if a corporation commits an offence against a provision of the Act, each of the executive officers of the corporation also commits an offence, subject to appropriate defences (current Bill - clause 702);
- (c) providing that, when considering an individual's suitability for admission or for a practising certificate, past matters (even pre-dating the commencement of the legislation) may be taken into account (current Bill - clauses 9, 31 and 46);
- (d) a lack of precision in providing that, if there is an inconsistency between the conditions imposed on an interstate legal practitioner locally and those imposed under a corresponding law, the more onerous conditions prevail to the extent of the inconsistency (current Bill - clause 75);
- (e) providing, in relation to incorporated legal practices, for the relationship between the Act and the Corporations Act to be dealt with by regulation and for such regulation to be a Corporations legislation displacement provision (current Bill - clause 142);
- (f) the prescribed accounts system in relation to the statutory deposit obligations relating to solicitors' trust accounts being provided for by regulation (current Bill - clause 285);
- (g) regulations being used to give effect to other documents made or entered into by a regulatory authority, such as administration rules and protocols (examples from current Bill - clauses 231 and 402); and
- (h) the transitional regulation-making power (current clause 751).

Legal Profession Bill 2004 -Scrutiny Committee

The following are extracts from the Alert Digest (No 3 of 2004) about matters considered by a previous Scrutiny Committee about provisions of the Legal Profession Bill 2004 and for which there are equivalent provisions in the current Bill. In each case, the Committee noted the then Minister's response.

Henry VIII clauses (some examples in current Bill– clauses 24, 111, 112, 145, 167, 285, 353, 413, 414 and 751)

“Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?”

Does the bill authorise the amendment of an Act only by another Act (by a “Henry VIII clause”)?

- **clauses 24, 50, 74, 86, 87, 117, 124, 145, 156, 182, 199, 200, 205, 316, 363, and 643**
3. The committee noted that the bill contained a very large number of provisions authorising the making of regulations, including some “Henry VIII clauses”. The committee sought confirmation from the Attorney that he is satisfied the extent of these delegations of legislative power was appropriate in the circumstances, and had been kept to the minimum reasonably achievable.
 4. The Attorney responded as follows:
I confirm that I am satisfied in the matters the Committee has raised.
 5. The committee notes the Attorney’s response.”

Non reviewable decisions (current Bill - clauses 396 and 397)

“Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?”

- **clauses 182(5) and 183(4)**
6. The committee noted that cls.182 and 183 of the bill provided that specified decisions of the Law Society shall not be subject to review. The Explanatory Notes advanced arguments in favour of these denials of review rights. The committee referred to Parliament the question whether these denials of review rights were acceptable in the circumstances.
 7. The Attorney provided the following comment:

Under clause 182, if the Queensland Law Society decides to not pay an amount in excess of the prescribed cap on claims for the fidelity fund, that decision is not reviewable. The purpose of the cap on claims is to ensure that, while providing for reasonable amounts of compensation, the viability of the fund cannot be jeopardised by a single large claim or groups of claims. This maximizes the availability of the fund for all potential claimants. At the same time, the Society can exceed the cap having regard to the position of the fund and the circumstances of a particular case. As outlined in the explanatory notes for the Bill, if the cap

is not exceeded, the Society is already paying the maximum claim generally allowed under the legislation and to provide a right of appeal for payments not made in excess of the cap would not be workable.

Under clause 183, if the Fidelity Fund is insufficient to meet claims, the payment of claims can be postponed and claims partially paid. The Queensland Law Society can also declare that, for partial claims, the balance is not payable, although it can later revoke the declaration. The clause provides for the Society's decision to declare to be non-reviewable. As outlined in the explanatory notes for the Bill, the clause can be justified having regard to the finite resources of the Fund and the foreseeable possibility of the insufficiency of the Fund due to extraordinary claims.

8. The committee notes the Attorney's comments."

Self-incrimination – receiverships (current Bill - clause 521)

“Does the legislation provide appropriate protection against self-incrimination?”

- **clause 342(4)**

9. The committee noted that cl.342(3) removed the protection of the rule against self-incrimination in relation to Supreme Court examinations of associates of a legal practice or other persons, in relation to “regulated property” of the law practice. The committee further noted that the bill conferred a general immunity from use of the answer or “derivative evidence” in relation to proceedings for offences (subject to certain exceptions).
10. The committee referred to Parliament the question whether, in the circumstances, the exclusion by cl.342(3) of the rule against self-incrimination was justifiable.

11. The Attorney commented as follows:

In a receivership examination, it is appropriate for the Court to be able to require persons to answer questions that might incriminate them provided they are able to claim appropriate protection against its use or derivative use.

12. The committee notes the Attorney's comments."

Government legal officers (current Bill - clause 12)

“Is the legislation unambiguous and drafted in a sufficiently clear and precise way?”

- **clause 10**

13. Various requirements of the bill do not apply in relation to “government legal officers” who engage in legal practice in that role. In particular, such persons are not required to hold a practising certificate (cl.47(2)). The drafting of this provision clearly recognizes that there will be a range of Queensland public sector agencies, other than departments of Government, whose staff should appropriately be afforded the status of “government legal officers”.

14. The committee considered that, whilst retaining a residual power to extend the definition by regulation, it should be possible to specify a number of the more obvious agencies in the bill itself. The committee sought information from the Attorney as to whether consideration was given to drafting cl.10(1) in the manner mentioned.

15. The Attorney responded as follows:

I agree with the Committee that the Bill should list agencies expected to be proposed under a regulation if currently known. However, where only officers departments are exempt in similar matters under current legislation, this provision has been added as an abundance of caution. Agencies wishing to be considered would need to apply and make their case for approval.

16. The committee notes the Attorney’s response.”

Legal Profession Bill 2004 – Explanatory notes

Other breaches of the fundamental legislative principles addressed with justification in the explanatory notes for the Legal Profession Bill 2004 as new matters in the 2004 Bill and which are still relevant to the current Bill are as follows:

- (a) the requirement that, if it should be reasonably apparent that the provision of legal services by an incorporated legal practice will result in breaches of the professional obligations of a practitioner, a legal practitioner director must take all reasonable action available to prevent the breach or take appropriate remedial action (current Bill - clause 118);
- (b) the conduct of others (employees and partners) or the unsuitability of a partner being capable of being professional misconduct or

- unsatisfactory professional conduct by the legal practitioner partner of a multi-disciplinary partnership (current Bill- clause 148);
- (c) privacy issues raised by a provision allowing the law society to consult and co-operate with corresponding authorities in other jurisdictions in respect of fidelity fund claims (current Bill -clause 411);
 - (d) allowing a receiver to disregard a lien over regulated property in certain circumstances (current Bill - clause 522);
 - (e) providing that, in certain proceedings, by the receiver, specified matters certified by a person authorised by the law society are evidence of those matters, in absence of evidence to the contrary (current Bill - clause 524);
 - (f) the certain regulation making powers (current Bill - clauses 12, 24, 112 and 167 and 353);
 - (g) providing for protections from liability (current clause 360, 376 and 529): and
 - (h) providing for a transitional regulation-making power (current clause 751).

New matters under the Legal Profession Bill 2007

Insufficient regard to the institution of Parliament

Clause 75 provides that an interstate practitioner's right to engage in legal practice is subject to the provisions of the Act and any conditions imposed by the relevant regulatory authority. The right is stated to be, to the greatest practicable extent and with all necessary changes, the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction and is subject to any condition applicable to the practitioner's right to engage in legal practice in the practitioner's home jurisdiction. If there is an inconsistency between home jurisdiction conditions and those imposed by the regulatory authority under the Act, the conditions which the regulatory authority considers are more onerous prevail to the extent of the inconsistency. This potentially allows the regulatory authority to override the requirements of the Act as they apply to interstate practitioners and adopt a more onerous condition than the Act would require. The provision is core uniform from the model Bill. The issue is the same in relation to interstate-registered foreign lawyers under clause 207.

There is provision for a regulation to be made for how part 3.6 (in relation to the fidelity fund) applies to Australian-registered foreign lawyers. The provision is core uniform from the model. In some cases, it will be

appropriate for defaults by Australian-registered foreign lawyers to be covered by the fund and for contributions to be made by them to the fund. In other cases, it will not.

Under the trust account provisions, after specifying a jurisdictional connection for the part for trust moneys received by a law practice in this jurisdiction or in another jurisdiction, clause 240 provides that the part does not apply to law practices or kinds or trust money prescribed under a regulation. A regulation may provide for a provision of the Act, a regulation or the legal profession rules relating to trust accounts not to apply to incorporated legal practices and multi-disciplinary partnerships. A regulation may provide for exemptions, or the giving of exemptions, from all or any stated requirements of the part (clause 298). Clause 257 provides that it is an offence for a law practice to mix trust money with other money. It then provides that a law practice can mix these moneys, if approved by the QLS. This is a core uniform provision. These regulation-making and QLS powers are considered justified where the trust account provisions are new and complex and incorporated legal practices and multi-disciplinary practice business structures are untried in this jurisdiction. It may be important to be able to quickly respond to a situation affecting daily legal practice that may not have been anticipated. These provisions will ensure that any necessary regulations can be quickly made consistent with other jurisdictions under the model Bill.

Under the costs provisions, a regulation may prescribe the circumstances in which, or the rules to be used to decide whether, a matter has or does not have a substantial connection with this jurisdiction for the purposes of the part (clause 306). Clause 348 provides that a regulation may provide that stated provisions of the part do not apply or apply with stated changes to incorporated legal practices and multi-disciplinary partnerships. These regulation-making powers are considered to be justified where the costs provisions are new and complex and incorporated legal practices and multi-disciplinary practice business structures are untried in this jurisdiction. It may be important to be able to quickly respond to a situation affecting daily legal practice that may not have been anticipated. These provisions will ensure that any necessary regulations can be quickly made consistent with other jurisdictions under the model Bill.

There is also provision for the law society to approve the employment by a law practice of a lay associate who is a disqualified person or who has committed a serious offence. This will ensure that action can be taken if the provision adversely affects an individual in circumstances appropriate for exemption. This may be appropriate given the nature of an offence committed, the circumstances of the person becoming a disqualified

person, the passage of time or the proposed duties of the lay associate (clause 26).

The Bill authorises the making of transitional regulations for 1 year for matters for which the Act does not sufficiently provide (clause 751). This is also considered to be justified in view of the complexity of the amendments, the need for the legislation to be consistent with the emerging national model Bill and the need for provisions which have previously only applied to individuals and legal practitioners to operate in respect of incorporated legal practices and multi-disciplinary partnerships. It is in the public interest that there are no gaps in the legislative scheme that would adversely affect a lawyer's right to practise, a lawyer's professional obligations or the operation of provisions intended to protect the public. A similar provision for the original LPA has expired and similar provisions have been used in Queensland legislation when regulatory regimes are being substantially changed.

As under section 48IC of the QLSA, clause 347 provides for the decision as to whether a law practice can exceed the cap on legal costs in personal injuries matters to be made by the QLS. The QLS is considered an appropriate body to make that decision as a professional regulatory body. The Bill will provide criteria for the QLS in making decisions under this provision.

Consistent with the principles of natural justice

Clause 349 imputes to the law practice, for the purposes of prescribed costs provisions, things done or omitted to be done by Australian legal practitioners and Australian-registered foreign lawyers in the course of acting on behalf of a law practice. This is considered to be justified where the law practice is responsible for ensuring compliance with the new costs regime when dealing with a client.

Reversal of the onus of proof

Each law practice principal will be liable for the practice's contravention of the Act unless the principal establishes certain defences e.g. contravention without the principal's knowledge. This will ensure principals are responsible for practice contraventions. This is comparable to an existing LPA provision in respect of the liability executive officers of corporations.

