

Legal Profession National Law

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TABLE OF PROVISIONS

Chapter 1	Preliminary	1
Part 1.1	Introduction	1
1.1.1	Citation.....	1
1.1.2	Commencement.....	1
1.1.3	Objectives	1
1.1.4	Extraterritorial operation of this Law.....	1
Part 1.2	Interpretation	2
1.2.1	Definitions	2
1.2.2	Interpretation generally	15
1.2.3	Meaning of pro bono basis.....	15
Chapter 2	Threshold requirements for legal practice	16
Part 2.1	Unqualified legal practice	16
2.1.1	Objectives	16
2.1.2	Prohibition on engaging in legal practice by unqualified entities.....	16
2.1.3	Prohibition on advertisements or representations by or about unqualified entities	16
2.1.4	Entitlement of certain persons to use certain titles, and presumptions with respect to other persons.....	16
2.1.5	Protection of non-practitioner associates	17
2.1.6	Functions of Board with respect to offence	17
Part 2.2	Admission to the Australian legal profession	18
Division 1	Introduction	18
2.2.1	Objective	18
Division 2	Admission	18
2.2.2	Admission	18
2.2.3	Prerequisites for compliance certificates.....	18
2.2.4	Exemption from certain prerequisites.....	19

2.2.5	Compliance certificates	19
2.2.6	Conditional admission of foreign lawyers	20
2.2.7	Declaration of early assessment of suitability for a compliance certificate	20
2.2.8	Supreme Court roll	21
2.2.9	Removal from Supreme Court roll	21
2.2.10	Australian lawyer is officer of Supreme Court	21
2.2.11	Referral of matters about compliance certificates for local advice	21
2.2.12	Delegation of conduct of litigation involving admission functions	21
Division 3	Appeals	22
2.2.13	Right of appeal about compliance certificates	22
2.2.14	Right of appeal about early assessment	22
2.2.15	Provisions relating to appeals	22
Division 4	Miscellaneous	22
2.2.16	Notification of information to Board	22
2.2.17	National Rules for admission	23
Chapter 3	Legal practice	24
Part 3.1	Introduction	24
3.1.1	Objectives	24
Part 3.2	Law practices—general provisions	24
3.2.1	Business structures	24
3.2.2	Obligations not affected by nature of business structures	24
3.2.3	Relationship of Law to legislation establishing legal practice	24
3.2.4	Responsibilities of principals	24
3.2.5	Liability of principals	25
3.2.6	Discharge by legal practitioner associate of obligations of law practice	25
3.2.7	Involvement of practitioners	25
3.2.8	Privileges of practitioners	26
3.2.9	Undue influence	26
3.2.10	National Rules	26
Part 3.3	Australian legal practitioners	26
Division 1	Introduction	26
3.3.1	Objectives	26
Division 2	Australian practising certificates	27
3.3.2	Entitlement to practise	27
3.3.3	Grant or renewal of Australian practising certificates	27
3.3.4	Prerequisites for grant or renewal of Australian practising certificates	27
3.3.5	Notification of principal place of legal practice	27
3.3.6	Notification of home jurisdiction by barrister when moving from fused to non-fused jurisdiction	28

Division 3	Conditions of Australian practising certificates	28
3.3.7	Conditions—categories of practice and trust money	28
3.3.8	Statutory conditions—to comply with admission conditions and to hold only one practising certificate	29
3.3.9	Statutory condition—to engage in supervised legal practice....	30
3.3.10	Statutory condition—barrister to undertake reading program.....	30
3.3.11	Statutory condition—to notify certain events	31
3.3.12	Statutory condition—continuing professional development.....	31
3.3.13	Discretionary conditions	31
3.3.14	Compliance with conditions.....	31
Division 4	Miscellaneous	32
3.3.15	Physical alteration or substitution of varied certificate.....	32
3.3.16	National Rules for Australian practising certificates and associated matters	32
Part 3.4	Foreign lawyers	32
Division 1	Introduction	32
3.4.1	Objective	32
3.4.2	This Part does not apply to Australian legal practitioners	32
Division 2	Limited practice without registration	32
3.4.3	Practice of foreign law without registration but for limited periods	32
Division 3	Registration	33
3.4.4	Entitlement to practise.....	33
3.4.5	Grant or renewal of Australian registration certificates.....	33
3.4.6	Notification of principal place of legal practice	34
Division 4	Conditions of Australian registration certificates	35
3.4.7	Conditions—trust money.....	35
3.4.8	Statutory condition—to hold only one Australian registration certificate	35
3.4.9	Statutory condition—to notify certain events	35
3.4.10	Discretionary conditions	35
3.4.11	Compliance with conditions.....	35
Division 5	Scope and form of practice	35
3.4.12	Scope of practice	35
3.4.13	Form of practice	36
Division 6	Miscellaneous	37
3.4.14	National Rules for foreign lawyers	37
Part 3.5	Refusal, variation, suspension and cancellation of certificates	37
Division 1	Introduction	37
3.5.1	Objectives	37
3.5.2	References to certificate	37

Division 2	Variation, suspension or cancellation of certificates	38
3.5.3	Variation, suspension or cancellation for minor matters, or at request or with concurrence	38
3.5.4	Variation, suspension or cancellation at direction of tribunal....	38
3.5.5	Variation, suspension or cancellation under Division 3 or 4	38
3.5.6	Immediate variation or suspension before or during consideration of proposed action	38
3.5.7	Lifting of suspension and renewal during suspension	38
3.5.8	Matters involving convictions	39
3.5.9	Notice to be given	39
Division 3	Variation, suspension or cancellation on specific grounds	39
3.5.10	Grounds for action under this Division	39
3.5.11	Board to give notice before acting under this Division	40
3.5.12	Action taken after giving notice	40
Division 4	Show cause procedure for refusal, variation, suspension or cancellation of certificates	41
Subdivision 1	Preliminary	41
3.5.13	Show cause events	41
Subdivision 2	Automatic show cause events	41
3.5.14	Nature of automatic show cause events	41
3.5.15	Automatic show cause events—applicants	41
3.5.16	Automatic show cause events—holders	42
3.5.17	Automatic show cause events—action by Board	42
Subdivision 3	Designated show cause events	43
3.5.18	Nature of designated show cause events	43
3.5.19	Designated show cause events—holders	43
3.5.20	Designated show cause events—action by Board	43
Division 5	Miscellaneous	44
3.5.21	Events or matters occurring before admission or registration	44
3.5.22	Restriction on making further applications	44
3.5.23	Consideration and investigation of applicants or holders	45
3.5.24	Deferral of action or temporary renewal for limited purposes	45
3.5.25	Relationship of this Part with Chapter 5	45
3.5.26	National Rules.....	45
Part 3.6	Appeal or review about certificates	45
3.6.1	Objective	45
3.6.2	Right of appeal or review about Australian practising certificates	45
3.6.3	Right of appeal or review about Australian registration certificates.....	47

Part 3.7	Incorporated and unincorporated legal practices	47
Division 1	General	47
3.7.1	Application of this Division	47
3.7.2	Services that may be provided	48
3.7.3	Notice of intention to engage in or terminate legal practice.....	48
3.7.4	Principals	48
3.7.5	Law practice without principal	48
3.7.6	Disclosure obligations	49
Division 2	Provisions applying to incorporated legal practices only	49
3.7.7	External administration proceedings under Corporations Act or other legislation.....	49
3.7.8	Incorporated legal practice that is subject to receivership under this Law and external administration under Corporations Act	50
3.7.9	Incorporated legal practice that is subject to receivership under this Law and external administration under other legislation	51
3.7.10	Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices.....	51
3.7.11	Relationship of Law to Corporations legislation	52
Division 3	Miscellaneous	52
3.7.12	Approval of business structures	52
3.7.13	National Rules for incorporated and unincorporated legal practices.....	52
Part 3.8	Community legal services	52
3.8.1	Status of community legal services	52
3.8.2	Supervising legal practitioner	53
3.8.3	National Rules for community legal services.....	53
Part 3.9	Disqualifications	53
Division 1	Making of disqualification orders	53
3.9.1	Disqualification of individuals (other than practitioners)	53
3.9.2	Disqualification of entities from providing legal services	54
Division 2	Prohibitions and other provisions regarding disqualified persons and disqualified entities	55
3.9.3	Contravention by law practice—disqualified person as lay associate.....	55
3.9.4	Contravention by disqualified person	55
3.9.5	Contravention by Australian legal practitioner	56
3.9.6	Disqualified entity ceases to be incorporated or unincorporated legal practice	56
3.9.7	Spent convictions.....	56

Chapter 4	Business practice and professional conduct	57
Part 4.1	Introduction	57
4.1.1	Objectives	57
Part 4.2	Trust money and trust accounts	57
Division 1	Preliminary	57
4.2.1	Objective	57
4.2.2	Definitions	57
4.2.3	Meaning of trust money.....	58
4.2.4	Application of Part to law practices and trust money.....	59
4.2.5	Australian registered foreign lawyers	60
4.2.6	Former practices, principals and associates	60
4.2.7	Barristers not to receive trust money	60
4.2.8	Provisions relating to certain non-trust money	60
Division 2	Trust money and trust accounts	61
4.2.9	Dealing with trust money.....	61
4.2.10	General trust account for one jurisdiction.....	61
4.2.11	General trust account for more than one jurisdiction.....	61
4.2.12	Provisions applying when general trust account for more than one jurisdiction	62
4.2.13	Certain trust money to be deposited in general trust account	62
4.2.14	Holding, disbursing and accounting for trust money in general trust account	62
4.2.15	Controlled money.....	63
4.2.16	Transit money	63
4.2.17	Trust money subject to specific powers	64
4.2.18	Trust money subject to a written direction.....	64
4.2.19	Trust money received in the form of cash	64
4.2.20	Withdrawal of trust money.....	64
4.2.21	Protection of trust money	65
4.2.22	Intermixing money.....	65
4.2.23	Keeping trust records	65
4.2.24	Deficiency in trust account	66
4.2.25	Authorised deposit-taking institutions.....	66
4.2.26	Authority to receive trust money.....	67
4.2.27	Disclosure of accounts used to hold money.....	67
4.2.28	Determinations about status of money.....	67
4.2.29	When, how and where money is received.....	67
4.2.30	Reporting irregularities and suspected irregularities	68
Division 3	External examinations of trust money	68
4.2.31	Appointment of external examiner to conduct external examination of trust records.....	68
4.2.32	Qualifications of external examiners	69
4.2.33	External examinations.....	69
4.2.34	Carrying out external examination	69
4.2.35	External examiner's report	69

4.2.36	Costs of external examination.....	70
Division 4	External investigations	70
4.2.37	Principal purposes of external investigation	70
4.2.38	Appointment of external investigators	70
4.2.39	External investigations	70
4.2.40	Carrying out external investigation	70
4.2.41	Investigator's report	70
4.2.42	Costs of external investigation	71
Division 5	Miscellaneous	71
4.2.43	National Rules for trust money and trust accounts.....	71
Part 4.3	Legal costs	71
Division 1	Introduction	71
4.3.1	Objectives	71
4.3.2	Commercial or government clients.....	72
4.3.3	Third party payers	73
Division 2	Legal costs generally	73
4.3.4	Legal costs must be fair and reasonable	73
4.3.5	Avoidance of increased legal costs.....	74
Division 3	Costs disclosure	74
4.3.6	Disclosure obligations of law practice regarding clients	74
4.3.7	Disclosure obligations if another law practice is to be retained	75
4.3.8	Disclosure obligations of law practice regarding associated third party payers	75
4.3.9	Non-compliance with disclosure obligations.....	76
Division 4	Costs agreements	76
4.3.10	Client's right to costs agreement.....	76
4.3.11	Making costs agreements	76
4.3.12	Conditional costs agreements.....	76
4.3.13	Conditional costs agreements involving uplift fees.....	77
4.3.14	Contingency fees are prohibited	78
4.3.15	Effect of costs agreement	78
4.3.16	Certain costs agreements are void	78
Division 5	Billing	79
4.3.17	Form of bills	79
4.3.18	Request for itemised bills	79
4.3.19	Responsible principal for bill	79
4.3.20	Giving bills.....	79
4.3.21	Progress reports	79
4.3.22	Charging for bills prohibited	79
4.3.23	Notification of client's rights.....	80
Division 6	Unpaid legal costs	80
4.3.24	Restriction on commencing proceedings to recover legal costs.....	80
4.3.25	Interest on unpaid legal costs	80

Division 7	Costs assessment	81
4.3.26	Application of this Division generally	81
4.3.27	Application of this Division where complaint made	81
4.3.28	Applications for costs assessment	81
4.3.29	Costs assessment.....	82
4.3.30	Factors in a costs assessment.....	82
4.3.31	Reasons to be given	83
4.3.32	Referral for disciplinary action.....	83
4.3.33	Admissibility determinations in disciplinary proceedings	83
4.3.34	Costs of costs assessment	83
4.3.35	Right of appeal or review	83
Division 8	Miscellaneous	84
4.3.36	Security for legal costs.....	84
4.3.37	Unreasonable legal costs—disciplinary action	84
4.3.38	National Rules for legal costs.....	84
Part 4.4	Professional indemnity insurance	84
4.4.1	Objectives	84
4.4.2	Approved insurance policy	85
4.4.3	Australian legal practitioners	85
4.4.4	Incorporated legal practices	86
4.4.5	Community legal services	86
4.4.6	Australian-registered foreign lawyers	86
4.4.7	Exemptions	86
4.4.8	National Rules for professional indemnity insurance	88
Part 4.5	Fidelity cover	88
Division 1	Introduction	88
4.5.1	Objective	88
4.5.2	Definitions	88
4.5.3	Defaults to which this Part applies	89
Division 2	Fidelity funds and fidelity authorities	89
4.5.4	Fidelity fund for this jurisdiction	89
4.5.5	How this Part applies to this jurisdiction.....	89
Division 3	Fidelity fund of a jurisdiction	89
4.5.6	Funding.....	89
4.5.7	Annual contributions	90
4.5.8	Levies.....	90
4.5.9	Failure to pay annual contribution or levy.....	90
4.5.10	Insurance	90
4.5.11	Borrowing.....	91
4.5.12	Caps on payments for claims.....	91
4.5.13	Sufficiency.....	91
4.5.14	Audit.....	92
Division 4	Claims about defaults	92
4.5.15	Entitlement to make a claim	92
4.5.16	Making a claim	92
4.5.17	Advertisements	92

4.5.18	Time limit for making claims.....	92
4.5.19	Processing and investigation of claims	93
4.5.20	Advance payments	93
4.5.21	Claims by law practices or associates about notional defaults	94
Division 5	Determination of claims	94
4.5.22	Determination of claims.....	94
4.5.23	Maximum amount allowable.....	95
4.5.24	Costs.....	95
4.5.25	Interest.....	95
4.5.26	Reduction of claim because of other benefits	96
4.5.27	Repayment of certain amounts	96
4.5.28	Subrogation.....	96
4.5.29	Right of appeal against decision on claim	97
4.5.30	Right of appeal against failure to determine claim	98
4.5.31	Court proceedings.....	98
Division 6	Defaults involving interjurisdictional elements	98
4.5.32	Concerted interjurisdictional defaults	98
4.5.33	Interjurisdictional agency.....	99
Division 7	Miscellaneous	99
4.5.34	Co-operation	99
4.5.35	Protection from liability.....	99
4.5.36	National Rules for fidelity cover.....	100
Part 4.6	Business management and control	100
4.6.1	Compliance audits	100
4.6.2	Management system directions	100
4.6.3	Prohibited services and business.....	101
4.6.4	National Rules for legal services.....	102
Chapter 5	Dispute resolution and professional discipline	103
Part 5.1	Preliminary	103
Division 1	Introduction	103
5.1.1	Objectives	103
5.1.2	References to lawyers.....	103
Division 2	Application of this Chapter	103
5.1.3	Application of this Chapter to conduct.....	103
5.1.4	Application of this Chapter to lawyers and law practices	104
5.1.5	Jurisdiction of Supreme Courts	104
Part 5.2	Complaints	105
Division 1	Making complaints and other matters about complaints	105
5.2.1	What is a complaint?.....	105
5.2.2	Who may make a complaint?.....	105
5.2.3	How is a complaint made?	105
5.2.4	Matters in a complaint.....	105

5.2.5	Consumer matters (including costs disputes)	105
5.2.6	Disciplinary matters.....	106
5.2.7	Mixed complaints	106
5.2.8	Time limits on making complaints	106
5.2.9	Withdrawing complaints	107
5.2.10	Where complaint is dealt with	107
5.2.11	Other rights not affected.....	107
Division 2	Preliminary assessment of complaints	107
5.2.12	Preliminary assessment of complaint.....	107
5.2.13	Closure of whole or part of complaint after preliminary assessment.....	108
5.2.14	Immediate suspension of practising or registration certificate.....	108
Division 3	Notification of and submissions by respondents	109
5.2.15	Notification of respondent about complaint	109
5.2.16	Submissions by respondent	109
5.2.17	Exceptions to requirement for notification of complaint	109
Division 4	Investigation of complaints	110
5.2.18	Power to investigate complaints.....	110
5.2.19	Extending scope of investigation.....	110
5.2.20	Referral of matters for costs assessment.....	110
Part 5.3	Consumer matters	110
Division 1	Preliminary	110
5.3.1	Application of this Part	110
Division 2	Provisions applicable to all consumer matters	111
5.3.2	Prerequisite to resolution action by Commissioner	111
5.3.3	Informal resolution of consumer matters	111
5.3.4	Mediation	111
5.3.5	Settlement agreements	111
5.3.6	Determination of consumer matters by Commissioner	112
Division 3	Further provisions applicable to costs disputes	112
5.3.7	General role of Commissioner in costs disputes	112
5.3.8	Binding determinations in costs disputes	113
5.3.9	Cases where binding determinations are not made in costs disputes.....	113
5.3.10	GST excluded in calculations.....	113
5.3.11	Lodgment of disputed legal costs with Commissioner	113
5.3.12	Dealing with lodged costs	114
Part 5.4	Disciplinary matters	114
Division 1	Preliminary	114
5.4.1	Application of this Part	114
5.4.2	Unsatisfactory professional conduct	114
5.4.3	Professional misconduct	114
5.4.4	Conduct capable of being unsatisfactory professional conduct or professional misconduct.....	115

Division 2	Determination by Commissioner	115
5.4.5	Determination by Commissioner—unsatisfactory professional conduct	115
Division 3	Role of designated tribunal	117
5.4.6	Initiation and prosecution of proceedings in designated tribunal	117
5.4.7	Procedure of designated tribunal	117
5.4.8	Determination by designated tribunal—disciplinary matters...	117
5.4.9	Costs.....	118
5.4.10	Compliance with determinations and orders	119
5.4.11	Power to disregard procedural lapses.....	119
Part 5.5	Compensation orders	119
5.5.1	Making of compensation orders	119
5.5.2	Request by complainant for compensation order.....	120
5.5.3	Nature of compensation orders.....	120
5.5.4	Prerequisites for making of compensation orders	121
5.5.5	Enforcement of compensation orders	121
5.5.6	Other remedies not affected.....	121
Part 5.6	Appeal or review	121
5.6.1	Finality of determinations of Commissioner	121
5.6.2	Internal review of decisions of Commissioner	121
5.6.3	Right of appeal or review of decisions of Commissioner.....	122
Part 5.7	General duties of Commissioner	122
5.7.1	Duty to deal with complaints	122
5.7.2	Duty to exercise discretions fairly.....	122
5.7.3	Duty to deal with complaints efficiently and expeditiously	122
5.7.4	Notice of decisions and determinations.....	122
5.7.5	Rules of procedural fairness	123
Chapter 6	External intervention	124
Part 6.1	Introduction	124
6.1.1	Objectives	124
6.1.2	Application of this Chapter	124
6.1.3	Operation of appointment of external intervener	124
Part 6.2	Initiation of external intervention	125
6.2.1	Circumstances warranting external intervention	125
6.2.2	Determination to initiate external intervention	126
6.2.3	Appointment of external intervener may be general or limited.....	126
Part 6.3	Supervisors of trust money	126
6.3.1	Appointment of supervisor of trust money.....	126
6.3.2	Effect of service of notice of appointment	127
6.3.3	Role of supervisor of trust money	127
6.3.4	Records of and dealing with trust money of law practice under supervision.....	129
6.3.5	Termination of supervisor’s appointment	129

Part 6.4	Managers	130
6.4.1	Appointment of manager.....	130
6.4.2	Effect of service of notice of appointment	130
6.4.3	Role of managers.....	131
6.4.4	Records and accounts of law practice under management and dealings with trust money.....	132
6.4.5	Deceased estates	133
6.4.6	Lien for costs on regulated property.....	133
6.4.7	Termination of manager's appointment.....	133
Part 6.5	Receivers	134
6.5.1	Appointment of receiver	134
6.5.2	Effect of service of notice of appointment	135
6.5.3	Role of receivers	136
6.5.4	Records and accounts of law practice under receivership and dealings with trust money.....	137
6.5.5	Power of receiver to take possession of regulated property...	137
6.5.6	Power of receiver to take delivery of regulated property	138
6.5.7	Power of receiver to deal with regulated property	138
6.5.8	Power of receiver to require documents or information.....	138
6.5.9	Examinations about regulated property	139
6.5.10	Lien for costs on regulated property.....	139
6.5.11	Regulated property not to be attached.....	139
6.5.12	Recovery of regulated property where there has been a breach of trust etc	139
6.5.13	Improperly destroying property etc.....	141
6.5.14	Deceased estates	141
6.5.15	Termination of receiver's appointment	141
Part 6.6	General	142
6.6.1	Conditions on appointment of external intervener.....	142
6.6.2	Status of acts of external intervener.....	142
6.6.3	Right of appeal or review about appointment of external intervener.....	143
6.6.4	Directions of designated tribunal.....	143
6.6.5	Manager and receiver appointed for law practice	144
6.6.6	ADI disclosure requirements.....	144
6.6.7	Confidentiality	144
6.6.8	Provisions relating to requirements under this Chapter	145
6.6.9	Obstruction of external intervener	145
6.6.10	Fees, costs and expenses	146
6.6.11	Protection from liability.....	146
6.6.12	National Rules for external intervention	146
Chapter 7	Investigatory powers	147
Part 7.1	Introduction	147
7.1.1	Objective.....	147
7.1.2	References to lawyers.....	147

Part 7.2	Requirements relating to documents, information and other assistance	147
7.2.1	Requirements—trust records examinations, trust records investigations and compliance audits.....	147
7.2.2	Requirements—complaint investigations	147
7.2.3	Inspection and copying of documents	148
7.2.4	Retention and return of documents.....	148
Part 7.3	Entry and search of premises	149
7.3.1	Investigator’s power to enter premises—trust records investigations, compliance audits and complaint investigations	149
7.3.2	Powers of investigator while on premises	149
7.3.3	Provisions relating to entry and search with consent	150
7.3.4	Search warrants.....	151
7.3.5	Search warrants—announcement before entry.....	152
7.3.6	Search warrants—details of warrant to be given to occupier	152
7.3.7	Retention and return of things seized during search.....	152
7.3.8	Copies of seized things to be provided	152
Part 7.4	Additional powers in relation to incorporated legal practices	153
7.4.1	Application and operation of Part	153
7.4.2	Examination of persons.....	153
7.4.3	Inspection of books	154
7.4.4	Power to hold hearings	154
Part 7.5	Miscellaneous	155
7.5.1	Obstruction of investigator	155
7.5.2	Obligation of lawyers.....	155
7.5.3	Protection from liability.....	155
7.5.4	National Rules.....	155
Chapter 8	National regulatory authorities	156
Part 8.1	Standing Committee	156
8.1.1	Role of Standing Committee	156
8.1.2	Decisions of Standing Committee	156
Part 8.2	National Legal Services Board	156
8.2.1	Objectives of Board.....	156
8.2.2	Provisions relating to Board	156
8.2.3	Responsibility of Board	157
8.2.4	Kinds of functions of Board	157
8.2.5	Exercise of independent functions of Board.....	158
8.2.6	Exercise of special functions of Board by local representatives	159
8.2.7	Responsibilities of Board regarding special functions	159
8.2.8	Exercise of admission functions of Board by Admissions Committee.....	159
8.2.9	Establishment of Admissions Committee	160

Part 8.3	National Legal Services Commissioner	160
8.3.1	Provisions relating to Commissioner	160
8.3.2	Objectives of office of Commissioner	160
8.3.3	Kinds of functions of Commissioner	160
8.3.4	Exercise of independent functions of Commissioner	161
8.3.5	Exercise of special functions of Commissioner by local representatives	161
8.3.6	Responsibilities of Commissioner regarding special functions.....	162
8.3.7	Power of local representative to take over exercise of special function	162
Part 8.4	Relationship of Commissioner with Board	163
8.4.1	Independence	163
8.4.2	Functions of Board in relation to Commissioner.....	163
Part 8.5	General	163
8.5.1	Exercise of functions in accordance with Law and National Rules.....	163
8.5.2	Guidelines and directions regarding special functions	163
8.5.3	Delegation by local representatives	164
8.5.4	Registers of delegations.....	164
8.5.5	Documents lodged with national authority instead of local representative	164
8.5.6	Limitation as to individual matters	165
Chapter 9	Miscellaneous	166
Part 9.1	Legal Profession National Rules	166
9.1.1	Power to make National Rules.....	166
9.1.2	Legal Practice Rules	166
9.1.3	Legal Profession Conduct Rules.....	166
9.1.4	Continuing Professional Development Rules.....	167
9.1.5	Development of general National Rules.....	167
9.1.6	Development of National Rules for legal practice, conduct and continuing professional development.....	167
9.1.7	Making of National Rules	168
9.1.8	Cases where public consultation not required.....	169
9.1.9	Urgent matters	169
9.1.10	Gazettal or notification of National Rules	169
Part 9.2	Australian Legal Profession Register	169
9.2.1	Australian Legal Profession Register	169
9.2.2	Contents of Australian Legal Profession Register.....	170
9.2.3	Public availability of Australian Legal Profession Register	170
Part 9.3	Co-operative and other arrangements	170
9.3.1	Arrangements with authorities.....	170
9.3.2	Ad hoc communication with authorities.....	171
9.3.3	Disclosure of information to ASIC	171
9.3.4	Disclosure of information between relevant persons.....	171
9.3.5	Information, assistance and co-operation	171

9.3.6	Co-operation with Commonwealth, States and Territories	172
Part 9.4	Notices and evidentiary matters	173
9.4.1	Service of notices on lawyers and law practices	173
9.4.2	Service of notices on Board, Commissioner, local representative or Admissions Committee.....	173
9.4.3	Service of notices on other persons	173
9.4.4	Time of service.....	174
9.4.5	Evidentiary matters	174
Part 9.5	Injunctions	174
9.5.1	Injunctions to restrain offences against Law	174
9.5.2	Amendment or discharge of injunctions	175
9.5.3	Interim injunctions—undertakings about damages	175
9.5.4	Supreme Court’s other powers not limited	175
Part 9.6	Criminal and civil penalties	175
Division 1	Criminal penalties	175
9.6.1	References to maximum criminal penalty	175
9.6.2	Indictable offences and summary offences	175
Division 2	Civil penalties	176
9.6.3	References to maximum civil penalty.....	176
9.6.4	Designated tribunal may order payment of pecuniary penalty	176
9.6.5	Contravening a civil penalty provision is not an offence.....	177
9.6.6	Persons involved in contravening civil penalty provision.....	177
9.6.7	Recovery of a pecuniary penalty	177
9.6.8	Civil proceedings after criminal proceedings.....	177
9.6.9	Criminal proceedings during civil proceedings	177
9.6.10	Criminal proceedings after civil proceedings.....	178
9.6.11	Evidence given in proceedings for penalty order not admissible in criminal proceedings	178
Part 9.7	General	178
9.7.1	Prohibition on disclosure of information	178
9.7.2	General provisions about appeal or review	179
9.7.3	Duty to report suspected offences	180
9.7.4	Provisions relating to certain requirements under this Law	180
9.7.5	Protection from liability	181
9.7.6	Indexation of amounts.....	181
9.7.7	Supreme Court may order delivery up of documents etc	182
9.7.8	Local representatives of Board	182
9.7.9	Local representatives of Commissioner	183
9.7.10	Professional associations.....	183
9.7.11	Fidelity authorities	183
9.7.12	Orders	183
9.7.13	Forms.....	183
9.7.14	Fees.....	183
9.7.15	Savings and transitional provisions	183

Schedule 1	Provisions relating to Board	184
Part 1	Introduction	184
1	Definitions	184
Part 2	Constitution of Board	184
2	Membership of Board.....	184
3	Terms of office of members	185
4	Diversity of membership.....	185
5	Vacancy in office of member.....	185
6	Extension of term of office during vacancy in membership	186
7	Remuneration of members.....	186
8	Disclosure of conflict of interest	186
Part 3	Procedure of Board	187
9	General procedure	187
10	Quorum	187
11	Chief executive officer may attend meetings.....	187
12	Presiding member	187
13	Voting.....	187
14	Transaction of business outside meetings or by telecommunication	187
15	Defects in appointment of members	188
16	First meeting	188
Part 4	Chief Executive Officer of Board	188
17	Chief Executive Officer of Board	188
Part 5	Staff, consultants and contractors of Board	188
18	Staff of Board.....	188
19	Secondment of staff to Board.....	188
20	Consultants and contractors of Board.....	189
Part 6	Committees established by Board	189
21	Admissions Committee	189
22	Advisory committees.....	189
23	Other committees.....	190
24	Remuneration of members of committees	190
25	Committees are committees of Board.....	190
Part 7	Annual reports of Board	190
26	Annual reports.....	190
Schedule 2	Provisions relating to Commissioner	192
Part 1	Appointment and tenure of office	192
1	Appointment of Commissioner	192
2	Term of office of Commissioner	192
3	Remuneration of Commissioner.....	192
4	Vacancy in office of Commissioner	192
5	Acting Commissioner	193

Part 2	Staff, consultants and contractors of Commissioner	193
65	Staff of Commissioner.....	193
7	Secondment of staff to Commissioner	193
8	Consultants and contractors of Commissioner.....	193
Part 3	Annual reports of Commissioner	194
9	Annual reports.....	194
Schedule 3	Local representatives of Board	195
Schedule 4	Local representatives of Commissioner	195
Schedule 5	Professional associations	195
Schedule 6	Fidelity authorities	195
Schedule 7	Savings and transitional provisions	195
1	Initial National Rules	195
2	Initial Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules	195

Legal Profession National Law

Chapter 1 Preliminary

Part 1.1 Introduction

1.1.1 Citation

This Law may be cited as the Legal Profession National Law.

