



Legal Profession Act 2007

Legal Profession Regulation 2017

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Queensland

Legal Profession Regulation 2017

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Legal Profession Regulation 2017

Part 1.1 Preliminary

1 Short title

This regulation may be cited as the *Legal Profession Regulation 2017*.

Note—

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

2 Commencement

This regulation commences on 1 September 2017.

Part 1.2 Interpretation

3 Definitions

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

4 Prescribed home jurisdiction criteria—Act, s 8

For section 8(3)(b)(iii) of the Act, the following criteria are prescribed in relation to an associate of a law practice—

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

5 Prescribed agencies—Act, s 12

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

- (a) the Australian Government Solicitor;
- (b) the Board of Architects of Queensland;
- (c) the Board of Professional Engineers of Queensland;
- (d) the Crime and Corruption Commission;
- (e) each Hospital and Health Service under the *Hospital and Health Boards Act 2011*;
- (f) the National Heavy Vehicle Regulator established under the *Heavy Vehicle National Law (Queensland)*;
- (g) the Office of Groundwater Impact Assessment;
- (h) the Office of the Ombudsman;
- (i) the parliamentary service;
- (j) the Queensland Building and Construction Commission;
- (k) the Queensland Treasury Corporation;
- (l) the Residential Tenancies Authority.

6 Prescribed community legal service—Act, sch 2, definition *community legal service*

For the Act, schedule 2, definition *community legal service*, paragraph (b), Legal Aid Queensland is prescribed as a community legal service.

Part 2.2 Reservation of legal work

7 Prescribed legal practice—Act, s 24

For section 24(2)(e) of the Act, the following kinds of legal practice are prescribed—

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

Part 2.3 Admission of local lawyers

8 Prescribed fees—Act, s 42

For section 42 of the Act, the fees stated in schedule 1 are prescribed.

Part 2.4 Legal practice by Australian legal practitioners

9 Completion of periods of supervised legal practice

- (1) This section states how to work out whether a person has undertaken a period of supervised legal practice required under section 56(1) or 77(1) of the Act (each the *required period*).
- (2) The person may undertake the supervised legal practice as—
 - (a) 1 period of supervised legal practice, worked on a full-time basis, that is equal to the required period worked out on a full-time basis; or

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- (b) 1 period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period worked out on a full-time basis; or
 - (c) 2 or more periods of supervised legal practice, worked on either or both a full-time basis or a part-time basis, that together are equal or equivalent to the required period worked out on a full-time basis.
- (3) Both of the following count towards the required period—
- (a) public holidays during the period, whether or not the person engaged in legal practice on those days;
 - (b) normal periods of leave taken during the period.
- (4) This section applies to supervised legal practice whether undertaken before or after the commencement.

10 Prescribed particulars—Act, s 81

- (1) For section 81(2)(b) of the Act, the following particulars are, subject to subsection (3), prescribed for each local legal practitioner recorded in the register—
- (a) the name of the practitioner;
 - (b) the type of local practising certificate held by the practitioner;
 - (c) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with which the practitioner is otherwise engaged in legal practice;
 - (d) the contact details of the office of the law practice or other entity in this jurisdiction;
 - (e) by way of separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity—
 - (i) in this jurisdiction; and

-
- (ii) in any other jurisdictions in which it has an office, except if the regulatory authority considers those particulars need not be included in relation to an entity that is not a law practice;
 - (f) any other particulars about the practitioner, law practice or other entity that the regulatory authority considers should be included.
- (2) A local legal practitioner may, by written notice to a regulatory authority, request that the authority not include any, or any stated, particulars (the *notified particulars*) about the practitioner, law practice or other entity in the register, on the ground that special circumstances justify the notified particulars not being publicly available.

Example of special circumstances—

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

- (3) If the regulatory authority is satisfied the special circumstances exist, the authority must not include the notified particulars in the register, unless the authority considers the public interest in keeping public access to the notified particulars outweighs any individual interest in the notified particulars not being publicly available.
- (4) Subsection (1) does not limit other information being included in the register at the request, or with the consent, of a local legal practitioner to whom the information relates.

Example of other information—

a special area of legal practice the legal practitioner engages in.

- (5) In this section—

contact details, of an office, means—

- (a) the street address of the office (the address where the office is physically located); and
- (b) the postal address of the office (a post office box number and the location and postcode of the post office), if any; and

- (c) the DX address of the office (the number of the exchange box in a document exchange (DX)), if any.

register means the register kept under section 81(1) of the Act.

Part 2.7 Incorporated legal practices and multidisciplinary partnerships

11 Corporations prescribed as corporations that are not incorporated legal practices—Act, s 111

For section 111(3) of the Act, each of the following is prescribed as a corporation that is not an incorporated legal practice—

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

12 Prohibition on conduct of managed investment scheme by incorporated legal practice

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

Note—

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

13 Prescribed period for notice of termination of provision of legal services—Act, s 116

For section 116(1) of the Act, a period of 14 days is prescribed.

14 Disqualifications and prohibitions

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

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- (4) The written notice for an order made under section 132 of the Act—
 - (a) must state—
 - (i) the corporation's name; and
 - (ii) the Australian Company Number (ACN) of the corporation; and
 - (iii) the office or business address of the corporation, as last known to the applicant for the order; and
 - (iv) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The written notice for an order made under section 133 or 158 of the Act—
 - (a) must state—
 - (i) the person's name; and
 - (ii) the person's address, as last known to the applicant for the order; and
 - (iii) the date of the order; and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.