Immunity from proceeding

Clause 352 provides for costs assessors in performing their functions have same protection and immunity as a judge performing the functions of a judge. There are also protections for parties appearing and witnesses

attending and documents used in costs assessments. This is consistent with the position for case appraisers and mediators under the *Supreme Court of Queensland Act 1991* and tribunal members and panel members of the Legal Practice Tribunal under clause 618 and is appropriate where cost assessment processes will be under the supervision of the Court.

Rights of individual

When a relevant authority (a regulatory authority or the admissions board) requests a health assessment, the authority or board will be required to meet the costs of the assessment. It is reasonable that the health assessor should be guaranteed payment by the board or relevant authority. It is also reasonable for the cost of an application for admission or a practising certificate to be met by an applicant (clause 90). Where a required assessment is adverse to the applicant, it may be reasonable for the board or authority to recover the cost from an applicant.

Consultation

Stakeholders have been consulted on draft legislation on a number of occasions. An early discussion draft of the Bill was circulated to stakeholders in December 2005. Substantial changes to the model Bill by SCAG were published in September 2006. Some stakeholders were provided with a consultation draft in December 2006. A further consultation draft was circulated to stakeholders in February 2007. Stakeholders included the Chief Justice, the Chief Judge, the Chief Magistrate, the QLS, BAQ, LSC, the Law Council of Australia, the Law Deans, Legal Aid Queensland, the Queensland Public Interest Clearing House and the Queensland Association of Independent Legal Services.

Notes on Provisions

Chapter 1 Introduction

Part 1.1 Preliminary

Clause 1 provides for the citation of the Act.

Clause 2 provides for the commencement of certain sections on assent and the remainder on a date fixed by proclamation. Those commencing on assent are clauses 218, 219, 220, 221, 222, 224, 696 and 714.

Clause 3 provides that the main purposes of the Act are:-

- (a) to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- (b) to facilitate the regulation of legal practice on a national basis across State borders.

Part 1.2 Interpretation

Division 1 Dictionary

Clause 4 provides that Schedule 2 is the dictionary for the Act.

Division 2 Meaning of various terms

Clause 5 provides for the meaning of terms relating to “lawyer”. For various provisions, the Act distinguishes between “lawyers” (admitted

practitioners) and “legal practitioners” (those with practising certificates). In some cases, a provision may apply to an Australian lawyer or, in other cases to an Australian legal practitioner. Other provisions need to distinguish the position for local as against interstate legal practitioners or lawyers.

Clause 6 defines terms in the Act relating to involving “legal practitioner”. See clause 5.

Clause 7 provides for the meaning of terms relating to associates and principals of law practices.

Clause 8 provides for how the home jurisdiction of Australian legal practitioners, Australian-registered foreign lawyers and associates of law practices who are not Australian legal practitioners is decided.

Clause 9 provides for matters that are suitability matters for a natural person.

Clause 10 provides for what must be included in an information notice about a decision in relation to a person.

Clause 11 provides for the meaning of “conviction” and “quashing a conviction”.

Clause 12 provides for the meaning of “government legal officer” and “engaged in government work” and related matters. Government legal officers are not subject to certain requirements of the Act when they engage in government work. The clause will allow government legal officers who are Australian lawyers to witness documents in certain circumstances.

Division 3 Jurisdiction of the Supreme Court and related matters

Clause 13 provides that the Act does not affect the inherent jurisdiction and power of the Supreme Court in relation to the control and discipline of local lawyers and local legal practitioners. It also provides for that jurisdiction to extend to an interstate legal practitioner and for the Court to be able to make any order that a disciplinary body may make under the Act.

Clause 14 provides for the jurisdiction of Supreme Court in respect of applications and appeals.

Clause 15 provides that the Supreme Court and the tribunal may allow persons to appeal out of time.

Clause 16 provides for certain proceedings to be determined by a judge without a jury.

Division 4 Other interpretation matters

Clause 17 provides that a note in the text of this Act is part of this Act.

Clause 18 provides for the interpretation of the time for doing things.

Clause 19 provides in respect of grounds for specified matters under the Act to be reasonable in the circumstances.

Clause 20 provides for the interpretation of references to parts under the Act without chapter references.

Chapter 2 General requirements for engaging in legal practice

Part 2.1 Preliminary

Clause 21 provides an overview to give readers a guide to the general scheme of the chapter.

Part 2.2 Reservation of legal work

Division 1 Preliminary

Clause 22 provides for the main purposes of the part.

Clause 23 provides that the part does not apply to a government legal officer engaged in government work and persons authorised to engage in legal practice under a Commonwealth law.

Division 2 Prohibitions

Clause 24 prohibits persons from engaging in legal practice in this jurisdiction unless they are Australian legal practitioners. There are specified exceptions. The Bill tightens the reservation of legal work exemption for property agents and motor dealers.

Clause 25 imposes restrictions from representing or advertising that persons are entitled to engage in legal practice unless they are Australian legal practitioners.

Clause 26 prohibits local legal practitioners without approval from having associates who are disqualified persons.

Division 3 General

Clause 27 provides that contravention of the part by an Australian lawyer is capable of constituting unsatisfactory professional conduct or professional misconduct and may be dealt with as an offence and under chapter 4.

Part 2.3 Admission of local lawyers

Division 1 Preliminary

Clause 28 provides for the main purposes of the part.

Clause 29 defines certain terms used in the part.

Division 2 Eligibility and suitability for admission

Clause 30 specifies the eligibility requirements for admission. Academic qualifications and practical legal training from other jurisdictions which apply similar minimum criteria will be recognised.

Clause 31 provides that a person is suitable for admission as a legal practitioner only if the person is a fit and proper person to be admitted as a legal practitioner and for how that is to be determined.

Clause 32 allows an individual to apply to the board for early consideration of a matter that may adversely affect its assessment of the individual's suitability for admission to the legal profession.

Clause 33 provides that, if an application under clause 32 is referred by the board to the Supreme Court, the Court may give directions to the board. It also provides for how appeals against decisions of the board under clause 32 are to be dealt with.

Division 3 Admission to the legal profession under this Act

Clause 34 provides for the making of an application for admission.

Clause 35 provides for the role of the Supreme Court relating to applications for admission.

Clause 36 provides for a person to be admitted on conditions

Clause 37 provides for the keeping by the Supreme Court of a roll of persons admitted to the legal profession as a lawyer under the Act. The roll includes the local rolls of barristers and solicitors kept before 1 July 2004 and the roll of legal practitioners kept by the Supreme Court from 1 July 2004 to immediately before commencement.

Clause 38 provides for an individual to become an officer of the Supreme Court on being admitted to the legal profession under the Act and for the cessation of that status on being removed from the roll. The clause provides that persons who are officers of the court because of their admission as barristers, solicitors or legal practitioners continue to be officers of the court.

Division 4 Powers and functions of board

Clause 39 specifies the role of the board in helping the Supreme Court by making recommendations in relation to applications for admission.

Clause 40 provides that the board may require an applicant to give it stated documents or information or to cooperate with inquiries by the board.

Division 5 Miscellaneous

Clause 41 provides for the board's right of appearance at the hearing of applications under the Part.

Clause 42 provides for the board to charge fees set by regulation.

Part 2.4 Legal practice by Australian legal practitioners

Division 1 Preliminary

Clause 43 provides for the main purposes of the part.

Division 2 Legal practice in this jurisdiction by Australian legal practitioners

Clause 44 entitles an Australian legal practitioner, subject to this Act, to engage in legal practice in this jurisdiction. It provides that government legal officers engaged in government work can engage in legal practice even though they are not Australian legal practitioners but they are not prevented from holding practising certificates.

Division 3 Local practising certificates generally

Clause 45 provides for practising certificates to be granted under the part, for the regulatory authority to decide the categories of practising certificate granted by it and the statutory condition that the holder of a local practising certificate must not hold another certificate.

Clause 46 provides for how suitability to hold or continue to hold a practising certificate is to be decided under the part.

Clause 47 provides for the duration of local practising certificates based on a financial year.

Clause 48 provides that an individual, who is not already an officer of the Supreme Court, becomes an officer of the court on being granted a local practising certificate.

Division 4 Grant or renewal of local practising certificates

Clause 49 provides for applications for the grant or renewal of a local practising certificate. The provision specifies when an Australian lawyer is eligible to, or is required to; apply for the grant or renewal of a local practising certificate. Subject to the specified exceptions, an Australian legal practitioner who engages in legal practice principally in this jurisdiction during a financial year and reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year must apply for the grant or renewal of a local practising certificate for the following financial year.

Clause 50 provides for the manner of application for a local practising certificate.

Clause 51 provides for the decisions that a regulatory authority may make on receiving an application for the grant or renewal of a local practising certificate and for an applicant to be able to appeal against a decision to refuse to grant or renew, or to impose a condition on, a practising certificate.

Division 5 Conditions on local practising certificates

Clause 52 provides for the conditions to which a local practising certificate is or may be subject.

Clause 53 provides for the conditions that may be imposed by a regulatory authority on a local practising certificate.

Clause 63 enables the relevant regulatory authority, where it considers it necessary in the public interest, to immediately suspend a local practising certificate or impose a condition concerning the operation of trust accounts.

Clause 64 provides for the cancellation of a local practising certificate if a person is removed from the local roll.

Clause 65 provides for the consensual amendment or cancellation of a local practising certificate.

Clause 66 provides for the investigation of matters under the division and for nothing in this division to prevent a regulatory authority from making a complaint about a matter to which this division relates or the commissioner investigating or referring a matter for investigation.

Division 7 Special powers in relation to local practising certificates—show cause events

Clause 67 applies in relation to the application for a local practising certificate if a show cause event (relating to insolvency, a taxation offence or a serious offence) has occurred after first admission.

Clause 68 specifies the action to be taken by a local legal practitioner if a show cause event happens to that practitioner.

Clause 69 specifies the powers of refusal, amendment suspension or cancellation of a local practising certificate by the relevant regulatory authority because of practitioner's failure to show cause.

Clause 70 provides that a regulatory authority can decide that a person is not to apply for a practising certificate for a specified period up to 5 years, for an appeal from such decision and for recognition of similar decision of a corresponding authority.

Clause 71 provides for the investigation of matters under the division and for nothing in this division to prevent a regulatory authority from making a complaint about a matter to which this division relates or the commissioner investigating or referring a matter for investigation.

Division 8 Further provisions relating to local practising certificate

Clause 72 provides that the holder of a practising certificate may surrender it and the regulatory authority to whom it is surrendered may cancel it.

Clause 73 provides for the return of a practising certificate if it is amended, suspended or cancelled under division 6 or 7 and for its return to the certificate holder as amended or at the end of a period of suspension.

Division 9 Interstate legal practitioners

Clause 74 specifies the professional indemnity insurance requirements for interstate legal practitioners.

Clause 75 specifies the extent of entitlement of an interstate legal practitioner to practise in this jurisdiction.

Clause 76 provides for the relevant regulatory authority to impose conditions on interstate legal practitioners engaging in legal practice in this jurisdiction.

Clause 77 provides for the same requirements in respect of unsupervised practice for interstate legal practitioners as for local legal practitioners.

Clause 78 provides that an interstate legal practitioner has all the duties and obligations of an officer of the Supreme Court, and in that respect is subject to the jurisdiction of the Supreme Court.

Division 10 Miscellaneous

Clause 79 provides for regulatory authorities to enter into protocols with regulatory authorities of other jurisdictions about deciding certain matters and for a protocol to have effect in this jurisdiction only to the extent it is approved under a regulation.

Clause 80 provides that a regulatory authority may require an applicant for or holder of a practising certificate to give stated documents or information or to co-operate in a stated way for the authority considering whether or not

to grant or renew a certificate or amend, suspend or cancel a local practising certificate.

Clause 81 provides that a regulatory authority must keep a register of local practising certificates.