1.1.2 Commencement

- (1) Chapters # commence on [tbd].
- (2) The remaining provisions of this Law commence on [tbd].

1.1.3 Objectives

The objectives of this Law are to promote the administration of justice and an efficient and effective Australian legal profession, by:

- (a) providing and promoting national consistency in the law applying to the Australian legal profession; and
- (b) ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
- (c) enhancing the protection of clients of law practices and the protection of the public generally; and
- (d) empowering clients of law practices to make informed choices about the services they access and the costs involved; and
- (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
- (f) providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

1.1.4 Extraterritorial operation of this Law

The operation of this Law is, as far as possible, to include operation, according to its terms, in relation to the following:

- (a) things situated within or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring within or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

Section 1.2.1

Part 1.2 Interpretation

1.2.1 Definitions

(1) In this Law:

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

admission or **admission to the Australian legal profession** means admission to the Australian legal profession in any jurisdiction under section 2.2.2 of this Law as applied by the Legal Profession National Law Act of this or any other jurisdiction.

admission function—see section 8.2.4.

Admissions Committee—see section 8.2.9.

affairs of a law practice includes the following:

- (a) all accounts and records required by or under this Law or the National Rules to be maintained by the law practice or an associate or former associate of the law practice;
- (b) other records of the law practice or an associate or former associate of the law practice;
- (c) any transaction:
 - (i) to which the law practice or an associate or former associate of the law practice was or is a party; or
 - (ii) in which the law practice or an associate or former associate of the law practice has acted for a party.

aggrieved person (in Part 5.5)—see section 5.5.2.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

associate of a law practice means a person who is one or more of the following:

- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) an Australian legal practitioner who is a consultant to the law practice;
- (d) a person who shares the receipts, revenue or other income arising from the law practice.

associated third party payer—see section 4.3.3.

Australian Bar Association means The Australian Bar Association.

Australian financial services licence has the same meaning as it has in Chapter 7 of the Corporations Act.

authorised representative has the same meaning as it has in Chapter 7 of the Corporations Act.

Section 1.2.1

Australian lawyer means a person admitted to the Australian legal profession in this jurisdiction or any other jurisdiction.

Australian legal practitioner means an Australian lawyer who holds a current Australian practising certificate.

Australian Legal Profession Register means the register maintained under section 9.2.1.

Australian practising certificate means a practising certificate granted to an Australian lawyer under Part 3.3 of this Law as applied by the Legal Profession National Law Act of this jurisdiction or any other jurisdiction.

Australian registration certificate means a registration certificate granted under Part 3.4 of this Law as applied by the Legal Profession National Law Act of this jurisdiction or any other jurisdiction to a foreign lawyer.

Australian-registered foreign lawyer means a person who holds a current Australian registration certificate.

authorised ADI—see section 4.2.2.

authorised principal means a principal who is authorised to supervise others.

automatic show cause event—see section 3.5.14.

Bankruptcy Act means the *Bankruptcy Act 1966* of the Commonwealth.

bankruptcy-related event, in relation to a person, means:

- (a) his or her becoming bankrupt under the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory); or
- (b) his or her being served with notice of a creditor's petition presented to a court under section 43 of the Bankruptcy Act; or
- (c) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the Bankruptcy Act of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (d) his or her applying to take the benefit of any law (whether Australian or otherwise) for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit.

barrister means an Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

Board means the National Legal Services Board established by a law of [jurisdiction to be decided].

borrower (in section 4.6.3)—see section 4.6.3 (5).

business day means a day that is not a Saturday, Sunday, public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

certificate (in Part 3.5)—see section 3.5.2.

Section 1.2.1

Chair of the Board (in Schedule 1)—see clause 1 of Schedule 1.

civil penalty provision—see section 9.6.3.

claim (in Part 4.5)—see section 4.5.2.

client includes a person to whom or for whom legal services are provided or on whose behalf trust money is received or held.

commercial or government client—see section 4.3.2.

Commissioner means the person appointed to or acting in the office of the National Legal Services Commissioner established by a law of [jurisdiction to be decided].

community legal service means an organisation (whether incorporated or not) that:

- (a) holds itself out as:
 - (i) a community legal service; or
 - (ii) a community legal centre; or
 - (iii) an Aboriginal and Torres Strait Islander Legal Service;whether or not it is a member of a State or Territory association of community legal centres, and whether or not it is accredited or certified by the National Association of Community Legal Centres; and
- (b) is established and operated on a not-for-profit basis; and
- (c) provides legal or legal-related services that:
 - (i) are directed generally to people who are disadvantaged (including but not limited to being financially disadvantaged) in accessing the legal system or in protecting their legal rights; or
 - (ii) are conducted in the public interest.

complaint—see section 5.2.1.

complaint investigation means an investigation of a complaint under section 5.2.18.

compliance audit means an audit under section 4.6.1.

compliance certificate means a certificate issued under section 2.2.5.

concerted interjurisdictional default—see section 4.5.2.

conditional costs agreement—see section 4.3.12.

conditions includes terms, limitations and restrictions.

consumer matter—see section 5.2.5.

Continuing Professional Development Rules means the provisions of the National Rules that are designated as Continuing Professional Development Rules—see section 9.1.4.

contributor (in section 4.6.3)—see section 4.6.3 (5).

contributory mortgage (in section 4.6.3)—see section 4.6.3 (5).

controlled money—see section 4.2.2.

Section 1.2.1

conviction includes a finding of guilt, or the acceptance of a guilty plea by the court, whether or not a conviction is recorded.

corporate legal practitioner means an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a related entity, but does not include a government legal practitioner.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations Act administrator (in section 3.7.8)—see section 3.7.8 (7).

costs assessment means an assessment of legal costs under Part 4.3.

costs assessor means:

- (a) a person appointed by a court, judicial officer or other official to have the responsibility of conducting costs assessments; or
- (b) a judicial officer or other official designated by jurisdictional legislation to have that responsibility.

costs dispute—see section 5.2.5.

default (in Part 4.5)—see section 4.5.2.

designated body means a body specified or described in a law of a jurisdiction for the purposes of a provision of this Law in which the term is used.

designated show cause event—see section 3.5.18.

designated tribunal means the court or tribunal (or one of two or more courts or tribunals) specified or described in a law of a jurisdiction for the purposes of a provision of this Law in which the term is used.

disqualified entity means an entity that is disqualified under section 3.9.2.

disqualified person means:

- (a) a person whose name has been removed from a Supreme Court roll and who has not subsequently been admitted or re-admitted; or
- (b) a person who has been refused the grant or renewal of an Australian practising certificate and who has not been granted an Australian practising certificate at a later time; or
- (c) a person whose Australian practising certificate is suspended (for the period of the suspension); or
- (d) a person whose Australian practising certificate has been cancelled and who has not been granted an Australian practising certificate at a later time; or
- (e) a person who is disqualified under section 3.9.1.

engage in legal practice includes practise law or provide legal services, but does not include engage in policy work (which, without limitation, includes developing and commenting on legal policy).

entity includes:

- (a) an individual, an incorporated body and an unincorporated body or other organisation; and
- (b) in the case of a partnership:

Section 1.2.1

- (i) the partnership as currently constituted from time to time; or
- (ii) the assignee or receiver of the partnership.

exercise of a function includes, where the function is a duty, the performance of the duty.

external administrator (in section 3.7.9)—see section 3.7.9 (6).

external intervener means a supervisor, manager or receiver under Chapter 6.

external intervention means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under Chapter 6.

fee, gain or reward includes any form of, and any expectation of, a fee, gain or reward.

fidelity authority means an entity specified in Schedule 6.

fidelity fund—see sections 4.5.2, 4.5.4 and 4.5.6.

financial institution (in section 4.6.3)—section 4.6.3 (5).

financial service has the same meaning as it has in Chapter 7 of the Corporations Act.

financial services business has the same meaning as it has in Chapter 7 of the Corporations Act.

financial year means a year ending on 30 June.

fixed costs legislative provision means a determination, scale, arrangement or other provision fixing the costs or maximum costs of any legal services that is made by or under the National Rules or any other legislation.

foreign country means:

- (a) a country other than Australia; or
- (b) a state, province or other part of a country other than Australia.

foreign law means law of a foreign country.

Note. Section 3.4.12 describes the legal services that may be provided by a foreign lawyer.

foreign lawyer means an individual who is properly registered or authorised to engage in legal practice in a foreign country by the foreign registration authority for the country.

foreign lawyer associate of a law practice means an associate of the law practice who is an Australian-registered foreign lawyer.

foreign registration authority means an entity in a foreign country having the function, conferred by the law of the foreign country, of registering or authorising persons to engage in legal practice in the foreign country.

function includes a power, authority or duty, and without limitation includes jurisdiction in relation to a court.

fused jurisdiction means a jurisdiction a law of which contains a provision declaring that the jurisdiction is a fused jurisdiction.

general trust account—see section 4.2.2.

Section 1.2.1

government authority includes a Minister, government department or public authority of the Commonwealth or of a jurisdiction, and includes a body or organisation (or a class of bodies or organisations) declared in the National Rules to be within this definition.

government lawyer means a person who engages in legal practice only:

- (a) as an officer or employee of a government authority; or
- (b) as the holder of a statutory office of the Commonwealth or of a jurisdiction; or
- (c) in another category specified in the National Rules.

government legal practitioner means a government lawyer who is an Australian legal practitioner.

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

home jurisdiction means:

- (a) in the case of an applicant for or the holder of an Australian practising certificate—the jurisdiction last notified to the Board under section 3.3.5 or 3.3.6; or
- (b) in the case of an applicant for or the holder of an Australian registration certificate—the jurisdiction last notified to the Board under section 3.4.6; or
- (c) in the case of an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer:
 - (i) where only one jurisdiction is the home jurisdiction for the only legal practitioner associate of the law practice or for all the legal practitioner associates of the law practice—that jurisdiction; or
 - (ii) where no single jurisdiction is the home jurisdiction for all the legal practitioner associates of the law practice:
 - (A) the jurisdiction in which the office is situated at which the associate performs most of his or her duties for the law practice; or
 - (B) if a jurisdiction cannot be determined under subparagraph (A)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at Australian government elections for the jurisdiction; or
 - (C) if a jurisdiction can be determined under neither subparagraph (A) nor (B)—the jurisdiction of the associate’s place of residence in Australia (or if he or she does not have a place of residence in Australia) the jurisdiction of his or her last place of residence in Australia; or
- (d) in any other case—the jurisdiction determined in accordance with the National Rules.

host Attorney-General means the Attorney-General of the host jurisdiction.

Section 1.2.1

host jurisdiction means [jurisdiction to be decided].

incorporated legal practice means a corporation that satisfies the following criteria:

- (a) it is:
 - (i) a company within the meaning of the Corporations Act; or
 - (ii) a corporation, or a corporation of a kind, approved by the Board or specified in the National Rules for the purposes of this definition;
- (b) it has given notice under section 3.7.3 that it intends to engage in legal practice in Australia and that notice is still operative;
- (c) the legal services it provides or proposes to provide are not limited to either or both of the following services:
 - (i) in-house legal services for the corporation or a related entity;
 - (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner;

Note. The National Rules under section 2.1.2 (3) may provide that certain persons are exempt from the operation of section 2.1.2 (1), which provides that an entity must not engage in legal practice in this jurisdiction unless it is a qualified entity.

- (d) it is not excluded by the National Rules from being an incorporated legal practice;

but does not include a community legal service.

independent function:

- (a) in relation to the Board—see section 8.2.4; or
- (b) in relation to the Commissioner—see section 8.3.3.

indexed means indexed in accordance with section 9.7.6.

insolvent under administration has the same meaning as in the Corporations Act.

jurisdiction means a State of the Commonwealth, the Australian Capital Territory or the Northern Territory of Australia.

jurisdictional legislation means legislation of a jurisdiction.

Law Council of Australia means Law Council of Australia Limited.

law firm means a partnership consisting only of:

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers.

law practice means:

- (a) a sole practitioner; or
- (b) a law firm; or
- (c) a community legal service; or

Section 1.2.1

- (d) an incorporated legal practice; or
- (e) an unincorporated legal practice.

lawyer:

- (a) in Part 4.5—see section 4.5.2; and
- (b) when used alone in Chapter 5 or 7—see section 5.1.2 or 7.1.2.

lay associate of a law practice means:

- (a) an associate of the law practice who is not an Australian legal practitioner; or
- (b) a consultant to the law practice (however described) who is not an Australian legal practitioner and who provides services related to legal services to the law practice, other than services of a kind specified in the National Rules for the purposes of this definition.

legal costs means:

- (a) amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services; or
- (b) without limitation, amounts that a person has been or may be charged, or is or may become liable to pay, as a third party payer in respect of the provision of legal services by a law practice to another person;

including disbursements but not including interest.

Legal Practice Rules means the provisions of the National Rules that are designated as the Legal Practice Rules—see section 9.1.2.

legal practitioner associate of a law practice means an associate of the law practice who is an Australian legal practitioner.

Legal Profession Conduct Rules means the provisions of the National Rules designated as the Legal Profession Conduct Rules—see section 9.1.3.

Legal Profession National Law Act of a jurisdiction means the Act of that jurisdiction that applies this Law (whether with or without modification) as a law of that jurisdiction.

legal services means work done, or business transacted, in the ordinary course of legal practice.

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

Note. A matter is a litigious matter when proceedings are initiated or at any stage when proceedings are reasonably likely.

local representative in relation to:

- (a) the Board—means an entity specified in Schedule 3 in relation to a jurisdiction; and
- (b) the Commissioner—means an entity specified in Schedule 4 in relation to a jurisdiction.

managed investment scheme has the same meaning as in the Corporations Act.

management system direction means a direction under section 4.6.2.

Section 1.2.1

maximum civil penalty—see section 9.6.3.

maximum criminal penalty—see section 9.6.1.

member of the Board (in Schedule 1)—see clause 1 of Schedule 1.

member of the staff of the Board, the Commissioner or a local representative means a person employed, engaged or assigned to provide assistance in the exercise of the respective functions of the Board, Commissioner or local representative.

modifications includes modifications by way of alteration, omission, addition or substitution.

mortgage means an instrument or proposed instrument under which an interest in real property is charged, encumbered or transferred as security for the payment or repayment of money.

mortgage financing means facilitating a loan secured or intended to be secured by mortgage by:

- (a) acting as an intermediary to match a prospective lender and borrower, or
 - (b) arranging the loan; or
 - (c) receiving or dealing with payments for the purposes of, or under, the loan;
- but does not include providing legal advice or preparing an instrument for the loan.

national authority means the Board or the Commissioner.

National Law receiver (in sections 3.7.8 and 3.7.9)—see sections 3.7.8 (7) and 3.7.9 (6).

National Rules means the National Rules made under Part 9.1.

nominated jurisdiction—see section 2.2.5 or 2.2.7.

non-associated third party payer—see section 4.3.3.

non-fused jurisdiction means a jurisdiction a law of which contains a provision declaring that the jurisdiction is a non-fused jurisdiction.

obstruct includes hinder, delay, resist and attempt to obstruct.

officer of a law practice includes a principal of the law practice.

operational term of the Board—see section 8.2.2.

partnership includes a limited partnership.

pecuniary loss (in Part 4.5)—see section 4.5.2.

penalty unit means an amount equal to the value of a penalty unit under an Act of the host jurisdiction for an offence, and has that meaning in a provision of this Law regardless of whether the provision gives rise to a criminal offence or is a civil penalty provision.

permanent form, in relation to a trust record—see section 4.2.2.

power, in relation to trust money, includes an authority.

practical legal training means either or both of the following:

- (a) legal training by participation in course work;

Section 1.2.1

- (b) supervised legal training, whether involving articles of clerkship or otherwise.

principal of a law practice is an Australian legal practitioner who:

- (a) in the case of a sole practitioner—is the sole practitioner; or
- (b) in the case of a law firm—is a partner in the firm; or
- (c) in the case of a community legal service—is a supervising legal practitioner of the service referred to in section 3.8.2; or
- (d) in the case of an incorporated legal practice or an unincorporated legal practice:
- (i) holds an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice; and
- (ii) is:
- (A) if the law practice is a company within the meaning of the Corporations Act—a validly appointed director of the company; or
- (B) if the law practice is a partnership—a partner in the partnership; or
- (C) if the law practice is neither—has a relationship with the law practice that is of a kind approved by the Board or specified in the National Rules for the purposes of this definition.

pro bono basis—see section 1.2.3.

professional association means an entity specified in Schedule 5.

professional association for barristers means a professional association whose membership consists principally of barristers or whose principal function is to represent, assist or regulate the affairs of barristers.

professional misconduct—see section 5.4.3.

professional obligations includes:

- (a) duties to the Supreme Courts; and
- (b) obligations in connection with conflicts of interest; and
- (c) duties to clients, including disclosure; and
- (d) ethical standards required to be observed;

that do not otherwise arise under this Law or the National Rules.

qualified entity means:

- (a) an Australian legal practitioner; or
- (b) a law practice; or
- (c) either:
- (i) an Australian-registered foreign lawyer; or
- (ii) a foreign lawyer who is not an Australian-registered foreign lawyer but only to the extent that the foreign lawyer's legal practice is limited to the practice of foreign law and is carried out in

Section 1.2.1

accordance with the applicable requirements of Part 3.4; or

- (d) an individual engaged in legal practice under the authority of the Commonwealth or of a jurisdiction; or
- (e) an entity engaged in legal practice of a kind specified in the National Rules for the purposes of this definition, but only while the person engages in the legal practice in accordance with any applicable requirements of the National Rules.

quashing of a conviction for an offence includes:

- (a) the quashing of a finding of guilt in relation to the offence; or
- (b) the acceptance of a guilty plea in relation to the offence;

but does not include the quashing of a conviction where a finding of guilt or the acceptance of a guilty plea remains unaffected in relation to the offence.

regulated property, in relation to a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the law practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
- (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the law practice or an associate of the law practice by which any documents or records referred to in paragraph (c) may be produced or reproduced in visible form;
- (e) client files.

related entity, in relation to a person, means:

- (a) if the person is a company within the meaning of the Corporations Act—a related body corporate within the meaning of section 50 of that Act; or
- (b) if the person is not a company within the meaning of that Act—a person specified or described in the National Rules for the purposes of this definition.

relevant person:

- (a) in section 9.3.4—see section 9.3.4 (2); and
- (b) in section 9.7.1—see section 9.7.1 (3); and
- (c) in section 9.7.3—see section 9.7.3 (4).

respondent means the lawyer (within the meaning it has when used alone in Chapter 5) or law practice that is the subject of a complaint.

serious offence means an offence that is:

- (a) an indictable offence against a law of the Commonwealth, a State or a Territory (whether or not the offence is or may be dealt with summarily); or
- (b) an offence against a law of a foreign country that would be an indictable

Section 1.2.1

offence against a law of the Commonwealth, a State or a Territory if committed in Australia (whether or not the offence could be dealt with summarily if committed in Australia).

sole practitioner means an Australian legal practitioner who engages in legal practice on his or her own account.

solicitor means an Australian legal practitioner whose Australian practising certificate is not subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.

special function:

- (a) in relation to the Board—see section 8.2.4; or
- (b) in relation to the Commissioner—see section 8.3.3.

staff—see the definition of ***member of the staff***.

Standing Committee means the Attorneys-General of the States and the Territories.

supervised legal practice means legal practice by a person who is an Australian legal practitioner:

- (a) as an employee of, or other person working under supervision in, a law practice, where:
 - (i) at least one legal practitioner associate of the law practice holds an Australian practising certificate authorising the holder to supervise legal practice by others; and
 - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or
- (b) as a principal of a law practice (other than a community legal service), where the person engages in legal practice under the supervision of an authorised principal of the law practice; or
- (c) as a corporate legal practitioner or government legal practitioner, where the person engages in legal practice under the supervision of a person who holds, or is eligible to hold but is exempted from holding, an Australian practising certificate authorising the holder to supervise legal practice by others; or
- (d) in a capacity or in circumstances specified in the National Rules for the purposes of this definition.

Note. Section 3.3.7 (6) provides that an Australian practising certificate authorises the holder to supervise legal practice by others, unless the certificate is subject to a condition requiring the holder to engage in supervised legal practice or a condition to the effect that the holder may not supervise legal practice by others.

Supreme Court roll means a roll of Australian lawyers maintained by a Supreme Court.

tax offence means any offence under the *Taxation Administration Act 1953* of the Commonwealth.

third party payer—see section 4.3.3.

Section 1.2.1

transit money—see section 4.2.2.

tribunal includes a panel or person authorised to hear or determine a matter.

trust account—see section 4.2.2.

trust money—see section 4.2.3.

trust property—see section 4.2.2.

trust records—see section 4.2.2.

trust records examination means an external examination of trust records under Division 3 of Part 4.2.

trust records investigation means an external investigation of trust records under Division 4 of Part 4.2.

unincorporated legal practice means an unincorporated body or group that satisfies the following criteria:

- (a) it is:
 - (i) a partnership; or
 - (ii) an unincorporated body or group, or an unincorporated body or group of a kind, approved by the Board or specified in the National Rules for the purposes of this definition;
- (b) it has given notice under section 3.7.3 that it intends to engage in legal practice in Australia and that notice is still operative;
- (c) the legal services it provides or proposes to provide are not limited to either or both of the following services:
 - (i) in-house legal services for the unincorporated body or group ;
 - (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner;
- (d) it is not excluded by the National Rules from being an unincorporated legal practice;

but does not include:

- (e) a law firm; or
- (f) a community legal service; or
- (g) an incorporated legal practice.

unsatisfactory professional conduct—see section 5.4.2.

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

vary includes, in relation to an Australian practising certificate or an Australian registration certificate, impose a condition on the certificate and alter or revoke a condition (other than a statutory condition) already imposed on the certificate.

Note. For the term **this jurisdiction**, see the Legal Profession National Law Act of each jurisdiction.

Section 1.2.2

- (2) A reference in this Law to this Law or a provision of this Law is a reference to this Law as applied by the Legal Profession National Law Act of this jurisdiction, except as expressly provided otherwise and except where the context or subject matter otherwise indicates or requires.
- (3) Notes included in this Law do not form part of this Law.

1.2.2 Interpretation generally

- (1) The Act or Acts of the host jurisdiction that provide for the interpretation of legislation and statutory instruments of the host jurisdiction apply to this Law and the National Rules in the same way as they apply to the legislation and statutory instruments of the host jurisdiction.
- (2) Definitions, words and other expressions have in the National Rules or part of the National Rules the same meanings as they have in this Law or the relevant part of this Law, unless a contrary intention appears in this Law or the National Rules.

1.2.3 Meaning of pro bono basis

For the purposes of this Law, an Australian legal practitioner provides legal services on a pro bono basis where:

- (a) the practitioner, without fee, gain or reward or at a reduced fee, advises or represents a client in cases where:
 - (i) the client has no other access to the courts and the legal system; or
 - (ii) the client's case raises a wider issue of public interest; or
- (b) the practitioner is involved in free community legal education or law reform; or
- (c) the practitioner is involved in the giving of free legal advice or representation to charitable and community organisations.

Chapter 2 Threshold requirements for legal practice

Part 2.1 Unqualified legal practice

2.1.1 Objectives

The objectives of this Part are:

- (a) to ensure, in the interests of the administration of justice, that legal work is carried out only by those who are properly qualified to do so; and
- (b) to protect clients of law practices by ensuring that persons carrying out legal work are entitled to do so.

2.1.2 Prohibition on engaging in legal practice by unqualified entities

- (1) An entity must not engage in legal practice in this jurisdiction unless it is a qualified entity.

Maximum criminal penalty: 250 penalty units or imprisonment for 2 years, or both.

- (2) An entity is not entitled to recover any amount, and must repay any amount received, in respect of anything the entity did in contravention of subsection (1). Any amount so received may be recovered as a debt by the person who paid it.
- (3) Subsection (1) does not apply to an entity or class of entities declared by the National Rules to be exempt from the operation of subsection (1), but only to the extent (if any) specified in the declaration.
- (4) Government lawyers cannot be declared to be exempt as a class from the operation of subsection (1), but this subsection does not prevent government lawyers of a specified class from being declared to be exempt if the Board considers special circumstances warrant the exemption.

2.1.3 Prohibition on advertisements or representations by or about unqualified entities

- (1) An entity must not advertise or represent, or do anything that states or implies, that it is entitled to engage in legal practice unless it is a qualified entity.

Maximum criminal penalty: 250 penalty units.

- (2) A director, partner, officer, employee or agent of an entity must not advertise or represent, or do anything that states or implies, that the entity is entitled to engage in legal practice unless the entity is a qualified entity.

Maximum criminal penalty: 50 penalty units.

2.1.4 Entitlement of certain persons to use certain titles, and presumptions with respect to other persons

- (1) **Titles**

This section applies to the following titles:

- (a) lawyer, legal practitioner, barrister, solicitor, attorney, counsel or proctor;
- (b) Senior Counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel

Section 2.1.5

or His Majesty's Counsel;

- (c) any other title specified in the National Rules for the purposes of this section.

(2) **Entitlement to take or use title**

A person is entitled by force of this section to take or use a title to which this section applies if:

- (a) the person is of a class authorised by the National Rules for the purposes of this section to take or use that title; and
- (b) where the National Rules so provide—the person does so in circumstances, or in accordance with restrictions, specified in the National Rules for the purposes of this section.

(3) **Presumption of representation of entitlement of person**

The taking or use of a title to which this section applies by a person gives rise to a rebuttable presumption (for the purposes of section 2.1.3 (1)) that the person represented that he or she is entitled to engage in legal practice.

(4) **Presumption of representation of entitlement of entity**

The taking or use of a title to which this section applies by a person in connection with an entity, of which the person is a partner, director, officer, employee or agent, gives rise to a rebuttable presumption (for the purposes of section 2.1.3 (2)) that the person represented that the entity is entitled to engage in legal practice.

2.1.5 Protection of non-practitioner associates

An associate of a law practice who is not an Australian legal practitioner does not contravene a provision of this Law or the National Rules merely because of any of the following:

- (a) he or she receives any fee, gain or reward for business of the law practice that is the business of an Australian legal practitioner;
- (b) he or she holds out, advertises or represents himself or herself as an associate of the law practice where its business includes the provision of legal services;
- (c) he or she shares with any other person the receipts, revenue or other income of the law practice where its business is the business of an Australian legal practitioner;

unless the provision expressly applies to associates of law practices who are not Australian legal practitioners.

2.1.6 Functions of Board with respect to offence

The Board may:

- (a) take such steps as in the Board's opinion may be necessary or proper for or with respect to the investigation of any question as to conduct by any entity (whether or not an Australian lawyer) that is, or may be, a contravention of a provision of this Part; and
- (b) institute prosecutions and other proceedings for the breach of a provision of this Part by any entity (whether or not an Australian lawyer).

Section 2.2.1

Part 2.2 Admission to the Australian legal profession

Division 1 Introduction

2.2.1 Objective

The objective of this Part is to protect the administration of justice and the clients of law practices by providing a system under which persons are eligible for admission to the Australian legal profession only if:

- (a) they have appropriate academic qualifications and practical legal training, whether obtained in Australia or elsewhere; and
- (b) they are fit and proper persons to be admitted.

Note 1. Admission does not of itself entitle a person to engage in legal practice, but is a prerequisite for being able to apply for an Australian practising certificate, which entitles the holder to engage in legal practice.

Note 2. The admission of New Zealand lawyers is effected by the operation of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Division 2 Admission

2.2.2 Admission

- (1) The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if:
 - (a) the Board has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and
 - (b) this jurisdiction is specified as the nominated jurisdiction under section 2.2.5 (2); and
 - (c) the person is not already admitted to the Australian legal profession; and
 - (d) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.
- (2) Residence in or any other connection with this jurisdiction is not a requirement for admission by the Supreme Court.

Note. A person may seek admission by any Supreme Court.

- (3) Nothing in this section is intended to interfere with the inherent jurisdiction of the Supreme Court to refuse admission.
- (4) Any person may, in accordance with any applicable rules of court, object to the Supreme Court to the admission of a particular person.

2.2.3 Prerequisites for compliance certificates

- (1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:
 - (a) has attained the academic qualifications specified under the National Rules for the purposes of this section (the *specified academic qualifications prerequisite*); and
 - (b) has satisfactorily completed the practical legal training requirements

Section 2.2.5

specified in the National Rules for the purposes of this section (the *specified practical legal training prerequisite*); and

- (c) is a fit and proper person to be admitted to the Australian legal profession.
- (2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession, the Board must have regard to the matters specified in the National Rules for the purposes of this section.

2.2.4 Exemption from certain prerequisites

- (1) The Board may exempt a person from satisfying the specified academic qualifications prerequisite or the specified practical legal training prerequisite or both, if the Board is satisfied that the person has sufficient legal skills or relevant experience so as to render the person eligible for admission.
- (2) The legal skills or relevant experience or both can be obtained in legal practice, in service with a government authority or in another way considered appropriate by the Board. They can be obtained wholly in Australia or overseas or obtained partly in Australia and partly overseas.