Part 2.8 Legal practice by foreign lawyers

15 Prescribed legal services—Act, s 167

- (1) For section 167(1)(b) of the Act, an arbitration proceeding is prescribed if, in the proceeding—

-
- (a) the arbitrator is not required to apply the rules of evidence; and
 - (b) knowledge of Australian law is not essential.
- (2) For section 167(1)(d) of the Act, all forms of dispute resolution, other than restricted dispute resolution, are prescribed.
- (3) In this section—

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

restricted dispute resolution means dispute resolution in which participation is restricted to a stated class of persons, that does not include Australian-registered foreign lawyers, under—

- (a) the provisions of other legislation applying to the dispute resolution; or
- (b) the requirements of a body responsible for the dispute resolution; or
- (c) the provisions of a contract that provides for the dispute resolution.

16 Application of particular provisions to Australian-registered foreign lawyers—Act, s 174

For section 174(2) of the Act, the following provisions apply to Australian-registered foreign lawyers as if a reference in the provisions to a law practice, or an Australian legal practitioner, were a reference to an Australian-registered foreign lawyer—

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

- (c) any provisions of any legal profession rules relating to trust money and trust accounts.

17 Application of pt 3.6 of the Act to particular locally registered foreign lawyers—Act, s 176

- (1) For section 176 of the Act, this section states how particular provisions of part 3.6 of the Act apply to a locally registered foreign lawyer practising foreign law in this jurisdiction as an associate of a law practice.
- (2) Section 368 of the Act applies to the foreign lawyer as if a reference in that section to a local practising certificate were a reference to a local registration certificate within the meaning of section 163 of the Act.
- (3) Section 369 of the Act applies to the foreign lawyer as if a reference in that section to a local legal practitioner were a reference to a locally registered foreign lawyer.

18 Locally registered foreign lawyers not covered by fidelity fund

- (1) This section applies to a locally registered foreign lawyer practising foreign law in this jurisdiction otherwise than as an associate of a law practice.
- (2) The foreign lawyer may not practise foreign law in this jurisdiction on behalf of a client unless the foreign lawyer has provided the client with a disclosure statement in relation to the foreign lawyer's lack of cover by the fidelity fund.
- (3) A disclosure statement under subsection (2) is not valid unless—
 - (a) it is in writing; and
 - (b) it is in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding; and

- (c) it states that the foreign lawyer is not covered by the fidelity fund in relation to the practice of foreign law in this jurisdiction; and
- (d) it states that Australian legal practitioners generally are covered by the fidelity fund.

19 Fees for application for grant or renewal of registration as foreign lawyer—Act, s 181

For section 181(1)(b) of the Act, the fee prescribed is \$320.00.

20 Written statement for show cause event—Act, s 192

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

21 Addressee for notification of offence—Act, s 204

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

22 Prescribed particulars—Act, s 210

- (1) For section 210(2)(b) of the Act, the following particulars are, subject to subsection (3), prescribed for each locally registered foreign lawyer recorded in the register—
 - (a) the name of the foreign lawyer;
 - (b) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
 - (c) the contact details of the office of the partnership or other entity in this jurisdiction;

- (d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity—
 - (i) in this jurisdiction; and
 - (ii) in any other jurisdictions in which it has an office, except if the law society considers those particulars need not be included in relation to an entity that is not a law practice;
- (e) details of the foreign registration authority or authorities by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries;
- (f) any other particulars about the lawyer, partnership or other entity the law society considers should be included.

- (2) A locally registered foreign lawyer may, by written notice to the law society, request the society not to include any or any stated particulars (the *notified particulars*) about the lawyer, partnership or other entity in the register, on the ground that special circumstances justify the notified particulars not being publicly available.

Example of special circumstances—

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

- (3) If the law society is satisfied the special circumstances exist, the society must not include the notified particulars in the register, unless the society considers the public interest in keeping public access to the notified particulars outweighs any individual interest in the notified particulars not being publicly available.
- (4) Subsection (1) does not limit other information being included in the register at the request or with the consent of the local legal practitioner.

Example of other information—

a special area of legal practice the legal practitioner engages in

- (5) In this section—

contact details, of an office, means—

- (a) the street address of the office (the address where the office is physically located); and
- (b) the postal address of the office (a post office box number and the location and postcode of the post office), if any; and
- (c) the DX address of the office (the number of the exchange box in a document exchange (DX)), if any.

register means the register kept under section 210(1) of the Act.

23 Refund of fees—Act, s 215

- (1) This section applies if the registration of a foreign lawyer is suspended or cancelled during its currency other than as the result of a complaint or disciplinary matter.
- (2) For section 215 of the Act, the law society must refund, to the foreign lawyer, a portion of each fee paid in relation to the registration.
- (3) The law society must decide the portion by considering the number of days for which—
 - (a) the registration had effect; and
 - (b) the registration was suspended or cancelled.

Part 3.2 Manner of legal practice

24 Government legal officers and application of legal profession rules

A provision of the solicitors rules or the barristers rules does not apply to a government legal officer if—

- (a) the officer does not hold a local practising certificate granted by the regulatory authority that made the rules; or

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- (b) otherwise—compliance with the provision would involve the officer committing an act contrary to, or failing to do an act for a purpose of, another Act that applies to the officer because of the officer’s employment or appointment in an entity mentioned in section 12(1) of the Act or section 5.

Note—

For the relationship between the solicitors rules or the barristers rules and a provision of this regulation, see section 229 of the Act.

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

- (1) A law practice must not provide legal services to a person relating to a transaction if the law practice has provided services, as a POA licensee or interstate real estate agent, to the person for the transaction.

Example—

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

Note—

For the relationship between the solicitors rules or the barristers rules and a provision of this regulation, see section 229 of the Act.

- (2) In this section—

interstate real estate agent means a person who, under a corresponding law within the meaning of the *Property Occupations Act 2014*, may lawfully perform functions under that corresponding law that a POA licensee may perform under the *Property Occupations Act 2014*.

law practice includes an associate of the law practice.