Clause 82 provides that a regulatory authority can apply for a court order that an Australian lawyer not contravene a condition imposed under the part.

Clause 83 provides that fees may be charged by a regulatory authority.

Part 2.5 Suitability reports

Division 1 Preliminary

Clause 84 provides for the main purpose of the part.

Clause 85 provides for the definitions for the part.

Division 2 Police reports

Clause 86 provides for the circumstances where a relevant regulatory authority may ask for a police report.

Division 3 Health assessments

Clause 87 provides that a relevant authority may require a person to undergo a health assessment if a relevant authority believes a subject person may be unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.

Clause 88 provides for the appointment of the health assessor and liability for the costs of the health assessor.

Clause 89 provides for the health assessor conducting all or part of a health assessment to prepare a report about the assessment.

Clause 90 provides for the relevant authority that appoints a health assessor to be liable for the cost of the assessment. When a relevant authority requests a health assessment report, the authority will be able to require the assessed person to meet the expense when the report is adverse to the person.

Clause 91 limits the uses to which the report may be put.

Division 4 General

Clause 92 provides for the confidentiality of a suitability report.

Clause 93 provides for the part to operate respectively to the board and a relevant authority.

Part 2.6 Inter-jurisdictional provisions regarding admission and practising certificates

Division 1 Preliminary

Clause 94 provides for the main purpose of the part.

Clause 95 provides that this part does not affect a function or power under chapter 4.

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

Clause 96 provides for notification by the board to a corresponding authority relating to an application for admission.

Clause 97 provides for the Brisbane registrar to notify other jurisdictions about removal from the local roll.

Clause 98 provides for the regulatory authority to provide notice of various actions to corresponding authorities.

Division 3 Notifications to be given by lawyers to local authorities

Clause 99 provides for local lawyers and local legal practitioners to give notice of removal from an interstate roll.

Clause 100 provides for local lawyers to give notice of orders under corresponding laws recommending their removal from the local roll and for local legal practitioners to give notice of an order under a corresponding law recommending action in relation to the practitioner's local practising certificate.

Clause 101 provides for a local lawyer or local legal practitioner to give notice of foreign regulatory action.

Clause 102 provides for the information to be provided in the notice requirements.

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

Clause 103 provides for preemptory removal of local lawyer's name from the local roll following removal in another jurisdiction.

Clause 104 provides for preemptory cancellation of local practising certificate following removal of name from an interstate roll.

Clause 105 provides for the show cause procedure for removal of the lawyer's name from the local roll following foreign regulatory action.

Clause 106 provides the show cause procedure for the cancellation of a local practising certificate following foreign regulatory action.

Clause 107 provides that, where an Australian lawyer reasonably expects that the practitioner's name will be removed from an interstate roll or that

foreign regulatory action will be taken against the lawyer, he or she may apply for a order that the lawyer not be removed from the local roll or that the lawyer's local practising certificate not be cancelled.

Clause 108 provides that a local authority that receives information from an authority in another jurisdiction may provide that information to another local authority.

Part 2.7 Incorporated legal practices and multi-disciplinary partnerships

Division 1 Preliminary

Clause 109 specifies the main purposes of the part.

Clause 110 contains definitions for the part.

Division 2 Incorporated legal practices providing legal services

Clause 111 provides for when a corporation is or is not an "incorporated legal practice".

Clause 112 provides that non-legal services that may not be provided by an incorporated legal practice or related body corporate may be prescribed by regulation.

Clause 113 provides for corporations that are eligible to be incorporated legal practices.

Clause 114 provides that, before starting to engage in legal practice in this jurisdiction, a corporation must give the law society written notice of its intention to do so.

Clause 115 creates an offence about advertising or representing that a corporation is an incorporated legal practice unless a relevant notice has been given.

Clause 116 provides for notice to be given when a corporation stops engaging in legal practice in this jurisdiction.

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

Clause 117 requires an incorporated legal practice to have a legal practitioner director and specifies the responsibilities of a legal practitioner director.

Clause 118 specifies the obligations of a legal practitioner director relating to conduct of others in relation to the incorporated legal practice.

Clause 119 provides that an incorporated legal practice cannot be without a legal practitioner director for more than 7 days and for the required notice to the law society and for action that may be taken by the law society in that event.

Clause 120 preserves the obligations and privileges of an Australian legal practitioner who is an officer or employee of an incorporated legal practice.

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

Clause 121 provides for professional indemnity insurance requirement in relation to incorporated legal practices.

Clause 122 relates to matters pertaining to conflicts of interest, in respect of the interests of the incorporated legal practice or related body corporate.

Clause 123 provides for the disclosure obligations that apply when a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services (unless the practice provides only legal services in this jurisdiction).

Clause 124 provides for the effect of non-disclosure.

Clause 125 provides for the application of the legal profession rules to Australian legal practitioners who are officers or employees of incorporated legal practices.

Clause 126 provides for restrictions on advertising by Australian legal practitioners to apply to advertising by an incorporated legal practice in relation to the provision of legal services and for an advertisement by an incorporated legal practice for the purposes of disciplinary proceedings to be taken to have been authorised by each legal practitioner director.

Clause 127 provides for the extension of vicarious liability relating to failure to account and dishonesty to incorporated legal practices.

Clause 128 provides that nothing under this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.

Clause 129 prohibits an incorporated legal practice from specified kinds of involvement with a disqualified person.

Division 5 Ensuring compliance with this Act by incorporated legal practices

Clause 130 provides for the audit of incorporated legal practices by an ILP authority (the commissioner or the law society).

Clause 131 provides for chapter 6 to apply to an audit under this division.

Clause 132 provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a corporation from providing legal services in this jurisdiction.

Clause 133 provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a person from managing an incorporated legal practice.

Clause 134 provides that an ILP authority may disclose information to the Australian Securities and Investments Commission.

Division 6 External administration

Clause 135 provides for an ILP authority to intervene in external administration proceedings under the Corporations Act and for the court, when exercising its jurisdiction in the proceedings, to 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.

Clause 136 provides, as for section 135, in respect of external administration proceedings under other legislation.

Clause 137 provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under the Corporations Act.

Clause 138 provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under another Act.

Division 7 Miscellaneous provisions relating to incorporated legal practices

Clause 139 provides for courts to make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this part.

Clause 140 provides that the Act prevails to the extent of any inconsistency with a corporation's constitution.

Clause 141 for corporations not under the Corporations Act, provides that a provision of this Act prevails to the extent of any inconsistency with the law under which they are established or regulated, as prescribed by regulation.

Clause 142 provides for the making of a regulation to provide for a provision of the part to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.

Clause 143 makes it an offence for a person to cause or induce a legal practitioner director, or any other Australian legal practitioner who provides legal services or an incorporated legal practice, to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Division 8 Multi-disciplinary partnerships

Clause 144 provides for when a partnership is or is not a “multi-disciplinary partnership”.

Clause 145 provides in relation to the non-legal services a multi-disciplinary partnership that provides legal services may or may not provide.

Clause 146 provides that a legal practitioner partner of a multidisciplinary partnership must, before a multi-disciplinary partnership starts to engage in legal practice in this jurisdiction, give the law society written notice of its intention to do so.

Clause 147 provides that a legal practitioner partner of a multi-disciplinary partnership is responsible for the management of legal services provided by a multi-disciplinary partnership.

Clause 148 specifies the obligations of a legal practitioner partner relating to conduct of others in relation to a multi-disciplinary partnership.

Clause 149 provides that a partner of a multi-disciplinary partnership who is not an Australian legal practitioner does not contravene a provision of the Act merely because of specified circumstances.

Clause 150 preserves the obligations and privileges of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership.

Clause 151 relates to matters pertaining to conflicts of interest, in respect of the interests in multi-disciplinary partnership.

Clause 152 provides for the disclosure obligations that apply when a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services (unless the practice provides only legal services in this jurisdiction).

Clause 153 provides for the effect of non-disclosure.

Clause 154 provides for the application of the legal profession rules to Australian legal practitioners who are legal practitioner partners or employees of multi-disciplinary partnerships.

Clause 155 provides for restrictions on advertising by multi-disciplinary partnerships in relation to the provision of legal services and for an advertisement by a multi-disciplinary partnership for the purposes of disciplinary proceedings to be taken to have been authorised by each legal practitioner partner.

Clause 156 provides that nothing under this Act prevents a legal practitioner partner or others from sharing with a partner who is not an Australian legal practitioner, receipts, revenue or other income arising from the provision of legal services.

Clause 157 prohibits an Australian legal practitioner partner of a multi-disciplinary partnership from specified kinds of involvement with a disqualified person.

Clause 158 provides for the Court to make orders in respect of persons who Australian legal practitioners should not have as partners.

Clause 159 makes it an offence for a person to cause or induce a legal practitioner partner or employee of a multi-disciplinary partnership to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Division 9 Miscellaneous

Clause 160 provides that nothing affects the obligations of a legal practitioner director or an Australian legal practitioner who is an employee of an incorporated legal practice under the Act or a legal practitioner partner or Australian legal practitioner who is an employee of a multi-disciplinary partnership under this Act.

Clause 161 provides that a regulation may provide in respect of legal services provided by an incorporated legal practice or legal practitioner partner or employees of a multi-disciplinary partnership and the other services that they can provide where conflicts of interest may arise in relation to those services.

Part 2.8 Legal practice by foreign lawyers

Division 1 Preliminary

Clause 162 provides for the purpose of the part.

Clause 163 provides for the definitions for the part.

Clause 164 provides that the part does not apply to Australian legal practitioners.

Division 2 Practice of foreign law

Clause 165 prohibits persons from practising foreign law unless they are an Australian-registered foreign lawyer or an Australian legal practitioner.

Clause 166 provides that an Australian-registered foreign lawyer can practise foreign law in this jurisdiction.

Clause 167 specifies the scope of legal practice for a foreign lawyer.

**Division 4 Application for grant or renewal of
local registration**

Clause 180 provides for the application for the grant or renewal of registration.

Clause 181 provides for the manner of application.

Clause 182 provides for the requirements for applications for the grant or renewal of registration.

Division 5 Grant or renewal of local registration

Clause 183 provides for consideration of an application by the law society.

Clause 184 provides that the law society must grant or renew if the criteria for registration is satisfied.

Clause 185 provides for when the law society may refuse to grant or renew registration.

**Division 6 Amendment, suspension or
cancellation of local registration**

Clause 186 provides for the application of the part.

Clause 187 provides for the grounds for amending, suspending or cancelling registration.

Clause 188 provides for a show cause process for amending, suspending or cancelling registration.

Clause 189 provides for how amendment, suspension or cancellation of registration is to operate.

Clause 190 provides for other ways of amending, suspending or cancelling registration.

Clause 191 provides that nothing in the part prevents the law society from making a complaint under chapter 4.

Division 7 Special powers in relation to local registration – show cause events

Clause 192 provides for disclosure by an applicant for registration of show cause event happening since first registration as an overseas-registered foreign lawyer.

Clause 193 provides for disclosure of a show cause event by locally registered foreign lawyer.

Clause 194 provides for refusal, amendment, suspension or cancellation of local registration for failure to show cause.

Clause 195 provides for a restriction to be imposed on making further applications.

Clause 196 provides for the relationship of this part with chapter 6 and part 4.6.

Division 8 Further provisions relating to local registration

Clause 197 provides for registration to be able to be immediately suspended.

Clause 198 provides that a locally registered foreign lawyer may surrender his or her local registration certificate.

Clause 199 provides that the registration is cancelled if the person becomes an Australian legal practitioner.

Clause 200 provides that suspension or cancellation does not affect the disciplinary processes.

Clause 201 provides for the return of the certificate on amendment, suspension or cancellation.