2.2.5 Compliance certificates

- (1) A person may apply, in accordance with the National Rules, to the Board for a compliance certificate.
- (2) An application for a compliance certificate must nominate the jurisdiction (the *nominated jurisdiction*) where the applicant proposes to be admitted. A compliance certificate, if issued, must specify the nominated jurisdiction.
- (3) The Board may require an applicant for a compliance certificate to provide further information to the Board within a specified time.
- (4) The Board may issue and provide to the Supreme Court a compliance certificate stating that the applicant has satisfied the Board that he or she:
- (a) has satisfied the specified academic qualifications prerequisite and the specified practical legal training prerequisite or is exempted under section 2.2.4); and
 - (b) is a fit and proper person to be admitted to the Australian legal profession (as referred to in section 2.2.3 (1) (c)).
- (5) The Board may revoke a compliance certificate issued in respect of a person if the Board is satisfied that the certificate was issued on the basis of information provided by the person that was false, misleading or incomplete in a material particular or that the certificate was issued in error. The Board must notify the person of the revocation of the compliance certificate.
- (6) However, revocation of a compliance certificate under this section does not of itself affect the person's admission if he or she is already admitted.
- (7) The Board must ensure that notice is given, in accordance with the National Rules, on the Board's website of an application for admission.
- (8) Any person may object to the Board against the issue of a compliance certificate to a particular person.
- (9) The Board is not to issue a compliance certificate until after it has:
- (a) given notice under subsection (7) of the application; and

Section 2.2.6

- (b) afforded a reasonable opportunity for persons to object to the issue of the certificate; and
- (c) given the applicant a copy of each objection received within a reasonable period and afforded the applicant an opportunity to respond to each such objection within a reasonable period specified by the Board and notified to the applicant; and
- (d) considered all objections received within a reasonable period and all responses received from the applicant within the specified period.

2.2.6 Conditional admission of foreign lawyers

- (1) The Board may recommend in a compliance certificate in respect of a foreign lawyer that the foreign lawyer be admitted subject to conditions of one or more of the following kinds:
 - (a) a condition limiting the period of the foreign lawyer's admission;
 - (b) a condition requiring the foreign lawyer to engage in supervised legal practice, or limiting the area of law in which the foreign lawyer may engage in legal practice, or otherwise restricting the foreign lawyer's practising entitlements;
 - (c) a condition requiring the foreign lawyer to undertake particular academic or practical legal training or both.
- (2) The admission of a foreign lawyer is subject to the conditions (if any) recommended by the Board in the compliance certificate.
- (3) The Supreme Court of this jurisdiction may, after the admission of a foreign lawyer and on the recommendation of the Board, vary or revoke a condition to which a foreign lawyer's admission by the Court is subject.
- (4) Without limiting the grounds on which a person's name may be removed from the Supreme Court roll, the Supreme Court may order the removal of a person's name from the Supreme Court roll for this jurisdiction for a contravention of a condition.
- (5) Without limiting subsection (4), a contravention of a condition is capable of constituting unsatisfactory professional conduct or professional misconduct.

Note. Section 3.3.8 (1) provides that it is a statutory condition of an Australian practising certificate that the holder must not contravene a condition that was imposed on the admission of the person to the Australian legal profession and that is still in force.

2.2.7 Declaration of early assessment of suitability for a compliance certificate

- (1) A person may apply to the Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board as to whether the person is a fit and proper person to be admitted.
- (2) An application for a declaration must nominate the jurisdiction (the *nominated jurisdiction*) where the applicant proposes to be admitted.
- (3) The Board may make the declaration applied for in relation to any or all of the matters disclosed and specified in the declaration or may refuse to do so.
- (4) A declaration made under this section is binding on the Board unless the

Section 2.2.8

applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

2.2.8 Supreme Court roll

- (1) The Supreme Court of this jurisdiction must maintain a roll of Australian lawyers (the *Supreme Court roll*) for this jurisdiction containing the names and other relevant particulars of persons admitted by the Court, whether conditionally or without conditions.
- (2) A person's admission is effective from the time the person signs the Supreme Court roll.

2.2.9 Removal from Supreme Court roll

- (1) The Supreme Court of this jurisdiction may order the removal of the name and other particulars of a person from the Supreme Court roll for this jurisdiction, on its own motion or on the recommendation of the Board or of a designated tribunal of any jurisdiction under this Law.
- (2) A person whose name and other particulars are removed under subsection (1) ceases to be an Australian lawyer from the time the order for removal is made.

Note. Removal of a person's name from a Supreme Court roll results in the person becoming a disqualified person.

2.2.10 Australian lawyer is officer of Supreme Court

- (1) An Australian lawyer is an officer of the Supreme Court of this jurisdiction for as long as his or her name remains on the Supreme Court roll for any jurisdiction.

Note. It is intended that an Australian lawyer will also be an officer of federal courts.
- (2) However, a person ceases to be an officer of the Supreme Court of this jurisdiction if his or her name is removed from the Supreme Court roll of any jurisdiction.

2.2.11 Referral of matters about compliance certificates for local advice

- (1) The Board may refer a matter to a designated body of this jurisdiction for advice about a compliance certificate or a declaration of early assessment of suitability for a compliance certificate, if the Board considers that it is appropriate to obtain local advice and that the matter raises or may raise a significant issue in relation to the suitability of the person concerned.
- (2) Subsection (1) extends to local advice about the issue, amendment or revocation of a compliance certificate or the making of a declaration of early assessment of suitability for a compliance certificate.
- (3) The National Rules may contain provisions about the manner in which a designated body is to respond to a referral.

2.2.12 Delegation of conduct of litigation involving admission functions

The Board may delegate to a designated body or local representative the conduct of any litigation by or against the Board that arises as a result of the exercise of admission functions, where the jurisdiction concerned is the nominated jurisdiction (see sections 2.2.5 and 2.2.7) or is otherwise appropriate for the purpose.

Section 2.2.13

Division 3 Appeals

2.2.13 Right of appeal about compliance certificates

- (1) An applicant for a compliance certificate may appeal to the Supreme Court of this jurisdiction against the refusal of the Board to issue a compliance certificate, where this jurisdiction is specified in the application for the compliance certificate as the nominated jurisdiction under section 2.2.5 (2).
- (2) A person for whom a compliance certificate has been issued may appeal to the Supreme Court of this jurisdiction against the revocation of the compliance certificate, where this jurisdiction is specified in the compliance certificate as the nominated jurisdiction under section 2.2.5 (2).
- (3) A foreign lawyer for whom a compliance certificate has been issued recommending that the foreign lawyer be admitted subject to any conditions referred to in section 2.2.6 (1) may appeal to the Supreme Court of this jurisdiction against the recommendation, where this jurisdiction is specified in the compliance certificate as the nominated jurisdiction under section 2.2.5 (2).
- (4) The Supreme Court may make any order it considers appropriate on an appeal under this section.

2.2.14 Right of appeal about early assessment

- (1) An applicant for a declaration of early assessment of suitability for a compliance certificate may appeal to the Supreme Court of this jurisdiction against the refusal of the Board to make the declaration, where this jurisdiction is specified in the application for declaration as the nominated jurisdiction under section 2.2.7 (2).
- (2) The Supreme Court may make any order it considers appropriate on the appeal, including without limitation a declaration of early assessment of suitability for a compliance certificate.
- (3) A declaration made under this section is binding on the Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

2.2.15 Provisions relating to appeals

- (1) An appeal under this Division is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the Board may be given on the appeal. The decision of the Supreme Court is taken to be a decision of the Board.
- (2) On an appeal under this section, the Supreme Court may make an order as to costs as it thinks fit, other than an order against the Board in favour of an applicant where the appeal was not successful.

Division 4 Miscellaneous

2.2.16 Notification of information to Board

- (1) The Supreme Court of this jurisdiction must ensure that the name and other relevant particulars of:
 - (a) a person admitted by the Court; or
 - (b) a person whose name is removed by the Court from the Supreme Court roll

Section 2.2.17

for this jurisdiction;

are provided to the Board as soon as practicable for the purposes of maintaining the Australian Legal Profession Register.

- (2) The Supreme Court must ensure that the name and other relevant particulars of a person for whom the Court has refused admission, together with a statement of its reasons for refusal, are provided to the Board as soon as practicable.

2.2.17 National Rules for admission

- (1) The National Rules may make provision with respect to any aspect of admission.
- (2) Without limitation, the National Rules may make provision with respect to the following:
 - (a) the prerequisites for the issue of a compliance certificate, as referred to in section 2.2.3;
 - (b) the making and assessment of applications for compliance certificates and the fee to accompany an application;
 - (c) the issue of compliance certificates;
 - (d) conditions on admission that may be applied in the case of foreign lawyers.
- (3) The National Rules may require the disclosure of matters that may affect consideration of the suitability of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed.

Chapter 3 Legal practice

Part 3.1 Introduction

3.1.1 Objectives

The objectives of this Chapter are:

- (a) to enable the provision of legal services through a range of business structures; and
- (b) to ensure that any particular type of business structure does not hinder a law practice and the legal practitioners within it from complying with this Law, the National Rules and the other professional obligations of Australian legal practitioners; and
- (c) to ensure that clients of law practices are adequately protected regardless of the business structure through which a law practice provides legal services; and
- (d) to regulate the provision of legal services through community legal services.

Part 3.2 Law practices—general provisions

3.2.1 Business structures

Legal services may be provided under any business structure, subject to the provisions of this Law and the National Rules.

3.2.2 Obligations not affected by nature of business structures

- (1) An Australian legal practitioner must comply with this Law, the National Rules and his or her other professional obligations, regardless of the business structure in which or in connection with which the practitioner provides legal services.
- (2) A law practice must comply with this Law, the National Rules and its other professional obligations, regardless of the business structure in which or in connection with which the law practice provides legal services.

3.2.3 Relationship of Law to legislation establishing legal practice

- (1) This section applies to an entity that is established by or under a law (whether or not of this jurisdiction) with power to engage in legal practice, but is not a company within the meaning of the Corporations Act.
- (2) The provisions of this Law or the National Rules that apply to a law practice prevail, to the extent of any inconsistency, over provisions of the legislation by or under which the entity is established or regulated that are specified or described in the National Rules.

3.2.4 Responsibilities of principals

- (1) Each principal of a law practice is responsible for ensuring that reasonable steps are taken to ensure that:

Section 3.2.5

- (a) all legal practitioner associates of the law practice comply with their obligations under this Law and the National Rules and their other professional obligations; and
 - (b) the legal services provided by the law practice are provided in accordance with this Law, the National Rules and other professional obligations.
- (2) A failure to uphold that responsibility is capable of constituting unsatisfactory professional conduct or professional misconduct.

3.2.5 Liability of principals

- (1) If a law practice contravenes any provision of this Law or the National Rules imposing an obligation on the law practice, each principal of the law practice is taken to have contravened the same provision, unless the principal establishes that:
- (a) the law practice contravened the provision without the actual, imputed or constructive knowledge of the principal; or
 - (b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision and it was reasonable for the principal not to be in that position; or
 - (c) the principal, if in the position referred to in paragraph (b), used all due diligence to prevent the contravention by the law practice.
- (2) A contravention of a requirement imposed on a law practice by this Law or the National Rules is capable of constituting unsatisfactory professional conduct or professional misconduct by each principal of the law practice.
- (3) Neither subsection (1) nor (2) affects any liability of the law practice or any other person for the contravention.

3.2.6 Discharge by legal practitioner associate of obligations of law practice

- (1) A legal practitioner associate of a law practice may, on behalf of the law practice, discharge any obligations of the law practice under this Law or the National Rules.
- (2) For the purposes of subsection (1), the relevant provisions of this Law and the National Rules apply to the associate in the same way as they apply to the law practice.
- (3) Subsection (1) does not apply to the extent that the associate is prevented by the National Rules from taking an action referred to in that subsection.
- (4) This section does not affect any liability of a principal of the law practice.

3.2.7 Involvement of practitioners

- (1) Subject to the conditions of his or her Australian practising certificate, an Australian legal practitioner is not prevented from being a partner, director, officer or employee of a law practice merely because of one or more of the following:
- (a) the business of the law practice includes the provision of both legal services and other services;

Section 3.2.8

- (b) one or more other persons who are not Australian legal practitioners are officers, partners or employees of the law practice;
 - (c) the practitioner shares receipts, revenue or other income from the provision of his or her legal services with the law practice or one or more persons who are referred to in paragraph (b).
- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 3.9.3 (2).

3.2.8 Privileges of practitioners

- (1) An Australian legal practitioner who provides legal services in the capacity of an officer, director, partner or employee of a law practice, or in the capacity of a corporate legal practitioner or government legal practitioner, does not lose the professional privileges of an Australian legal practitioner.
- (2) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer, director, partner or employee of a law practice or in the capacity of a corporate legal practitioner or government legal practitioner.

3.2.9 Undue influence

A person must not cause or induce or attempt to cause or induce a law practice or a legal practitioner associate of a law practice to contravene this Law, the National Rules or other professional obligations.

Maximum criminal penalty: 100 penalty units.

3.2.10 National Rules

The National Rules may make provision with respect to any matter referred to in this Part.

Part 3.3 Australian legal practitioners

Division 1 Introduction

3.3.1 Objectives

The objectives of this Part are:

- (a) to provide a system for the grant and renewal of Australian practising certificates to eligible and suitable persons who are already admitted to the Australian legal profession in any jurisdiction; and
- (b) to facilitate the national practice of law by ensuring that Australian legal practitioners can engage in legal practice regardless of their home jurisdiction.

Note. The grant of practising certificates to New Zealand lawyers and their entitlement to practise in this jurisdiction are effected by the operation of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Section 3.3.2

Division 2 Australian practising certificates

3.3.2 Entitlement to practise

- (1) An Australian legal practitioner is entitled to engage in legal practice in this jurisdiction.
- (2) That entitlement is subject to any requirements of this Law and the National Rules and the conditions of the practitioner's Australian practising certificate.

3.3.3 Grant or renewal of Australian practising certificates

- (1) The Board may, on application, grant or renew an Australian practising certificate in respect of a financial year.
- (2) An Australian practising certificate is subject to conditions imposed by or under this Law or the National Rules.
- (3) An Australian practising certificate ceases to be in force if the holder ceases to be an Australian lawyer.
- (4) The application must be made in this jurisdiction if the applicant reasonably intends that this jurisdiction will be his or her principal place of practice during the currency of the certificate or renewal applied for.
- (5) The National Rules may specify the jurisdiction in which the application must be made if the applicant does not reasonably intend to engage in legal practice in Australia during the currency of the certificate or renewal applied for.

3.3.4 Prerequisites for grant or renewal of Australian practising certificates

- (1) The Board may grant or renew an Australian practising certificate only if it is satisfied that the applicant:
 - (a) is an Australian lawyer; and
 - (b) if required by this Law to have professional indemnity insurance—has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with this Law and the National Rules.
- (2) Subject to subsection (4), the Board must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate.
- (3) In considering whether a person is or is not a fit and proper person to hold an Australian practising certificate, the Board may have regard to the matters specified in the National Rules for the purposes of this section.
- (4) A person may be considered a fit and proper person to hold an Australian practising certificate even though the person does not satisfy the requirements for a matter to which the Board may have regard, if the Board is satisfied that this action is warranted in the circumstances.

Note. A person who has been refused the grant or renewal of a certificate becomes a disqualified person.

3.3.5 Notification of principal place of legal practice

- (1) If an Australian lawyer reasonably intends that this jurisdiction will be his or her

Section 3.3.6

principal place of practice, he or she must notify the Board of that intention:

- (a) on application for the grant or renewal of an Australian practising certificate; and
 - (b) except if section 3.3.6 applies to the lawyer—within 14 days after his or her principal place of legal practice changes, if that change coincides with the move to this jurisdiction from another jurisdiction of the permanent office in or through which the lawyer engages in legal practice.
- (2) The notification must be given to the local representative of the Board for this jurisdiction.
 - (3) The Board may reject the notification if it considers that it is reasonably likely that another jurisdiction will be the Australian lawyer's principal place of practice.

3.3.6 Notification of home jurisdiction by barrister when moving from fused to non-fused jurisdiction

- (1) This section applies if:
 - (a) this jurisdiction is a non-fused jurisdiction; and
 - (b) an Australian lawyer who is a barrister proposes to move his or her permanent office in or through which he or she engages in legal practice from a fused jurisdiction to this jurisdiction; and
 - (c) the lawyer proposes to engage in legal practice in this jurisdiction as or in the manner of a barrister only.
- (2) The barrister must notify the Board of his or her proposed move to this jurisdiction by giving the notification to the local representatives of the Board for both the fused jurisdiction and this jurisdiction.
- (3) Until the Board endorses the notification under subsection (4), the barrister must not move his or her permanent office in or through which he or she engages in legal practice to this jurisdiction.
- (4) The Board may endorse the notification, but must not do so unless the Board has consulted the professional association for barristers in this jurisdiction about whether or not the barrister satisfies the relevant requirements for engaging in legal practice in this jurisdiction as or in the manner of a barrister only.
- (5) Nothing in this section prevents the barrister from engaging in legal practice in this jurisdiction if he or she is otherwise entitled to do so.

Division 3 Conditions of Australian practising certificates

3.3.7 Conditions—categories of practice and trust money

- (1) An Australian practising certificate is subject to the condition, as determined by the Board, that the holder is authorised to engage in legal practice:
 - (a) in one or more of the following categories:
 - (i) as a principal of a law practice;
 - (ii) as an employee of a law practice;

Section 3.3.8

- (iii) as a corporate legal practitioner;
 - (iv) as a government legal practitioner; or
 - (b) as or in the manner of a barrister only; or
 - (c) as a volunteer at a community legal service, or otherwise on a pro bono basis, only.
- (2) An Australian practising certificate is subject to a condition, as determined by the Board, that the holder is authorised or not authorised to receive trust money.
- (3) An Australian practising certificate authorising the holder to engage in legal practice as a principal also authorises the holder to engage in legal practice as an employee of a law practice or a corporate legal practitioner or government legal practitioner.
- (4) Until the Australian practising certificate concerned is renewed and subject to any relevant conditions:
- (a) an Australian practising certificate authorising the holder to engage in legal practice as an employee of a law practice also authorises the holder to engage in legal practice as a corporate legal practitioner or government legal practitioner; and
 - (b) an Australian practising certificate authorising the holder to engage in legal practice as a corporate legal practitioner also authorises the holder to engage in legal practice as a government legal practitioner; and
 - (c) an Australian practising certificate authorising the holder to engage in legal practice as a government legal practitioner also authorises the holder to engage in legal practice as a corporate legal practitioner.
- (5) An Australian practising certificate also authorises the holder to provide legal services as a volunteer at a community legal service, or otherwise on a pro bono basis. This does not apply to the extent that the certificate is subject to a discretionary condition that specifically prohibits, restricts or regulates the provision of legal services at community legal services or otherwise on a pro bono basis.
- (6) An Australian practising certificate also authorises the holder to supervise legal practice by others. This does not apply:
- (a) if the certificate is subject to a statutory or discretionary condition that the holder must engage in supervised legal practice only; or
 - (b) to the extent that the certificate is subject to a discretionary condition to the effect that the holder may not supervise legal practice by others.

Note. Section 4.4.3 provides that an Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by a complying policy of professional indemnity insurance.

3.3.8 Statutory conditions—to comply with admission conditions and to hold only one practising certificate

- (1) It is a statutory condition of an Australian practising certificate that the holder must not contravene a condition that was imposed on the admission of the person to the Australian legal profession (including that condition as varied after

Section 3.3.9

admission) and that is still in force.

- (2) It is a statutory condition of an Australian practising certificate that the holder must not apply for or hold another Australian practising certificate that would be in force concurrently with the first certificate.

3.3.9 Statutory condition—to engage in supervised legal practice

- (1) It is a statutory condition of an Australian practising certificate that the holder must engage in supervised legal practice only, until:
 - (a) if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission to the Australian legal profession—a period or periods equivalent to 18 months of supervised legal practice; or
 - (b) if the holder completed other practical legal training to qualify for admission to the Australian legal profession—a period or periods equivalent to 2 years of supervised legal practice.
- (2) The National Rules may specify the method or a method of determining any such period or periods.
- (3) The statutory condition does not apply to an Australian practising certificate with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only.
- (4) The Board may:
 - (a) exempt a person or class of persons from the statutory condition; or
 - (b) reduce a period referred to in the statutory condition for a person or class of persons;

if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to the length and nature of any legal practice previously engaged in by the person or persons.

- (5) The exemption may be given unconditionally or subject to such conditions as the Board thinks appropriate.

3.3.10 Statutory condition—barrister to undertake reading program

- (1) It is a statutory condition of an Australian practising certificate with a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only that the holder must:
 - (a) undertake and complete to the satisfaction of the Board a reading program (whether full-time or otherwise) specified in the National Rules or otherwise approved by the Board; and
 - (b) read for a period specified in the National Rules or otherwise approved by the Board with a barrister (the *supervising barrister*) who is:
 - (i) of a class or description specified in the National Rules or otherwise approved by the Board; and
 - (ii) chosen by the holder; and
 - (c) comply with such requirements specified in the National Rules or otherwise approved by the Board as will enable the supervising barrister, at

Section 3.3.11

the end of that period, to certify to the Board that the holder is fit to practise as or in the manner of a barrister without restriction.

- (2) The Board may impose a discretionary condition limiting the practising rights of a barrister referred to in subsection (1) until the statutory condition is complied with.
- (3) The statutory condition, once satisfied, does not have to be complied with again unless the Board otherwise directs.
- (4) The Board may exempt a person or class of persons from the statutory condition.
- (5) The exemption may be given unconditionally or subject to such conditions as the Board thinks appropriate.

3.3.11 Statutory condition—to notify certain events

- (1) It is a statutory condition of an Australian practising certificate that the holder must notify the Board in writing within 7 days that:
 - (a) the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the National Rules for the purposes of this section; or
 - (b) a bankruptcy-related event has occurred in relation to the holder; or
 - (c) the holder has become the subject of disciplinary proceedings as a lawyer in a foreign country.
- (2) The National Rules may specify circumstances in which a notice need not be given under subsection (1).
- (3) Subsection (1) does not apply to an offence to which section 3.5.14 applies.

Note. Section 3.5.16 provides notification procedures for the automatic show cause events for holders of Australian practising certificates.

3.3.12 Statutory condition—continuing professional development

It is a statutory condition of an Australian practising certificate that the holder must comply with the applicable requirements of the Continuing Professional Development Rules.

3.3.13 Discretionary conditions

- (1) The Board may impose discretionary conditions on an Australian practising certificate in accordance with the National Rules, but those conditions must be of a kind permitted by this Law or specified or described in the National Rules for the purposes of this section.
- (2) Discretionary conditions may be imposed on an Australian practising certificate at its grant or renewal or during its currency and must be reasonable and relevant.

3.3.14 Compliance with conditions

The holder of an Australian practising certificate must comply with the conditions of the certificate.

Maximum civil penalty: 100 penalty units.

Division 4 Miscellaneous

3.3.15 Physical alteration or substitution of varied certificate

The Board may physically alter a certificate, or issue a substitute certificate, to reflect a variation of the certificate under this Law, but the operation of the variation is not affected if the Board does neither.

3.3.16 National Rules for Australian practising certificates and associated matters

The National Rules may make provision with respect to the following:

- (a) any aspect of Australian practising certificates, including their grant and renewal and the imposition of conditions including conditions restricting practising entitlements;
- (b) without limiting paragraph (a):
 - (i) applications for the grant or renewal of Australian practising certificates, including the disclosure of matters relevant to an applicant's eligibility and suitability; and
 - (ii) the refusal of applications for the grant or renewal of Australian practising certificates; and
 - (iii) fees for the grant or renewal of Australian practising certificates.

Note. Fees for Australian practising certificates may be fixed by or under jurisdictional legislation.

Part 3.4 Foreign lawyers

Division 1 Introduction

3.4.1 Objective

The objective of this Part is to encourage and facilitate the internationalisation of legal services by providing a framework for the regulation of the practice of foreign law in Australia by foreign lawyers as a recognised aspect of legal practice in Australia.

3.4.2 This Part does not apply to Australian legal practitioners

This Part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also a foreign lawyer), except as expressly provided.

Division 2 Limited practice without registration

3.4.3 Practice of foreign law without registration but for limited periods

- (1) A foreign lawyer may, subject to this Law, practise foreign law in this jurisdiction without having to hold a current Australian registration certificate:
 - (a) during one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or

Section 3.4.4

- (b) during any period during which any restriction under the *Migration Act 1958* of the Commonwealth has the effect of limiting the period during which work may be done, or business transacted, by the foreign lawyer in Australia.
- (2) Subsection (1) does not apply to a foreign lawyer:
- (a) who maintains an office in this jurisdiction for the purpose of practising foreign law in Australia; or
 - (b) who is a partner, director or other principal of a law practice in this jurisdiction; or
 - (c) whose Australian registration certificate has been cancelled and he or she has not subsequently been granted an Australian registration certificate; or
 - (d) while his or her Australian registration certificate is suspended.
- (3) A foreign lawyer who does not hold a current Australian registration certificate must not:
- (a) maintain an office in this jurisdiction for the purpose of practising foreign law in this jurisdiction; or
 - (b) practise foreign law in this jurisdiction as a partner, director or other principal of a law practice .

Maximum criminal penalty: 250 penalty units.

Division 3 Registration

3.4.4 Entitlement to practise

- (1) An Australian-registered foreign lawyer is entitled to practise foreign law in this jurisdiction.
- (2) That entitlement is subject to any requirements of this Law and the National Rules and the conditions of the lawyer's Australian registration certificate.

3.4.5 Grant or renewal of Australian registration certificates

- (1) The Board may, on application, grant or renew an Australian registration certificate in respect of a financial year.
- (2) An Australian registration certificate is subject to conditions imposed by or under this Law or the National Rules.
- (3) The Board must grant an Australian registration certificate to a person applying for it if the Board is satisfied that:
 - (a) the person is an individual aged 18 years or over; and
 - (b) the person is registered or authorised to engage in legal practice in one or more foreign countries with an effective system of legal practice regulation and is not an Australian legal practitioner; and
 - (c) the person demonstrates an intention to engage in legal practice in Australia within a reasonable period after registration; and
 - (d) the person is not subject to any special conditions or undertakings concerning his or her engagement in legal practice as a result of criminal,

Section 3.4.6

- civil or disciplinary proceedings in Australia or a foreign country that would make registration inappropriate; and
- (e) the person is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as:
 - (i) a foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian lawyer; and
 - (f) the person's registration or authorisation is not cancelled or currently suspended in any place as a result of disciplinary action; and
 - (g) the person is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place as a result of criminal, civil or disciplinary proceedings in any place; and
 - (h) the person satisfies any other requirements of the National Rules.
- (4) The Board may refuse to grant or renew an Australian registration certificate on any ground specified in the National Rules for the purposes of this section.
- (5) Residence or domicile in Australia is not a prerequisite for or a factor in entitlement to the grant or renewal of an Australian registration certificate.
- (6) The Board:
- (a) may make such enquiries as it thinks fit of any foreign registration authority for the purposes of determining whether to be satisfied as to the matters referred to in subsection (3); and
 - (b) may consider any other matters, not inconsistent with this Law, that the Board considers relevant.
- (7) A foreign lawyer is registered as a foreign lawyer on being granted an Australian registration certificate, and ceases to be registered when the foreign lawyer no longer holds an Australian registration certificate.

Note. A person who is granted an Australian registration certificate becomes an Australian-registered foreign lawyer.

3.4.6 Notification of principal place of legal practice

- (1) If an applicant for or holder of an Australian registration certificate reasonably intends that this jurisdiction will be his or her principal place of practice, he or she must notify the Board of that intention:
 - (a) on application for the grant or renewal of an Australian registration certificate; and
 - (b) within 14 days after his or her principal place of legal practice changes, if that change coincides with the move to this jurisdiction from another jurisdiction of the permanent office in or through which the holder engages in legal practice.
- (2) The Board may reject the notification if it considers that it is reasonably likely that another jurisdiction will be the person's principal place of practice.

Section 3.4.7

Division 4 Conditions of Australian registration certificates

3.4.7 Conditions—trust money

An Australian registration certificate is subject to a condition, as determined by the Board, that the holder is authorised or not authorised to receive trust money.

3.4.8 Statutory condition—to hold only one Australian registration certificate

It is a statutory condition of an Australian registration certificate that the holder must not apply for or hold another Australian registration certificate that would be in force concurrently with the first certificate.

3.4.9 Statutory condition—to notify certain events

- (1) It is a statutory condition of an Australian registration certificate that the holder must notify the Board in writing within 7 days that:
 - (a) the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the National Rules for the purposes of this section; or
 - (b) a bankruptcy-related event has occurred in relation to the holder; or
 - (c) the holder is the subject of disciplinary proceedings, or other disciplinary action, as a lawyer in a foreign country.
- (2) The National Rules may specify circumstances in which notification is not required.

3.4.10 Discretionary conditions

- (1) The Board may impose discretionary conditions on an Australian registration certificate in accordance with the National Rules, but those conditions must be of a kind specified or described in the National Rules for the purposes of this section.
- (2) Discretionary conditions may be imposed on an Australian registration certificate at its grant or renewal or during its currency and must be reasonable and relevant.
- (3) Without limitation, a discretionary condition may require the holder to engage in the practice of foreign law under specified supervision or restrict the foreign lawyer's practising entitlements.
- (4) The Board must include details of discretionary conditions imposed on a foreign lawyer's Australian registration certificate in the Australian Legal Profession Register.

3.4.11 Compliance with conditions

The holder of an Australian registration certificate must comply with the conditions of the certificate.