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

26 Restriction on setting fees under administration rules

A regulatory authority may not set a fee under an administration rule for the grant or renewal of a practising certificate that differs according to whether the legal practitioner is a member of the regulatory authority.

Note—

For the relationship between the administration rules and a provision of this regulation, see section 233 of the Act.

Part 3.3 Trust money and trust accounts

Division 1 Trust money and trust accounts

27 Definitions for division

In this division—

associate, in relation to a law practice, means an associate of the law practice.

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

Note—

BSB number is an abbreviation for Bank State Branch number.

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

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

trust money means trust money to which this division applies under section 28.

28 Application of division

(1) This division applies to a law practice in relation to—

[s 29]

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
 - (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
 - (c) trust money received by the practice in another jurisdiction, if the practice has an office in—
 - (i) this jurisdiction; and
 - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received;unless the money is dealt with under the corresponding law of a jurisdiction in which the practice has an office.
- (2) However, sections 29 to 32 apply only to a law practice that keeps trust records, including records relating to controlled money, using a computerised accounting system.

29 Keeping and printing trust records

- (1) The law practice must maintain and keep, in printed form or in readable and printable form, the following copies of trust records—
- (a) a copy of trust account receipts and payments cash books as at the end of each named month;
 - (b) a copy of reconciliation statements prepared under section 44 as at the end of each named month;
 - (c) a copy of lists of trust ledger accounts and their balances as at the end of each named month;
 - (d) a copy of lists of controlled money accounts and their balances as at the end of each named month.
- (2) The law practice must—
- (a) print a paper copy of trust ledger accounts, the controlled money movement records and the trust

transfer journal before they are archived or deleted from the system; and

- (b) on request by an investigator, provide to the investigator a printed copy of trust ledger accounts and controlled money account details.
- (3) The copies of trust records, as at the end of a named month under subsection (1)(a) to (d), must be prepared within 15 working days after the end of the named month.
- (4) The paper copies printed under subsection (2) must be kept by the law practice, unless they have been provided on request under that subsection.

30 Chronological record of information to be made

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

31 Requirements regarding computer accounting systems

- (1) The law practice must ensure its computerised accounting system is not capable of accepting, in relation to a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a way that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.

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- (2) The law practice must ensure the system is not capable of deleting a trust ledger account unless—
 - (a) the balance of the account is zero and all outstanding cheques have been presented; and
 - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure any entry in a record produced in a permanent form appears in chronological sequence.
- (4) The law practice must ensure each page of each printed record is numbered sequentially or is printed in a way that no page can be extracted.
- (5) The law practice must ensure its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this division to be included in trust records.

32 Backups

The law practice must ensure—

- (a) a backup copy of all records required by this division is made at least once each month; and
- (b) each backup copy is kept by the law practice; and
- (c) a complete set of backup copies is kept in a separate location that prevents any incident, that may adversely affect the records, from affecting the backup copy.

33 Establishment of general trust account—Act, s 247

- (1) A law practice must, after receiving trust money that is required to be paid into a general trust account, establish a

compliant general trust account if the practice does not already have a compliant general trust account.

- (2) Subsection (1) does not prevent a law practice from establishing a compliant general trust account at any time.
- (3) A general trust account is *compliant* if—
 - (a) the account is established in this jurisdiction, at any time, with an approved ADI; and
 - (b) the account is and will be kept in this jurisdiction; and
 - (c) the name of the account includes—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression ‘law practice trust account’ or ‘law practice trust a/c’; and
 - (d) the account is of a kind that is, for the time being, approved by the law society.
- (4) Subsection (3)(c) does not apply to an account established in this jurisdiction before 1 July 2007.
- (5) Subsection (3)(c)(ii) does not require the repetition of the words ‘law practice’ if those words form part of the name or business name of the law practice.

34 Receiving of trust money

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

written or electronic form, of the deposit from the ADI concerned.

Note—

Under section 18 of the Act, if no time is provided or allowed for doing something under the Act, the thing is to be done as soon as practicable.

- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out the required particulars are recorded by computer program in the trust account receipts cash book.
- (5) For subsection (4), the following particulars are ***required particulars***—
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression ‘trust account’ or ‘trust a/c’;
 - (h) the name of the person who made out the receipt;
 - (i) the number of the receipt.
- (6) The original receipt must be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.

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- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

35 Deposit records for trust money

- (1) This section applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record—
- (a) the date of the deposit;
 - (b) the amount of the deposit;
 - (c) whether the deposit consists of cheques, notes or coins, and the amount of each;
 - (d) for each cheque—
 - (i) the name of the drawer of the cheque; and
 - (ii) the name and branch, or BSB number, of the ADI on which the cheque is drawn; and
 - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

36 Period for keeping direction for non-deposit of trust money in general trust account—Act, s 248

For section 248(3) of the Act, the prescribed period is the period—

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- (a) beginning when the law practice receives the written direction; and
- (b) ending 7 years after finalisation of the matter to which the direction relates.

37 Payment by cheque

- (1) This section applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) The cheque—
 - (a) must be made payable to or to the order of a stated person or persons and not to bearer or cash; and
 - (b) must be crossed ‘not negotiable’; and
 - (c) must include—
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression ‘law practice trust account’ or ‘law practice trust a/c’.
- (3) The cheque must be signed—
 - (a) by an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly.
- (4) A written record of the required particulars (including a record in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is

issued those particulars are recorded by computer program in the trust account payments cash book.