Division 9 Conditions on registration

Clause 202 provides for the conditions for locally registered foreign lawyers generally.

Clause 203 provides for conditions that can be imposed by the law society.

Clause 204 provides for the requirement to notify conviction of an offence or being charged with a serious offence.

Clause 205 provides for conditions that can be imposed by a regulation.

Clause 206 provides that the locally registered foreign lawyer must comply with the conditions.

Division 10 Interstate-registered foreign lawyers

Clause 207 provides for the extent of an interstate-registered foreign lawyer's entitlement to practise in this jurisdiction.

Clause 208 provides for additional conditions on practice of interstate registered foreign lawyers.

Division 11 Miscellaneous

Clause 209 provides for the law society to ask for documents or information or make inquiries to help it consider a matter under the part.

Clause 210 provides for the law society to keep a register of locally registered foreign lawyers.

Clause 211 provides for the publication of information about locally registered foreign lawyers.

Clause 212 provides that the Supreme Court may order that an Australian-registered foreign lawyer shall not contravene a condition imposed under the part.

Clause 213 provides for the law society to be able to exempt an Australian-registered foreign lawyer (or class) from a requirement that would otherwise apply.

Clause 214 provides that Australian-registered foreign lawyers are not required to join a professional association.

Clause 215 provides for a refund of fees in certain circumstances.

Chapter 3 Conduct of legal practice

Part 3.1 Preliminary

Clause 216 provides an outline for the chapter.

Part 3.2 Manner of legal practice

Division 1 Preliminary

Clause 217 provides for the main purposes of the part.

Clause 218 provides for some definitions for the part.

Division 2 Rules for Australian legal practitioners and other individuals

Clause 219 provides for the law society to make rules about legal practice engaged in by Australian legal practitioners as solicitors and by Australian-registered foreign lawyers in this jurisdiction.

Clause 220 provides for the bar association to make rules about legal practice engaged in by Australian legal practitioners as barristers in this jurisdiction.

Clause 221 that the legal profession rules may apply to government legal officers.

Clause 222 provides for legal profession rules to be made about any aspect of legal practice including the standards of conduct of the persons to whom they apply.

Clause 223 provides for public notice by a regulatory authority that proposes to make a legal profession rule.

Division 3 Rules for incorporated legal practices and multi-disciplinary partnerships

Clause 224 provides for rules to be made about the provision of legal services by incorporated legal practices and multi-disciplinary partnerships and places limits on the extent to which the rules can relate to non-legal services.

Division 4 Notice about making of legal profession rules and role of committee

Clause 225 provides rules do not have effect unless notified by the Minister and the notice is sub-ordinate legislation.

Clause 226 provides for the role of the committee in monitoring the rules.

Division 5 General provisions for legal profession rules

Clause 227 provides for the legal profession rules to be binding on those to whom they apply.

Clause 228 provides that the law society can make rules prohibiting Australian legal practitioners and Australian-registered foreign lawyers from engaging in mortgage financing and related activities and practices.

Clause 229 provides for the relationship between the legal profession rules and a regulation.

Clause 230 requires a regulatory authority to make its legal profession rules publicly available.

Division 6 Administration rules

Clause 231 provides for regulatory authorities to make administration rules.

Clause 232 provides for the administration rules in relation to professional indemnity cover.

Clause 233 provides for a regulation to be made for any matter for which administration rules may be made and for the administration rules not to have effect to the extent that they are inconsistent with this Act, a regulation or the legal profession rules relevant to the authority.

Clause 234 provides for the relationship between the legal profession rules and the administration rules.

Clause 235 requires a regulatory authority to make its administration rules publicly available.

Part 3.3 Trust money and trust accounts

Division 1 Preliminary

Clause 236 sets out the main purposes of this part.

Clause 237 contains definitions for the part including for controlled money, external examination, general trust account, transit money and trust account.

Clause 238 provides that money held by law practices in connection with financial services, managed investment schemes or mortgage financing are not trust money for the purposes of the Act. Also, money held for investment purposes is only trust money if held as part of the ordinary course of legal practice.

Clause 239 permits the law society, subject to any decision of a court, to make a binding determination as to whether certain money is trust money for the purposes of the Act.

Clause 240 provides for the rules for deciding whether the part applies to trust money received by a law practice. A regulation can be made that modifies the operation of the principles stated in the clause.

Clause 241 provides for the law society to enter into protocols with other regulatory bodies for determining which jurisdiction has responsibility for trust money and for the sharing of information. Such protocols are only effective if contained in or referred to in a regulation.

Clause 242 defines when trust money is received.

Clause 243 sets out various actions that, if taken by a legal practitioner associate, discharge the obligations of the law practice.

Clause 244 provides that a provision of part 3.3 that is binding on law practices imposes the same obligations on the principals of the law practice.

Clause 245 provides that part 3.3 applies to former law practices, principals and associates in relation to conduct that took place whilst they were performing their former functions.

Clause 246 provides that barristers are not to receive trust money subject to stated exceptions.

Division 2 Trust accounts and trust money

Clause 247 provides that a law practice that receives trust money must maintain one or more trust accounts in Queensland. Such accounts must be kept in accordance with a regulation. However, if a law practice only receives controlled money or transit money (other than cash) there is no obligation to maintain a trust account. A regulation may provide for the circumstances in which trust accounts may be closed.

Clause 248 provides that trust money must be deposited in a trust account as soon as practicable after it is received unless it is controlled or transit money or the money is subject to a power given to the practice or an associate of the practice to deal with the money for another person.

Clause 249 provides that trust money in a general trust account must be held exclusively for the client and must be disbursed in accordance with the directions of the person on whose behalf the money has been received.

Clause 250 provides for how trust money from the general account may and may not be withdrawn. It can be withdrawn by cheque or, if authorised by the law society, by electronic funds transfer. It cannot be withdrawn in cash through an ATM or telephone banking or electronic funds transfer unless authorised by the law society.

Clause 251 provides that a law practice must deposit controlled money in accordance with the written direction relating to such money. The money must be held exclusively for the client and must not be disbursed except in accordance with the appropriate written direction. Except in accordance with a regulation, controlled money must be kept in a controlled money account.

Clause 252 provides for the withdrawal of controlled money as for clause 250.

Clause 253 provides that transit money must be paid within the period specified in the instructions or in the absence of such a period as soon as practicable after it is received. The money must be accounted for in accordance with a regulation.

Clause 254 provides that, where a law practice is acting under a power, the law practice must ensure that the money is only dealt with by the law practice in accordance with the power.

Clause 255 provides that as a general rule, trust money that is cash must be deposited in the general trust account. Controlled money that is cash is dealt with in accordance with clause 251.

Clause 256 provides that trust money cannot be used to satisfy the claims of third parties against the law practice.

Clause 257 provides that a law practice must not mix trust money unless permitted to so by the law society.

Clause 258 provides that a law practice may, in respect of trust money, exercise a lien, withdraw money to pay for amounts owing to the law practice, and deal with any balance as unclaimed money under clause 713.

Clause 259 provides that it is an offence for an Australian legal practitioner to cause any deficiency in any trust account or a failure to pay or deliver any trust money.

Clause 260 provides a duty on legal practitioner associates and Australian legal practitioners to give written notice to the law society or corresponding authorities of any irregularities in the trust accounts or the trust ledger accounts of the law practice.

Clause 261 provides that trust records must be kept in a permanent form. The trust records must also be maintained in accordance with a regulation and also so as to provide the true position and so as to be readily examined and for a period as prescribed by a regulation.

Clause 262 provides that a law practice must not knowingly receive money or record the receipt of money under a false name.

Division 3 Investigations

Clause 263 provides that the law society may investigate the affairs of a law practice of its own initiative or at the request of the commissioner.

Clause 264 provides for the trust account investigator to report to the law society and for a copy to be provided to the commissioner if the commissioner has requested the investigation.

Clause 265 provides for when the costs of the investigation are a debt of the law practice. The circumstance is where the investigator specifies that there has been a breach of the Act or a default and the law society is satisfied the breach or default is wilful or substantial.

Clause 266 provides that the law society or commissioner can give a professional accounting association certain information if a trust account investigation report discloses conduct that shows that an external examiner may have breached professional accounting and audit standards in relation to an external examination of a law practice's trust records.

Division 4 External examinations

Clause 267 requires a law practice to appoint an external examiner within 14 days of becoming a law practice or of another external examiner ceasing to be the external examiner for the practice. The external examiner must have the qualifications approved under a regulation and not be disqualified from being an external examiner under clause 278.

Clause 268 provides that a law practice must, once a year, have its trust records externally examined. The law society may appoint an external examiner for a law practice if the law practice has not had its trust records externally examined.

Clause 269 provides that an associate of a law practice may be appointed as an external examiner but cannot examine the trust records of the law practice of which he or she is an associate.

Clause 270 provides for the law practice to give the law society notice of the appointment of an external examiner or replacement external examiner.

Clause 271 provides for the external examiner to give the law society notice if he or she ceases to be an external examiner for a law practice.

Clause 272 provides that an external examiner may, in examining a law practice's trust records also examine the affairs of the law practice - including the affairs of incorporated legal practices and multi disciplinary partnerships.

Clause 273 provides that external examinations must be carried out in accordance with a regulation and the regulation may provide for the standards to be adopted and the procedures to be followed by external examiners and also the form and content of the reports of external examiners.

Clause 274 provides for the law practice to give a copy of the report of its external examination to the law society. If the society has appointed an external examiner, the external examiner must provide a copy of its report to the law society.

Clause 275 provides for the external examiner to be required to report to the law society certain matters of which the external examiner becomes aware in carrying out an external examination.

Clause 276 provides that a law practice that ceases to be authorised to receive trust money or ceases to engage in legal practice must appoint an external examiner to examine the law practice's trust records and give a report of the external examination to the law society within 60 days of the end of the period to which the examination relates.

Clause 277 provides that a law practice is responsible for the costs of its external examination.

Clause 278 allows the law society to disqualify a person from conducting external examinations of law practices' trust accounts.

Clause 279 provides for an offence if a disqualified person conducts an external examination

Division 5 Provisions relating to ADIs

Clause 280 provides that the law society may approve ADIs at which trust accounts can be maintained. Approval may only be given if the ADI has entered into an arrangement with the chief executive under clause 287.

Clause 281 states that an ADI is not under any obligation to control or supervise transactions and does not have any right of action or set off in respect of trust money.

Clause 282 provides that the ADI at which trust money is held is under an obligation to report certain matters (such as deficiencies in trust accounts) to the law society. ADIs are also obligated to provide certain reports to the law society. ADIs must, without charge, produce various documents and records.

Division 6 Prescribed accounts and Legal Practitioner Interest on Trust Accounts Fund

Subdivision 1 Preliminary

Clause 283 provides for the main purposes of the division.

Clause 284 provides for definitions for the division.

Subdivision 2 Prescribed accounts

Clause 285 provides that a regulation may prescribe matters relating to a prescribed account.

Clause 286 provides that no action at law or in equity may lie against a law practice relating to a matter or thing done by the practice for complying with a regulation as mentioned in section 285 that applied to the practice.

Subdivision 3 Interest on trust accounts paid to department

Clause 287 provides for the chief executive to enter into arrangements with ADIs about the ADIs paying interest to the department on prescribed accounts and trust accounts kept by solicitors.

Subdivision 4 Legal Practitioner Interest on Trust Accounts Fund

Clause 288 continues the Legal Practitioner Interest on Trust Accounts Fund.

Clause 289 provides for the purposes for which payments can be made from the Fund.

Clause 290 provides for the Minister to decide distribution payments under the section and for the chief executive to make recommendations to the Minister.

Clause 291 provides for the submission of budgets by a potential beneficiary.