Division 5 Scope and form of practice

3.4.12 Scope of practice

- (1) This section applies to:

Section 3.4.14

- (a) a foreign lawyer who is practising foreign law under Division 2; or
 - (b) an Australian-registered foreign lawyer.
- (2) The foreign lawyer may provide only the following legal services in Australia:
- (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered or authorised by the foreign registration authority for the country;
 - (b) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is considered by the Board to be essential;
 - (c) legal services in relation to arbitration proceedings or conciliation, mediation and other forms of consensual dispute resolution;
 - (d) legal services of a kind specified in the National Rules for the purposes of this section.
- (3) Nothing in this Law authorises the foreign lawyer:
- (a) to practise Australian law in Australia; or
 - (b) to appear in any court, except on the lawyer's own behalf or as permitted by the National Rules.
- (4) Despite subsection (3), the foreign lawyer may advise on the effect of an Australian law if:
- (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
 - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

3.4.13 Form of practice

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's Australian registration certificate) practise foreign law:
- (a) on the foreign lawyer's own account; or
 - (b) as a partner in a law firm; or
 - (c) as a volunteer at a community legal service or otherwise on a pro bono basis; or
 - (d) as a partner, director, officer or employee of an incorporated legal practice or unincorporated legal practice; or
 - (e) as an employee of a law practice; or
 - (f) as an employee of an Australian-registered foreign lawyer.
- (2) This section does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

Division 6 Miscellaneous

3.4.14 National Rules for foreign lawyers

The National Rules may make provision with respect to the following:

- (a) any aspect of Australian registration certificates, including their grant and renewal and the imposition of conditions including conditions restricting practising entitlements;
- (b) without limiting paragraph (a):
 - (i) applications for the grant or renewal of Australian registration certificates, including the disclosure of matters relevant to an applicant's eligibility and suitability for the grant or renewal of Australian registration certificates; and
 - (ii) the refusal of applications for Australian registration certificates; and
 - (iii) fees for the grant or renewal of Australian registration certificates; and
 - (iv) the imposition of conditions on Australian registration certificates;
- (c) the conduct of the practice of foreign law in Australia by foreign lawyers.

Part 3.5 Refusal, variation, suspension and cancellation of certificates

Division 1 Introduction

3.5.1 Objectives

The objectives of this Part are:

- (a) to provide procedures for the variation, suspension or cancellation of Australian practising certificates and Australian registration certificates; and
- (b) to provide show cause procedures for certain events or matters relating to the grant, renewal or continued holding of Australian practising certificates and Australian registration certificates.

Note. The refusal, suspension or cancellation of a person's Australian practising certificate results in the person becoming a disqualified person.

3.5.2 References to certificate

The term *certificate* in this Part refers to an Australian practising certificate or an Australian registration certificate.

Section 3.5.3

Division 2 Variation, suspension or cancellation of certificates

3.5.3 Variation, suspension or cancellation for minor matters, or at request or with concurrence

- (1) The Board may vary a certificate for a formal or clerical reason or in another way that does not adversely affect the holder's interests.
- (2) The Board may vary, suspend or cancel a certificate at the request of or with the concurrence of the holder.

3.5.4 Variation, suspension or cancellation at direction of tribunal

The Board must vary, suspend or cancel a certificate at the direction of the designated tribunal under section 5.4.8.

3.5.5 Variation, suspension or cancellation under Division 3 or 4

The Board may vary, suspend or cancel a certificate in accordance with:

- (a) Division 3 on a ground referred to in that Division; or
- (b) Division 4 in relation to an automatic show cause event or a designated show cause event.

3.5.6 Immediate variation or suspension before or during consideration of proposed action

- (1) This section applies if the Board is considering whether to start, continue or complete action under this Part in relation to a certificate and the Board considers it necessary in the public interest to vary or suspend the certificate immediately.
- (2) The Board may immediately vary or suspend the certificate, by written notice given to the holder, until the earlier of the following:
 - (a) the time at which the Board informs the holder of the Board's decision under this Part;
 - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The holder may make written representations to the Board about the variation or suspension, and the Board must consider the representations.
- (4) The Board may at any time revoke a condition imposed by the variation under this section, whether or not in response to any written representations made to it by the holder.

3.5.7 Lifting of suspension and renewal during suspension

- (1) The Board may lift the suspension of a certificate imposed under this Part at any time, whether or not in response to any written representations made to it by the holder, but must not do so inconsistently with an order of the designated tribunal in a case where the suspension was imposed at the direction of the designated tribunal.
- (2) The Board may renew a certificate while it is suspended under this Part if the end of the period of its currency is imminent, but the renewed certificate remains

Section 3.5.8

suspended until it is cancelled or the suspension is lifted.

3.5.8 Matters involving convictions

- (1) If a certificate is varied, suspended or cancelled under this Part because the holder has been convicted of an offence, the Supreme Court may, on the application of the holder, order that decision be stayed until:
- (a) the end of the time to appeal against the conviction; and
 - (b) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends.

The variation, suspension or cancellation does not have effect during any period in respect of which the stay is in force.

- (2) If a certificate is varied, suspended or cancelled under this Part because the holder has been convicted of an offence and the conviction is quashed:
- (a) the variation or suspension ceases to have effect when the conviction is quashed; or
 - (b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had merely been suspended.

3.5.9 Notice to be given

The Board must give written notice of any variation, suspension or cancellation of a certificate to the holder or former holder, except where he or she has died.

Division 3 Variation, suspension or cancellation on specific grounds

3.5.10 Grounds for action under this Division

- (1) The Board may vary, suspend or cancel a certificate under this Division on the ground that:
- (a) the holder has contravened a condition of the certificate; or
 - (b) the holder has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the holder in connection with this Chapter or has committed an offence under Chapter 7 in connection with any such investigation; or
 - (c) the Commissioner has made a recommendation to that effect under section 5.2.14; or
 - (d) the designated tribunal has made a recommendation to that effect under section 5.4.8; or
 - (e) in the case of an Australian practising certificate—the Board reasonably believes that the holder is unable to fulfil the inherent requirements of an Australian legal practitioner.

Note. Section 4.5.9 empowers the Board to suspend an Australian practising certificate or Australian registration certificate for failure to pay an annual contribution or a levy.

Section 3.5.11

- (2) The Board may vary or suspend a certificate under this Division (if it considers it appropriate to do so having regard to the seriousness of the offence concerned and to the public interest) on the ground that the holder has been charged with a serious offence, a tax offence or an offence specified in the National Rules for the purposes of this section and:
 - (a) the charge has not been determined; or
 - (b) the holder has been convicted of the offence but proceedings taken or likely to be taken before the designated tribunal in relation to the offence have not been concluded.
- (3) The variation or suspension referred to in subsection (2) has effect until the earliest of the following occurs:
 - (a) the Board revokes it;
 - (b) the end of the period specified by the Board;
 - (c) if the holder is convicted of the offence—28 days after the day of the conviction;
 - (d) if the charge is dismissed—the day of the dismissal.
- (4) Without limiting the powers of either national authority, the Commissioner may recommend to the Board that it consider whether the holder of an Australian practising certificate is, or may be, unable to fulfil the inherent requirements of an Australian legal practitioner (as referred to in subsection (1) (e)).

3.5.11 Board to give notice before acting under this Division

If the Board considers that a certificate should be varied, suspended or cancelled on a ground specified in section 3.5.10, the Board must give the holder notice in writing:

- (a) stating that it proposes to take that action and the ground or grounds for the proposed action; and
- (b) if it proposes to vary or suspend the certificate, stating the proposed variation or period of suspension, as the cases requires; and
- (c) inviting the holder to respond in writing to the Board within a specified period (not being less than 7 days nor more than 28 days after the notice is given) as to why the proposed action should not be taken.

3.5.12 Action taken after giving notice

If the Board:

- (a) has given notice under section 3.5.11 to the holder of a certificate of its proposed action; and
 - (b) the time specified in the notice for a response from the holder has expired;
- the Board may, after considering any response made by the holder, by notice in writing given to the holder, take the proposed action or, alternatively (if the proposed action was cancellation) suspend the certificate for a period specified in the notice.

Division 4 Show cause procedure for refusal, variation, suspension or cancellation of certificates

Subdivision 1 Preliminary

3.5.13 Show cause events

Show cause events are of two kinds, as follows:

- (a) automatic show cause events;
- (b) designated show cause events.

Subdivision 2 Automatic show cause events

3.5.14 Nature of automatic show cause events

An *automatic show cause event* is an event that occurred in relation to a person who is an applicant for or the holder of a certificate and that is one of the following:

- (a) a bankruptcy-related event;
- (b) his or her conviction for a serious offence or a tax offence, whether or not:
 - (i) the offence was committed while he or she was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer; or
 - (ii) other persons are prohibited from disclosing the identity of the offender;
- (c) an event of a kind specified in the National Rules for the purposes of this section.

3.5.15 Automatic show cause events—applicants

- (1) This section applies if an automatic show cause event has occurred at any time in relation to an applicant for the grant or renewal of a certificate.
- (2) As part of the application, the applicant must provide to the Board a statement:
 - (a) about the show cause event; and
 - (b) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a certificate.
- (3) However, the applicant need not provide a statement under subsection (2) if:
 - (a) the applicant (as a previous applicant for a compliance certificate) has previously provided to the Board adequate details of the show cause event; or
 - (b) the applicant (as a previous applicant for the grant or renewal of a certificate) has previously provided to the Board a statement under this Part explaining why, despite the show cause event, he or she considers himself or herself to be a fit and proper person to hold a certificate.

Section 3.5.16

3.5.16 Automatic show cause events—holders

- (1) This section applies to an automatic show cause event that occurs in relation to the holder of a certificate.
- (2) The holder must, in accordance with subsection (3), give the Board:
 - (a) a written notice stating that the show cause event occurred; and
 - (b) a written statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.
- (3) The holder must give the Board:
 - (a) the notice within 7 days after the show cause event occurred; and
 - (b) the statement within 28 days after the show cause event occurred or a longer period allowed by the Board (not exceeding the maximum period specified in the National Rules) on application made by the holder within the applicable period.
- (4) The Board may nevertheless accept a statement received out of time.

3.5.17 Automatic show cause events—action by Board

- (1) If the applicant or holder gives a statement required by this Subdivision, the Board must investigate and determine whether the person concerned is a fit and proper person to hold a certificate.
- (2) The Board may vary, suspend or cancel, or may refuse to renew, a certificate if the applicant or holder:
 - (a) fails to provide a statement as required by this Subdivision; or
 - (b) has provided a statement in accordance with this Subdivision but the Board does not consider that the applicant or holder has shown in the statement that, despite the show cause event, he or she is a fit and proper person to hold a certificate (or can be considered such a fit and proper person if the Board is satisfied that doing so is warranted in the circumstances); or
 - (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.
- (3) If the Board determines that the applicant or holder is such a fit and proper person (or can be considered such a fit and proper person if the Board is satisfied that doing so is warranted in the circumstances)—it must take no further action in relation to the show cause event but may impose a discretionary condition that it considers appropriate in the circumstances.
- (4) In investigating and determining a matter under this section, the Board:
 - (a) is not limited to investigating and making its determination on the basis of just the automatic show cause event concerned; and
 - (b) may have regard to the facts and circumstances that surround, arise in connection with, relate to or give rise to the automatic show cause event

concerned.

Subdivision 3 Designated show cause events

3.5.18 Nature of designated show cause events

A *designated show cause event* is service of a notice on a holder of a certificate:

- (a) alleging:
 - (i) in the case of a holder of an Australian practising certificate—that the holder has engaged in legal practice outside the terms of a condition restricting his or her practising entitlements; or
 - (ii) in the case of a holder of an Australian registration certificate—that the holder has provided legal services not permitted by or under this Law; or
 - (iii) in the case of a holder of an Australian practising certificate who is required to have professional indemnity insurance—that the holder does not have, or no longer has, professional indemnity insurance that complies with this Law in relation to the certificate; or
 - (iv) a matter of a kind specified in the National Rules for the purposes of this section; and
- (b) requiring the holder to provide a statement showing cause why the Board should not take action, specified in the notice, to vary, suspend or cancel the certificate.

3.5.19 Designated show cause events—holders

- (1) The holder of a certificate in relation to whom a designated show cause event occurs must, in accordance with subsection (2), give the Board a written statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.
- (2) The holder must give the Board the statement within 28 days after service of the notice of the designated show cause event or a longer period allowed by the Board (not exceeding the maximum period specified in the National Rules) on application made by the holder within that period of 28 days.
- (3) The Board may nevertheless accept a statement received out of time.

3.5.20 Designated show cause events—action by Board

- (1) If the holder provides a statement required by this Subdivision, the Board must investigate and determine whether the person concerned is a fit and proper person to hold a certificate.
- (2) The Board may vary, suspend or cancel, or may refuse to renew, a certificate if the holder:
 - (a) fails to provide a statement as required by this Subdivision; or
 - (b) has provided a statement in accordance with this Subdivision but the Board does not consider that the holder has shown in the statement that, despite the show cause event, he or she is a fit and proper person to hold a

Section 3.5.21

certificate (or can be considered such a fit and proper person if the Board is satisfied that doing so is warranted in the circumstances); or

- (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.

(3) If:

- (a) the Board determines that the person is such a fit and proper person (or can be considered such a fit and proper person if the Board is satisfied that doing so is warranted in the circumstances)—it must take no further action in relation to the show cause event but may impose a discretionary condition that it considers appropriate in the circumstances; or
- (b) the Board determines that the person is not such a fit and proper person (or cannot be so considered such a fit and proper person)—it may take the action specified in the notice referred to in section 3.5.18 or take less onerous action that the Board considers appropriate.

(4) In investigating and determining a matter under this section, the Board:

- (a) is not limited to investigating and making its determination on the basis of just the designated show cause event concerned; and
- (b) may have regard to the facts and circumstances that surround, arise in connection with, relate to or give rise to the designated show cause event concerned.

(5) The Board is not to deal with a matter under this section if the matter has previously been the subject of investigation and determination under this Law unless the Board is satisfied there are exceptional circumstances for doing so.

Division 5 Miscellaneous

3.5.21 Events or matters occurring before admission or registration

If an event or matter occurred before a person was first admitted to the Australian legal profession or first registered as a foreign lawyer, the Board may decide to take no action under this Part in connection with the event or matter if:

- (a) the person disclosed the event or matter to the Board in an application for a compliance certificate or for a declaration of early assessment of suitability for a compliance certificate or in his or her first application for an Australian registration certificate; or
- (b) the Board is satisfied there are exceptional circumstances for doing so.

3.5.22 Restriction on making further applications

- (1) If the Board refuses to grant or renew or cancels a certificate under this Part, the Board may also decide that the person concerned is not entitled to apply for a certificate for a specified period not exceeding 5 years.
- (2) That person is accordingly not entitled to apply for a certificate during that period.
- (3) The Board must give the person concerned written notice of the Board's decision

Section 3.5.25

under this section.

3.5.23 Consideration and investigation of applicants or holders

- (1) In considering whether or not to grant, renew, vary, suspend or cancel a certificate, the Board may, by notice to the applicant or holder, require the applicant or holder:
 - (a) to give it specified documents or information; or
 - (b) to be medically examined by a medical practitioner nominated by the Board; or
 - (c) to provide a report from a Commissioner of Police as to whether the applicant or holder has been convicted or found guilty of an offence in Australia; or
 - (d) to co-operate with any inquiries by the Board that it considers appropriate.
- (2) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the Board.

3.5.24 Deferral of action or temporary renewal for limited purposes

The Board may, at its discretion, for the purpose of enabling the proper arrangement of the affairs of the holder of a certificate who is the subject of action or proposed action under this Part, defer taking the action, or renew the certificate, for such period as the Board considers necessary to achieve that purpose.

3.5.25 Relationship of this Part with Chapter 5

- (1) Nothing in this Part prevents a matter to which this Part relates from being dealt with under Chapter 5, whether or not it is being, or has already been, dealt with under this Part.
- (2) Without limitation, a matter to which this Part relates may be made the subject of a complaint and dealt with under Chapter 5 even if adverse action has been taken under this Part against the Australian legal practitioner or Australian-registered foreign lawyer concerned.

3.5.26 National Rules

The National Rules may make provision with respect to the variation, suspension or cancellation of certificates, the show cause procedure under this Part and any other matter relating to this Part.

Part 3.6 Appeal or review about certificates

3.6.1 Objective

The objective of this Part is to provide a right to appeal against or to seek a review of certain decisions of the Board in relation to Australian practising certificates and Australian registration certificates.

3.6.2 Right of appeal or review about Australian practising certificates

- (1) An applicant for or the holder of an Australian practising certificate may, in

Section 3.6.2

accordance with applicable jurisdictional legislation, appeal to the designated tribunal of this jurisdiction against, or seek a review by that tribunal of, any of the following decisions of the Board under this Chapter made by a local representative of the Board for this jurisdiction:

- (a) a decision to refuse to grant or renew the Australian practising certificate;
 - (b) a decision to vary, suspend or cancel the Australian practising certificate or, without limitation, to impose a condition on the Australian practising certificate;
 - (c) a decision that a person is not entitled to apply for an Australian practising certificate for a specified period (see section 3.5.22).
- (2) An appeal or review under this section may be made to review the merits of the decision concerned.
- (3) The designated tribunal may make any order it considers appropriate on an appeal or review under this section, including any of the following orders:
- (a) an order directing the Board to grant, or to refuse to grant, an application for an Australian practising certificate;
 - (b) an order directing the Board to suspend for a specified period or cancel an Australian practising certificate, or to reinstate an Australian practising certificate that has been suspended or cancelled;
 - (c) an order that an applicant or holder is not entitled to apply for the grant of an Australian practising certificate for a specified period not exceeding 5 years;
 - (d) an order directing the Board to vary an Australian practising certificate in the manner specified by the designated tribunal.
- (4) Except to the extent (if any) that may be ordered by the designated tribunal, the lodging of an appeal or application for review under this section does not stay the effect of the refusal, variation, suspension or cancellation concerned.
- (5) The designated tribunal may not order the imposition of conditions on an Australian practising certificate without first taking submissions from the Board.
- (6) In proceedings on an appeal or review under this section, fresh evidence, or evidence in addition to or in substitution for matters considered by the Board, may be given.
- (7) In proceedings on an appeal or review under this section in which the question of whether a person is a fit and proper person to hold an Australian practising certificate is at issue:
- (a) the onus of establishing that a person is a fit and proper person to hold an Australian practising certificate is on the person asserting that fact; and
 - (b) it is to be presumed in the absence of evidence to the contrary that any statement of facts in the reasons of the Board for the decision concerned is a correct statement of the facts in the matter; and
 - (c) a document that appears to be a document issued for the purposes of or in connection with any application, proceedings or other matter arising under the Bankruptcy Act is admissible in the proceedings and is evidence of the

Section 3.6.3

matters stated in the document.

- (8) The Board is to give effect to any order of the designated tribunal under this section.

Note. Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

3.6.3 Right of appeal or review about Australian registration certificates

- (1) An applicant for or the holder of an Australian registration certificate whose home jurisdiction is this jurisdiction may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal of this jurisdiction against, or seek a review by that tribunal of, any of the following decisions of the Board under this Chapter:

- (a) a decision to refuse to grant or renew the Australian registration certificate;
- (b) a decision to vary, suspend or cancel the Australian registration certificate;
- (c) a decision that a person is not entitled to apply for an Australian registration certificate for a specified period (see section 3.5.22).

- (2) An appeal or review under this section may be made to review the merits of the decision concerned.

- (3) The designated tribunal may make any order it considers appropriate on the appeal or review.

- (4) Except to the extent (if any) that may be ordered by the designated tribunal, the lodging of an appeal or application for review does not stay the effect of the refusal, variation, suspension or cancellation concerned.

- (5) The designated tribunal may not order the imposition of conditions on an Australian registration certificate without first taking submissions from the Board.

- (6) In proceedings on an appeal or review under this section, fresh evidence, or evidence in addition to or in substitution for matters considered by the Board, may be given.

- (7) The Board is to give effect to any order of the designated tribunal under this section.

Note. Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

Part 3.7 Incorporated and unincorporated legal practices

Division 1 General

3.7.1 Application of this Division

This Division applies to a law practice that is an incorporated legal practice or an unincorporated legal practice.

Section 3.7.2

3.7.2 Services that may be provided

A law practice to which this Division applies is entitled to engage in legal practice in this jurisdiction, and may also provide other services.

3.7.3 Notice of intention to engage in or terminate legal practice

(1) If an entity intends to engage in legal practice in this jurisdiction as a law practice to which this Division applies, it must give the Board a notice of that intention within the period specified in the National Rules.

(2) An entity must not engage in legal practice in this jurisdiction as a law practice to which this Division applies if it has not given the Board the notice required under subsection (1).

Maximum civil penalty: 50 penalty units.

(3) If a law practice to which this Division applies ceases to engage in legal practice in this jurisdiction, it must give the Board a notice of that fact within the period specified in the National Rules.

Maximum civil penalty: 50 penalty units.

(4) The National Rules may make provision for determining whether and when an entity ceases to engage in legal practice in this jurisdiction.

(5) To be effective, a notice under this section must comply with and be given in accordance with the National Rules. In particular, the National Rules may:

- (a) specify the period within which a notice must be given; and
- (b) provide for a notice to be given on behalf of an entity.

(6) A notice given by an entity under subsection (1) operates until it gives notice under subsection (3).

3.7.4 Principals

A law practice to which this Division applies must have at least one authorised principal.

3.7.5 Law practice without principal

(1) A law practice to which this Division applies contravenes this section if it does not have any authorised principals for a period exceeding 7 days.

Maximum civil penalty: 50 penalty units.

(2) If a law practice to which this Division applies ceases to have any authorised principals, the law practice must notify the Board of that fact within 7 days.

Maximum civil penalty: 50 penalty units.

(3) A law practice to which this Division applies must not provide legal services in this jurisdiction during any period it is non-compliant with relevant requirements under this section.

Maximum criminal penalty: 250 penalty units.

(4) A law practice to which this Division applies that contravenes subsection (1) is taken to be non-compliant with relevant requirements under this section for the period from the end of the period of 7 days until it has at least one authorised

Section 3.7.6

principal.

- (5) The Board may, if it thinks it appropriate, appoint an Australian legal practitioner who is an employee of the law practice or another person nominated by the Board, in the absence of an authorised principal, to exercise the responsibilities of a principal under this Law.

Note. Section 3.2.4 provides for the responsibilities of each principal of a law practice.

- (6) An Australian legal practitioner is not eligible to be appointed under this section unless the practitioner is an authorised principal.
- (7) The appointment under this section of a person to exercise functions of an authorised principal does not, for any other purpose, confer or impose on the person any of the other functions of a principal of the law practice.
- (8) A law practice does not contravene subsection (1) during any period during which a person holds an appointment under this section in relation to the law practice.

3.7.6 Disclosure obligations

- (1) This section applies if a person engages a law practice to which this Division applies to provide services that the person might reasonably assume to be legal services and the law practice provides both legal services and other services.
- (2) The law practice must, in accordance with the National Rules, make a disclosure to the person informing the person:
- (a) whether the services are legal services; and
 - (b) of any other matters specified in the National Rules for the purposes of this section.
- (3) If a proper disclosure has not been made under this section, the standard of care owed by the law practice in respect of the service is the standard that would be applicable if the service were a legal service that had been provided by an Australian legal practitioner.

Division 2 Provisions applying to incorporated legal practices only

3.7.7 External administration proceedings under Corporations Act or other legislation

- (1) This section applies to:
- (a) proceedings in any court under Chapter 5 of the Corporations Act relating to a corporation that is or was an incorporated legal practice and that is or was in the process of becoming an externally-administered corporation under that Act; or
 - (b) proceedings in any court under other legislation for the external administration (however expressed) of an incorporated legal practice.
- (2) The Board or the Commissioner or both are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or

Section 3.7.8

affect the provision of legal services by the incorporated legal practice.

- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the law practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of:
 - (a) in relation to proceedings referred to in subsection (1) (a)—the Corporations Act; or
 - (b) in relation to proceedings referred to in subsection (1) (b)—any legislation applicable to the incorporated legal practice.
- (5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note. Section 5G of the Corporations Act provides that, if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

3.7.8 Incorporated legal practice that is subject to receivership under this Law and external administration under Corporations Act

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a National Law receiver; and
 - (b) the appointment of a Corporations Act administrator.
- (2) The National Law receiver is under a duty to notify the Corporations Act administrator of the appointment of the National Law receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) The National Law receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court of this jurisdiction for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except where proceedings referred to in section 3.7.10 have been commenced.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the National Law receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
- (5) The Board or the Commissioner or both are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.
- (7) In this section:

Section 3.7.9

Corporations Act administrator means:

- (a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or
- (b) a person who is appointed to exercise powers under that Act and who is specified, or of a class specified, in the National Rules for the purposes of this definition.

National Law receiver means a receiver appointed under Part 6.5.

3.7.9 Incorporated legal practice that is subject to receivership under this Law and external administration under other legislation

- (1) This section applies if an incorporated legal practice is the subject of both:
 - (a) the appointment of a National Law receiver; and
 - (b) the appointment of an external administrator.
- (2) The National Law receiver is under a duty to notify the external administrator of the appointment of the National Law receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.
- (3) The National Law receiver or the external administrator (or both of them jointly) may apply to the Supreme Court of this jurisdiction for the resolution of issues arising from or in connection with the dual appointments and their respective powers.
- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the National Law receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
- (5) The Board or the Commissioner or both are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) In this section:

external administrator means a person who is appointed to exercise powers under other legislation (whether or not of this jurisdiction) and who is specified, or of a class specified, in the National Rules for the purposes of this definition.

National Law receiver means a receiver appointed under Part 6.5.

3.7.10 Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):
 - (a) civil proceedings relating to a failure to account for, pay or deliver money or property received by, or entrusted to, the practice (or to any director, officer or employee of the practice) in the course of the provision of legal services by the practice, being money or property under the direct or indirect control of the practice;

Section 3.7.11

- (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by an Australian legal practitioner who is a director, officer or employee of the practice in connection with the provision of legal services to the client.
- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in those proceedings, but would be liable for those acts or omissions if the practice and those officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.

3.7.11 Relationship of Law to Corporations legislation

- (1) The National Rules may declare any provision of this Law or the National Rules that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.
- (2) The National Rules may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Law or the National Rules to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to:
 - (a) the whole of the Corporations legislation; or
 - (b) a specified provision of the Corporations legislation; or
 - (c) the Corporations legislation other than a specified provision; or
 - (d) the Corporations legislation otherwise than to a specified extent.
- (3) In this section, *matter* includes act, omission, body, person or thing.

Division 3 Miscellaneous

3.7.12 Approval of business structures

The Board may approve:

- (a) a corporation, or a kind of corporation, for the purposes of the definition of *incorporated legal practice* in section 1.2.1; or
- (b) an unincorporated body or group, or a kind of unincorporated body or group, for the purposes of the definition of *unincorporated legal practice* in section 1.2.1.

3.7.13 National Rules for incorporated and unincorporated legal practices

The National Rules may make provision with respect to any aspect of incorporated legal practices and unincorporated legal practices, so far as concerns the provision of legal services or matters that affect or may affect the provision of legal services.

Part 3.8 Community legal services

3.8.1 Status of community legal services

- (1) The status of a community legal service as a body established on a not-for-profit basis is not affected by any profit made by it so long as the income cannot or will

Section 3.8.2

not be distributed to any member or employee of the body otherwise than by way of reasonable remuneration under a contract of service or for services.

- (2) A community legal service may, subject to Part 4.3, recover legal costs incurred by it in respect of legal services that it provides.

Note. Legal practice at a community legal service is required to be covered by professional indemnity insurance, including legal services provided by a member or employee of the service or a volunteer at the service.

3.8.2 Supervising legal practitioner

- (1) A community legal service or its governing body is required to have at least one supervising legal practitioner who is employed or engaged by the service or is a member of its governing body.
- (2) A community legal service contravenes this section if it or its governing body does not have any supervising legal practitioners for a period exceeding 7 days.

Maximum criminal penalty: 250 penalty units.

Note. A supervising legal practitioner is a principal of the law practice.

3.8.3 National Rules for community legal services

The National Rules may make provision with respect to any aspect of community legal services, so far as concerns the provision of legal services or matters that affect or may affect the provision of legal services.

Part 3.9 Disqualifications

Division 1 Making of disqualification orders

3.9.1 Disqualification of individuals (other than practitioners)

- (1) The designated tribunal of this jurisdiction may, on the application of the Board or the Commissioner or both, make an order disqualifying a person who is an individual (other than an Australian legal practitioner) for the purposes of this Law, for a specified period or indefinitely, if satisfied that:
- (a) a ground for making the order under this section has been established (see subsection (2)); and
 - (b) the disqualification is justified.
- (2) Any of the following are grounds for disqualifying a person:
- (a) that the person has been convicted of a serious offence;
 - (b) that the person is not a fit and proper person to be employed or paid in connection with the practice of law or to be involved in the management of a law practice;
 - (c) that the person was formerly an Australian legal practitioner and has, when an Australian legal practitioner, been guilty of conduct that constituted unsatisfactory professional conduct or professional misconduct;
 - (d) that the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory

Section 3.9.2

professional conduct or professional misconduct;

- (e) that the person could be disqualified under sections 206C–206F of the Corporations Act from managing a law practice if the law practice were a corporation.
- (3) The designated tribunal, on application by the person and with the leave of the tribunal, or by the Board or the Commissioner or both, may vary or revoke an order if it considers it appropriate to do so.
- (4) An order made by the designated tribunal of another jurisdiction applies in relation to this jurisdiction in the same way as it applies in relation to that other jurisdiction and as if it had been made by the designated tribunal of this jurisdiction.

3.9.2 Disqualification of entities from providing legal services

- (1) The designated tribunal of this jurisdiction may, on the application of the Board or the Commissioner or both, make an order disqualifying an entity that is or was a law practice from providing all or specified legal services in this jurisdiction, for a specified period or indefinitely, if satisfied that:
 - (a) a ground for disqualifying the entity under this section has been established (see subsection (2)); and
 - (b) the disqualification is justified.
- (2) Any of the following are grounds for disqualifying an entity that is or was a law practice from providing legal services:
 - (a) that the law practice has contravened section 3.9.3;
 - (b) that the law practice has failed to comply with a management system direction under section 4.6.2;
 - (c) that the law practice (or a related corporation) has contravened section 4.6.3 or the National Rules made under that section;
 - (d) that a legal practitioner associate of the law practice has been found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction.
- (3) An order disqualifying an entity may, if the designated tribunal thinks it appropriate, be made:
 - (a) subject to conditions as to the conduct of the law practice; or
 - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
 - (c) together with orders to safeguard the interests of clients or employees of the law practice.
- (4) The designated tribunal, on application by the entity, or by the Board or the Commissioner or both, may vary or revoke an order if it considers it appropriate to do so.
- (5) An order made by the designated tribunal of another jurisdiction applies in relation to this jurisdiction in the same way as it applies in relation to that other jurisdiction and as if it had been made by the designated tribunal of this

Section 3.9.2

jurisdiction.