- (5) If, at the time the cheque is issued, the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For subsections (4) and (5), the following particulars are ***required particulars***—
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by cheque, including cheque requisitions, must be kept in the order in which the cheques were issued.
- (8) Subsection (2)(c) does not apply to an account established in this jurisdiction before 1 July 2007.
- (9) Subsection (2)(c)(ii) does not require the repetition of the words ‘law practice’ if those words form part of the name or business name of the law practice.
- (10) In this section—
- authorised*** means authorised by the law practice to sign cheques drawn on the general trust account.

38 Payment by electronic funds transfer

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

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- (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer, including transfer requisitions, must be kept in the order in which the transfers were effected.
- (7) In this section—
- authorised* means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

39 Recording transactions in trust account cash books

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

- (a) a trust account receipts cash book in accordance with section 40;
- (b) a trust account payments cash book in accordance with section 41.

40 Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in relation to each receipt of trust money—
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the form in which the money was received;

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- (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the purpose for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
 - (3) The particulars in relation to receipts must be recorded in the order in which the receipts are made out.
 - (4) The particulars in relation to a receipt must be recorded within the period of 5 working days starting on, and inclusive of, the day the receipt was made out.

41 Trust account payments cash book

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in relation to each payment of trust money by cheque—
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;

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- (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in relation to each payment of trust money by electronic funds transfer—
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in relation to payments must be recorded in the order in which the payments are made.
- (4) The particulars in relation to a payment must be recorded within the period of 5 working days starting on, and inclusive of, the day the payment was made.

42 Recording transactions in trust ledger accounts

- (1) A law practice that keeps a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded in the title of a trust ledger account—

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- (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in relation to each receipt of trust money for the matter—
 - (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the name of the person from whom the money was received;
 - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by cheque—
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in relation to each payment of trust money by electronic funds transfer—

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

43 Journal transfers

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

(6) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

(7) In this section—

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

44 Reconciliation of trust records

(1) A law practice that keeps 1 or more general trust accounts must reconcile the trust records relating to each account.

(2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing—

(a) a statement—

(i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and

(ii) showing the date the statement was prepared; and

(b) a statement—

(i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and

(ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and

(iii) showing the date the statement was prepared.

(3) The statements must be—

(a) prepared within 15 working days after the end of the month concerned; and

(b) reviewed by a principal of the law practice; and

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- (c) annotated in a way that evidences the completion of the review; and
- (d) kept by the law practice.

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

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

46 Notification requirements regarding general trust accounts

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

- (a) either before, or within 14 days after, an authorisation event, give the law society written notice of the event; and
 - (b) during July of each year, give the law society written notice of the associates and Australian legal practitioners who are authorised, as at 1 July of that year—
 - (i) to sign cheques drawn on a general trust account of the practice; or
 - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Subsection (2)(b) does not apply to a law practice in relation to a year if an external examiner’s report for the practice for the financial period ending 31 March of that year has been given to the law society under section 274 of the Act.
- (4) A notice under this section must—
- (a) include particulars sufficient to identify the general trust accounts of the law practice; and
 - (b) for a notice mentioned in subsection (2)(a)—
 - (i) include the name and address of an associate or practitioner who is the subject of the notice; and
 - (ii) state whether an associate, who is the subject of the notice, is an employee of the law practice; and
 - (c) for a notice mentioned in subsection (2)(b)—include the names and addresses of the associates and Australian legal practitioners.
- (6) In this section—
- authorisation event***, in relation to a law practice, means authorisation or termination of the authority of an associate or an Australian legal practitioner—
- (a) to sign cheques drawn on a general trust account of the practice; or

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- (b) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.

general trust account event, in relation to a law practice, means—

- (a) the establishment of a general trust account by the law practice; or
- (b) the closure of a general trust account kept by the law practice.

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

47 Way in which controlled money accounts must be kept— Act, s 251

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

48 Receipt of controlled money

- (1) This section applies if a law practice receives controlled money.

- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out—
 - (a) after the controlled money is received, except as provided by paragraph (b); or
 - (b) for controlled money received by direct deposit—after the law practice receives or accesses notice or confirmation, in written or electronic form, of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For subsection (5), the following particulars are ***required particulars***—
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;

- (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression ‘controlled money receipt’;
 - (i) the name of the person who made out the receipt;
 - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt must be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

49 Period for keeping direction for deposit of controlled money—Act, s 251

For section 251(5) of the Act, the prescribed period in relation to a written direction is the period—

- (a) beginning when the law practice receives the written direction; and
- (b) ending 7 years after finalisation of the matter to which the direction relates.

50 Withdrawal of controlled money

- (1) This section applies to the withdrawal of money from a controlled money account of a law practice.
- (2) The withdrawal must be effected by cheque or electronic funds transfer.

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- (3) Also, the withdrawal must be effected by, under the direction of or with the authority of—
- (a) an authorised principal of the law practice; or
 - (b) if a principal mentioned in paragraph (a) is not available—
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (4) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (5) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For subsections (4) and (5), the following are ***required particulars***—
- (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) for a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) particulars sufficient to identify the purpose for which the payment was made;

- (g) the person or persons effecting, directing or authorising the withdrawal.
- (7) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (8) In this section—
authorised means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

51 Register of controlled money

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

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

- (b) annotated in a way that evidences the completion of the review.

52 Way in which transit money must be accounted for—Act, s 253

- (1) This section applies if a law practice receives transit money.
- (2) For section 253(2) of the Act, the law practice must record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

53 Trust account statements

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

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

54 Trust account statements for sophisticated clients

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

Note—

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

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

55 Register of investments

- (1) The law practice must keep a register of the investment of investment money.
- (2) The register must record the following information for each investment of investment money—
 - (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person’s address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;
 - (f) the date the investment was made;
 - (g) particulars sufficient to identify the source of the investment;
 - (h) details of any documents evidencing the investment;
 - (i) details of any interest received from the investment or credited directly to the investment;
 - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (3) This section does not require particulars to be recorded in the register if the particulars are required by this regulation to be recorded elsewhere.
- (4) This section does not confer power to invest trust money.
- (5) In this section—

investment money means money that is trust money under section 238(3) of the Act.