Division 7 Miscellaneous

Clause 292 provides that a law practice (other than a incorporated legal practice) can only receive trust money if a principal holds a practising certificate that authorises the holding of trust money. It also provides for when an incorporated legal practice can receive trust money.

Clause 293 provides that the obligations imposed by part 3.3 applies to incorporated legal practices and multi-disciplinary partnerships only in connection with legal services provided by them. A regulation may provide that certain provisions of part 3.3 do or do not apply to incorporated legal practices and multi-disciplinary partnerships.

Clause 294 provides that, if a law practice receives money that is not trust money or which ceases to be trust money, the law practice must disclose this status to the client.

Clause 295 obliges law practices to advise, in accordance with a regulation, the law society of the details of all accounts at ADIs where trust money is held.

Clause 296 provides for the law society to report to the Minister about its functions and powers under the part.

Clause 297 provides that the commissioner can ask the law society for a report about a law practice's compliance with the part.

Clause 298 provides for the making of a regulation necessary for the operation of the Part.

Part 3.4 Costs disclosure and assessment

Division 1 Preliminary

Clause 299 provides for the purposes of the part.

Clause 300 provides for the definitions for the part.

Clause 301 defines terms in relation to third party payers.

Division 2 Application of this part

Clause 302 provides that the part applies to a matter only if the client first instructs the law practice in Queensland in respect of the matter. The equivalents to this part in other jurisdictions will apply if the first instructions occur in the other jurisdiction.

Clause 303 provides that the part may also apply in circumstances other than those mentioned in clause 302. Where legal services are to be either primarily provided in Queensland or where the matter has a substantial connection with Queensland, the client may sign an appropriate agreement or give a notice to the effect that this part is to apply.

Clause 304 provides that clauses 302 and 303 do not apply if, in effect, the client signs an agreement to give a notification under a provision of another jurisdiction's law that is equivalent to clause 303.

Clause 305 provides that a client first instructs a law practice in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, however it is communicated.

Clause 306 provides that a regulation may set out the rules for determining whether or not a matter has a substantial connection with Queensland.

Clause 307 deals with the situation where the part only applies to a matter for a period of time (with some other jurisdiction's law applying for the remainder of the period of the matter). In the absence of an agreement to the contrary, the part applies in respect of legal costs incurred whilst this part applied and does not apply to any subsequent period - so long as a corresponding law applies. However, the client may sign an agreement nominating that either this part or some other jurisdiction's law is to apply to the entire proceedings.

Division 3 Costs disclosure

Clause 308 provides that a law practice must disclose the basis on which legal costs are to be calculated along with the client's right to negotiate, receive a bill, request an itemised bill, to be notified of changes, an estimate of costs or a range of costs, billing intervals, range of costs that may be recovered (in litigation matters), right to progress reports, dispute rights and information about which jurisdiction's law may apply. Where interest is to be charged, a benchmark rate may be prescribed.

Clause 309 provides for what a law practice must do if it intends to retain another law practice (eg a barrister) on behalf of a client. The retained law practice must disclose to the retaining law practice sufficient information to enable the retaining law practice to disclose the relevant information about the costs to be charged by the retained law practice.

Clause 310 provides for disclosure to be before or as soon as practicable after a law practice is retained. It must be made in writing.

Clause 311 sets out various exceptions to the disclosure requirement imposed by clauses 308 and 309(1). The most significant exceptions include:

- where the total legal costs are less than \$750 (or another higher figure is prescribed by regulation);
- there has been disclosure in the previous 12 months, the client waives further disclosure and a principal of the law practice considers it reasonable;
- certain sophisticated clients;
- costs determined as part of a tender process;
- costs that will not be paid by the client (eg pro bono services).

Clause 312 provides that a law practice that is negotiating the settlement of litigation must disclose a reasonable estimation of legal costs and the reasonable estimate of any contributions from any other party.

Clause 313 provides for additional disclosure when a uplift fee may be charged.

Clause 314 provides that the disclosure must be in writing but can be in another language and in some cases must be conveyed orally.

Clause 315 provides that a law practice must notify a client of any substantial changes to matters that have been disclosed.

Clause 316 provides for the consequences of a law practice failing to comply with disclosure requirements e.g. the client need not pay the legal costs unless assessed in accordance with Division 7. Where a law practice has retained another law practice on behalf of a client, and the second law practice fails to provide relevant information to allow the first law practice

to make the costs disclosure required by the Act, the above consequences do not apply to the first law practice's legal costs to the extent that the first law practice's failure to disclose was caused by the second law practice. The consequences do, however, apply to the second law practice's legal costs.

Clause 317 provides that, on the reasonable request of a client, the law practice must give a written progress report or a written report on costs incurred.

Clause 318 provides that disclosure must also be made to an associated third party payer.

Division 4 Legal costs generally

Clause 319 sets out that costs are recoverable – under a costs agreement; under the applicable scale; or otherwise for a fair and reasonable value.

Clause 320 provides that a law practice may take security for the payment of legal costs (including for interest on those legal costs).

Clause 321 states that a law practice may charge interest on legal costs that have been unpaid for 30 days. The rate of interest must not exceed that which is determined in accordance with a regulation.

Division 5 Costs agreements

Clause 322 provides for the making of costs agreements. Such agreements must be in writing or evidenced by writing. They must clearly indicate that they are costs agreements and they cannot, subject to clauses 344, provide that costs are not subject to assessment under division 7.

Clause 323 provides that costs agreements may provide that the payment of costs is conditional on a specified successful outcome of the matter. However, there cannot be conditional costs agreements for criminal matters and family law matters and for matters under a regulation. The

agreement must set out what is a successful outcome and must contain a cooling period of 5 days. It must state that the client has been informed of the client's right to seek independent legal advice.

Clause 324 provides in relation to conditional costs agreements involving an uplift fee that the uplift fee must not exceed 25% of the legal costs, excluding disbursements.

Clause 325 provides that a law practice must not enter into a costs agreement where the amount of costs payable is determined on the basis of the financial outcome in a litigation matter.

Clause 326 provides that costs agreements are enforced as contracts subject to divisions 5 and 7.

Clause 327 provides that a costs agreement that breaches division 5 is void. However, legal costs under a void costs agreement can be recovered in accordance with clause 319(b) or (c) subject to the amount recovered not exceeding the amount that would have been recovered if the costs agreement had not been void. No legal costs are recoverable if there has been a breach of clause 325.

Clause 328 provides that a client may apply to the court for an order that a costs agreement be set aside if the agreement is not fair or reasonable.

Division 6 Billing

Clause 329 provides that a law practice cannot commence legal proceedings for the recovery of costs unless at least 30 days has passed since a bill has been given in accordance with clauses 330 and 331. However, a court can approve a lesser period.

Clause 330 provides that a bill can be in the form of a lump sum or be itemised. The clause also sets out how bills are to be signed and delivered.

Clause 331 provides that bills must be accompanied by explanation of the rights of a client to dispute a bill.

Clause 332 provides that if a law practice provides a lump sum bill the client may, within 30 days, request that an itemised bill be provided.

Clause 333 provides that law practice may give interim bills covering a part of the legal services that have been provided.

Division 7 Costs assessment

Clause 334 defines "client" for the division.

Clause 335 provides for applications for costs assessments by clients and third party payers.

Clause 336 provides that a law practice may apply for a costs assessment of the legal costs given by another law practice.

Clause 337 provides for a law practice giving a bill to apply for a costs assessment.

Clause 338 provides that, if an application for a costs assessment is made, no money can be required to be paid into court on account of the costs and the law practice cannot commence recovery proceedings.

Clause 339 provides that an applicant must provide copies of the application to the appropriate persons.

Clause 340 provides that costs must be assessed in accordance with a costs agreement unless the agreement does not comply with the disclosure requirements of division 3 or division 5 precludes the recovery of costs by the law practice.

Clause 341 sets out the criteria for assessing costs.

Clause 342 provides that a costs assessor must determine the costs of a costs assessment. The clause also states that unless the costs assessor decides otherwise, the law practice must pay those costs if the legal costs are reduced by 15% or more or the costs assessor is satisfied that the law practice has failed to comply with division 3. Otherwise, the applicant is liable.

Clause 343 provides for costs assessors or a court to refer a matter to the commissioner.

Clause 344 provides that a sophisticated client can contract out of the division.

Division 8 Speculative personal injury claims

Clause 345 provides for the main purpose of the division.

Clause 346 provides for the definitions for the division.

Clause 347 provides for a cap on legal fees for personal injuries matters undertaken by law practices on a speculative basis

Division 9 Miscellaneous

Clause 348 provides that a regulation may be made for the purpose of determining the extent to which the part applies to incorporated legal practices and multi-disciplinary practices.

Clause 349 provides that things done or not done by Australian legal practitioners and Australian-registered foreign lawyers, as a general rule, are taken to be acts or omissions of the law practice for whom they were acting.

Clause 350 protects confidential information under the part from disclosure, except as permitted by the Act.

Clause 351 provides that protection of privilege continues despite the provision of the relevant document to costs assessor.

Clause 352 provides that costs assessors in performing their functions have same protection and immunity as a judge performing the functions of a judge. There are also protections for parties appearing and witnesses attending and documents used in costs assessments.

Part 3.5 Professional indemnity insurance

Clause 353 provides for the professional indemnity insurance requirements for a local practising certificate and exempts government legal officers in relation to government work and legal practitioners providing in-house legal services from the requirement.

Clause 354 provides for the continuing obligation on a practitioner relating to professional indemnity insurance cover.

Part 3.6 Fidelity cover

Division 1 Preliminary

Clause 355 provides for the purpose of the part.

Clause 356 provides for definitions for the part.

Clause 357 provides for the part to not apply to barristers.

Clause 358 provides for the time when a default occurs.

Division 2 Fidelity Fund

Clause 359 provides for the continuation of the Legal Practitioners' Fidelity Guarantee Fund (the Fund).

Clause 360 allows the law society to make arrangements for insurance of the Fund.

Clause 361 limits the power of the law society to borrow for the purposes of the Fund.

Clause 362 provides for the Fund to be kept in a separate account.

Clause 363 provides for moneys payable to the Fund.

Clause 364 provides for authorised expenditure from the Fund.

Clause 365 provides for the audit of the Fund.

Clause 366 provides for the law society to delegate its powers in relation to the Fund to a committee of management.

Clause 367 provides that the Minister may require a report on the Fund.

Clause 368 provides for contributions to be made to the Fund.

Clause 369 provides for levies to be made for the purposes of the Fund.

Clause 370 provides for the law society to advance money from its general funds for the purposes of the Fund.

Division 3 Defaults to which this part applies

Clause 371 provides for the meaning of relevant jurisdiction for a default for the purposes of the part.

Clause 372 defines defaults to which the part applies.

Clause 373 excludes from the part (and therefore claims under the part) certain financial services and investments.

Division 4 Claims about defaults

Clause 374 provides for claims to be made on the Fund.

Clause 375 provides for the time for making claims.

Clause 376 provides for advertisements to be made about defaults.

Clause 377 provides for the time limit for making claims following an advertisement.

Clause 378 provides that claims are not affected by a later change in the status of the practice or associate.

Clause 379 provides for the investigation of claims against the Fund in the same way as the investigation of complaints.

Clause 380 gives the law society a discretion to make an advance payment where satisfied the claim is likely to be allowed and it considers the payment is warranted to alleviate hardship.

Division 5 Deciding claims

Clause 381 provides for the law society to decide a claim.

Clause 382 provides for the amount payable by the Fund not to exceed the amount of the pecuniary loss.

Clause 383 provides for reasonable costs to also be payable.

Clause 384 provides for reasonable interest to also be payable.

Clause 385 provides for a reduction of claim because of other benefits.

Clause 386 provides for the law society to be subrogated to the rights and remedies of the claimant.

Clause 387 provides in respect of proceedings brought under the right of subrogation.