Division 2 Prohibitions and other provisions regarding disqualified persons and disqualified entities

3.9.3 Contravention by law practice—disqualified person as lay associate

- (1) A law practice contravenes this subsection if the law practice has a lay associate whom any principal or other legal practitioner associate of the law practice knows to be:

- (a) a disqualified person; or
- (b) a person who has been convicted of a serious offence;

unless the lay associate is approved by the Board under subsection (3).

Maximum criminal penalty: 100 penalty units.

- (2) A law practice contravenes this subsection if a person whom any principal or other legal practitioner associate of the law practice knows to be disqualified person shares the receipts, revenue or other income arising from the provision of legal services by the law practice, unless the lay associate is approved by the Board under subsection (3).

Maximum criminal penalty: 100 penalty units.

- (3) The Board may, on application, approve a person as a lay associate for the purposes of this section. An approval may be given generally, or for a particular position or category of positions with a particular law practice, or for a particular category of positions with any law practice.

- (4) In dealing with an application for approval of a person as a lay associate, the Board may consider any relevant matters and must consider the following matters so far as they are relevant:

- (a) the nature and circumstances of the person's disqualification or conviction;
- (b) the requirements and responsibilities of the arrangement or kind of arrangement under which the person is seeking to be employed or otherwise involved;
- (c) the degree of connection between the person's disqualification or conviction and the requirements and responsibilities of the arrangement or kind of arrangement.

- (5) An approval may be granted unconditionally or subject to specified conditions.

Note. The Board could consider a person's application for approval as a lay associate at the same time as it decides not to grant or renew, or decides to suspend or cancel, the person's Australian practising certificate.

3.9.4 Contravention by disqualified person

- (1) A person who:

- (a) is a disqualified person; or
- (b) has been convicted of a serious offence;

must not seek to become a lay associate of a law practice unless the person first

Section 3.9.6

informs the law practice of the disqualification or conviction.

Maximum civil penalty: 100 penalty units.

- (2) Proceedings for an offence under subsection (1) may only be brought within 6 months after discovery of the offence by the law practice.
- (3) Subsection (1) does not apply in circumstances specified in the National Rules for the purposes of this section.

3.9.5 Contravention by Australian legal practitioner

Conduct of an Australian legal practitioner who provides legal services on behalf of a disqualified entity in the capacity of an associate of the entity is capable of constituting unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the entity is a disqualified entity.

3.9.6 Disqualified entity ceases to be incorporated or unincorporated legal practice

If a disqualified entity is an incorporated legal practice or unincorporated legal practice immediately before an order is made under section 3.9.2, it ceases to be an incorporated legal practice or unincorporated legal practice.

3.9.7 Spent convictions

This Part has effect subject to any applicable jurisdictional legislation relating to spent convictions (however described).

Chapter 4 Business practice and professional conduct

Part 4.1 Introduction

4.1.1 Objectives

The objectives of this Chapter are:

- (a) to ensure appropriate safeguards are in place for maintaining the integrity of legal services; and
- (b) to apply those safeguards regardless of the type of business structure used for the delivery of legal services.

Part 4.2 Trust money and trust accounts

Division 1 Preliminary

4.2.1 Objective

The objective of this Part is to ensure that trust money is held by law practices in a manner that protects the interests of the persons for whom or on whose behalf it is held.

4.2.2 Definitions

- (1) In this Law:

authorised ADI means an ADI authorised to maintain trust accounts to hold trust money under section 4.2.25.

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

general trust account means an account maintained by a law practice with an authorised ADI for the holding of trust money, other than controlled money or transit money.

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

permanent form, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material.

transit money means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the law practice.

trust account means an account maintained by a law practice with an authorised ADI to hold trust money.

trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice for or on behalf of another person, but does not include trust money.

trust records includes the following documents:

Section 4.2.2

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

4.2.3 Meaning of trust money

- (1) For the purposes of this Law, *trust money* is money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes:
- (a) money received by the law practice on account of legal costs in advance of providing the services; and
 - (b) controlled money received by the law practice; and

Section 4.2.4

- (c) transit money received by the law practice; and
 - (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person.
- (2) However, **trust money** does not include:
- (a) money received and held by a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the legal services (and see section 4.2.8 (2)); or
 - (b) money entrusted to or held by a law practice for or in connection with:
 - (i) a managed investment scheme; or
 - (ii) mortgage financing;undertaken by the law practice; or
 - (c) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client; or
 - (d) money received by a law practice for or in connection with a financial service it provides in circumstances where the practice or an associate of the law practice:
 - (i) is required to hold an Australian financial services licence covering the provision of the service; or
 - (ii) provides the financial service as a representative of another person who carries on a financial services business; or
 - (e) money received by a law practice for investment purposes unless:
 - (i) the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client; and
 - (ii) the investment is or is to be made in the ordinary course of legal practice and for the ancillary purpose of maintaining or enhancing the value of the money or property; or
 - (f) money declared by the National Rules not to be trust money.

4.2.4 Application of Part to law practices and trust money

- (1) This Part applies to a law practice in respect of the following trust money received by it:
- (a) trust money received in this jurisdiction if the law practice has an office in this jurisdiction or has offices in no jurisdiction at all;
 - (b) trust money received in another jurisdiction if the law practice has an office in this jurisdiction and in no other jurisdiction;
 - (c) trust money received in another jurisdiction if:
 - (i) the law practice has offices in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the money was received; and

Section 4.2.5

- (ii) the law practice elects to have this Part apply to the money.
- (2) This Part applies to a law practice only in connection with legal services provided by the law practice.
- (3) The National Rules may provide that specified provisions of this Part:
 - (a) do not apply; or
 - (b) apply with specified modifications;to specified law practices or classes of law practices or to specified trust money or specified kinds of trust money, either generally or in specified circumstances or kinds of circumstances.
- (4) The Commissioner may exempt a particular law practice from complying with any of the provisions of this Part, subject to any conditions that the Commissioner may impose.
- (5) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

4.2.5 Australian registered foreign lawyers

The provisions of this Part and the National Rules apply to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners, subject to any modifications specified in the National Rules for the purposes of this section.

4.2.6 Former practices, principals and associates

This Part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.

4.2.7 Barristers not to receive trust money

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

4.2.8 Provisions relating to certain non-trust money

- (1) If a law practice receives or holds money from a client that is not trust money (other than for the payment of legal costs due to the law practice), it must give the person who provided the money written notice that:
 - (a) the money will not be treated as trust money; and
 - (b) the money is not subject to the provisions relating to trust money in this Law or the National Rules; and
 - (c) a claim against the fidelity fund of this jurisdiction cannot be made in respect of the money.

Maximum civil penalty: 100 penalty units.

- (2) A barrister must ensure that money received and held by a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the

Section 4.2.9

legal services is dealt with in accordance with the applicable requirements of the National Rules.

Maximum civil penalty: 50 penalty units.

Division 2 Trust money and trust accounts

4.2.9 Dealing with trust money

- (1) A law practice must deal with trust money in accordance with this Law and the National Rules and not otherwise.

Maximum civil penalty: 50 penalty units.

- (2) Trust money held by a law practice may be dealt with only by the law practice or an authorised associate of the law practice.

4.2.10 General trust account for one jurisdiction

- (1) Subject to section 4.2.11, a law practice that receives trust money to which this Part applies (other than controlled money or transit money received in a form other than cash) must maintain a general trust account in this jurisdiction.

Maximum civil penalty: 50 penalty units.

- (2) A law practice may maintain more than one general trust account in this jurisdiction unless the law practice has a single general trust account for more than one jurisdiction (see section 4.2.11).

4.2.11 General trust account for more than one jurisdiction

- (1) If a law practice engages in legal practice in more than one jurisdiction, it may choose to maintain a single general trust account in one of those jurisdictions only.
- (2) The jurisdiction chosen under subsection (1) must be:
 - (a) one in which the law practice maintains a permanent office; and
 - (b) the home jurisdiction of a principal of the law practice who holds an Australian practising certificate and whose practising certificate authorises the principal to receive trust money.
- (3) If a law practice proposes to operate a single general trust account under subsection (1), it must provide the Commissioner with at least 30 days' written notice.
- (4) The Commissioner may request additional information, and may refuse authority to operate a single general trust account under subsection (1) if the Commissioner reasonably believes that:
 - (a) the law practice is not genuinely operating in more than one jurisdiction; or
 - (b) the jurisdiction in which the law practice proposes to operate the single general trust account does not satisfy the requirements of subsection (2).
- (5) If a law practice operates a single general trust account for two or more jurisdictions including this jurisdiction, it must not also operate another general trust account in any jurisdiction.

Maximum civil penalty: 100 penalty units.

Section 4.2.12

4.2.12 Provisions applying when general trust account for more than one jurisdiction

- (1) This section applies if a law practice maintains in a jurisdiction a single general trust account in respect of two or more jurisdictions.
- (2) The law practice must:
 - (a) comply with the requirements of this Law and the National Rules in relation to receipts in the jurisdiction in which the money is received; and
 - (b) maintain its trust records in the jurisdiction in which the records are generated; and
 - (c) maintain a copy of its trust records in the jurisdiction in which the single general trust account is held.

Maximum civil penalty: 100 penalty units.

- (3) An external examination may be conducted in the jurisdiction in which the single general trust account is maintained in relation to all the trust records of the law practice. The external examiner may require the law practice to provide access to trust records held in other jurisdictions.
- (4) An external investigation may be conducted in the jurisdiction in which the single general trust account is maintained in relation to all trust records (including any held in other jurisdictions) and other relevant matters (including any relating to other jurisdictions). The external investigator may require the law practice to provide access to those trust records and anything relating to those relevant matters.

4.2.13 Certain trust money to be deposited in general trust account

A law practice must deposit trust money (other than cash) into the law practice's general trust account as soon as practicable after receiving it unless:

- (a) the law practice has a written direction by a person legally entitled to provide it to deal with the money otherwise than by depositing it in the account; or
- (b) the money is controlled money or transit money; or
- (c) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Maximum civil penalty: 100 penalty units.

4.2.14 Holding, disbursing and accounting for trust money in general trust account

- (1) Except as otherwise provided in this Part, a law practice must:
 - (a) hold trust money deposited in the law practice's general trust account exclusively for the person on whose behalf it is received; and
 - (b) disburse the trust money only in accordance with a direction given by the person.

Maximum civil penalty: 50 penalty units.

- (2) Subsection (1) applies subject to an order of a court of competent jurisdiction or

Section 4.2.15

as authorised by law.

- (3) The law practice must account for the trust money as required by the National Rules.

Maximum civil penalty: 50 penalty units.

Note. Jurisdictional legislation may provide for disbursement for the purpose of statutory deposit accounts.

4.2.15 Controlled money

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money.

Maximum civil penalty: 50 penalty units.

- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.

Maximum civil penalty: 50 penalty units.

- (3) Subject to a court order or as authorised by law, the law practice that holds money deposited in a controlled money account must not disburse the money except in accordance with:

- (a) the written direction relating to the money; or
- (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Maximum civil penalty: 50 penalty units.

- (4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the National Rules.

Maximum civil penalty: 50 penalty units.

- (5) The law practice must keep a written direction mentioned in this section for 7 years.

Maximum civil penalty: 50 penalty units.

- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the National Rules otherwise permit.

Maximum civil penalty: 50 penalty units.

- (7) The National Rules may make provision with respect to the receipt of controlled money, the establishment and maintenance of controlled money accounts, the withdrawal of controlled money, and the keeping of registers of controlled money.

4.2.16 Transit money

- (1) A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions, or else as soon as practicable after it is received.

Section 4.2.17

Maximum civil penalty: 50 penalty units.

- (2) A law practice must, in respect of transit money received by the law practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Maximum civil penalty: 50 penalty units.

- (3) A law practice must keep the particulars mentioned in subsection (2) for 7 years.

Maximum civil penalty: 50 penalty units.

4.2.17 Trust money subject to specific powers

- (1) A law practice must ensure that trust money (other than cash) that is the subject of a power is dealt with only in accordance with that power.

Maximum civil penalty: 50 penalty units.

- (2) The law practice must account for the money in the way specified in the National Rules for the purposes of this Division.

Maximum civil penalty: 50 penalty units.

4.2.18 Trust money subject to a written direction

- (1) A law practice that receives a written direction to deal with trust money (other than cash) in a particular way must comply with that direction within the period specified in the direction, or otherwise, as soon as practicable after it is received.

Maximum civil penalty: 50 penalty units.

- (2) The law practice must keep the written direction for 7 years after the matter has been finalised.

Maximum civil penalty: 50 penalty units.

4.2.19 Trust money received in the form of cash

- (1) A law practice must deposit all trust money received in the form of cash (other than controlled money) in the law practice's general trust account even if it has a written direction to deal with it in some other way. Once deposited, the money may be dealt with in accordance with the written direction.

Maximum civil penalty: 50 penalty units.

- (2) A law practice must deposit controlled money received in the form of cash in a controlled money account and deal with it in accordance with the provisions of the National Rules.

Maximum civil penalty: 50 penalty units.

4.2.20 Withdrawal of trust money

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

Maximum civil penalty: 50 penalty units.

- (2) A law practice may do any of the following, in relation to trust money held in the practice's general trust account or controlled money account:

- (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the law practice, where

Section 4.2.21

the law practice is otherwise entitled to do so;

- (b) withdraw money for payment to the law practice's account for legal costs owing to the practice if the relevant procedures or requirements specified in the National Rules for the purposes of this Division are complied with;
- (c) deal with the balance as unclaimed money, after:
 - (i) deducting any legal costs properly owing to the practice, and
 - (ii) exhausting any other means of distributing it in accordance with the client's instructions.

4.2.21 Protection of trust money

- (1) Money standing to the credit of a trust account maintained by a law practice is not available for the payment of debts of the law practice or any of its associates.
- (2) Money standing to the credit of a trust account maintained by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the law practice or any of its associates.
- (3) This section does not apply to money to which a law practice or associate is entitled.

4.2.22 Intermixing money

A law practice must not mix trust money with other money unless authorised to do so by the Commissioner, and only in accordance with any conditions the Commissioner imposes in relation to that authorisation.

Maximum civil penalty: 50 penalty units.

4.2.23 Keeping trust records

- (1) A law practice must keep in permanent form trust records in relation to trust money received by the law practice.

Maximum civil penalty: 50 penalty units.

- (2) The law practice must keep the trust records:
 - (a) in accordance with the National Rules; and
 - (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
 - (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
 - (d) for a period of 7 years after the last transaction entry in the trust record, or the finalisation of the matter to which the trust record relates, whichever is the later.

Maximum civil penalty: 50 penalty units.

- (3) A law practice must not knowingly receive money or record receipt of money in the law practice's trust records under a false name.

Maximum criminal penalty: 100 penalty units.

- (4) If a law practice is aware that a person on whose behalf trust money is received by the law practice is commonly known by more than one name, the law practice

Section 4.2.24

must ensure that the law practice's trust records record all names by which the person is known.

Maximum criminal penalty: 50 penalty units.

- (5) In this section, a reference (however expressed) to *keeping trust records* includes a reference to making and keeping back-up copies of trust records.

4.2.24 Deficiency in trust account

A law practice, an Australian legal practitioner or any other person must not, without reasonable excuse, cause:

- (a) a deficiency in any trust account or trust ledger account; or
- (b) a failure to pay or deliver any trust money.

Maximum criminal penalty: 250 penalty units or imprisonment for 5 years, or both.

4.2.25 Authorised deposit-taking institutions

- (1) An ADI is authorised to maintain trust accounts to hold trust money if:
- (a) it is regulated by APRA; and
 - (b) it has entered into an arrangement with a nominated trust authority that provides for any one or more of the following:
 - (i) the payment of interest on the whole or any part of deposits in trust accounts to the nominated trust authority on account of the nominated fund of the relevant jurisdiction;
 - (ii) the manner in which the nominated trust authority is informed of amounts held in trust accounts;
 - (iii) the auditing of balances in trust accounts;
 - (iv) any other relevant matters.
- (2) An ADI at which a trust account is maintained by a law practice:
- (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and
 - (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right against money in the account;

but this subsection does not relieve an ADI from any liability to which it is subject apart from this Law.

- (3) An ADI must give the Commissioner any reports about trust accounts required under the National Rules and must do so in accordance with the National Rules.

Maximum civil penalty: 100 penalty units.

- (4) An ADI at which a trust account is maintained must, without charge, provide an investigator or external examiner access to, or copies of, any records relating to the trust account or trust money deposited in it, and full details of any transactions relating to it. This requirement applies despite any legislation or duty of confidence to the contrary.

Section 4.2.27

Maximum civil penalty: 100 penalty units.

- (5) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of any action taken in accordance with this section.

- (6) In this section:

nominated fund means a fund or account nominated in applicable jurisdictional legislation for the purposes of this section.

nominated trust authority means an authority nominated in applicable jurisdictional legislation for the purposes of this section.

4.2.26 Authority to receive trust money

A law practice must not receive trust money unless:

- (a) a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money; or
- (b) the law practice is otherwise authorised to receive trust money under the National Rules.

Maximum civil penalty: 250 penalty units.

4.2.27 Disclosure of accounts used to hold money

- (1) A law practice must notify the Commissioner of the details required by the National Rules of each account maintained at an ADI in which the law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate.

Maximum civil penalty: 50 penalty units.

- (2) Subsection (1) applies whether or not the money is trust money.
- (3) The details must be notified to the Commissioner at such times and in such manner as the Commissioner requires.

4.2.28 Determinations about status of money

- (1) The Commissioner may determine that money held by a law practice is or is not trust money if it considers there is doubt or a dispute about its status. The Commissioner may revoke or modify a determination under this section.
- (2) The money is taken to be or not to be trust money for the purposes of this Law according to the terms of the determination.
- (3) This section has effect subject to a decision of a court or administrative review body made in relation to the money.

4.2.29 When, how and where money is received

- (1) For the purposes of this Law, a law practice receives money when:
- (a) the law practice obtains possession or control of it directly; or
- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
- (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with

Section 4.2.30

the money for or on behalf of another person.

- (2) For the purposes of this Law, a law practice or associate is taken to have received money if the money is available to the law practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.
- (3) The National Rules or (to the extent that the National Rules do not do so) the Commissioner may provide guidelines for determining the jurisdiction in which a law practice receives trust money. For the purposes of this Law as applied by the Legal Profession National Law Act of this jurisdiction, to the extent that the guidelines are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the guidelines.

4.2.30 Reporting irregularities and suspected irregularities

- (1) As soon as practicable after:
 - (a) a legal practitioner associate of a law practice; or
 - (b) an ADI; or
 - (c) another entity of a kind specified in the National Rules for the purposes of this section;

becomes aware that there is an irregularity in any of the law practice's trust accounts or trust ledger accounts, the associate, ADI or entity must give written notice of the irregularity to the Commissioner.

Maximum civil penalty: for a corporation—250 penalty units; for an individual—50 penalty units.

- (2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to the Commissioner.

Maximum civil penalty: 50 penalty units.

Note. Section 9.7.4 contains provisions relating to compliance with this section.

Division 3 External examinations of trust money

4.2.31 Appointment of external examiner to conduct external examination of trust records

- (1) A law practice must at least once in each financial year have its trust records externally examined by an external examiner appointed in accordance with the National Rules.

Maximum civil penalty: 50 penalty units.

- (2) The Commissioner may examine, or may in writing appoint an external examiner to examine, a law practice's trust records if the Commissioner is not satisfied:
 - (a) that the law practice has had its trust records externally examined as required by this section; or

Section 4.2.32

- (b) that an external examination of the law practice's trust records has been carried out in accordance with the National Rules.
- (3) An appointment by the Commissioner may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external examination.
- (4) If the only trust money received or held by a law practice during a financial year is transit money, its trust records in respect of that year are not required to be externally examined.
- (5) The Commissioner may exercise the functions of an external examiner, and references in this Law to an external examiner appointed to examine a law practice's trust records include references to the Commissioner when exercising those functions.

4.2.32 Qualifications of external examiners

- (1) Only persons designated or within a class designated under the National Rules for the purposes of this section may be appointed as external examiners.
- (2) An associate of a law practice cannot be appointed as an external examiner to examine the law practice's trust records.

4.2.33 External examinations

An external examiner appointed to examine a law practice's trust records may examine the affairs of the law practice for the purposes of and in connection with an examination of the trust records.

4.2.34 Carrying out external examination

Subject to Chapter 7, an external examination of trust records is to be carried out in accordance with the National Rules.

Note. Chapter 7 applies to an external examination of trust records.

4.2.35 External examiner's report

- (1) An external examiner must give a written report of the examination:
 - (a) to the Commissioner as soon as practicable after completing the examination; or
 - (b) otherwise as specified in the National Rules.
- (2) The examiner must not disclose information in the report or acquired in carrying out the external examination, unless permitted to do so under subsection (3) or under section 9.7.1.

Maximum criminal penalty: 50 penalty units.

- (3) The examiner may disclose information in the report or acquired in carrying out the examination:
 - (a) as is necessary for properly conducting the external examination and making the report of the examination; or
 - (b) to an investigator or a supervisor, manager or receiver appointed under this Law; or
 - (c) to the law practice concerned or an associate of the law practice.

Section 4.2.36

4.2.36 Costs of external examination

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the external examination.
- (2) If the Commissioner carried out, or appointed the external examiner to carry out, the external examination, the Commissioner may recover the amount (as determined by the Commissioner) of all or part of the costs of the examination as a debt payable to it by the law practice.
- (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

Division 4 External investigations

4.2.37 Principal purposes of external investigation

The principal purposes of an external investigation are to ascertain whether a law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud or defalcation, but this section does not limit the scope of an investigation or the powers of an external investigator.

4.2.38 Appointment of external investigators

- (1) The Commissioner may investigate, or may in writing appoint a suitably qualified person to investigate, the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external investigation.
- (3) The Commissioner may exercise the functions of an external investigator, and references in this Law to an external investigator appointed to examine a law practice's trust records include references to the Commissioner when exercising those functions.

4.2.39 External investigations

The Commissioner may undertake, or the instrument of appointment of an external investigator may authorise the investigator to undertake, external investigations in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice, or where the Commissioner otherwise considers it appropriate to do so.

4.2.40 Carrying out external investigation

Subject to Chapter 7, an external investigation is to be carried out in accordance with the National Rules.

Note. Chapter 7 applies to an external investigation.

4.2.41 Investigator's report

- (1) As soon as practicable after completing an external investigation, the investigator must give a written report of the investigation to the Commissioner.
- (2) The investigator must not disclose information contained in the report or acquired in carrying out the external investigation except:
 - (a) to the law practice or person who is a subject of the investigation or report;
or

Section 4.2.42

- (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
- (c) as provided in section 9.7.1.

Maximum criminal penalty: 50 penalty units.

4.2.42 Costs of external investigation

- (1) This section applies if:
 - (a) an investigator states in his or her report of an external investigation that there is evidence that a breach of this Law has been committed or evidence that a default (within the meaning of Part 4.5) has occurred in relation to the law practice whose affairs are under investigation; and
 - (b) the Commissioner is satisfied that the breach or default is wilful or of a substantial nature.
- (2) The Commissioner may recover the amount (as determined by the Commissioner) of all or part of the costs of the external investigation as a debt payable to it by the law practice.
- (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

Division 5 Miscellaneous

4.2.43 National Rules for trust money and trust accounts

- (1) The National Rules may make provision with respect to any aspect of trust money received by law practices and trust accounts.
- (2) Without limitation, the National Rules may make provision with respect to the following:
 - (a) the receipt, handling and disbursement of trust money;
 - (b) the establishment and maintenance of trust accounts;
 - (c) record keeping and accounting requirements;
 - (d) reports to clients and the Commissioner by law practices relating to trust money and trust accounts;
 - (e) the external examination of trust records;
 - (f) external investigation of the affairs of a law practice;
 - (g) dealing with unclaimed money.

Part 4.3 Legal costs

Division 1 Introduction

4.3.1 Objectives

The objectives of this Part are:

- (a) to ensure that clients of law practices are able to make informed choices

Section 4.3.2

about their legal options and the costs associated with pursuing those options; and

- (b) to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- (c) to provide a framework for assessment of legal costs.

4.3.2 Commercial or government clients

- (1) This Part does not apply to commercial or government clients, but this section and sections 4.3.12 (1), (7) and (8), 4.3.13, 4.3.14 and 4.3.16 (3), (4) and (5).
- (2) For the purposes of this Law, a **commercial or government client** is a client of a law practice where the client is:
 - (a) a law practice; or
 - (b) one of the following entities defined or referred to in the Corporations Act:
 - (i) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body;
 - (ii) a liquidator, administrator or receiver;
 - (iii) a financial services licensee;
 - (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required;
 - (v) a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3); or
 - (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
 - (e) a body or person incorporated in a place outside Australia; or
 - (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
 - (g) a government authority in Australia or in a foreign country; or
 - (h) a person specified in, or of a class specified in, the National Rules.
- (3) For the purposes of subsection (2) (b) (v), the composition of the subsidiary's board is taken to be controlled by the large proprietary company if the large proprietary company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the subsidiary.

Section 4.3.3

- (4) For the purposes of subsection (3), the large proprietary company is taken to have power to make an appointment referred to in that subsection if:
- (a) a person cannot be appointed as a director of the subsidiary without the exercise by the large proprietary company of such a power in the person's favour; or
 - (b) a person's appointment as a director of the subsidiary follows necessarily from the person being a director or other officer of the large proprietary company.

4.3.3 Third party payers

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

Division 2 Legal costs generally

4.3.4 Legal costs must be fair and reasonable

- (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are:
- (a) proportionately and reasonably incurred; and
 - (b) proportionate and reasonable in amount.
- (2) In considering whether legal costs satisfy subsection (1), regard must be had to whether the legal costs reasonably reflect:
- (a) the level of skill, experience, specialisation and seniority of the lawyers concerned; and
 - (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the matter involved a matter of public interest; and

Section

- (c) the labour and responsibility involved; and
 - (d) the circumstances in acting on the matter, including (for example) any or all of the following:
 - (i) the urgency of the matter;
 - (ii) the time spent on the matter;
 - (iii) the time when business was transacted in the matter;
 - (iv) the place where business was transacted in the matter;
 - (v) the number and importance of any documents involved; and
 - (e) the quality of the work done; and
 - (f) the retainer and the instructions (express or implied) given in the matter.
- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the National Rules and any fixed costs legislative provisions.
- (4) A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if:
- (a) the provisions of Division 3 relating to costs disclosure have been complied with; and
 - (b) the costs agreement does not contravene, and was not entered into in contravention of, any provision of Division 4.

4.3.5 Avoidance of increased legal costs

A law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs.

Division 3 Costs disclosure

4.3.6 Disclosure obligations of law practice regarding clients

- (1) A law practice must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs.
- (2) A law practice must, when or as soon as practicable after there is any significant change to anything previously disclosed under this section, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client.
- (3) Information provided under this section must contain:
 - (a) a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter; and
 - (b) information about the client's rights:

Section 4.3.8

- (i) to negotiate a costs agreement with the law practice; and
 - (ii) to negotiate the billing method (for example, by reference to timing or task); and
 - (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
 - (iv) to seek the assistance of the Commissioner in the event of a dispute about legal costs.
- (4) The law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs after being given that information.
- (5) Disclosure under this section must be made in writing, but the requirement for writing does not affect the law practice's obligations under subsection (4).
- (6) Disclosure is not required to be made under this section if the total legal costs in the matter (excluding GST and disbursements) are not likely to exceed the amount specified in the National Rules for the purposes of this subsection.

4.3.7 Disclosure obligations if another law practice is to be retained

- (1) If a law practice (the *first law practice*) intends to retain another law practice (the *second law practice*) on behalf of a client, the first law practice must disclose to the client the details specified in section 4.3.6 (1) in relation to the second law practice, in addition to any information required to be disclosed to the client under section 4.3.6.
- (2) If a law practice (the *first law practice*) retains or intends to retain another law practice (the *second law practice*) on behalf of a client, the second law practice is not required to make disclosure to the client under section 4.3.6, but must disclose to the first law practice the information necessary for the first law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the second law practice is retained.

4.3.8 Disclosure obligations of law practice regarding associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the law practice under section 4.3.6 or 4.3.7, the law practice must, in accordance with subsection (2), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing:
- (a) at the time the disclosure to the client is required; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.

Section 4.3.10

4.3.9 Non-compliance with disclosure obligations

- (1) If a law practice contravenes the disclosure obligations of this Part:
 - (a) the costs agreement concerned (if any) is void; and
 - (b) the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the Commissioner; and
 - (c) the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the Commissioner; and
 - (d) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.
- (2) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section:
 - (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
 - (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

Division 4 Costs agreements

4.3.10 Client's right to costs agreement

A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice.

4.3.11 Making costs agreements

- (1) A costs agreement may be made:
 - (a) between a client and a law practice retained by the client; or
 - (b) between a client and a law practice retained on behalf of the client by another law practice; or
 - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
 - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer that is accepted in writing or (except in the case of a conditional costs agreement) by other conduct.
- (4) A costs agreement cannot provide that the legal costs to which it relates are not subject to a costs assessment.

4.3.12 Conditional costs agreements

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

Section 4.3.13

- (2) A conditional costs agreement must:
 - (a) be in writing and in plain language; and
 - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (3) A conditional costs agreement must:
 - (a) be signed by the client; and
 - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement.
- (4) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
- (5) If a client terminates a conditional costs agreement within the cooling-off period, the law practice:
 - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
 - (b) in particular, may not recover any uplift fee.
- (6) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.
- (7) A conditional costs agreement may relate to any matter, except a matter that involves:
 - (a) criminal proceedings; or
 - (b) proceedings under the *Family Law Act 1975* of the Commonwealth; or
 - (c) proceedings under legislation specified in the National Rules for the purposes of this section.
- (8) A contravention of provisions of this Law or the National Rules relating to conditional costs agreements by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

4.3.13 Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) If a conditional costs agreement relates to a litigious matter:
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A conditional costs agreement that includes an uplift fee:

Section 4.3.14

- (a) must identify the basis on which the uplift fee is to be calculated; and
 - (b) must include an estimate of the uplift fee or, if that is not reasonably practical:
 - (i) a range of estimates for the uplift fee; and
 - (ii) an explanation of the major variables that may affect the calculation of the uplift fee.
- (4) A law practice must not enter into a costs agreement in contravention of this section or of the National Rules relating to uplift fees.