**56 Accounting for trust money subject to specific powers—
Act, s 254**

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

57 Register of powers and estates in relation to trust money

- (1) A law practice must keep a register of powers and estates in relation to which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or 1 or more associates of the practice, in relation to trust money.
- (2) Subsection (1) does not apply if the law practice or associate is also required to act jointly with 1 or more persons who are not associates of the law practice.
- (3) The register must record—
 - (a) the name and address of the donor and date of each power; and
 - (b) the name and date of death of the deceased in relation to each estate of which the law practice or associate is executor or administrator.

58 Procedures and requirements for withdrawing trust money for legal costs—Act, s 258

- (1) For section 258(1)(b) of the Act, trust money, held in a general trust account or controlled money account of a law practice for a person, may only be withdrawn, for payment of legal costs owing to the practice by the person, in accordance with the procedure set out in subsection (2), (3), (4) or (5).
- (2) The law practice may withdraw the trust money—
 - (a) if the practice has given the person a bill relating to the money; and
 - (b) if—
 - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
 - (ii) the person has objected within 7 days after being given the bill, but has not applied for a costs assessment within 60 days after being given the bill; or
 - (iii) the money otherwise becomes legally payable.
- (3) The law practice may withdraw the trust money, whether or not the law practice has given the person a bill relating to the money, if—
 - (a) the money is withdrawn in accordance with—
 - (i) a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
 - (ii) instructions that have been received by the practice and that authorise the withdrawal; and
 - (b) the practice, before withdrawing the money, gives or sends to the person—
 - (i) a request for payment, referring to the proposed withdrawal; or
 - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money if—

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- (a) the money is owed to the law practice by way of reimbursement of money already paid by the law practice on behalf of the person; and
 - (b) the practice, before withdrawing the money, gives or sends to the person—
 - (i) a request for payment, referring to the proposed withdrawal; or
 - (ii) a written notice of withdrawal.
- (5) If a cost agreement or instruction, mentioned in subsection (3)(a), authorises withdrawal of only part of the money, the remainder of the money may still be withdrawn in accordance with subsection (2) or (4).
- (6) An instruction mentioned in subsection (3)(a)(ii)—
- (a) if the instruction is given in writing—must be kept as a permanent record; or
 - (b) otherwise—must be confirmed in writing either before, or within 5 working days after, the law practice withdraws the money and a copy must be kept as a permanent record.
- (7) For the purposes of subsection (4), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited.

59 Period for keeping trust records—Act, s 261

- (1) This section prescribes, for section 261 of the Act, the period for which the trust records must be kept.
- (2) A trust record must be kept for a period of 7 years after—
 - (a) for a trust record mentioned in paragraphs (a) to (m) of the definition *trust records* in section 237(1) of the Act—the only or the last transaction entry in the trust record; or
 - (b) for any other trust record—finalisation of the matter to which the trust record relates.

- (3) This section does not apply to a written direction mentioned in section 248(1)(a) or 251(1) of the Act.

Note—

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

60 Keeping other records and information

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

61 Statements regarding receipt or holding of trust money

- (1) The law society may, by written notice, require a law practice to give the society a statement—
- (a) stating whether or not the practice has, during a period stated in the notice, received or held trust money; and
 - (b) if the practice has received or held trust money during the stated period—stating whether the trust money is—
 - (i) controlled money;
 - (ii) transit money;
 - (iii) money subject to a power;
 - (iv) other trust money not mentioned in subparagraphs (i) to (iii).
- (2) The notice may—
- (a) apply indefinitely for recurring periods; and
 - (b) be withdrawn or varied by a further notice; and

-
- (c) state the time by which, or the period during which, the requirement stated in the notice is to be complied with.
- (3) The notice must be given by—
- (a) if the notice relates to a particular law practice—sending the notice by post to the practice; or
 - (b) if the notice relates to a particular class of law practices—publishing the notice in—
 - (i) a circular distributed generally to law practices of the class; or
 - (ii) a magazine or other publication available generally to law practices of the class.
- (4) A law practice that is given a notice under this section—
- (a) must comply with the notice; and
 - (b) must not include in the statement any information that is false or misleading in a material particular.

62 Exemption from requirement on law practice to have its trust records externally examined—Act, s 268

- (1) This section applies to a law practice if the only trust money received or held by the law practice during a financial period is either or both of the following—
- (a) transit money;
 - (b) money received into or held in a PEXA source account.
- (2) The law practice is exempt from the requirement to have its trust records for the financial period externally examined under section 268(1) of the Act.
- (3) In this section—

conveyancing transaction see the ECNL (Qld), section 3(1).

ECNL (Qld) means the Electronic Conveyancing National Law (Queensland) as defined in the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 3(2).

PEXA means Property Exchange Australia Limited ACN 140 677 792.

PEXA Electronic Lodgment Network means an Electronic Lodgment Network provided and operated by PEXA as a person approved as an Electronic Lodgment Network Operator under the ECNL (Qld), section 15.

PEXA source account means an account, to hold trust money, that is—

- (a) maintained by PEXA with an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cwlth); and
- (b) used by PEXA to receive and hold funds that are paid into that account for use in a settlement of a conveyancing transaction using the PEXA Electronic Lodgment Network.