Clause 388 provides for the repayment of surplus money by the claimant.

Clause 389 provides for the law society to notify a delay in deciding a claim.

Clause 390 provides for the notification under the division to include an information notice.

Division 6 Right of action against external examiner

Clause 391 provides that the law society has a right of action against an external examiner who is guilty of neglect in relation to the external

examination of a law practice where there is a default in relation to the law practice and the law society pays an amount from the Fund to reimburse persons who suffered a loss because of the default.

Division 7 Appeals

Clause 392 provides for an appeal or review of a decision in respect of a claim.

Clause 393 provides for an appeal against the failure of the law society to decide a claim within a year.

Clause 394 provides in relation to proceedings on appeal.

Division 8 Payments from fidelity fund for defaults

Clause 395 provides for payments for defaults to which the part applies.

Clause 396 provides for prescribed caps on claims for individual claims and for the aggregate claims for an individual.

Clause 397 provides for what the law society may do in the event the Fund is not sufficient. This includes postponing payments, imposing levies and making partial payments

Division 9 Claims by law practices or associates

Clause 398 provides in relation to claims by law practices or associates for defaults.

Clause 399 provides for claims remedied, avoided or reduced by a financial contribution by a law practice or associate.

Division 10 Defaults involving interstate elements

Clause 400 provides for the treatment of concerted interstate defaults.

Clause 401 provides in relation to defaults with interstate elements by one associate only.

Division 11 Inter-jurisdictional provisions

Clause 402 provides for the law society to enter into protocols with corresponding authorities in relation to matters under the part.

Clause 403 provides for the forwarding of claims to corresponding authorities and in respect of those forwarded by corresponding authorities.

Clause 404 allows the law society to request a corresponding authority to act as agent for processing or investigating a claim.

Clause 405 provides for the law society to act as agent for a corresponding authority for processing or investigating a claim.

Clause 406 provides as for the investigation of concerted interstate defaults and defaults under section 401.

Clause 407 provides for the law society to make a recommendation in relation to a claim under a corresponding law.

Clause 408 the law society can receive but does not have to accept the recommendations of a corresponding authority about a claim.

Clause 409 provides that the law society can request a corresponding authority to investigate an aspect of a claim.

Clause 410 provides for the law society to investigate aspects of a claim at the request of a corresponding authority.

Clause 411 provides for the law society to consult and co-operate with a corresponding authority.

Division 12 Miscellaneous

Clause 412 for an interstate practitioner who becomes authorised to operate a local trust account to notify the law society and be liable for contributions and levies in the same way as a local legal practitioner.

Clause 413 provides for the application of the part to incorporated legal practices.

Clause 414 provides for the application of the part to multi-disciplinary partnerships.

Clause 415 provides for the application of the part to Australian lawyers whose practising certificates have lapsed in certain circumstances.

Chapter 4 Complaints and discipline

Part 4.1 Preliminary

Clause 416 provides for the main purposes of this chapter.

Clause 417 provides for the application of the chapter to lawyers, former lawyers and former legal practitioners.

Part 4.2 Key concepts

Clause 418 provides for the meaning of “unsatisfactory professional conduct”.

Clause 419 provides for the meaning of “professional misconduct”.

Clause 420 provides for conduct capable of being unsatisfactory professional conduct or professional misconduct.

Clause 421 defines the meaning of “respondent”.

Part 4.3 Application of this chapter

Clause 422 provides for Australian legal practitioners to whom this chapter applies.

Clause 423 provides for conduct in this jurisdiction of an Australian legal practitioner to which the chapter applies.

Clause 424 provides that the chapter applies to the conduct in relation to a serious offence, a tax offence or an offence involving dishonesty, becoming insolvent under administration or being disqualified from managing a corporation.

Clause 425 provides that the chapter applies in respect of the employees and former employees of law practices.

Clause 426 provides for the chapter to apply to persons suspected of contravening the *Personal Injuries Proceedings Act 2002*, chapter 3, part 1.

Clause 427 provides for the chapter to apply to unlawful operators in relation to conduct constituting a contravention of sections 24 or 25.

Part 4.4 Complaints about Australian legal practitioners

Clause 428 provides for the conduct about which a complaint can be made under the chapter.

Clause 429 provides for the making of a complaint against an Australian legal practitioner or law practice employee.

Clause 430 provides for complaints made over 3 years after the conduct concerned.

Clause 431 provides for the commissioner to require the complainant to provide further information or verify the complaint.

Clause 432 provides for the summary dismissal of complaints.

Clause 433 provides that the withdrawal of a complaint does not prevent the commissioner from investigating.

Clause 434 provides for the commissioner to delay dealing with a complaint for specified reasons.

Clause 435 provides for a referral of a complaint or the investigation matter to the law society or bar association for a report.

Clause 436 provides for the commissioner to investigate a complaint or investigation matter.

Clause 437 provides for the respondent to be notified of a complaint or investigation matter.

Clause 438 provides for submissions to be made by respondents to the commissioner.

Clause 439 provides for the role of the law society or bar association in investigating complaints.

Part 4.5 Mediation for complaints involving consumer dispute

Clause 440 defines consumer dispute for the part.

Clause 441 provides for mediation of complaints which only involve consumer disputes.

Clause 442 provides for the mediation of complaints that involve consumer disputes and an issue of unsatisfactory professional conduct or professional misconduct.

Part 4.6 Investigations

Clause 443 provides for an investigating entity to be able to require an Australian lawyer to give an explanation of a matter being investigated, to appear before it and produce documents and engage a person to report on the reasonableness of a bill of costs.

Clause 444 provides that, for investigating a complaint, an investigating entity may refer a matter for a costs assessment.

Clause 445 provides for a regulation covering the cost of a costs assessment under clauses 443 or 444.

Clause 446 provides for the powers of the commissioner after investigating a complaint or investigation matter in relation to an unlawful operator.

Part 4.7 Decision of commissioner

Clause 447 provides for the commissioner to start proceedings before a disciplinary body.

Clause 448 enables the commissioner to dismiss a complaint.

Clause 449 provides for the keeping of a record by the commissioner of a decision about a complaint or investigation matter.

Part 4.8 General procedural matters

Clause 450 provides for the duties of the commissioner to deal with complaints.

Clause 451 provides for the duty of the commissioner to keep complainants informed.

Part 4.9 Proceedings in disciplinary body

Clause 452 provides for the commissioner to start a disciplinary proceeding.

Clause 453 provides for a disciplinary body to hear proceedings.

Clause 454 provides for joinder of disciplinary proceedings.

Clause 455 provides for variations to disciplinary proceedings.

Clause 456 provides for orders by the tribunal after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter if the tribunal is satisfied that the Australian legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

Clause 457 provides for the filing of decisions of the tribunal about discipline applications.

Clause 458 provides for the decisions of the committee about discipline applications.

Clause 459 provides for the filing of committee decisions.

Clause 460 provides for interlocutory and interim orders.

Clause 461 provides for entities to comply with orders of the disciplinary body.

Clause 462 provides for costs orders.

Clause 463 provides that the part does not affect other remedies.

Part 4.10 Compensation orders

Clause 464 provides for the meaning of “compensation order”.

Clause 465 provides for limits on compensation orders relating to pecuniary loss.

Clause 466 provides for the effect of a compensation order.

Clause 467 provides that other remedies are not affected by the recovery of an amount awarded by a compensation order.

Part 4.10A Appeals from decisions of disciplinary bodies

Clause 468 provides for an appeal from a decision of the tribunal to the Court of Appeal by a party or the Minister.

Clause 469 provides for an appeal from a decision of the committee to the tribunal.

Clause 470 provides for an appeal to the Court of Appeal in relation to a decision of the committee.

Part 4.11 Publicising disciplinary action

Clause 471 provides for the definitions for the part.

Clause 472 provides for the commissioner to keep a “discipline register”. The Bill provides that the register may include unsatisfactory professional conduct as well as professional misconduct.

Clause 473 provides that the commissioner may publicise disciplinary action taken against an individual in any way the commissioner considers appropriate.

Clause 474 provides for removal from the register on the quashing of a disciplinary action on appeal or review.

Clause 475 provides that no liability is incurred by a protected person in relation to anything done or omitted to be done in good faith for certain purposes.

Clause 476 provides for disciplinary action taken because of infirmity, injury or illness not to be recorded without consent.

Clause 477 provides for the part to be subject to an order of a tribunal about the required disclosure of information.

Part 4.12 Inter-jurisdictional provisions

Clause 478 provides that the commissioner may enter into arrangements (“protocols”) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than one jurisdiction and the matters that the protocols may provide for.

Clause 479 provides that the commissioner may request another jurisdiction to investigate a complaint.

Clause 480 provides for a request by another jurisdiction to investigate a complaint.

Clause 481 provides for the sharing of relevant information with corresponding authorities.

Clause 482 provides for the commissioner to consult and co-operate with corresponding authorities.

Clause 483 provides that the commissioner may ask a person or body for information relevant to a complaint or investigation matter.

Clause 484 provides for compliance with certain orders made under corresponding laws.

Clause 485 provides that other functions and powers of a person or body apart from this part are not affected.

Part 4.13 Miscellaneous

Clause 486 provides that the commissioner must produce information about the making of complaints and the procedure for dealing with complaints, ensure that information is available to members of the public on request and give help to members of the public in making complaints.

Clause 487 provides that a person is not liable civilly, criminally or under an administrative process for making a complaint or giving information to the commissioner, law society or bar association in relation to a complaint.

Clause 488 provides that failure to comply with an order of a disciplinary body may constitute unsatisfactory professional conduct or professional misconduct.

Clause 489 allows the commissioner to develop performance criteria.

Clause 490 provides for reports to the Minister.

Clause 491 provides for the affect of requirements under this chapter or part 7.2 on confidentiality of client communications.

Clause 492 provides that a complainant is taken to have waived legal professional privilege and benefit of duty of confidentiality to enable the practitioner to disclose to the appropriate authorities any information necessary for the investigating and dealing with the complaint.

Chapter 5 External intervention

Part 5.1 Preliminary

Clause 493 provides for the main purposes of the chapter.

Clause 494 provides for the definitions for the chapter.

Clause 495 provides for the non-application of the chapter to barristers and the application of the chapter to Australian-registered foreign lawyers.

Clause 496 provides for the application of the chapter to other persons.

Part 5.2 Starting external intervention

Clause 497 provides for circumstances warranting external intervention.

Clause 498 provides for the circumstances where the law society can make a decision appointing an external intervener.

Part 5.3 Supervisors of trust money

Clause 499 provides for the appointment of a supervisor of trust money.

Clause 500 provides for notice of the appointment to be given to specified persons.

Clause 501 provides for the effect of the service of that notice including for ADIs with which any trust account of the practice is kept.

Clause 502 provides for the role of the supervisor.

Clause 503 provides for the supervisor to keep records of the supervisor's dealings with the trust money.

Clause 504 provides for the termination of the supervisor's appointment.

Part 5.4 Managers

Clause 505 provides for the appointment of a manager for a law practice.

Clause 506 provides for notice of the appointment to be given to specified persons.

Clause 507 provides for the effect of the service of that notice including for ADIs with which any trust account of the practice is kept.

Clause 508 provides for the role of the manager.

Clause 509 provides for the manager to keep records of the manager's dealings with the trust money.

Clause 510 provides for the manager to co-operate with the legal personal representative of a deceased legal practitioner associate.

Clause 511 provides for the termination of the manager's appointment.

Part 5.5 Receivers

Clause 512 provides for the appointment of a receiver for a law practice.

Clause 513 provides for notice of the appointment to be given to specified persons.

Clause 514 provides for the effect of the service of that notice including for ADIs with which any trust account of the practice is kept.

Clause 515 provides for the role of the receiver.