Maximum civil penalty: 100 penalty units.

4.3.14 Contingency fees are prohibited

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

Maximum civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable fixed costs legislative provision.
- (3) A contravention of subsection (1) by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

4.3.15 Effect of costs agreement

Subject to this Law, a costs agreement may be enforced in the same way as any other contract.

4.3.16 Certain costs agreements are void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.

Note. If a costs agreement is void due to a failure to comply with the disclosure obligations of this Part, the costs must be assessed before the law practice can seek to recover them (see section 4.3.9 (1)).

- (2) A law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (3) A law practice that has entered into a costs agreement in contravention of section 4.3.13 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (4) A law practice that has entered into a costs agreement in contravention of section 4.3.14 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (5) If a law practice does not repay an amount required by subsection (2), (3) or (4)

Section 4.3.17

to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

Division 5 Billing

4.3.17 Form of bills

A bill may be in the form of a lump sum bill or an itemised bill.

4.3.18 Request for itemised bills

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable.
- (3) The law practice must comply with the request within 21 days after the date on which the request is made in accordance with subsection (2).
- (4) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

4.3.19 Responsible principal for bill

- (1) A bill given by a law practice, or a letter accompanying the bill, must:
 - (a) be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or
 - (b) nominate a principal of the law practice as the responsible principal for the bill.
- (2) If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be a responsible principal for the bill.

4.3.20 Giving bills

A bill is to be given to a client in accordance with the National Rules.

4.3.21 Progress reports

- (1) A law practice must give a client, on reasonable request, without charge and within a reasonable period, a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.
- (3) Subsection (2) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

4.3.22 Charging for bills prohibited

A law practice must not make a charge for preparing or giving a bill, and any charge made for that purpose is not recoverable by the law practice.

Section 4.3.23

4.3.23 Notification of client's rights

A law practice must ensure that a bill includes or is accompanied by a written statement setting out:

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).

Division 6 Unpaid legal costs

4.3.24 Restriction on commencing proceedings to recover legal costs

- (1) A law practice must not commence legal proceedings to recover legal costs from a person unless a bill has been given for the legal costs and the bill complies with the requirements of this Law and the National Rules.
- (2) A law practice must not commence legal proceedings to recover legal costs from a person who has been given a bill until:
 - (a) where the legal costs are the subject of a costs dispute before the Commissioner—the Commissioner has closed or resolved the dispute; and
 - (b) at least 30 days after the later of:
 - (i) the date on which the person is given the bill; or
 - (ii) the date on which the person receives an itemised bill following a request made in accordance with section 4.3.18.

4.3.25 Interest on unpaid legal costs

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the law practice has given a bill for the costs in accordance with this Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under this section on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice must not charge interest under this section or under a costs agreement at a rate that exceeds the rate specified in or determined under the National Rules for the purposes of this section.
- (5) A law practice must not charge interest under this section or under a costs agreement on a bill given more than 6 months after the completion of the matter.
- (6) Subsection (5) does not apply where:
 - (a) the law practice has provided a lump sum bill within the 6-month period after completion, but the client or an associated third party payer requests an itemised bill outside of the 6-month period; or
 - (b) a bill has not been issued within the 6-month period (or an earlier bill has been issued but withdrawn) at the request of the client or associated third party payer.

Section 4.3.26

Division 7 Costs assessment

4.3.26 Application of this Division generally

This Division applies to legal costs payable on a solicitor-client basis.

4.3.27 Application of this Division where complaint made

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a costs dispute under Chapter 5 may not be the subject of a costs assessment under this Division except to the extent that:

- (a) the Commissioner is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment; or
- (b) the Commissioner arranges for a costs assessment under section 5.2.20.

4.3.28 Applications for costs assessment

- (1) Applications for an assessment of the whole or any part of legal costs payable to a law practice may be made by any of the following:
 - (a) a client who has paid or is liable to pay them to the law practice;
 - (b) a third party payer who has paid or is liable to pay them to the law practice or the client;
 - (c) the law practice;
 - (d) another law practice, where the other law practice retained the law practice to act on behalf of a client and the law practice has given the other law practice a bill for doing so.
- (2) An application under this section is to be made in accordance with applicable jurisdictional legislation.
- (3) An application under this section must be made within 12 months after:
 - (a) the bill was given to, or the request for payment was made to, the client, third party payer or other law practice; or
 - (b) the legal costs were paid if neither a bill nor a request was made.
- (4) However, an application that is made out of time may be dealt with by the costs assessor if the designated tribunal, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.
- (5) Subsection (4) does not apply to an application made out of time by a third party payer who is not a commercial or government client but who would be a commercial or government client if the third party payer were a client of the law practice concerned.
- (6) If the third party payer is a non-associated third party payer, the law practice concerned must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (7) If an application for a costs assessment is made in accordance with this Division:

Section 4.3.29

- (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
 - (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.
- (8) A costs assessor is to cause a copy of an application for a costs assessment to be given to any law practice or client concerned or any other person whom the costs assessor thinks it appropriate to notify.
- (9) A person who is notified by the costs assessor under subsection (8):
- (a) is entitled to participate in the costs assessment process; and
 - (b) is taken to be a party to the assessment; and
 - (c) if the costs assessor so determines, is bound by the assessment.
- (10) If there is a non-associated third party payer for a client of a law practice, then, despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.

4.3.29 Costs assessment

- (1) Assessments of legal costs are conducted by costs assessors, and are to be conducted in accordance with this Part, the National Rules and any applicable jurisdictional legislation.
- (2) On a costs assessment, the costs assessor must:
 - (a) determine whether or not a valid costs agreement exists; and
 - (b) determine whether legal costs are fair and reasonable and, to the extent they are not fair and reasonable, determine the amount of legal costs (if any) that are to be payable.

Note. A costs agreement can be void under section 4.3.9 or 4.3.16.

4.3.30 Factors in a costs assessment

- (1) In considering whether legal costs for legal work are fair and reasonable, the costs assessor must apply the principles in section 4.3.4 so far as they are applicable.
- (2) In considering whether legal costs for legal work are fair and reasonable, the costs assessor may have regard to the following matters:
 - (a) whether the law practice and any legal practitioner associate or foreign lawyer associate involved in the work complied with this Law and the National Rules;
 - (b) any disclosures made, including whether it would have been reasonably practicable for the law practice to disclose the total costs of the work at the outset (rather than simply disclosing charging rates);
 - (c) any relevant advertisement as to the law practice's costs or the skills of the law practice or any legal practitioner associate or foreign lawyer associate involved in the work;
 - (d) any other relevant matter.
- (3) The costs assessor must take into account the incidence of GST in a costs

Section

assessment.

- (4) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

4.3.31 Reasons to be given

Costs assessors are to provide reasons for their costs assessments.

4.3.32 Referral for disciplinary action

On a costs assessment, a costs assessor:

- (a) may refer a matter to the Commissioner if the costs assessor considers that the legal costs charged are not fair and reasonable; and
- (b) must refer a matter to the Commissioner if the costs assessor considers that the legal costs charged, or any other matter raised in the assessment, may amount to unsatisfactory professional conduct or professional misconduct.

4.3.33 Admissibility determinations in disciplinary proceedings

Determinations of costs assessors are to be admissible in disciplinary proceedings as evidence as to the fairness and reasonableness of legal costs.

4.3.34 Costs of costs assessment

- (1) Without affecting the powers of a court or tribunal to award costs in relation to a costs assessment, a costs assessor is, subject to this section, to determine the costs of a costs assessment and by whom they are payable.
- (2) Unless the costs assessor believes that in all the circumstances it is not fair and reasonable for the costs to be paid otherwise, the costs of a costs assessment are payable by a law practice if:
- (a) the law practice has failed to disclose a matter required to be disclosed by Division 3; or
- (b) the law practice has failed to disclose a matter required to be disclosed in the manner required by Division 3; or
- (c) the law practice's costs have been reduced by 15% or more on assessment.

4.3.35 Right of appeal or review

- (1) An applicant for assessment or the law practice concerned may, in accordance with applicable jurisdictional legislation, appeal against or seek a review of a decision of a costs assessor in the jurisdiction for which the costs assessor exercised his or her functions in relation to the decision.
- (2) The court or tribunal hearing the appeal or reviewing the decision may make any order it considers appropriate on the appeal or review.
- (3) This section does not apply where the Commissioner determines a costs dispute under Part 5.3.

Division 8 Miscellaneous

4.3.36 Security for legal costs

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

4.3.37 Unreasonable legal costs—disciplinary action

- (1) A contravention of a requirement of this Part that a law practice must not charge more than fair and reasonable legal costs is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of:
 - (a) the responsible principal or principals for a bill given by the law practice (see section 4.3.19); and
 - (b) each legal practitioner associate or foreign lawyer associate who was involved in giving the bill or authorising it to be given.
- (2) Subsection (1) applies to a responsible principal:
 - (a) whether or not he or she had actual knowledge of the bill or its contents; and
 - (b) whether or not he or she had actual knowledge that the legal costs were unfair or unreasonable.
- (3) However, subsection (1) does not apply to a responsible principal if he or she establishes that it was not reasonable for him or her to suspect or believe that the legal costs in the bill were unfair or unreasonable in the circumstances (otherwise than by the mere assertion of someone else involved in the law practice).

4.3.38 National Rules for legal costs

- (1) The National Rules may make provision with respect to any aspect of legal costs.
- (2) Without limitation, the National Rules may make provision with respect to the following:
 - (a) costs disclosure;
 - (b) costs agreements;
 - (c) costs billing;
 - (d) the payment of interest on unpaid costs;
 - (e) costs assessments.

Part 4.4 Professional indemnity insurance

4.4.1 Objectives

The objectives of this Part are:

- (a) to ensure that each Australian legal practitioner who engages in legal practice in this jurisdiction has or is covered by approved professional indemnity insurance; and
- (b) to ensure that clients of law practices have adequate protection against the

Section 4.4.1

consequences of professional negligence.

4.4.2 Approved insurance policy

- (1) For the purposes of this Part, a policy of professional indemnity insurance is an approved insurance policy for this jurisdiction if:
 - (a) it is issued or provided by:
 - (i) an insurer or other provider approved under, or selected in accordance with, applicable legislation of this jurisdiction; or
 - (ii) if there is no insurer or other provider approved under or selected in accordance with that legislation or if there is no legislative arrangement for the approval or selection of insurers or other providers in this jurisdiction:
 - (A) an insurer authorised by APRA under the *Insurance Act 1973* of the Commonwealth to carry on insurance business in Australia; or
 - (B) an insurer or other provider approved by the Board; and
 - (b) it:
 - (i) complies with the minimum standards specified in the National Rules for the purposes of this section; or
 - (ii) is approved by the Board.
- (2) If it considers it is appropriate to do so, the Board may give an approval for the purposes of this section unconditionally or subject to conditions specified in the approval, and may vary or revoke an approval.
- (3) For the purposes of this Law, an Australian legal practitioner or law practice has professional indemnity insurance for this jurisdiction if the practitioner or law practice holds or is covered by an approved insurance policy for this jurisdiction.

4.4.3 Australian legal practitioners

An Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by an approved insurance policy for this jurisdiction and the policy covers that legal practice.

Maximum civil penalty: 100 penalty units.

Note 1. Section 3.3.4 provides that the Board must not grant or renew an Australian practising certificate unless it is satisfied that the applicant has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with this Law and the National Rules. This does not apply if the applicant is not required to have professional indemnity insurance.

Note 2. The National Rules may provide that professional indemnity insurance may be issued on either a practitioner basis or on a law practice basis covering practitioners.

Note 3. All legal practice as a volunteer or on a pro bono basis needs to be covered by an approved insurance policy for this jurisdiction.

Section 4.4.1

4.4.4 Incorporated legal practices

An incorporated legal practice must not engage in legal practice in this jurisdiction unless the incorporated legal practice itself holds an approved insurance policy for this jurisdiction and the policy covers the legal practice in which it is engaged.

Maximum civil penalty: 100 penalty units.

4.4.5 Community legal services

(1) A community legal service that is a corporation must not engage in legal practice in this jurisdiction unless:

- (a) the community legal service holds an approved insurance policy for this jurisdiction; and
- (b) the policy covers the community legal service itself and each Australian legal practitioner who engages in legal practice for or on behalf of the community legal service in this jurisdiction; and
- (c) the policy covers that legal practice.

Maximum civil penalty: 100 penalty units.

(2) A community legal service that is not a corporation must not engage in legal practice in this jurisdiction unless:

- (a) each Australian legal practitioner who engages in legal practice for or on behalf of the community legal service holds or is covered by an approved insurance policy for this jurisdiction; and
- (b) the policy covers that legal practice.

Maximum civil penalty: 100 penalty units.

4.4.6 Australian-registered foreign lawyers

An Australian-registered foreign lawyer who does not hold or is not covered by an approved insurance policy for this jurisdiction must provide a disclosure statement in writing to each client before, or as soon as practicable after, being retained for legal services in this jurisdiction stating whether or not the lawyer is covered by other professional indemnity insurance and, if covered, the nature and extent of that insurance.

Maximum civil penalty: 100 penalty units.

4.4.7 Exemptions

(1) An Australian legal practitioner is exempt from the requirement to hold or be covered by an approved insurance policy for this jurisdiction if:

- (a) the home jurisdiction of the practitioner (see section 3.3.5) is another jurisdiction; and
- (b) the practitioner holds or is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.

Note. The National Rules may provide that professional indemnity insurance must provide indemnity for the private legal practice of the insured in relation to

Section 4.4.1

the provision of legal services within Australia.

- (2) The Board may exempt an Australian legal practitioner from the requirement to obtain an approved insurance policy for this jurisdiction where:
 - (a) the home jurisdiction of the practitioner (see section 3.3.5) is this jurisdiction; and
 - (b) the practitioner is a legal practitioner associate of a law practice that:
 - (i) maintains a permanent office in this jurisdiction and only one other jurisdiction; and
 - (ii) has at least one principal whose home jurisdiction is that other jurisdiction and who engages solely or principally in legal practice at that permanent office; and
 - (c) the practitioner is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.
- (3) An Australian legal practitioner is exempt from the requirement to hold or be covered by an approved insurance policy of this jurisdiction where:
 - (a) the home jurisdiction of the practitioner (see section 3.3.5) is this jurisdiction; and
 - (b) the practitioner is a legal practitioner associate of a law practice that:
 - (i) maintains a permanent office in this jurisdiction and at least 2 other jurisdictions; and
 - (ii) has at least one principal in each of those other jurisdictions who engages solely or principally in legal practice at the permanent office in that other jurisdiction; and
 - (c) the Australian legal practitioner is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (b) refers and that policy covers legal practice in this jurisdiction.
- (4) The Board may exempt a law practice that is a corporation from the requirement to obtain an approved insurance policy for this jurisdiction where:
 - (a) the law practice maintains a permanent office in this jurisdiction and only one other jurisdiction; and
 - (b) the law practice is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in this jurisdiction.
- (5) A law practice that is a corporation is exempt from the requirement to obtain an approved insurance policy for this jurisdiction where:
 - (a) the law practice maintains a permanent office in this jurisdiction and at least 2 other jurisdictions; and
 - (b) the law practice is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (a) refers and that policy covers legal practice in this jurisdiction.
- (6) The National Rules may provide for other exemptions from the requirement to hold or be covered by an approved insurance policy and may, as a condition of exemption, impose or provide for imposing a discretionary condition on an

Section 4.5.1

Australian practising certificate limiting the scope of legal services that may be provided by the holder of that certificate.

4.4.8 National Rules for professional indemnity insurance

The National Rules may make provision with respect to any aspect of professional indemnity insurance.

Part 4.5 Fidelity cover

Division 1 Introduction

4.5.1 Objective

The objective of this Part is to establish a fidelity cover scheme to ensure that clients of law practices have a source of compensation for defaults by law practices arising from or constituted by acts or omissions of associates of law practices.

4.5.2 Definitions

In this Part:

claim means a claim under this Part, and *claimant* means a person who makes a claim under this Part.

concerted interjurisdictional default means a default of a law practice arising from or constituted by an act or omission:

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

where this jurisdiction is the home jurisdiction for at least one of the associates and another jurisdiction is the home jurisdiction for at least one of the associates.

default means:

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

fidelity fund—see sections 4.5.4 and 4.5.6.

lawyer means:

- (a) an Australian legal practitioner; or
- (b) an Australian-registered foreign lawyer who is an associate of a law practice.

Section 4.5.3

pecuniary loss, in relation to a default, means:

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing.

4.5.3 Defaults to which this Part applies

- (1) This Part applies to a default of a law practice only to the extent that it occurs in connection with the provision of legal services by the law practice.
- (2) It is immaterial where a default occurs.
- (3) This Part applies to a default even though an associate involved was but is no longer an Australian legal practitioner or an Australian-registered foreign lawyer.
- (4) This Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the law practice for or in connection with:
 - (a) a managed investment scheme undertaken by the law practice; or
 - (b) mortgage financing undertaken by the law practice.
- (5) This Part does not apply to defaults or classes of defaults specified in the National Rules.

Division 2 Fidelity funds and fidelity authorities

4.5.4 Fidelity fund for this jurisdiction

The fund nominated in the Legal Professional National Law Act of this jurisdiction is the *fidelity fund* of this jurisdiction for the purposes of this Part.

Note. The fidelity authority for a jurisdiction is the authority responsible for the general administration of the fidelity fund of that jurisdiction.

4.5.5 How this Part applies to this jurisdiction

- (1) This Part applies in relation to this jurisdiction, so that:
 - (a) the term “the fidelity fund” refers to the fidelity fund of this jurisdiction; and
 - (b) the term “the fidelity authority” refers to the fidelity authority for this jurisdiction.
- (2) Subsection (1) does not apply where the context indicates that the fidelity fund of another jurisdiction or the fidelity authority of another jurisdiction is referred to.

Division 3 Fidelity fund of a jurisdiction

4.5.6 Funding

The fidelity fund consists of:

- (a) the money paid on account of the fidelity fund either as annual contributions or levies under this Part; and
- (b) the interest or other income accruing from investment of the money in the

Section 4.5.7

fidelity fund; and

- (c) other money paid to the fidelity fund in accordance with jurisdictional legislation.

4.5.7 Annual contributions

- (1) A person who applies to the Board for the grant or renewal of:
 - (a) an Australian practising certificate; or
 - (b) an Australian registration certificate (except where the person is not and reasonably expects not to be an associate of a law practice during its currency);in relation to a financial year must pay an annual contribution for the financial year to the fidelity fund of the person's home jurisdiction.
- (2) The amount of a contribution is to be set by the fidelity authority and is in addition to all other fees payable in relation to the application.
- (3) The fidelity authority may provide for different contributions to be payable by different classes of lawyers.
- (4) This section does not apply to:
 - (a) a barrister; or
 - (b) a government legal practitioner; or
 - (c) a corporate legal practitioner; or
 - (d) other Australian legal practitioners of a class specified in the National Rules for the purposes of this section and to the extent so specified.

4.5.8 Levies

- (1) This section applies if, at a particular time, the fidelity authority believes that the fidelity fund is not sufficient to satisfy the liabilities of the fidelity fund at or about that time.
- (2) The fidelity authority may impose a levy of an amount that the authority considers reasonable on:
 - (a) all lawyers who are liable to pay an annual contribution to the fidelity fund for the relevant financial year; or
 - (b) a class of lawyers so liable that is determined by the authority.
- (3) The fidelity authority may provide for different levies to be payable by different classes of lawyers.
- (4) The amount of a levy is payable into the fidelity fund by a date and in a way determined by the fidelity authority.

4.5.9 Failure to pay annual contribution or levy

If a lawyer fails to pay an annual contribution or a levy in accordance with this Part, the Board may suspend his or her Australian practising certificate or Australian registration certificate while the failure continues.

4.5.10 Insurance

- (1) The fidelity authority may arrange with an insurer for the insurance of the fidelity fund, whether against particular claims or particular classes of claims or

Section 4.5.11

otherwise.

- (2) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the fidelity fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.

4.5.11 Borrowing

The fidelity authority cannot borrow money for the purposes of the fidelity fund.

4.5.12 Caps on payments for claims

- (1) The fidelity authority may fix either or both of the following:
 - (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the fidelity fund in respect of individual claims or classes of individual claims;
 - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the fidelity fund in respect of all claims made in relation to individual law practices or classes of law practices.
- (2) Amounts must not be paid from the fidelity fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the fidelity fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the fidelity authority may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the fidelity fund and the circumstances of the particular case.
- (5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the fidelity authority to consider payment of a larger amount.

4.5.13 Sufficiency

- (1) If the fidelity authority is of the opinion that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the authority may do any or all of the following:
 - (a) postpone all payments relating to all or any class of claims out of the fund;
 - (b) impose a levy;
 - (c) make partial payments of the amounts of one or more allowed claims out of the fund with payment of the balance being a charge on the fund;
 - (d) make partial payments of the amounts of two or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.
- (2) In deciding whether to do any or all of the things mentioned in subsection (1), the fidelity authority:
 - (a) must have regard to hardship where relevant information is known to the authority; and
 - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.

Section 4.5.14

- (3) If the fidelity authority declares that a decision is made under subsection (1) (d):
 - (a) the balance specified in the declaration ceases to be a liability of the fidelity fund; and
 - (b) the authority may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the fund.
- (4) A decision of the fidelity authority made under this section is final and not subject to appeal or review.

Note. Section 4.5.28 (8) provides for payment to a claimant of any additional amount (less costs) recovered by the exercise of rights of subrogation under section 4.5.28.

4.5.14 Audit

The fidelity authority must cause the accounts relating to the fidelity fund to be audited annually, and must forward a copy of the audit report to the Commissioner.

Division 4 Claims about defaults

4.5.15 Entitlement to make a claim

- (1) A person who suffers pecuniary loss as a result of a default by a law practice is entitled to make a claim about the default against the fidelity fund of the home jurisdiction of each associate of the law practice whose act or omission (whether alone or with one or more other associates of the law practice) gives rise to or constitutes the default.
- (2) Subsection (1) extends to an associate of the law practice who, or to the law practice itself in the case of an incorporated legal practice that, suffers pecuniary loss as a result of the default.

4.5.16 Making a claim

- (1) A claim is to be made in writing in accordance with the National Rules.
- (2) Claims are to be dealt with in accordance with this Part and the National Rules.

4.5.17 Advertisements

- (1) If the fidelity authority considers that there has been, or may have been, a default by a law practice, it may publish a notice in accordance with the National Rules seeking information about the default or inviting claims about the default or both.
- (2) A notice inviting claims about a default must fix a final date for making claims that is at least 3 months and not more than 12 months after the date of the first (or only) publication of the notice.

Note. Section 4.5.30 (1) provides a right of appeal against a failure to determine a claim after 12 months after the claim was made.

- (3) The fidelity authority may provide information to persons making inquiries in response to a notice published under this section.

4.5.18 Time limit for making claims

- (1) Subject to subsection (2), a claim does not lie against a fidelity fund unless the

Section 4.5.19

prospective claimant notifies the fidelity authority of the default concerned within:

- (a) the period of 6 months after the prospective claimant becomes aware of the default; or
 - (b) a further period allowed by the fidelity authority; or
 - (c) a further period allowed by the Supreme Court of the jurisdiction to which the fidelity authority belongs where the authority refuses to allow a further period under paragraph (b).
- (2) If the fidelity authority publishes a notice under section 4.5.17 fixing a final date for making claims about a default, a claim may be made:
- (a) up to and including the final date fixed under the notice; or
 - (b) within a further period allowed by the authority; or
 - (c) within a further period allowed by the Supreme Court of the jurisdiction to which the authority belongs where the authority refuses to allow a further period under paragraph (b);

even though it would have been barred under subsection (1) had the notice not been published.

- (3) The Supreme Court may allow a further period referred to in subsection (1) (c) or (2) (c) if it is satisfied that it would be:
- (a) reasonable to do so after taking into account all ascertained and contingent liabilities of the fidelity fund; and
 - (b) appropriate to do so in a particular case having regard to matters the Supreme Court considers relevant.
- (4) The fidelity authority must take reasonable steps to individually notify potential claimants of whom it is aware of their entitlement to make a claim within a reasonable specified period of at least 21 days after the notification.
- (5) Notification under subsection (4) can be made only while relevant claims can be made under subsection (1) or (2), but a claim by a potential claimant who has been so notified:
- (a) may be made during the specified period even if it would otherwise be barred under subsection (1) or (2); and
 - (b) is ineffective if made after the specified period.

4.5.19 Processing and investigation of claims

Subject to this Part and the National Rules, the fidelity authority may process and investigate a claim against the fidelity fund in any manner it considers appropriate.

4.5.20 Advance payments

- (1) The fidelity authority may, at its absolute discretion, make payments from the fidelity fund to a claimant in advance of the determination of a claim if satisfied that:
- (a) the claim is likely to be allowed; and
 - (b) payment is warranted to alleviate hardship.

Section 4.5.22

- (2) Any payments made in advance are to be taken into account when the claim is determined.
- (3) If the claim is disallowed, the amounts paid under this section are recoverable by the fidelity authority as a debt due to the fidelity fund.
- (4) If the claim is allowed but the amount payable is less than the amounts paid under this section, the excess paid under this section is recoverable by the fidelity authority as a debt due to the fidelity fund.

4.5.21 Claims by law practices or associates about notional defaults

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

Division 5 Determination of claims

4.5.22 Determination of claims

- (1) The fidelity authority must ensure that claims against the fidelity fund are determined independently, at arm's length from the legal profession.
- (2) The fidelity authority must provide written notice to a claimant against the fidelity fund of its decision in relation to a claim as soon as practicable after making that decision.
- (3) The fidelity authority may determine a claim by wholly or partly allowing or disallowing it.
- (4) The fidelity authority may wholly or partly disallow a claim, or reduce the amount of a claim, to the extent that:
 - (a) the claim does not relate to a default for which the fidelity fund is liable; or
 - (b) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (c) the negligence of the claimant contributed to the loss; or
 - (d) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or
 - (e) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
 - (f) the claimant has unreasonably refused to disclose information or documents to or co-operate with the fidelity authority, or any other authority (including, for example, an investigative or prosecuting

Section 4.5.23

authority), in the investigation of the claim.

- (5) The fidelity authority may reduce the amount otherwise payable on a claim to the extent the authority considers appropriate:
 - (a) if satisfied that the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (b) if satisfied that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
 - (c) if satisfied that the claimant has unreasonably hindered the investigation of the claim.
- (6) In wholly or partly allowing a claim, the fidelity authority must specify the amount payable from the fidelity fund to the claimant or to another person at the claimant's direction.
- (7) Subsection (4) does not limit a fidelity authority's power to disallow a claim, and subsection (5) does not limit a fidelity authority's power to disallow or reduce a claim.
- (8) The fidelity authority must publish a statement, at least annually, about how the authority is giving effect to subsection (1).

4.5.23 Maximum amount allowable

- (1) The amount payable in respect of a default must not exceed the pecuniary loss resulting from the default.
- (2) This section does not apply to costs payable under section 4.5.24 or to interest payable under section 4.5.25.

4.5.24 Costs

- (1) If the fidelity authority wholly or partly allows a claim, it must order payment from the fidelity fund of the claimant's reasonable legal costs involved in making and proving the claim, unless it considers that special circumstances exist that warrant a reduced amount of costs or a determination that no amount should be paid for costs.
- (2) If the fidelity authority wholly disallows a claim, it may order payment from the fidelity fund of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, where it considers it is appropriate to make the order.

4.5.25 Interest

- (1) In determining the amount of pecuniary loss resulting from a default, the fidelity authority must order payment from the fidelity fund of interest on the amount payable, unless it considers that special circumstances exist that warrant a reduced amount of interest or a determination that no interest should be paid.
- (2) The interest is to be calculated from the date on which the claim was made, to the date of notification that the claim has been allowed, at the rate specified in or determined under the National Rules for the purposes of this section or at the rate of 5% to the extent provision is not made in the National Rules for the rate of interest.

Section 4.5.26

4.5.26 Reduction of claim because of other benefits

- (1) A person is not entitled to recover from the fidelity fund any amount equal to amounts or to the value of other benefits in connection with the default concerned:
 - (a) that have already been paid to or received by the person; or
 - (b) that have already been determined and are payable to or receivable by the person; or
 - (c) that (in the opinion of the fidelity authority) are likely to be paid to or received by the person; or
 - (d) that (in the opinion of the fidelity authority) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person;

from other sources in respect of the pecuniary loss to which a claim relates.

- (2) The fidelity authority may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1) (c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 4.5.27.
- (3) Without limiting subsection (1), but subject to section 4.5.32, a person is not entitled to recover from the fidelity fund of this jurisdiction if the person has already recovered from the fidelity fund of another jurisdiction in connection with the default concerned.

4.5.27 Repayment of certain amounts

- (1) If:
 - (a) a claimant receives a payment from a fidelity fund in respect of a claim; and
 - (b) the claimant receives or recovers from another source or sources a payment on account of the pecuniary loss; and
 - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources;

the amount of the surplus is a debt payable by the claimant to the fidelity fund.

- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the fidelity fund in respect of the claim.

4.5.28 Subrogation

- (1) On payment of a claim from the fidelity fund, the fidelity authority is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against:
 - (a) an associate in respect of whom the claim is made; or
 - (b) the person authorised to administer the estate of an associate in respect of whom the claim is made and who is deceased or an insolvent under

Section 4.5.29

administration.

- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 4.5.22.
- (4) The fidelity authority may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the fidelity authority brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
- (6) The fidelity authority may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.
- (7) The fidelity authority must pay into the fidelity fund any money recovered in exercising its rights and remedies under this section.
- (8) If in exercising its rights and remedies under this section the fidelity authority recovers more money than that already paid to the claimant, the authority must pay the difference to the claimant after deducting costs incurred to recover the money. This subsection applies whether or not the total amount paid would otherwise exceed any relevant maximum amount fixed under section 4.5.12.

4.5.29 Right of appeal against decision on claim

- (1) A claimant against the fidelity fund may appeal to the Supreme Court of this jurisdiction against a decision of the fidelity authority:
 - (a) to wholly or partly disallow a claim; or
 - (b) to reduce the amount allowed in respect of a claim;but an appeal does not lie against a decision of the fidelity authority to limit the amount payable, or to decline to pay an amount, under section 4.5.12 or 4.5.13.
- (2) An appeal against a decision must be lodged within 30 days of receiving written notice about the decision.
- (3) On an appeal under this section:
 - (a) the appellant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives that requirement; and
 - (b) the Supreme Court may, on application by the fidelity authority, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The Supreme Court may review the merits of the fidelity authority's decision to the extent considered relevant by the Court.
- (5) The Supreme Court may:
 - (a) affirm the decision; or
 - (b) if satisfied that the reasons for varying or setting aside the fidelity authority's decision are sufficiently cogent to warrant doing so:
 - (i) vary the decision; or
 - (ii) set aside the decision and make a decision in substitution for the

Section 4.5.30

decision set aside; or

- (iii) set aside the decision and remit the matter for reconsideration by the fidelity authority in accordance with any directions or recommendations of the Court.

- (6) The Supreme Court may make other orders as it thinks fit.
- (7) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

4.5.30 Right of appeal against failure to determine claim

- (1) A claimant against the fidelity fund of this jurisdiction may appeal to the Supreme Court of this jurisdiction against a failure of the fidelity authority to determine a claim after 12 months after the claim was made and while the failure continues.
- (2) On an appeal under this section:
 - (a) the appellant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the fidelity authority waives this requirement; and
 - (b) the Supreme Court may, on application by the fidelity authority, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (3) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

4.5.31 Court proceedings

In any proceedings brought in a court under section 4.5.28, 4.5.29 or 4.5.30:

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, a lawyer or other person with respect to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the lawyer or other person is not a defendant in, or a party to, the proceedings; and
- (b) any defence that would have been available to the lawyer or other person is available to the fidelity authority.

Division 6 Defaults involving interjurisdictional elements

4.5.32 Concerted interjurisdictional defaults

- (1) A fidelity authority for a jurisdiction may treat a concerted interjurisdictional default as if the default consisted of two or more separate defaults by reference to the different home jurisdictions of two or more associates involved in the default.
- (2) A fidelity authority may treat a claim about a concerted interjurisdictional default as if the claim consisted of two or more separate claims by reference to the different home jurisdictions of two or more associates involved in the default.
- (3) A claim about a concerted interjurisdictional default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute:

Section 4.5.33

- (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding sections 4.5.12 and 4.5.13; or
 - (b) in other shares as agreed by the fidelity authorities involved.
- (4) Subsection (3) does not affect the application of sections 4.5.12 and 4.5.13 in respect of the amount payable from a fidelity fund after the claim has been assessed.

4.5.33 Interjurisdictional agency

- (1) The fidelity authority may request a fidelity authority of another jurisdiction to act as its agent for the purpose of processing or investigating a claim about a default if the default appears to have:
- (a) occurred partly or solely in the other authority's jurisdiction; or
 - (b) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) If the fidelity authority agrees to act as agent of another fidelity authority, it may:
- (a) act as agent of the other authority for the purpose of processing or investigating the claim; and
 - (b) exercise any of its powers or other functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made against the fidelity fund of this jurisdiction.

Division 7 Miscellaneous

4.5.34 Co-operation

- (1) When dealing with a claim, the fidelity authority may exercise any of its functions in co-operation with or with the assistance of other fidelity authorities, the Board or the Commissioner.
- (2) The fidelity authority, the Board and the Commissioner may exchange information about a claim and the authority may exchange information about a claim with other fidelity authorities.

4.5.35 Protection from liability

- (1) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of a fidelity fund by:
- (a) a fidelity authority or a member of a fidelity authority; or
 - (b) a person acting at the direction of any one referred to in paragraph (a).
- (2) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of publishing a notice or providing information under section 4.5.17 by:
- (a) a fidelity authority or a member of a fidelity authority; or
 - (b) the proprietor, editor or publisher of a newspaper in respect of a notice under that section published in the newspaper; or
 - (c) an internet service provider or internet content host in respect of a notice

Section 4.5.36

under that section published on the internet; or

- (d) a person acting at the direction of any one referred to in paragraph (a), (b) or (c).

4.5.36 National Rules for fidelity cover

- (1) The National Rules may make provision with respect to any aspect of the fidelity cover scheme under this Part.
- (2) Without limitation, the National Rules may make provision with respect to the following:
- (a) the minimum terms and conditions of fidelity cover;
 - (b) the requirements and processes for making a claim against a fidelity fund;
 - (c) the procedure by which a claim against the relevant fidelity fund is to be processed;
 - (d) the procedure for identifying and dealing with concerted interjurisdictional defaults.

Part 4.6 Business management and control

4.6.1 Compliance audits

- (1) The Commissioner may conduct, or appoint a suitably qualified person to conduct, an audit of the compliance of a law practice with this Law, the National Rules and other applicable professional obligations if the Commissioner considers there are reasonable grounds to do so, based on:
- (a) the conduct of the law practice or one or more of its associates; or
 - (b) a complaint against the law practice or one or more of its associates.
- (2) The appointment of a suitably qualified person may be made generally, or in relation to a particular law practice, or in relation to a particular compliance audit.
- (3) A compliance audit may be conducted whether or not a complaint has been made with respect to the provision of legal services by the law practice or an associate of the law practice.
- (4) A report of a compliance audit is to be provided to the law practice concerned and may be provided to the Board and the Commissioner.

Note. Chapter 7 applies to a compliance audit.

4.6.2 Management system directions

- (1) The Commissioner may give a management system direction to a law practice if the Commissioner considers it reasonable to do so after the conduct of any examination, investigation or audit referred to in Chapter 7.
- (2) A *management system direction* is a direction to a law practice or class of law practices:
- (a) to ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the law practice, or by a law practice of that class, in accordance with this Law, the National

Section 4.6.3

Rules and other professional obligations; and

- (b) to provide periodic reports to the Commissioner on the systems and on compliance with the systems.

- (3) A law practice must comply with a management system direction given to it.

4.6.3 Prohibited services and business

- (1) A law practice (or a related entity) must not:

- (a) promote or operate a managed investment scheme; or
- (b) provide a service or conduct a business of a kind specified in the National Rules for the purposes of this section.

Maximum civil penalty: 250 penalty units.

- (2) Despite subsection (1), an associate of a law practice may promote or operate a managed investment scheme if, in the event of an insolvency or administration of the managed investment scheme, the associate is appointed as:

- (a) an administrator, liquidator, receiver, receiver and manager, agent of a mortgagee or controller of the managed investment scheme in respect of the insolvency or administration; or
- (b) a controller or external administrator of an entity acting in a similar capacity as a responsible entity where a managed investment scheme does not have a responsible entity in respect of an insolvency or administration.

- (3) Except as permitted by or under the National Rules, or as approved by the Board, a law practice must not provide legal services in relation to a managed investment scheme if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme.

Maximum civil penalty: 250 penalty units.

- (4) A law practice (or a related entity) must not, in its capacity as the legal representative of a lender or contributor, negotiate the making of or act in respect of a mortgage, other than:

- (a) a mortgage under which the lender is a financial institution; or
- (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the law practice who acts for the lender or contributors or by an associate or agent of the law practice, or a person engaged by the law practice for the purpose of introducing the borrower to the lender or contributors; or
- (c) a mortgage, or a mortgage of a class, that the National Rules specify as exempt from this prohibition.

Maximum civil penalty: 250 penalty units.

- (5) In this section:

borrower means a person who borrows, from a lender or contributor, money that is secured by a mortgage.

contributor means a person who lends, or proposes to lend, money that is secured

Section 4.6.4

by a contributory mortgage arranged by a law practice.

contributory mortgage means a mortgage to secure money lent by two or more contributors as tenants in common or joint tenants, whether or not the mortgagee is a person who holds the mortgage in trust for or on behalf of those contributors.

financial institution means:

- (a) an ADI; or
- (b) a corporation or other body, or a corporation or body of a class, specified in the National Rules for the purpose of this definition.

lender means a person who lends, or proposes to lend, a borrower money that is secured by a mortgage.

- (6) To the extent that this section applies to an incorporated legal practice, this section is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

4.6.4 National Rules for legal services

The National Rules may make provision with respect to:

- (a) the provision of legal services by law practices or particular categories of law practices; and
- (b) the provision of other services by law practices in circumstances where a conflict of interest relating to the provision of legal services may arise and imposing additional duties and obligations in those circumstances; and
- (c) requirement for law practices in or in connection with providing legal and other services referred to in paragraph (a) or (b).

Chapter 5 Dispute resolution and professional discipline

Part 5.1 Preliminary

Division 1 Introduction

5.1.1 Objectives

The objectives of this Chapter are:

- (a) to provide a national framework for the timely and effective resolution of disputes or issues between clients and lawyers or law practices; and
- (b) to provide a national scheme for the discipline of the Australian legal profession, in the interests of the administration of justice and for the protection of clients of law practices and the public generally; and
- (c) to monitor, promote and enforce the professional standards, competence and honesty of the Australian legal profession.

5.1.2 References to lawyers

The term *lawyer* when used alone in this Chapter refers to any of the following:

- (a) an Australian legal practitioner;
- (b) an Australian-registered foreign lawyer;
- (c) an Australian lawyer who is not an Australian legal practitioner;
- (d) a former Australian legal practitioner, a former Australian-registered foreign lawyer or a former Australian lawyer.

Division 2 Application of this Chapter

5.1.3 Application of this Chapter to conduct

- (1) This Chapter applies to conduct of a lawyer or law practice wherever occurring, whether:
 - (a) wholly within or outside Australia; or
 - (b) partly within and partly outside Australia.
- (2) This Chapter applies to conduct of a lawyer or law practice whether consisting of acts or omissions or a combination of both.
- (3) This Chapter extends to:
 - (a) a former Australian legal practitioner or former Australian-registered foreign lawyer in respect of conduct while an Australian legal practitioner or Australian-registered foreign lawyer in the same way as it applies to an Australian legal practitioner or Australian-registered foreign lawyer, with any necessary modifications; and
 - (b) a former Australian lawyer in respect of conduct occurring while an Australian lawyer who is not an Australian legal practitioner, in the same way as it applies to an Australian lawyer who is not an Australian legal

Section 5.1.4

practitioner, with any necessary modifications; and

- (c) conduct of a lawyer as a public notary.

5.1.4 Application of this Chapter to lawyers and law practices

- (1) A provision of this Law or any other applicable law that protects a person from any action, liability, claim or demand in connection with any conduct of the person does not affect the application of this Chapter to the person in respect of the conduct.
- (2) This Chapter does not apply to a person while the person holds:
- (a) office as a Justice of the High Court; or
 - (b) office as a judge or magistrate of a court created by the Parliament of the Commonwealth; or
 - (c) office as a judge or magistrate of a court, or a judicial member of a tribunal, of a jurisdiction; or
 - (d) an office specified in the National Rules for the purposes of this section;
- regardless of whether the conduct the subject of a complaint allegedly occurred before or after the person's appointment to the office concerned.

Note. Conduct by holders of judicial offices that occurred before their appointment to those offices may be dealt with through jurisdictional arrangements.

- (3) For the purposes of this Chapter, conduct of an Australian legal practitioner in the exercise of official functions as an arbitrator or costs assessor constitutes conduct occurring in connection with the practice of law, except to the extent that the conduct was concerned with the justiciable aspects of decision making by the arbitrator or costs assessor.
- (4) For the purposes of this Chapter, conduct of an Australian legal practitioner does not constitute conduct occurring in connection with the practice of law to the extent that it is conduct engaged in in the exercise of executive or administrative functions under legislation as:
- (a) a government lawyer who is not required to hold an Australian practising certificate; or
 - (b) a person appointed to an office by the Governor-General, the Governor of a State or the Administrator of a Territory; or
 - (c) any member, officer or employee of a local representative or professional association.

5.1.5 Jurisdiction of Supreme Courts

- (1) The inherent jurisdiction and powers of the Supreme Court of this jurisdiction with respect to the control and discipline of Australian lawyers are not affected by anything in this Chapter, and extend to Australian legal practitioners whose home jurisdiction is this jurisdiction and to other Australian legal practitioners engaged in legal practice in this jurisdiction.
- (2) Nothing in this Chapter is intended to affect the jurisdiction and powers of the Supreme Court of another jurisdiction with respect to the control and discipline of Australian lawyers or Australian legal practitioners.

Section 5.2.1

Part 5.2 Complaints

Division 1 Making complaints and other matters about complaints

5.2.1 What is a complaint?

A *complaint* is any dispute or issue about any conduct to which this Chapter applies.

Note. A complaint can be about the conduct of either a lawyer or a law practice or both.

5.2.2 Who may make a complaint?

- (1) Any person or body may make a complaint.
- (2) The Commissioner may initiate a complaint containing a disciplinary matter only.

5.2.3 How is a complaint made?

- (1) A complaint is made to or by the Commissioner.
- (2) A complaint must be made or recorded in writing and must:
 - (a) identify the complainant; and
 - (b) identify the lawyer or law practice about whom the complaint is made (or, if it is not possible to identify the lawyer, identify the law practice concerned); and
 - (c) describe the alleged conduct that is the subject of the complaint.

5.2.4 Matters in a complaint

- (1) A complaint may contain either or both of the following:
 - (a) a consumer matter;
 - (b) a disciplinary matter.
- (2) A dispute or issue about conduct that is the subject of a complaint can be both a consumer matter and a disciplinary matter.

Note. For example, a dispute or issue relating to costs could be both a consumer matter (ie a costs dispute) and a disciplinary matter.

- (3) A commercial or government client making a complaint cannot obtain relief under this Chapter in relation to a consumer matter, but this subsection does not prevent the dispute or issue that is the subject of the consumer matter from being dealt with as a disciplinary matter.

5.2.5 Consumer matters (including costs disputes)

- (1) A *consumer matter* is so much of a complaint about a lawyer or a law practice as relates to the provision of legal services to the complainant by the lawyer or law practice and as the Commissioner determines should be resolved by the exercise of functions relating to consumer matters.

Note. A determination of the Commissioner under subsection (1) does not prevent the dispute or issue also being dealt with as a disciplinary matter: see

Section 5.2.6

section 5.2.4 (2).

- (2) A **costs dispute** is a consumer matter involving a dispute about legal costs payable on a solicitor-client basis where the dispute is between a lawyer or law practice and a person who is charged with those legal costs or is liable to pay those legal costs (other than under a court or tribunal order for costs), whether as a client of the lawyer or law practice or as a third party payer.

Note. Section 5.3.7 enables the Commissioner to deal with costs disputes within certain monetary limits.

5.2.6 Disciplinary matters

A **disciplinary matter** is so much of a complaint about a lawyer or a law practice as would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

5.2.7 Mixed complaints

If a complaint contains or may contain both a consumer matter and a disciplinary matter, the Commissioner may give priority to resolving the consumer matter as soon as possible and, if necessary and appropriate, separately from the disciplinary matter.

5.2.8 Time limits on making complaints

- (1) Subject to subsection (2), a complaint must be about conduct alleged to have occurred within the period of 3 years immediately before the complaint is made, but the Commissioner may waive the time requirement if satisfied that:
- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
 - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (2) To the extent that a complaint involves a costs dispute, the complaint must be made within the required period referred to in subsection (3), but the Commissioner may waive the time requirement if satisfied that:
- (a) the complaint is made within 4 months after the required period; and
 - (b) it is just and fair to deal with the complaint having regard to the delay and reasons for the delay; and
 - (c) the lawyer or law practice has not commenced legal proceedings in respect of the legal costs.
- (3) For the purposes of subsection (2), the **required period** is the period of:
- (a) 60 days after the legal costs become payable, except as provided by paragraph (b); or
 - (b) if an itemised bill was requested in respect of those costs in accordance with section 4.3.18 (2)—30 days after the request was complied with.
- (4) The Commissioner's decision to waive or refuse to waive a time requirement under this section is final and cannot be challenged in any proceedings by the complainant or the respondent.

Section 5.2.9

5.2.9 Withdrawing complaints

- (1) A complaint may be wholly or partly withdrawn by the complainant.
- (2) No further action is to be taken under this Chapter with respect to a consumer matter contained in a complaint to the extent it is withdrawn, but:
 - (a) the Commissioner may initiate or continue to investigate disciplinary matters, or proceed with disciplinary matters despite the whole or partial withdrawal of a complaint; and
 - (b) the whole or partial withdrawal of a complaint does not prevent:
 - (i) a further complaint being made under this Chapter, by the same or any other person, with respect to the same subject-matter; or
 - (ii) action being taken on any other complaint made with respect to the same subject-matter.
- (3) The whole or partial withdrawal of a complaint in any jurisdiction does not of itself affect any proceedings in the designated tribunal.

5.2.10 Where complaint is dealt with

A complaint is to be dealt with in the jurisdiction with which the complaint has the closest connection.

Note. Section 8.5.2 (4) provides that guidelines and directions may be issued for determining which local representative should deal with a matter where more than one jurisdiction is or may be involved or there is uncertainty as to which jurisdiction is relevant in the circumstances.

5.2.11 Other rights not affected

This Division does not affect any other right of a person to complain about the conduct of a lawyer or a law practice under any other legislation or to seek a remedy at common law or in equity in relation to the conduct.

Division 2 Preliminary assessment of complaints

5.2.12 Preliminary assessment of complaint

- (1) The Commissioner must conduct a preliminary assessment of a complaint.
- (2) When conducting the preliminary assessment:
 - (a) the Commissioner may request further information to be provided within a specified period by the complainant, the respondent or another person who may have relevant information; and
 - (b) the Commissioner is not bound by rules of evidence and may inform himself or herself on any matter in any manner as he or she thinks fit.
- (3) Any evidence or information obtained by the Commissioner in the course of conducting a preliminary assessment may be used by the Commissioner or an investigator in or in relation to any later investigation or consideration of the complaint.
- (4) The Commissioner may complete a preliminary assessment even if requested information is not provided within the specified period.

Section 5.2.13

5.2.13 Closure of whole or part of complaint after preliminary assessment

- (1) At any stage after preliminary assessment of a complaint, the Commissioner may close the complaint without further consideration of its merits for any of the following reasons to the extent they are applicable:
 - (a) the complaint is vexatious, misconceived, frivolous or lacking in substance;
 - (b) the complaint was made out of time;
 - (c) the complainant has not responded, or has responded inadequately, to a request for further information;
 - (d) the subject-matter of the complaint has been or is already being investigated;
 - (e) the subject-matter of the complaint would be better investigated or dealt with by police or another investigatory or law enforcement body;
 - (f) the Commissioner has made a recommendation to the Board under section 3.5.10 (4) in relation the lawyer concerned;
 - (g) the subject-matter of the complaint is the subject of civil proceedings, except so far as it is a disciplinary matter;
 - (h) the complaint is not one that the Commissioner has power to deal with;
 - (i) the Commissioner is satisfied that it is otherwise in the public interest to close the complaint.
- (2) After preliminary assessment of a complaint made by a commercial or government client, the Commissioner must immediately close the complaint without further consideration of its merits unless it contains or gives rise to a disciplinary matter.

Note. Section 5.2.4 (3) precludes a commercial or government client from obtaining relief under this Chapter in relation to a consumer matter.
- (3) A complaint may be closed under this section without any investigation or without completing an investigation.
- (4) The Commissioner is not required to give a complainant, a lawyer or law practice an opportunity to be heard or make a submission to the Commissioner before determining whether or not to close a complaint under this section.
- (5) The power to close a complaint under this section extends to closure of part of a complaint.

5.2.14 Immediate suspension of practising or registration certificate

- (1) The Commissioner may recommend to the Board that an Australian practising certificate or Australian registration certificate be immediately suspended if:
 - (a) a complaint has been made about the conduct of an Australian legal practitioner, Australian-registered foreign lawyer or law practice; and
 - (b) the Commissioner considers the immediate suspension of the certificate is warranted in the public interest on the ground of the seriousness of the alleged conduct.
- (2) The Commissioner may make the recommendation whether or not an

Section 5.2.16

investigation of the complaint has begun or been completed.

- (3) The making of the recommendation does not prevent the Commissioner from continuing to deal with the complaint.

Note. Section 3.5.12 provides that in these circumstances the Board may suspend the certificate.

Division 3 Notification of and submissions by respondents

5.2.15 Notification of respondent about complaint

- (1) The Commissioner:
- (a) may, after receiving a complaint, notify the respondent of the complaint or give the respondent a summary or details of the complaint; and
 - (b) subject to section 5.2.17, must, as soon as practicable after the Commissioner decides to investigate a complaint under section 5.2.18 and if he or she has not already done so, give the respondent a summary or details of the complaint and a notice informing the respondent of the right to make submissions; and
 - (c) must, before making a determination and if he or she has not already done so, give the respondent a summary or details of the complaint and a notice informing the respondent of the right to make submissions.
- (2) A notice informing the respondent of the right to make submissions must specify a period of 21 days in which submissions must be received or a shorter or longer period if the Commissioner reasonably believes a different period is warranted in the circumstances.

5.2.16 Submissions by respondent

- (1) The respondent to a complaint may, within the period specified under section 5.2.15, make submissions to the Commissioner about the complaint or decision or its subject-matter, unless the complaint has been closed.
- (2) The Commissioner may at his or her discretion extend the period in which submissions may be made.
- (3) The Commissioner must consider any submissions made by the respondent within the specified period in response to the notice of a decision to investigate a complaint before deciding what action is to be taken on the complaint, and may consider submissions received afterwards.
- (4) The rules of procedural fairness are not breached merely because no submissions are received within the specified period and the Commissioner makes a determination in relation to the complaint, even if submissions are received afterwards.

5.2.17 Exceptions to requirement for notification of complaint

- (1) Section 5.2.15 (1) (b) does not require the Commissioner to give the respondent a summary or details of a complaint or a notice about making submissions if the Commissioner reasonably believes that to do so will or is likely to:
- (a) prejudice the investigation of the complaint; or
 - (b) prejudice an investigation by the police or another investigatory or law

Section 5.2.19

- enforcement body of any matter with which the complaint is concerned; or
- (c) place the complainant or another person at risk of intimidation or harassment; or
 - (d) prejudice pending court proceedings.
- (2) In that case, the Commissioner:
- (a) may postpone giving the respondent the summary or details and the notice until of the opinion that it is appropriate to do so; or
 - (b) may at his or her discretion give the respondent the notice and a statement of the general nature of the complaint.

Division 4 Investigation of complaints

5.2.18 Power to investigate complaints

- (1) The Commissioner may investigate the whole or part of a complaint.
- (2) The Commissioner may appoint a suitably qualified person to conduct a complaints investigation.
- (3) The appointment may be made generally, or in relation to a particular law practice, or in relation to a particular complaints investigation.

Note. Chapter 7 applies to an investigation under this Division

5.2.19 Extending scope of investigation

- (1) The Commissioner may, if he or she considers it appropriate to do so, extend the scope of an investigation of a complaint so as to include conduct of the respondent revealed during the investigation.
- (2) Conduct so revealed, or anything arising from that conduct, may be made the subject of a new complaint.
- (3) The new complaint need not be the subject of a separate or further investigation if the Commissioner is satisfied that the subject-matter has already been sufficiently investigated or considered.

5.2.20 Referral of matters for costs assessment

- (1) For the purpose of investigating a complaint containing a disciplinary matter, the Commissioner may arrange for an assessment of costs charged or claimed by the respondent.
- (2) Any such application may be made outside any applicable time limit for making applications for costs assessments.

Part 5.3 Consumer matters

Division 1 Preliminary

5.3.1 Application of this Part

- (1) This Part applies to consumer matters.
- (2) Division 2 applies to all consumer matters, but has effect subject to Division 3 in

Section 5.3.2

relation to costs disputes.

Division 2 Provisions applicable to all consumer matters

5.3.2 Prerequisite to resolution action by Commissioner

Despite any other provision of this Division, the Commissioner is not to take action towards resolving a consumer matter unless he or she is of the opinion that:

- (a) at least one of the parties has made a reasonable attempt to resolve the matter and the attempt has been unsuccessful; or
- (b) it would be unreasonable to expect the complainant to be involved in such an attempt.

5.3.3 Informal resolution of consumer matters

The Commissioner must attempt to resolve a consumer matter by informal means as soon as practicable.

5.3.4 Mediation

- (1) This section applies to a complaint to the extent that it contains a consumer matter.
- (2) The Commissioner may order the parties to the complaint to attend mediation in good faith in relation to the consumer matter.
- (3) If mediation succeeds in relation to a consumer matter contained in the complaint, the Commissioner may close the complaint to that extent on the ground that it has been resolved.
- (4) If mediation fails in relation to a consumer matter contained in the complaint, the Commissioner may investigate the complaint further and proceed to a determination of the consumer matter.
- (5) If the complainant does not engage in mediation in good faith in relation to a consumer matter contained in the complaint, the Commissioner may instead close the complaint so far as it contains the consumer matter.
- (6) Neither evidence of anything said or admitted during a mediation or attempted mediation under this section of the whole or a part of the conduct that is the subject of a complaint nor a document prepared for the purposes of the mediation or attempted mediation:
 - (a) may be used by the Commissioner in making a determination; or
 - (b) is admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.

5.3.5 Settlement agreements

- (1) If the parties to a complaint involving a consumer matter reach agreement under this Part or otherwise with respect to the consumer matter:
 - (a) the Commissioner may prepare a written record of the agreement; and
 - (b) the record must be signed by or on behalf of each party and certified by the Commissioner; and
 - (c) the Commissioner must give each party a copy of the signed and certified

Section 5.3.6

record.

- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified record free of charge in a court.
- (3) On filing, the record must be taken to be an order of the court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under subsection (2).

5.3.6 Determination of consumer matters by Commissioner

- (1) The Commissioner may resolve a consumer matter by making a determination that, in the Commissioner's view, is fair and reasonable in all the circumstances.
- (2) In determining a consumer matter, the Commissioner may make any of the following orders:
 - (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;
 - (b) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
 - (c) an order requiring the respondent to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
 - (d) an order requiring:
 - (i) the respondent Australian legal practitioner; or
 - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice;
to undertake training, education, be supervised or undertake counselling;
 - (e) a compensation order against the respondent in accordance with Part 5.5.
- (3) A failure to comply with an order under this section is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of:
 - (a) any principal of a respondent law practice; and
 - (b) any lawyer involved in the contravention.

Division 3 Further provisions applicable to costs disputes

5.3.7 General role of Commissioner in costs disputes

- (1) The Commissioner is, subject to the other provisions of this Division, to deal with a costs dispute in the same manner as other consumer matters if:
 - (a) the total bill for legal costs is less than \$100,000 (indexed) payable in respect of any one matter; or
 - (b) the total bill for legal costs equals or is more than \$100,000 (indexed) payable in respect of any one matter, but the total amount in dispute is less than \$10,000 (indexed).
- (2) If a complaint contains a costs dispute that cannot be dealt with under subsection (1), the Commissioner is not to deal with or continue to deal with the dispute, but is to inform the parties of the right to apply for a costs assessment.

Section 5.3.9

5.3.8 Binding determinations in costs disputes

- (1) The Commissioner may make a binding determination about costs in the circumstances referred to in subsection (2).
- (2) The determination may be made in circumstances where:
 - (a) the Commissioner is unable to resolve a costs dispute referred to in section 5.3.7 (1) (whether wholly or partly); and
 - (b) the total amount of legal costs still in dispute is less than \$10,000 (indexed).
- (3) The determination must specify the amount payable as legal costs (including a nil amount). The amount ordered as payable must be less than \$10,000 (indexed).
- (4) A determination is to be based on the Commissioner's assessment of what is fair and reasonable in all the circumstances.
- (5) In considering what is fair and reasonable in all the circumstances, the Commissioner must have regard to section 4.3.30.

5.3.9 Cases where binding determinations are not made in costs disputes

- (1) The Commissioner is to cease dealing with a costs dispute in the circumstances referred to in subsection (2), but is to inform the parties of the right to apply for a costs assessment.
- (2) The action under subsection (1) is to be taken where:
 - (a) an attempted resolution by the Commissioner of a costs dispute referred to in section 5.3.7 (1) is unsuccessful (whether wholly or partly); and
 - (b) either:
 - (i) the total amount of legal costs still in dispute is equal to or more than \$10,000 (indexed); or
 - (ii) the total amount of legal costs still in dispute is less than \$10,000 (indexed) and the Commissioner notifies the parties in writing that he or she is unable to resolve the dispute.

Note. Section 4.3.27 provides in part that legal costs that are or have been the subject of a costs dispute under this Chapter may not be the subject of a costs assessment unless the Commissioner is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment. Consequently, a costs assessment is not available where a costs dispute is resolved.

5.3.10 GST excluded in calculations

Amounts payable by way of GST in respect of legal costs are to be disregarded when determining:

- (a) the total bill for legal costs referred to in section 5.3.7; or
- (b) the total amount of legal costs referred to in section 5.3.8.

5.3.11 Lodgment of disputed legal costs with Commissioner

- (1) The Commissioner may, by notice in writing, require a party to a complaint that involves a costs dispute to lodge the whole or a specified part of the disputed amount of the legal costs with the Commissioner within 28 days after giving the

Section 5.3.12

notice to the party.