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

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

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- (a) a law practice's general trust accounts and controlled money accounts; and
 - (b) trust money controlled by the practice, or by an associate, under a power; and
 - (c) trust money invested by the practice.
- (4) In this section—

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

64 Prescribed professional accounting associations—Act, s 266

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

65 Prescribed qualifications and experience for appointment as external examiner—Act, s 267

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

- (a) the individual must be registered as an auditor under the Corporations Act;
- (b) the individual must—
 - (i) be a member of CPA Australia Ltd ACN 008 392 452; and
 - (ii) be entitled to use the letters 'CPA' or 'FCPA'; and
 - (iii) have satisfied the requirements of CPA Australia Ltd ACN 008 392 452 for practice as a public accountant;
- (c) the individual must—

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- (i) be a member of Chartered Accountants Australia and New Zealand ARBN 084 642 571; and
 - (ii) be entitled to use the letters ‘CA’ or ‘FCA’; and
 - (iii) have satisfied the requirements of Chartered Accountants Australia and New Zealand ARBN 084 642 571 for practice as a public accountant;
- (d) the individual must—
- (i) be a member of the Institute of Public Accountants ACN 004 130 643; and
 - (ii) be entitled to use the letters ‘MIPA’ or ‘FIPA’; and
 - (iii) have satisfied the requirements of the Institute of Public Accountants ACN 004 130 643 for practice as a public accountant; and
 - (iv) have completed a tertiary course of study in accounting with an auditing component from a university or other institution prescribed under the Corporations Act, section 1280(2A);
- (e) the individual must be a person who the chief executive considers has appropriate qualifications as an auditor under the Corporations Act;
- (f) the individual must be—
- (i) an employee or agent of the law society; and
 - (ii) recognised, by the law society, as having appropriate qualifications or experience for conducting external examinations.

**66 Way in which external examination must be carried out—
Act, s 273**

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

- (2) However, the law society may, in writing given to an external examiner, exempt the examiner from the requirement to report on the external examination in the approved form.

67 Chief executive ensuring compliance relating to trust accounts

- (1) The chief executive may by written notice to the law society, ask the society to provide the chief executive with information stated in the notice within a reasonable period stated in the notice.
- (2) The notice must relate to information about amounts in trust accounts.
- (3) The law society must comply with the notice.

Division 2 Matters relating to trust money and trust accounts

68 Exemptions relating to stated requirement of pt 3.3—Act, s 298

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

Part 3.4 **Costs disclosure and assessment**

69 **When does a matter have a substantial connection with this jurisdiction**

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

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

70 **Exceptions to requirement for disclosure—Act, s 311**

- (1) For section 311(1)(a) and (2) of the Act, the prescribed amount is \$1,500.
- (2) For section 311(1)(f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 308 or 309(1) of the Act is not required—

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

71 Additional disclosure—settlement of litigious matters—Act, s 312

- (1) For section 312(2) of the Act, the matters in this section are relevant to section 312(1) of the Act when there is more than 1 law practice acting on behalf of a client.
- (2) A law practice that negotiates the settlement of a litigious matter on behalf of the client (the *negotiating practice*) may ask any other law practice acting on behalf of the client to give information needed for a disclosure under section 312(1) of the Act and state when the information is required (being a day and time that is reasonable in the circumstances).
- (3) A law practice asked to give information under subsection (2) must comply with the request.
- (4) However, if the negotiating practice has retained another law practice to act on behalf of the client, the only information required to be given by the other law practice under subsection (3) is a reasonable estimate of the amount of legal costs payable to the other law practice if the matter is settled.
- (5) A law practice given information by another law practice under this section is entitled to rely on the information when complying with section 312 of the Act.

72 Rate of interest on unpaid legal costs—Act, s 321

- (1) For section 321(3) of the Act, the prescribed rate of interest is the rate that is equal to the prescribed rate as at the relevant date.
- (3) In this section—

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prescribed rate means the rate prescribed under the *Civil Proceedings Act 2011*, section 59(3) for a money order debt.

relevant date means the date the bill, to which the interest relates, was given by the law practice concerned.

Part 3.5 Professional indemnity insurance

73 Requirements for professional indemnity insurance—Act, s 353

- (1) This section prescribes requirements for professional indemnity insurance for section 353(3) of the Act.
- (2) Professional indemnity insurance must—
 - (a) be for at least \$1.5m inclusive of defence costs; and
 - (b) if the insurance relates to a practising certificate granted by the bar association—
 - (i) comply with a requirement under an indemnity rule made by the bar association; or
 - (ii) be provided by an insurer approved by the bar association; and
 - (c) if the insurance relates to a practising certificate granted by the law society—comply with a requirement under an indemnity rule made by the law society.

Part 3.6 Fidelity cover

74 Application of pt 3.6 of the Act to community legal services—Act, s 357

- (1) For section 357(2) of the Act, part 3.6 of the Act, and this part, apply to a community legal service—

- (a) as if the community legal service were a law practice;
and
- (b) in the manner stated in this section.

Note—

Under the *Legal Aid Queensland Act 1997*, section 72, part 3.6 of the Act does not apply to a Legal Aid lawyer performing the lawyer's duties under that Act.

- (2) Each of the following is taken to be an associate of a law practice for subsection (1)—
 - (a) an Australian legal practitioner who is an employee of a community legal service and, as an employee, is engaged in legal practice for the service;
 - (b) an Australian legal practitioner who is not an employee of a community legal service but is a volunteer at the service and, as a volunteer, is engaged in legal practice for the service.