Clause 516 provides for the receiver to keep records of the receiver's dealings with the trust money.

Clause 517 provides for the receiver to take possession of regulated property.

Clause 518 provides for the power of the receiver to take delivery of regulated property.

Clause 519 provides for the power of the receiver to deal in regulated property.

Clause 520 provides for the powers of the receiver to require documents and information.

Clause 521 provides for the power of the court to order the examination of the person.

Clause 522 provides for how a receiver may deal with a practitioner's lien.

Clause 523 provides that regulated property for which a receiver has been appointed is not liable to be attached under any court or other process.

Clause 524 provides for the recovery of regulated property where there has been a breach of trust.

Clause 525 provides for an offence for improperly destroying regulated property.

Clause 526 provides for the receiver to co-operate with the legal personal representative of a deceased legal practitioner associate.

Clause 527 provides for the termination of a receiver's appointment.

Part 5.6 General

Clause 528 provides for conditions on the appointment of an external intervener for a law practice.

Clause 529 provides for the status of acts of an external intervener for a law practice.

Clause 530 provides that a person appointed is eligible for reappointment.

Clause 531 provides for appeals against appointments.

Clause 532 provides for the Supreme Court to make directions in relation to an external intervention.

Clause 533 provides that if a receiver and manager are appointed any decision of the receiver prevails over the manager to the extent of any inconsistency.

Clause 534 provides for ADIs to disclose information and permit access to accounts.

Clause 535 provides in relation to the fees, legal costs and expenses of an external intervener.

Clause 536 provides for reports by an external intervener for a law practice.

Clause 537 provides for confidentiality for an external intervener for a law practice.

Clause 538 provides that the requirement of an external intervener for a person to give the external intervener access to documents or information is unaffected by a lien of the law practice or legal practitioner over the document or class of documents.

Clause 539 provides for an offence for obstructing an external intervener.

Chapter 6 Investigations

Part 6.1 Preliminary

Clause 540 provides that the main purposes of the chapter are to provide general powers for investigators of the purposes of part 2.7 (audits of incorporated legal practices), part 3.3, division 3 (trust accounts investigations) and chapter 4 (complaints and discipline).

Clause 541 provides for the definitions for the Part.

Part 6.2 Requirements relating to documents information and other assistance

Clause 542 provides that investigators may, on production of an identity card, require the production of documents for the purposes of a trust account investigation or ILP compliance audit.

Clause 543 provides that for the purposes of investigating complaints or investigation matters, an investigator may require the production of specified documents, written information or cooperation.

Clause 544 provides for what an investigator may do with documents provided under the part. Failure of an Australian lawyer to comply under the part is capable of constituting unsatisfactory professional conduct or professional misconduct and is a ground for suspension of a practising certificate while the failure continues.

Part 6.3 Entry to places

Clause 545 provides for an investigator's powers to enter places.

Clause 546 provides in relation to entry with consent.

Clause 547 provides that an investigator may apply to a magistrate for a warrant for a place.

Clause 548 provides for the issue of a warrant.

Clause 549 provides for an application for warrant by electronic communication and duplicate warrant in urgent or special circumstances.

Clause 550 provides in relation to a defect in relation to a warrant.

Clause 551 specifies the procedure before entry under a warrant.

Part 6.4 Powers of investigators after entry

Clause 552 specifies the general powers of an investigator after entering places.

Clause 553 provides that an investigator may require the occupier of the place, or a person at the place, to give the investigator reasonable help and information.

Part 6.5 Power of investigators to seize evidence

Clause 554 provides for seizure of things at a place entered under section 560.

Clause 555 provides for an investigator to secure seized things.

Clause 556 makes it an offence for a person to tamper with seized things.

Clause 557 specifies the powers of the investigator in support of seizure.

Clause 558 provides that an investigator must give a receipt for it to the person from whom a thing was seized.

Clause 559 provides for the forfeiture of seized things.

Clause 560 provides for how forfeited things are to be dealt with.

Clause 561 provides for the return of seized things.

Clause 562 provides for the owner to have access to seized things.

Part 6.6 General enforcement matters

Clause 563 provides for notice of damage to be given to the owner if an investigator (or a person acting under the direction of an investigator) damages property.

Clause 564 provides for a person to claim compensation for loss or expense because of the exercise or purported exercise of a power under parts 6.3, 6.4 or 6.5.

Clause 565 provides for an offence if a person states anything to an investigator that the person knows is false or misleading.

Clause 566 provides for an offence if a person gives a document to an investigator that contains information that the person knows is false or misleading.

Clause 567 provides an offence for obstructing investigators.

Clause 568 provides an offence for impersonating an investigator.

Part 6.7 Provisions about investigations relating to incorporated legal practices

Clause 569 defines an ILP investigator.

Clause 570 specifies the investigative powers of an ILP authority for the audit or investigation of an incorporated legal practice.

Clause 571 specifies the powers of an ILP authority to examine persons in relation to an incorporated legal practice investigation.

Clause 572 specifies an ILP authority's powers relating to the inspection of books of an incorporated legal practice.

Clause 573 specifies an ILP authority's powers to hold hearings for the purposes of an investigation of an incorporated legal practice.

Clause 574 specifies various matters in connection with an investigation that are capable of being unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner or a legal practitioner director.

Part 6.8 Investigators

Clause 575 provides for the appointment and qualifications of an investigator.

Clause 576 provides for the appointment conditions and limit on powers of an investigator.

Clause 577 provides that the commissioner or regulatory body must issue an identity card to each investigator.

Clause 578 provides for the production or display of an identity card by an investigator.

Clause 579 provides for when an investigator ceases to hold office.

Clause 580 provides for resignation by an investigator.

Clause 581 provides for the return of identity card when a person ceases to be an investigator.

Chapter 7 Establishment of entities for this Act, and related matters

Part 7.1 Legal Services Commissioner

Division 1 Preliminary

Clause 582 sets out the main purposes of the Part.

Division 2 Appointment

Clause 583 provides that there is to be a Legal Services Commissioner.

Clause 584 provides for the appointment of the commissioner.

Clause 585 provides for the term of the commissioner's appointment.

Clause 586 provides for the commissioner's remuneration and conditions.

Clause 587 provides for an acting commissioner to be appointed.

Clause 588 provides for when the Governor in Council can terminate the commissioner's appointment.

Clause 589 provides for resignation by the commissioner.

Division 3 Functions

Clause 590 provides for the commissioner's functions and right of appearance in proceedings.

Division 4 Legal Services Commission

Clause 591 provides for the continuation of the Legal Services Commission.

Clause 592 requires the chief executive to provide the commission with staff and resources.

Clause 593 provides for the preservation of rights if a public service officer is appointed or engaged under the part.

Clause 594 provides for the preservation of rights if, on appointment, the person becomes a public service officer.

Clause 595 provides for the preservation of rights if a public service officer is seconded.

Division 5 Miscellaneous matters about the commissioner

Clause 596 provides for the commissioner to delegate the commissioner's powers under this Act, other than this power of delegation.

Clause 597 provides for arrangements with a regulatory authority about copies of documents.

Part 7.2 Legal Practice Tribunal

Division 1 Preliminary

Clause 598 provides for the main purpose of the Part.

Division 2 Establishment of Legal Practice Tribunal and related matters

Clause 599 provides for the continuation of the members and chairperson of the Legal Practice Tribunal.

Clause 600 provides for the way the tribunal is to operate.

Clause 601 provides for the tribunal's jurisdiction.

Clause 602 provides for the tribunal's powers.

Clause 603 provides for the tribunal's rule-making power.

Clause 604 provides for the chairperson to make practice directions.

Clause 605 provides for the registrar of the tribunal.

Clause 606 provides for the tribunal's seal.

Division 3 Panels, members of panels and related matters

Clause 607 provides for the establishment of a lay panel and a practitioner panel to help the tribunal.

Clause 608 provides for the appointment of panel members.

Clause 609 provides for the remuneration and appointment conditions of panel members.

Clause 610 provides for the termination of appointment of panel members.

Clause 611 provides for the resignation of panel members.

Division 4 Role of tribunal members and panel members

Clause 612 provides for the role of the chairperson, tribunal and panel members.

Clause 613 provides for the disclosure of conflicts of interest.

Division 5 Constitution of tribunal for hearings

Clause 614 provides for how the tribunal is constituted for a hearing.

Division 6 Other provisions

Clause 615 provides for the institution of proceedings by the commissioner.

Clause 616 provides for contempt of tribunal.

Clause 617 provides for conduct that is contempt and an offence.

Clause 618 provides for the protection of members, legal practitioners and witnesses in tribunal proceedings.

Part 7.3 Legal Practice Committee

Division 1 Preliminary

Clause 619 provides for the main purpose of the part.

Clause 620 provides for the definitions for the part.

Division 2 Establishment, membership of committee and functions and powers

Clause 621 provides for the establishment of the Legal Practice Committee.

Clause 622 provides for membership of the committee.

Clause 623 provides for the term of appointment of members.

Clause 624 provides for the functions and powers of committee.

Clause 625 provides for administrative support for the committee by the commissioner.

Division 3 Provisions about committee members

Clause 626 provides for matters relating to the eligibility for membership of the committee.

Clause 627 provides for termination of the appointment of a committee member.

Clause 628 provides for the resignation of a committee member.

Clause 629 provides for the appointment of a deputy chairperson of the committee.

Clause 630 provides for the remuneration and allowances of lay members.

Division 4 Provisions about committee performing advisory functions

Clause 631 provides for the application of the division to the committee in performing its advisory functions.

Clause 632 provides the committee may conduct its business in the way it considers appropriate.

Clause 633 provides for the times and places of meetings.

Clause 634 provides for what is a quorum for the committee.

Clause 635 provides for presiding at meetings.

Clause 636 provides for the conduct of meetings.

Clause 637 provides for the keeping of minutes of meetings and records of resolutions.

Clause 638 provides for the disclosure of interests.

Division 5 Provisions applying to committee for hearings

Clause 639 provides for how the committee is to be constituted for a hearing.

Clause 640 provides for practice directions to be made in relation to committee hearings.

Clause 641 provides for the disclosure of interests.

Clause 642 provides for the protection of members.

Part 7.4 Provisions applying to each disciplinary body

Division 1 Parties to proceedings

Clause 643 specifies the parties to a proceeding in a disciplinary body for a discipline application and matters relating to appearance.

Division 2 Conduct of proceedings

Clause 644 provides that a hearing before a disciplinary body must be open to the public, unless the disciplinary body otherwise directs.

Clause 645 provides for the procedure for hearing by a disciplinary body.

Clause 646 provides that a disciplinary body may decide whether or not proceedings before it are recorded.

Clause 647 provides for when a disciplinary body may proceed in the absence of a party.

Clause 648 provides for when a matter may be decided on affidavit evidence.

Clause 649 provides for the standard of proof.

Clause 650 provides that a disciplinary body may prohibit the publication of information in an order or the hearing of a discipline application.

Division 3 Powers of disciplinary body

Clause 651 provides that the disciplinary body has the power to disregard procedural lapses.

Clause 652 provides for the disciplinary body to give directions for hearings.

Clause 653 provides that a disciplinary body can require the person to attend a hearing at a stated time and place to give evidence or to produce stated documents or things.

Clause 654 provides in respect of the authentication of documents.

Division 4 Offences

Clause 655 provides for an offence for a person stating anything to a disciplinary body that the person knows is false or misleading.

Clause 656 provides for an offence for a person giving to a disciplinary body a document containing information the person knows is false or misleading.

Part 7.5 Legal Practitioners Admissions Board

Division 1 Preliminary

Clause 657 provides for the main purpose of the Part.

Clause 658 provides for the definitions for the Part.

Division 2 Establishment and membership of board

Clause 659 continues the Legal Practitioners Admissions Board.

Clause 660 provides for membership of the board.

Division 3 Board's functions and powers

Clause 661 provides for the functions of the board.

Clause 662 provides for administrative support of the board by the law society.

Division 4 Provisions about board members

Clause 663 provides for a member's term of appointment.

Clause 664 provides for a chairperson and deputy chairperson.

Clause 665 provides for eligibility for membership.

Clause 666 provides for termination of appointment of a board member.

Clause 667 provides for the resignation of a board member.

Division 5 Board business

Clause 668 provides for the board to conduct its business in the way it considers appropriate.

Clause 669 provides for the times and places of meetings.

Clause 670 provides for the quorum for the board to be 4 members.

Clause 671 provides for presiding at meetings.

Clause 672 provides for the conduct of meetings.

Clause 673 provides for the board to keep minutes of its meetings and a record of its resolutions.

Clause 674 provides for the disclosure of interests.

Division 6 Miscellaneous

Clause 675 provides for the board to be able to reasonably delegate its financial powers to the chairperson or chief executive of the law society.

Clause 676 provides for the application of certain Acts to the board.

**Part 7.6 Queensland Law Society
 Incorporated****Division 1 Preliminary**

Clause 677 provides for the purpose of the part.

Clause 678 provides for the definitions for the part.

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

Clause 679 provides for the continued existence of the law society.

Clause 680 provides for the functions of the law society.

Clause 681 provides for the powers of the law society.

Clause 682 provides in respect of the status of the law society.

Clause 683 provides for the law society's powers of delegation.

Division 3 Membership of law society

Clause 684 provides for the membership of the law society.

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

Clause 685 provides for the council of the law society.

Clause 686 provides for the law society to have a president, deputy president and vice-president.

Clause 687 provides for dealings with casual vacancies.

Clause 688 provides that the performance of a function or the exercise of a power is not affected by a vacancy in the membership of the council of the society or a defect in the appointment or election of a council member.

Clause 689 provides for the secretary and staff of the law society.

Division 5 Council meetings

Clause 690 provides that the law society may conduct its business and proceedings at council meetings.

Clause 691 provides for there to be a presiding member.

Clause 692 provides for a quorum.

Clause 693 provides for the conduct of council meetings.

Clause 694 provides for minutes to be kept.

Clause 695 provides for council members to be subject to disclosure of interest requirements.

Division 6 Law society may make rule

Clause 696 provides for the law society to make society rules.

Clause 697 provides for society rules notified by the Minister to be subordinate legislation.

Clause 698 provides for the public availability of a society rule.

Division 7 Miscellaneous

Clause 699 provides for how the law society can start a proceeding.

Clause 700 provides for how the law society can recover an unpaid amount.

Chapter 8 General

Part 8.1 General provisions

Division 1 Liabilities, injunctions, protection of information etc

Clause 701 provides for each law practice principal to be liable for the practice's contravention of the Act unless the principal establishes certain defences e.g. contravention without the principal's knowledge.

Clause 702 provides for the circumstances where offences by a corporation are also offences by executive officers.

Clause 703 provides for the Court to grant injunctions including in respect of conduct that would contravene the Act.

Clause 704 provides for sharing of information by entities with functions under the Act.

Clause 705 provides an offence for improper disclosure of information.

Clause 706 requires relevant entities to report suspected offences. The Bill restricts this to suspicions formed on the basis of information obtained in the course of administering the Act.

Clause 707 provides protection from liability for "Act officials" in certain circumstances. This newly includes the board.

Division 2 Offences, starting proceedings and evidentiary and other matters

Clause 708 provides that offences under the Act are summary offences.

Clause 709 provides for the time for bringing a proceeding for a summary offence under the Act.

Clause 710 specifies matters in relation to appointments and authority that may be presumed unless proof is required on giving of reasonable notice.

Clause 711 provides for signatures to be evidence of the signatures that they purport to be.

Clause 712 provides for certain documents to be evidence of what they purport to be or contain.

Clause 713 provides for a law practice to make an annual return to the public trustee about trust money or property held by the practice where the person legally entitled is not known to the law practice. It also provides for the return to include other money or property where the practice has held the money or property for 2 years and has not been able to determine who is legally entitled, considers proceedings are necessary to determine the matter and proceedings for determining the matter have not been started. The public trustee can require the law practice to transfer the money or property to the public trustee.

Part 8.2 Machinery provisions

Clause 714 provides for approved forms.

Clause 715 provides for the making of regulations.

Chapter 9 Transitional, savings and repeal provisions for Legal Profession Act 2004

Part 9.1 Purposes, definitions and general approach

Clause 716 provides for the main purposes of the chapter.

Clause 717 provides for definitions for the chapter.

Clause 718 provides for authorised actions or documents, obligations and protections under the LPA to continue or to have effect according to their terms and to be taken to have been done, made, kept or applied under the corresponding provision of the new Act.

Clause 719 provides for things in force under the LPA to continue under the new Act.

Clause 720 provides that a reference in a document to a thing under the LPA is to be read with any necessary changes as if the reference were to a thing done, made or kept under the new Act.

Clause 721 provides, if there is a stated period for doing things under the LPA and the time for doing things started before commencement, the period continues to have started from when the period started under the previous provision and, if the corresponding provision under the new Act states a different period, for the period stated in the previous provision to prevail.

Clause 722 provides, as for clause 721, in relation to times stated in documents made under previous provisions that state a period for doing things.

Clause 723 provides that the chapter does not limit section 20 of the *Acts Interpretation Act 1952*.

Part 9.2 Transitional provisions relating to chapter 2

Clause 724 provides for acts and omissions before commencement to be able to be taken into account.

Clause 725 provides, in relation to chapter 2, for examples of actions or documents, obligations and protections for clause 718 in relation to matters dealt with under the LPA.

Part 9.3 Transitional provisions relating to chapter 3

Division 1 Examples for chapter 3

Clause 726 provides, in relation to chapter 3, for examples of actions or documents, obligations and protections for clause 718 in relation to matters dealt with under the LPA.

Division 2 Matters dealt with under part 3.3

Clause 727 provides for the transitional arrangements under which a law practice may continue to comply with the TAA up until 31 March 2008 in dealing with trust money and keeping trust accounts records.

Clause 728 provides for the external examination for the period from 1 April 2007 to 31 March 2008 to be conducted under this Act.

Clause 729 provides for a law practice's auditor under the TAA immediately before commencement to be taken to be the law practice's external examiner under this part without the need to give notice.

Clause 730 is a transitional provision for the application of section 276 to take into account that previous external examinations would have been performed under the TAA.

Clause 731 is a transitional provision for the application of section 278 to take into account that previous external examinations would have been performed under the TAA.

Division 3 Matters dealt with under part 3.4

Subdivision 1 Preliminary

Clause 732 provides for definitions for the division.

Clause 733 provides that part 3.4 applies subject to this division.

Subdivision 2 Client agreements

Clause 734 provides that, despite part 3.4 and the repeal of the QLSA, a law practice can continue to comply with the costs agreement provisions of the QLSA or perform urgent work that could have been performed under the QLSA without a client agreement until the relevant day (a period of 6 months from the commencement of clause 299).

Clause 735 provides for those provisions of part 3.4 that apply or do not apply where section 734 applies to a law practice.

Clause 736 provides for the application of the part where a law practice fails to comply with QLSA after commencement and before the relevant day. It requires them to comply with relevant disclosure requirements as soon as practicable.

Subdivision 3 Billing

Clause 737 provides for law practices complying with the QLSA before the relevant day to be able to comply with the billing requirement of the QLSA.

Subdivision 4 Costs assessments

Clause 738 provides that after commencement all costs assessments are to be under part 3.4, div 7.

Clause 739 provides for costs assessment started before commencement to continue or, if the parties agree, to be discontinued and the matter dealt with under the Act.

Division 4 Matters dealt with in part 3.6

Clause 740 provides in relation to amounts payable to or from the fidelity fund on commencement but not paid.

Clause 741 provides for delegations in force under the QLSA Act to continue.

Clause 742 provides in relation to claims for acts or omissions happening before commencement.

Clause 743 provides in relation to references to previous sections.

Clause 744 provides for the right of subrogation to continue despite repeal.

Clause 745 provides for a reference to the part in clause 395 to include a reference to a previous part.

Part 9.4 Transitional provisions relating to chapter 4

Clause 746 provides, in relation to chapter 4, for examples of actions or documents, obligations and protections for clause 718 in relation to matters dealt with under the LPA.

Part 9.5 Transitional provisions relating to chapter 5

Clause 747 provides, in relation to Chapter 5, for examples of actions or documents, obligations and protections for clause 718 in relation to matters dealt with under the LPA.

Part 9.6 Transitional provisions relating to chapter 6

Clause 748 provides, in relation to chapter 6, for examples of actions or documents, obligations and a protection for clause 718 in relation to matters dealt with under the LPA.

Part 9.7 Transitional provisions relating to chapter 7

Clause 749 provides, in relation to chapter 7, for examples of actions or documents, obligations and protections for clause 718 in relation to matters dealt with under the LPA.

Part 9.8 Transitional provisions relating to chapter 8

Clause 750 provides, in relation to chapter 8, for examples of actions or documents, obligations and a protection for clause 718 in relation to matters dealt with under the LPA.

Part 9.9 Regulation-making power for transitional purposes

Clause 751 provides for a transitional regulation-making power to make provisions of a saving or transitional nature for any matters for which the Act does not make sufficient provision to achieve a change from the operation of a relevant law or another Act in relation to the legal profession. A transitional regulation may have retrospective operation to a day not earlier than the commencement of the section. The section expires after 1 year.

Part 9.10 Repeal of the Legal Profession Act 2004

Clause 752 repeals the LPA.

Part 9.11 Provisions relating to the Trust Accounts Act 1973

Clause 753 provides for the definitions for the part.

Clause 754 provides for a trust account under the TAA to be taken to be a general trust account under this Act and for that trust money to be trust money held by the trustee under this Act.

Clause 755 provides that on commencement the accounting and other records of the trustee are taken to be trust records under this Act.

Clause 756 provides for a continuing obligation in relation to trust money received before commencement but not paid into a trust account.

Clause 757 provides that the person who was the trustee's auditor before commencement is taken to be the trustee's external examiner on commencement.

Clause 758 provides for various obligations under section 5 of the TAA and not satisfied on commencement to continue.

Clause 759 provides for various obligations under sections 12 and 13 of the TAA and not satisfied on commencement to continue.

Clause 760 provides for various obligations under section 14 of the TAA and not satisfied on commencement to continue.

Clause 761 provides for an obligation in relation to an audit under section 15 of the TAA to continue.

Clause 762 provides for the obligations on an auditor under section 17 of the TAA to continue.

Clause 763 provides for the obligations on a personal representative under section 19 of the TAA to continue.

Clause 764 provides for an obligation of a supervising entity under section 28A of the TAA to continue.

Clause 765 provides for the continuing operation of section 30 of the TAA to make audit reports available.

Clause 766 provides for the continuing operation of section 33 of the TAA in relation to the obligation to make returns to the public trustee if the obligation has not been complied with on commencement.

Part 9.12 Repeal of the Queensland Law Society Act 1952

Clause 767 repeals the QLSA.

Clause 768 provides that, where an accountant has been appointed under the QLSA to examine an entity's accounts and on commencement the examination is not completed, the examination is taken to be a trust account investigation and the accountant is taken to be an investigator.

Clause 769 provides for transitional matters on the abolition of the Solicitors Complaints Tribunal.

Part 9.13 Amendment of Acts

Clause 770 amends the Acts in Schedule 1

Schedule 1 amends other Acts as a consequence of the Bill for the most part to change references from the *Legal Profession Act 2004* to the corresponding reference under the *Legal Profession Act 2007*.

Schedule 2 provides for the definitions for the Act.