75 Prescribed classes of local legal practitioners—Act, s 368

- (1) For section 368(4)(b) of the Act, the following classes of local legal practitioners are prescribed—
 - (a) all local legal practitioners who are employees of a community legal service and—
 - (i) whose practising certificates are subject to a condition that the practitioner may engage in legal practice only as an employee of a community legal service or as an employee and volunteer of a community legal service; and
 - (ii) who, in relation to legal practice at the community legal service as an employee, pay an amount of \$10 to the law society for the fidelity fund for the financial year to which the practitioner's certificate relates;
 - (b) all local legal practitioners who are volunteers of a community legal service and whose practising certificates are subject to a condition that the

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

76 Caps on fidelity fund payments—Act, s 396

- (1) For section 396(1)(a) of the Act, the maximum amount that may be paid from the fidelity fund for a single claim is \$200,000.
- (2) For section 396(1)(b) of the Act, the maximum aggregate amount that may be paid from the fidelity fund for all claims made in relation to a single law practice is \$2m.

77 Fidelity protocols—Act, s 402

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

78 Notice of interstate legal practitioner becoming authorised to withdraw from local trust account—Act, s 412

- (1) This section prescribes requirements for section 412(2)(a) of the Act.
- (2) An interstate legal practitioner who, whether alone or with a cosignatory, becomes authorised to withdraw money from a local trust account must notify the law society of the authorisation.
- (3) The notice must include the following particulars—
 - (a) the interstate legal practitioner's name;
 - (b) the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted;
 - (c) the practitioner's principal business address;
 - (d) details of the local trust account, including the following—
 - (i) the name of the law practice operating the account;
 - (ii) the practice's principal business address;

- (iii) the name of the ADI with which the account is held;
 - (iv) the names of any other signatories to the account;
- (e) the date on which the practitioner became authorised to withdraw the money.
- (4) The practitioner must notify the law society of any change to the particulars mentioned in subsection (3).
- (5) A notice under this section must be in writing and must be sent to the business address of the law society within 7 days of—
 - (a) the practitioner becoming authorised to withdraw the money; or
 - (b) the change to the particulars.

Part 4.6 Investigations

79 **Covering cost of assessment under s 443 or 444 of the Act—Act, s 445**

- (1) This section prescribes, for section 445 of the Act, the way in which the cost of an assessment under section 443 or 444 of the Act is to be met.
- (2) The commissioner may, by written notice to a complainant, require the complainant—
 - (a) to pay an amount to the commissioner, before a costs assessment is undertaken, to cover the cost of the costs assessor; or
 - (b) to agree, before a costs assessment is undertaken, to pay the commissioner the cost of the costs assessor if the result of the assessment is that the costs charged or claimed by the relevant law practice are not to be reduced or are not to be reduced by at least 15%.
- (3) The commissioner may, by written notice to a law practice, require it to pay the cost of a costs assessor if the result of the

cost assessment is that the costs charged or claimed by the law practice are to be reduced by at least 15%.

Part 4.9 Proceedings in disciplinary body

Division 1 Preliminary matters for discipline application

80 How to make a discipline application

- (1) A discipline application must be made in the approved form and filed with the secretariat of the committee.
- (2) A discipline application may relate to more than 1 complaint or investigation matter.
- (3) A discipline application must state—
 - (a) for an application for an order against an Australian lawyer or former Australian lawyer—particulars of the lawyer’s alleged unsatisfactory professional conduct or professional misconduct; or
 - (b) for an application for an order against a law practice employee or former law practice employee—particulars of the employee’s alleged misconduct in relation to the relevant practice.

Note—

See sections 417 and 425 of the Act.

- (4) A discipline application must also state—
 - (a) the commissioner’s address for service; and
 - (b) the commissioner’s telephone number, fax number and email address.

81 Commissioner to serve copy of discipline application

The commissioner must serve a copy of a discipline application personally on each respondent to the discipline application.

82 Respondent to file and serve notice of address for service

- (1) Within 14 days after a respondent is served with a discipline application, the respondent must—
 - (a) file with the secretariat of the committee a notice of address for service, in the approved form; and
 - (b) serve a copy of the notice on the commissioner; and
 - (c) serve a copy of the notice personally on each of the other parties to the discipline application.
- (2) The notice of address for service must state the respondent's contact details.

Division 2 Other matters for discipline application

83 Substituted service

The committee may make an order substituting another way of serving a document required to be served under this part.

84 Address for service

- (1) Subject to subsection (3), the commissioner's address for service is the commissioner's address for service stated in a discipline application.
- (2) Subject to subsection (3), the address for service of a respondent to a discipline application is—

- (a) for a respondent acting personally—the respondent’s residential or business address stated in the respondent’s notice of address for service; or
 - (b) for a respondent for whom a law practice is appointed to act—the practice’s law practice address stated in the respondent’s notice of address for service.
- (3) A party to a discipline application may change the party’s address for service or any other contact details by—
- (a) filing with the secretariat of the committee a notice of address for service stating the new address for service or contact details; and
 - (b) serving a copy of the notice on each of the other parties to the discipline application.

85 Directions hearing

- (1) The committee, the chairperson or deputy chairperson of the committee may set a time, day and place for a directions hearing in a proceeding before the committee.
- (2) The committee must give each party to the proceeding written notice of the time, day and place set for the directions hearing as soon as practicable after it is set.
- (3) The committee may, in writing, require each party, within a stated time—
 - (a) to serve each of the other parties to the proceeding with a copy of the directions, if any, the party wants the committee to issue; and
 - (b) to confer with each of the other parties with a view to agreeing, as far as practicable, on the directions the committee should be asked to issue.

86 Setting down for hearing

- (1) The committee may set the time, day and place for the hearing of a discipline application.

- (2) The committee must give each party to the discipline application written notice of the time, day and place set for the hearing of the application as soon as practicable after it is set.

87 List of documents

- (1) A party to a proceeding for a discipline application must—
 - (a) at least 14 days before the hearing day for the discipline application, serve a list of documents the party intends to rely on at the hearing on each of the other parties to the proceeding, unless the committee orders otherwise; and
 - (b) make the documents mentioned in the list available for inspection by each of the other parties at least 7 days before the hearing day; and
 - (c) if asked by another party for a copy of a document mentioned in the list, and on payment of the appropriate amount, give the other party a copy of the document.
- (2) The *appropriate amount* is the amount worked out on the total number of pages copied at the rate set for copying a document under the *Uniform Civil Procedure Rules 1999*, schedule 1, item 7.
- (3) Subsection (1)(c) does not prevent a party recovering the cost of copies as part of the costs of the proceeding.

88 Affidavits

- (1) A party to a proceeding for a discipline application must—
 - (a) file with the secretariat of the committee each affidavit the party intends to rely on at the hearing of the discipline application; and
 - (b) serve a copy of the affidavit on each of the other parties to the proceeding.
- (2) A party must comply with subsection (1) as soon as practicable, but no later than 5 days, before the hearing day.

- (3) Subsection (4) applies if a party requires someone who has sworn an affidavit for another party to attend the hearing to give evidence or for cross-examination.
- (4) The party must, at least 3 days before the hearing day, file with the secretariat of the committee, and serve on each of the other parties, a list of the persons the party requires to attend the hearing to give evidence or for cross-examination.

Division 3 General

89 Extending and shortening time

- (1) The committee may—
 - (a) at any time—extend a time set under this part; or
 - (b) if a time set under this part, including a time for service, has not ended—shorten the time; or
 - (c) make any other appropriate order in relation to the extending or shortening of time.
- (2) For subsection (1), the committee must observe the rules of procedural fairness.

90 Effect of noncompliance with part

- (1) Noncompliance with this part by a respondent to a proceeding does not invalidate the proceeding, unless the committee directs otherwise.
- (2) If this part has not been complied with by a respondent to a proceeding, the committee may—
 - (a) waive the noncompliance; or
 - (b) by order, set aside part or all of the proceeding; or
 - (c) make any other appropriate order.
- (3) If the committee makes an order under section 651 of the Act in relation to noncompliance with this part by the

[s 91]

commissioner, the committee may also make any other appropriate order.

- (4) If the commissioner has not complied with this part and the committee is not satisfied it should make an order under section 651 of the Act in relation to the noncompliance, the committee may—
- (a) by order, set aside part or all of the proceeding; or
 - (b) make any other appropriate order.

Part 4.11 Publicising disciplinary action

91 Particulars for discipline register—Act, s 472

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

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

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

92 Application of ch 5 of the Act to interstate legal practitioners—Act, s 495

For section 495(2) of the Act, chapter 5 of the Act applies to an interstate legal practitioner other than an interstate legal practitioner who practises as a barrister.

Part 9 Repeal and transitional provisions

Division 1 Repeal

93 Repeal

The Legal Profession Regulation 2007, SL No. 153 is repealed.

Division 2 Transitional provision for SL No. 174 of 2017

94 **Obligation to do thing indefinitely or within or for stated period**

- (1) This section applies if, immediately before the commencement, a person was required to do something under a repealed provision—
 - (a) either—
 - (i) within, or for, a stated period that, at the commencement, had not expired; or
 - (ii) for an indefinite period; and
 - (b) there is a corresponding provision for the repealed provision.
- (2) The obligation is taken to continue under the corresponding provision.
- (3) In this section—

corresponding provision, for a repealed provision, means a provision of this regulation that is substantially the same as the repealed provision.

repealed provision means a provision of the repealed *Legal Profession Regulation 2007* as in force immediately before the commencement.

Division 3 Transitional provision for Legal Profession (Community Legal Service Practitioners) Amendment Regulation 2018

95 Payment for financial year ending on 30 June 2018

- (1) Despite section 75(1)(a)(ii), the pre-amended provision applies to a payment mentioned in the provision for the financial year ending on 30 June 2018.
- (2) In this section—

pre-amended provision means section 75(1) as in force immediately before the commencement.

Schedule 1 Fees

section 8

	\$
1 Board's consideration of an application for admission to the legal profession under section 39(2) of the Act	644.00
2 Application for approval of academic qualifications attained in a foreign country under rule 8 of the admission rules	126.00
3 Application for approval of legal training requirements completed in a foreign country under rule 9 of the admission rules	261.00
4 Notice of traineeship under rule 9I of the admission rules	64.00
5 Examination fee for a board examination under rule 34 of the admission rules	190.00
6 Statement, provided by the board, of results obtained in board examinations	56.00

Schedule 2 Dictionary

section 3

associate, for part 3.3, see section 27.

BSB number, for part 3.3, see section 27.

contact details, of a party to a discipline application, means—

- (a) if the party intends to act personally, the following details—
 - (i) the residential or business address of the party;
 - (ii) if the party has a telephone number—the telephone number of the party;
 - (iii) if the party does not have a telephone number—a way of contacting the party by telephone;
 - (iv) the fax number and email address, if any, of the party; or
- (b) if a law practice is appointed to act for the party, the following details—
 - (i) the residential or business address of the party;
 - (ii) the name under which the law practice is carried on;
 - (iii) either of the following (the *law practice address*)—
 - (A) if the law practice has a place of business in Queensland—the address of the place of business in Queensland of the law practice;
 - (B) otherwise—an address, in Queensland, for service of the party;
 - (iv) the telephone number of the law practice;
 - (v) the fax number and email address, if any, of the law practice.

law practice address, see the definition *contact details*, paragraph (b)(iii).

matter description, for part 3.3, see section 27.

matter reference, for part 3.3, see section 27.

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

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

secretariat of the committee means the administrative unit that provides secretariat services to the committee.

Note—

Under section 625 of the Act, the commissioner must provide administrative support for the committee, including secretariat support.

trust money, for part 3.3, see section 27.

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