- (2) The Commissioner may impose a requirement under subsection (1) only if satisfied that it would be fair and reasonable to do so.
- (3) The Commissioner cannot impose a requirement under subsection (1) on a lawyer or law practice if the complaint involving the costs dispute was made out of time or after the required period referred to in section 5.2.8 (3).
- (4) The Commissioner may close a complaint to the extent that it involves a costs dispute if the complainant fails to comply with this section.

5.3.12 **Dealing with lodged costs**

- (1) The Commissioner must cause money lodged under section 5.3.11 to be placed on deposit in an interest-bearing account with an ADI in the name of the Commissioner or an authority nominated in applicable jurisdictional legislation.
- (2) Money in the account, including interest earned on money deposited in the account, is to be paid (after the deduction of any relevant government duties and ADI charges and fees):
 - (a) if the costs dispute is successfully resolved by the Commissioner—as agreed by the parties; or
 - (b) if the complainant withdraws the complaint or does not apply to the designated tribunal of any jurisdiction or the complaint is closed—to the law practice or lawyer concerned; or
 - (c) despite paragraph (b) and if the Commissioner considers it appropriate to do so in the circumstances—to the complainant.

Part 5.4 **Disciplinary matters**

Division 1 **Preliminary**

5.4.1 **Application of this Part**

This Part applies to disciplinary matters.

5.4.2 **Unsatisfactory professional conduct**

For the purposes of this Law, *unsatisfactory professional conduct* includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

5.4.3 **Professional misconduct**

- (1) For the purposes of this Law, *professional misconduct* includes:
 - (a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
 - (b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

Section 5.4.4

- (2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as mentioned in subsection (1) (b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

5.4.4 Conduct capable of being unsatisfactory professional conduct or professional misconduct

Without limitation, the following conduct is capable of being unsatisfactory professional conduct or professional misconduct:

- (a) conduct consisting of a contravention of this Law, whether or not:
- (i) the person has been convicted of an offence in relation to the contravention; or
 - (ii) a pecuniary penalty order has been made against the person under Part 9.6 in relation to the contravention; or
 - (iii) the contravention is punishable by way of conviction or pecuniary penalty order;
- (b) conduct consisting of a contravention of the National Rules;
- (c) conduct involving contravention of the Legal Profession National Law Act of this or any other jurisdiction (other than this Law), whether or not the person has been convicted of an offence in relation to the contravention;
- (d) charging more than a fair and reasonable amount for legal costs in connection with the practice of law;
- (e) conduct in respect of which there is a conviction for:
- (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
- (f) conduct as or in becoming an insolvent under administration;
- (g) conduct in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (h) conduct consisting of a failure to comply with the requirements of a notice under this Law or the National Rules;
- (i) conduct in failing to comply with an order of a designated tribunal made under this Law (including but not limited to a failure to pay wholly or partly a fine imposed under this Law);
- (j) conduct in failing to comply with a compensation order made under this Chapter.

Division 2 Determination by Commissioner

5.4.5 Determination by Commissioner—unsatisfactory professional conduct

- (1) The Commissioner may, in relation to a disciplinary matter, find that the respondent lawyer or a legal practitioner associate of the respondent law practice

Section 5.4.5

has engaged in unsatisfactory professional conduct and may determine the disciplinary matter by making any of the following orders:

- (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;
 - (b) an order reprimanding the respondent or a legal practitioner associate of the respondent law practice;
 - (c) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
 - (d) an order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
 - (e) an order requiring:
 - (i) the respondent lawyer; or
 - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice;to undertake training, education or counselling or be supervised;
 - (f) an order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount (not exceeding \$25,000) to the fund referred to in section 9.6.7;
 - (g) an order recommending that the Board impose a specified condition on the Australian practising certificate or Australian registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.
- (2) If the Commissioner proposes to determine a disciplinary matter under this section:
- (a) the Commissioner must provide the respondent or associate and the complainant with details of the proposed determination and invite them to make written submissions to the Commissioner within a specified period; and
 - (b) the Commissioner must take into consideration any written submissions made to the Commissioner within the specified period, and may but need not consider submissions received afterwards; and
 - (c) the Commissioner is not required to repeat the process if the Commissioner decides to make a determination in different terms after taking into account any written submissions received during the specified period; and
 - (d) the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the Commissioner makes a determination in relation to the complaint, even if submissions are received afterwards.
- (3) If the Commissioner determines a disciplinary matter under this section, no further action is to be taken under this Chapter with respect to the complaint.
- (4) If a complaint contains both a consumer matter and a disciplinary matter and the Commissioner has already made a determination of the consumer matter under section 5.3.6, the Commissioner may, in subsequently making a determination

Section 5.4.6

about the disciplinary matter, take into account the determination already made about the consumer matter, but not so as to make further orders under that section.

Division 3 Role of designated tribunal

5.4.6 Initiation and prosecution of proceedings in designated tribunal

- (1) The Commissioner may initiate and prosecute proceedings against a respondent lawyer in the designated tribunal of this jurisdiction if the Commissioner is of the opinion that:
 - (a) the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the designated tribunal; or
 - (b) the alleged conduct may amount to professional misconduct.
- (2) As soon as practicable after deciding to initiate proceedings under this section, the Commissioner must give the complainant and the respondent to the complaint written notice of the decision.

5.4.7 Procedure of designated tribunal

- (1) Proceedings initiated under this Chapter in the designated tribunal are to be dealt with in accordance with the procedures of the designated tribunal.
- (2) Subject to any procedural requirements, the designated tribunal may determine proceedings without conducting a formal hearing, but is bound by the rules of procedural fairness.
- (3) The designated tribunal is bound by the rules of evidence in conducting a hearing in relation to an allegation of professional misconduct, but is otherwise not bound by those rules in relation to matters arising under this Chapter.

5.4.8 Determination by designated tribunal—disciplinary matters

- (1) If, after it has completed a hearing under this Part into the conduct of a respondent lawyer, the designated tribunal finds that the lawyer is guilty of unsatisfactory professional conduct or professional misconduct, the designated tribunal may make such orders as it thinks fit, including any of the orders that the Commissioner can make under section 5.4.5 in relation to a lawyer and any one or more of the following:
 - (a) an order that the lawyer do or refrain from doing something in connection with the practice of law;
 - (b) an order that the lawyer cease to accept instructions as a public notary in relation to notarial services;
 - (c) an order that the lawyer's practice be managed for a specified period in a specified way or subject to specified conditions;
 - (d) an order that the lawyer's practice be subject to periodic inspection by a specified person for a specified period;
 - (e) an order that the lawyer seek advice in relation to the management of the lawyer's practice from a specified person;
 - (f) an order recommending that the name of the lawyer be removed from a roll kept by a Supreme Court and the Australian Legal Profession Register;

Section 5.4.9

- (g) an order requiring the Board to impose a specified condition on the Australian practising certificate or Australian registration certificate of the lawyer;
 - (h) an order that the lawyer's Australian practising certificate or Australian registration certificate be suspended for a specified period or cancelled;
 - (i) an order that an Australian practising certificate or Australian registration certificate not be granted to the lawyer before the end of a specified period;
 - (j) an order that the lawyer not apply for an Australian practising certificate or Australian registration certificate before the end of a specified period;
 - (k) a compensation order against the lawyer in accordance with Part 5.5;
 - (l) an order that the lawyer pay a fine of a specified amount not exceeding \$50,000 if the lawyer is found guilty professional misconduct.
- (2) Subject to section 5.4.9, the designated tribunal may make ancillary or other orders, including:
- (a) an order for payment by the lawyer of expenses associated with orders under this section, as assessed or reviewed in or in accordance with the order or as agreed; and
 - (b) an interlocutory or interim order, including an order of the kind referred to in subsection (1).
- (3) The designated tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.
- (4) If the designated tribunal makes an order that a lawyer pay a fine, a copy of the order may be filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount of the fine and the order may be enforced as if it were an order of the court.
- (5) To avoid doubt, the power of the designated tribunal under subsection (1) to make any of the orders that the Commissioner can make under section 5.4.5 extends to making orders of that kind in relation to a lawyer whom the tribunal finds is guilty of professional misconduct.

5.4.9 Costs

- (1) The designated tribunal must make orders requiring a lawyer whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Commissioner and the complainant), unless the designated tribunal is satisfied that exceptional circumstances exist.
- (2) The designated tribunal may make orders requiring a lawyer whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Commissioner and the complainant), if satisfied that:
 - (a) the sole or principal reason why the proceedings were instituted in the designated tribunal was a failure of the lawyer to co-operate with the Commissioner; or
 - (b) there is some other reason warranting the making of an order in the particular circumstances.
- (3) The designated tribunal may make orders requiring:

Section 5.4.10

- (a) the Commissioner or the Board; or
- (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section;

to pay costs, but may do so only if satisfied that the lawyer concerned is not guilty of unsatisfactory professional conduct or professional misconduct and the designated tribunal considers that special circumstances warrant the making of the orders.

- (4) The designated tribunal may make orders requiring:
 - (a) a lawyer in respect of whom proceedings are pending before the designated tribunal; or
 - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section;

to pay costs on an interlocutory or interim basis.

- (5) An order for costs:
 - (a) may be for a specified amount; or
 - (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.
- (6) An order for costs may specify the terms on which costs must be paid.

Note. Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

5.4.10 Compliance with determinations and orders

Persons and bodies (other than a Supreme Court) having relevant functions under this Law must give effect to the orders of a tribunal under this Law.

Note. Section 2.2.9 provides that a Supreme Court may remove the name of a lawyer from a roll on the recommendation of the Board or a designated tribunal under this Law.

5.4.11 Power to disregard procedural lapses

- (1) The designated tribunal may order that a failure by the Commissioner to observe a procedural requirement in relation to a complaint is to be disregarded, if satisfied that the parties to the hearing have not been prejudiced by the failure.
- (2) This section applies to a failure occurring before proceedings were instituted in the designated tribunal in relation to the complaint as well as to a failure occurring afterwards.

Part 5.5 Compensation orders

5.5.1 Making of compensation orders

- (1) For the purposes of section 5.3.6, the Commissioner may make a compensation order against a respondent lawyer or law practice in accordance with this Part.
- (2) For the purposes of section 5.4.8, the designated tribunal may make a compensation order against a respondent lawyer in accordance with this Part.

Section 5.5.2

5.5.2 Request by complainant for compensation order

- (1) A complainant may request:
 - (a) the Commissioner; or
 - (b) the designated tribunal in proceedings under Division 3 of Part 5.4; to make a compensation order.
- (2) A compensation order may be requested in respect of loss suffered by:
 - (a) the complainant; or
 - (b) another person who is a client of the respondent;

(or both) because of the conduct the subject of the complaint. The complainant, or other person, suffering the loss is referred to in this Part as an *aggrieved person*.
- (3) A complainant who makes such a request must describe the loss suffered by the aggrieved person and the relevant circumstances.
- (4) A request may be made in the complaint or to the Commissioner at any time after the complaint is made and before it is disposed of.
- (5) However, a request may not be made after proceedings have been initiated in the designated tribunal with respect to the complaint unless the designated tribunal grants the complainant leave to make the request.

5.5.3 Nature of compensation orders

- (1) A compensation order is an order to compensate the aggrieved person for loss suffered because of conduct that is the subject of a complaint and consists of one or more of the orders referred to in subsections (2), (3) and (4).
- (2) A compensation order may include an order that the respondent lawyer or law practice pay to the aggrieved person, by way of monetary compensation for the loss, a specified amount not exceeding:
 - (a) where the compensation order is made by the Commissioner—\$25,000; or
 - (b) where the compensation order is made by the designated tribunal—\$25,000 or a greater amount agreed to with the consent of both the complainant and the lawyer or law practice.
- (3) A compensation order may include an order that the respondent lawyer or law practice cannot recover or must repay the whole or a specified part of the amount charged to the aggrieved person by the lawyer or law practice in respect of specified legal services. An order under this subsection is effective:
 - (a) to prevent recovery of an amount even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the lawyer or law practice; and
 - (b) to require repayment of an amount even if a court has ordered payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the lawyer or law practice.
- (4) A compensation order may include an order discharging a lien possessed by the lawyer or law practice in respect of a specified document or class of documents.

Section 5.5.4

- (5) A compensation order may specify the person to whom monetary compensation is payable, whether to the aggrieved person or to another person on behalf of the aggrieved person.

Note. Section 5.5.6 provides that compensation awarded under this Part does not affect any other remedy available for the loss.

5.5.4 Prerequisites for making of compensation orders

- (1) Unless the complainant and the respondent lawyer or law practice concerned agree, a compensation order is not to be made unless the Commissioner or designated tribunal (as the case requires) is satisfied that:
- (a) the aggrieved person has suffered loss because of the conduct concerned; and
 - (b) it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of any loss for which the aggrieved person has received or is entitled to receive:
- (a) compensation under an order that has been made by a court; or
 - (b) compensation paid or payable from a fidelity fund of any jurisdiction, where a relevant claim for payment from that fund has been made or determined.
- (3) Subsection (2) does not apply where a fidelity authority is seeking a compensation order under its subrogation to the rights and remedies of a claimant (see section 4.5.28).

5.5.5 Enforcement of compensation orders

A copy of a compensation order made by the Commissioner may be filed in a court of competent jurisdiction and the order (so far as it relates to any amount payable under the order) may be enforced as if it were an order of the court.

5.5.6 Other remedies not affected

The recovery of compensation awarded under this Part does not affect any other remedy available to an aggrieved person, but any compensation so awarded must be taken into account, and appropriate adjustments made, in any other proceedings by or on behalf of the aggrieved person in respect of the same loss.

Part 5.6 Appeal or review

5.6.1 Finality of determinations of Commissioner

The determination of a complaint or matter by the Commissioner under this Chapter is final, except as provided by this Part.

5.6.2 Internal review of decisions of Commissioner

- (1) The Commissioner may, at his or her absolute discretion, conduct an internal review of a decision made by the Commissioner if the Commissioner considers it appropriate to do so.
- (2) On the review, the Commissioner is to consider whether the decision was dealt with appropriately and whether the decision was based on reasonable grounds.
- (3) On the review, the Commissioner may confirm the original decision, make a new

Section 5.6.3

decision, or refer the matter back to the original decision-maker.

5.6.3 Right of appeal or review of decisions of Commissioner

- (1) A respondent lawyer or a legal practitioner associate of a respondent law practice may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by the designated tribunal of, a determination of the Commissioner under:
 - (a) section 5.3.6, in relation to a compensation order for more than \$10,000; or
 - (b) section 5.4.5.
- (2) The designated tribunal may make any order it considers appropriate on the appeal or review.

Note. Jurisdictional legislation may provide a right of appeal against or a right of review of the designated tribunal's decision.

Part 5.7 General duties of Commissioner

5.7.1 Duty to deal with complaints

It is the duty of the Commissioner to deal with all complaints properly made and to deal with them in accordance with this Law and the National Rules.

5.7.2 Duty to exercise discretions fairly

It is the duty of the Commissioner, in exercising or considering whether or how to exercise any applicable discretions when dealing with a complaint (including the conduct of any investigation), to act in a fair manner, having regard to the respective interests of the complainant and the respondent and to the public interest.

5.7.3 Duty to deal with complaints efficiently and expeditiously

It is the duty of the Commissioner to deal with complaints (including the conduct of any investigations) as efficiently and expeditiously as is practicable.

5.7.4 Notice of decisions and determinations

- (1) It is the duty of the Commissioner in relation to a complaint to give the complainant and the respondent written notice of:
 - (a) a decision to close the complaint; or
 - (b) a determination made in relation to the complaint (including a costs dispute); or
 - (c) a decision made as a result of an internal review in connection with the complaint.
- (2) A notice under this section must be given as soon as practicable after the decision or determination is made, and must include a statement of reasons for the decision.
- (3) The Commissioner need not give a party to a complaint notice of a decision or determination to close the complaint if the Commissioner considers that it would be appropriate in the circumstances to dispense with notifying that party.

Note. Section 5.4.6 provides for notice to be given of a decision to initiate

Section 5.7.5

proceedings in the designated tribunal.

5.7.5 Rules of procedural fairness

- (1) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Law or the National Rules, apply in relation to:
 - (a) the investigation and determination of complaints by the Commissioner; and
 - (b) the making of other decisions by the Commissioner in respect of complaints; and
 - (c) the procedures of the Commissioner in respect of complaints and any associated matters.
- (2) Subsection (1) does not apply in relation to a decision of the Commissioner that the whole or part of a complaint should be resolved by the exercise of functions relating to consumer matters (see section 5.2.5(1)).

Chapter 6 External intervention

Part 6.1 Introduction

6.1.1 Objectives

The objectives of this Chapter are:

- (a) to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices for the purpose of protecting the interests of:
 - (i) the general public; and
 - (ii) clients; and
 - (iii) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients; and
- (b) to ensure that there is an accountable and transparent process for the appointment of interveners and for the conduct of interventions.

6.1.2 Application of this Chapter

- (1) This Chapter applies to all law practices, regardless of whether they are incorporated under the Corporations Act.
- (2) This Chapter applies, with any necessary adaptations, to:
 - (a) a former law practice or former Australian legal practitioner; and
 - (b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate; and
 - (c) the administrator, or receiver, or receiver and manager, or official manager, of the property of an incorporated legal practice; and
 - (d) the liquidator of an incorporated legal practice that is being or has been wound up; and
 - (e) Australian-registered foreign lawyers and former Australian-registered foreign lawyers;in the same way as it applies to law practices.
- (3) This Chapter is intended to apply so that it, rather than the Corporations Act or the Bankruptcy Act, applies in respect of the winding up of trust property and in respect of the carrying on of a law practice during external intervention.

6.1.3 Operation of appointment of external intervener

- (1) The appointment in another jurisdiction of an external intervener is effective to operate in and in respect of this jurisdiction.
- (2) An order or direction of the designated tribunal of another jurisdiction made under this Chapter in relation to a law practice (other than an order appointing a receiver) has effect in and in respect of this jurisdiction as if it were an order or direction of the designated tribunal of this jurisdiction made in relation to that law practice.

Section 6.2.1

Part 6.2 Initiation of external intervention

6.2.1 Circumstances warranting external intervention

External intervention may take place in relation to a law practice in any of the following circumstances:

- (a) where a legal practitioner associate involved in the law practice has died, ceases to hold a current Australian practising certificate or a current Australian registration certificate, has become an insolvent under administration or is in prison;
- (b) in the case of a law firm or an unincorporated legal practice—where the firm or group has been wound up or dissolved;
- (c) in the case of an incorporated legal practice—where the corporation concerned ceases to be an incorporated legal practice, is being or has been wound up or has been deregistered or dissolved;
- (d) in any case—where the Commissioner forms a belief on reasonable grounds that the law practice or an associate of the law practice:
 - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the law practice; or
 - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the law practice; or
 - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the law practice for or on behalf of that person; or
 - (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
 - (v) is in breach of the National Rules with the result that the record-keeping for the law practice's trust accounts is inadequate; or
 - (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
 - (vii) is the subject of an adverse finding in relation to a complaint relating to trust money or trust property received by the law practice; or
 - (viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Law; or
 - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the law practice or for properly winding up the affairs of the law practice;
- (e) where any other proper cause exists in relation to the law practice.

Section 6.2.2

6.2.2 Determination to initiate external intervention

- (1) This section applies when the Commissioner becomes aware that one or more of the circumstances referred to in section 6.2.1 exist in relation to a law practice and decides that, having regard to the interests of the clients of the law practice and to other matters that it considers appropriate, external intervention is warranted.
- (2) The Commissioner may determine to initiate the appointment under this Chapter of:
 - (a) a supervisor of trust money of the law practice, if the Commissioner is of the opinion:
 - (i) that external intervention is required because of issues relating to the law practice's trust accounts; and
 - (ii) that it is not appropriate that the provision of legal services by the law practice be wound up and terminated because of those issues; or
 - (b) a manager for the law practice, if the Commissioner is of the opinion:
 - (i) that external intervention is required because of issues relating to the law practice's trust records; or
 - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the law practice; or
 - (c) a receiver for the law practice, if the Commissioner is of the opinion:
 - (i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (ii) that it may be appropriate that the provision of legal services by the law practice be wound up and terminated.
- (3) The Commissioner may, from time to time, make further determinations in relation to the law practice and for that purpose may, at the Commissioner's absolute discretion, revoke a previous determination with effect from a date or event specified by the Commissioner.

6.2.3 Appointment of external intervener may be general or limited

An appointment of an external intervener for a law practice may be made in respect of the law practice generally or may be limited by the terms of the appointment, including for example to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject-matter.

Part 6.3 Supervisors of trust money

6.3.1 Appointment of supervisor of trust money

- (1) This section applies if the Commissioner determines to appoint a supervisor of trust money of a law practice.

Section 6.3.2

- (2) The Commissioner may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either:
 - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;and may (but need not) be a member of the staff of the Commissioner.
- (4) Notice of the appointment must be given in accordance with the National Rules.

6.3.2 Effect of service of notice of appointment

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless:
 - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account and signed by the supervisor or a nominee of the supervisor; or
 - (b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.

Maximum civil penalty: 100 penalty units.

- (2) After service on a person (other than the supervisor or an ADI) of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the person must not:
 - (a) deal with any of the law practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

Maximum criminal penalty: 100 penalty units.

- (3) A supervisor of trust money may, for the purposes of subsection (1) (b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice.

6.3.3 Role of supervisor of trust money

- (1) A supervisor of trust money of a law practice has the powers and other functions of the law practice in relation to the trust money, including powers:

Section 6.3.3

- (a) to receive trust money entrusted to the practice; and
 - (b) to open and close trust accounts.
- (2) For the purpose of exercising his or her powers and other functions under subsection (1), the supervisor may exercise any or all of the following powers:
- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the law practice or an associate or former associate of the law practice or any other person who has or had control of documents relating to trust money received by the law practice to give the supervisor either or both of the following:
 - (i) access to the files and documents the supervisor reasonably requires;
 - (ii) information relating to the trust money the supervisor reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material and retain it for as long as may be necessary;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the Commissioner and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
 - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) This section applies to trust money held by the law practice before the supervisor is appointed, as well as to trust money received afterwards.
- (5) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the law practice.
- (6) The supervisor may enter and remain on premises under subsection (2) (a) only:
- (a) during normal business hours; or
 - (b) during other hours with the consent of the occupier of the premises.
- (7) The supervisor must not enter premises under subsection (2) (a) unless, before the entry, he or she has produced for inspection by the occupier:
- (a) the supervisor's notice of appointment; and
 - (b) a form of identification that includes the supervisor's photograph and signature.

Section 6.3.4

- (8) However, if the supervisor is refused access to the premises or the premises are unoccupied and the supervisor considers that entry is necessary to prevent destruction of documents or for another urgent reason, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (9) The supervisor must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the supervisor's functions.
- (10) If the supervisor takes possession of:
 - (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;under this section the supervisor on request by the occupier, a principal of a law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

6.3.4 Records of and dealing with trust money of law practice under supervision

- (1) A supervisor of trust money of a law practice must maintain the records of his or her dealings with the trust money:
 - (a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and
 - (b) separately from the affairs of any other law practice for which he or she is an external intervener; and
 - (c) in the manner specified in the National Rules for the purposes of this section.
- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

6.3.5 Termination of supervisor's appointment

- (1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances:
 - (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 6.6.3;
 - (c) the appointment of a manager for the law practice takes effect;
 - (d) the appointment of a receiver for the law practice takes effect;
 - (e) the supervisor has distributed all trust money received by the law practice and wound up all trust accounts;
 - (f) a determination of the Commissioner that the appointment be terminated has taken effect.
- (2) The Commissioner may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) The Commissioner must serve a written notice of the termination on all persons originally served with notice of the appointment.

Section 6.4.1

Part 6.4 Managers

6.4.1 Appointment of manager

- (1) This section applies if the Commissioner determines to appoint a manager for a law practice.
- (2) The Commissioner may, by instrument in writing, appoint a person as manager.
- (3) Subject to subsection (4), the appointee must be an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money.
- (4) In the case of the appointment of a manager for a law practice that consists of a barrister, the appointee must be the holder of an Australian practising certificate as a principal.
- (5) The powers of the manager for a law practice that consists of a barrister include power to reallocate or return briefs.
- (6) The appointee may (but need not) be a member of the staff of the Commissioner.
- (7) Notice of the appointment must be given in accordance with the National Rules.

6.4.2 Effect of service of notice of appointment

- (1) After service on a law practice of a notice of the appointment of a manager for the law practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

Maximum criminal penalty: 100 penalty units.

- (2) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless:
 - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account and signed by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account and signed by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver.

Maximum civil penalty: 100 penalty units.

- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not:
 - (a) deal with any of the law practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the law practice; or

Section 6.4.3

- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice;

but this subsection does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the law practice.

Maximum criminal penalty: 100 penalty units.

- (4) A manager may, for the purposes of subsection (2) (b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another trust account nominated by the manager or receiver.

6.4.3 Role of managers

- (1) A manager for a law practice may carry on the law practice and may do all things that the law practice or a legal practitioner associate of the law practice might lawfully have done, including but not limited to the following:
 - (a) transacting any business of the law practice that the manager reasonably believes to be urgent;
 - (b) transacting, with the approval of any or all of the existing clients of the law practice, any business on their behalf, including:
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of property;
 - (c) accepting instructions from new clients and transacting any business on their behalf, including:
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of regulated property;
 - (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;
 - (e) entering into, executing or performing any agreement;
 - (f) dealing with trust money or trust property;
 - (g) winding up the affairs of the law practice.
- (2) For the purpose of exercising his or her powers under subsection (1), the manager may exercise any or all of the following powers:
 - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the manager either or both of the following:
 - (i) access to the files and documents the manager reasonably requires;

Section 6.4.4

- (ii) information relating to client matters the manager reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material and retain it for as long as may be necessary;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the Commissioner and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
 - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) The manager may enter and remain on premises under subsection (2) (a) only:
- (a) during normal business hours; or
 - (b) during other hours with the consent of the occupier of the premises.
- (5) However, if the manager is refused access to the premises or the premises are unoccupied and the manager considers that entry is necessary to prevent destruction of documents or for another urgent reason, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (6) The manager must not enter premises under subsection (2) (a) unless, before the entry, he or she has produced for inspection by the occupier:
- (a) the manager's notice of appointment; and
 - (b) a form of identification that includes the manager's photograph and signature.
- (7) The manager must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the manager's functions.
- (8) If the manager takes possession of:
- (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;
- under this section the manager on request by the occupier, a principal of a law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

6.4.4 Records and accounts of law practice under management and dealings with trust money

- (1) The manager for a law practice must maintain the records and accounts of the law

Section 6.4.5

practice that he or she manages:

- (a) separately from the management of the affairs of the law practice before his or her appointment as manager; and
 - (b) separately from the affairs of any other law practice for which he or she is an external intervener; and
 - (c) in the manner specified in the National Rules for the purposes of this section.
- (2) Subject to subsection (1), the manager for a law practice must deal with trust money of the law practice in the same way as a law practice must deal with trust money.

6.4.5 Deceased estates

- (1) It is the duty of the manager for a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate of the law practice for the orderly winding up of the estate.
- (2) The manager is not, in the exercise of powers and other functions as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from exercising powers or other functions as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and other functions are not affected by the death.

6.4.6 Lien for costs on regulated property

- (1) This section applies if:
 - (a) a manager has been appointed for a law practice; and
 - (b) the law practice or a legal practitioner associate of the law practice claims a lien for legal costs on regulated property of the law practice.
- (2) The manager may serve on the law practice or legal practitioner associate a written notice requiring the law practice or associate to give the manager within a specified period of not less than one month:
 - (a) particulars sufficient to identify the regulated property; and
 - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the manager in writing to give access to the regulated property that is reasonably necessary to enable the law practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the manager may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

6.4.7 Termination of manager's appointment

- (1) The appointment of a manager for a law practice terminates in the following circumstances:

Section 6.5.1

- (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 6.6.3;
 - (c) the appointment of a receiver for the law practice takes effect, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and other functions of a manager;
 - (d) the manager has wound up the affairs of the law practice;
 - (e) a determination of the Commissioner that the appointment be terminated has taken effect.
- (2) The Commissioner may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) If the appointment terminates in the circumstances referred to in subsection (1) (a), (c) or (e), the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to:
- (a) another external intervener appointed for the law practice; or
 - (b) the law practice, if another external intervener is not appointed for the law practice.
- (4) The former manager need not transfer regulated property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the Commissioner.
- (5) The Commissioner must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 6.5 Receivers

6.5.1 Appointment of receiver

- (1) This section applies if the Commissioner determines to initiate action for the appointment of a receiver for a law practice.
- (2) The designated tribunal of this jurisdiction may, on the application of the Commissioner, appoint a person as receiver for a law practice.
- (3) The designated tribunal may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
- (4) Before commencing to hear an application for appointment of a receiver, the designated tribunal must order from the precincts of the tribunal any person who is not:
 - (a) an officer of the tribunal; or
 - (b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or
 - (c) a principal of the law practice concerned; or
 - (d) a person who is about to or is in the course of giving evidence; or

Section 6.5.2

- (e) a person permitted by the tribunal to be present in the interests of justice.
- (5) The appointee must be:
 - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts;and may (but need not) be a member of the staff of the Commissioner.
- (6) Notice of the appointment must be given in accordance with the National Rules.

6.5.2 Effect of service of notice of appointment

- (1) After service on a law practice of a notice of the appointment of a receiver for the law practice and until the appointment is terminated, a legal practitioner associate of the law practice who is specified or referred to in the notice must not participate in the affairs of the practice.

Maximum criminal penalty: 100 penalty units.

- (2) After service on an ADI of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless:
 - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the receiver, a manager appointed for the law practice or a nominee of the receiver or manager.

Maximum civil penalty: 100 penalty units.

- (3) After service on a person of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the person must not:
 - (a) deal with any of the law practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the law practice;

but this subsection does not apply to an ADI or the receiver or manager for the law practice.

Maximum criminal penalty: 100 penalty units.

- (4) A receiver may, for the purposes of subsection (2) (b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice

Section 6.5.3

concerned by means of electronic or internet banking facilities.

- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the receiver or a manager for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another trust account nominated by the receiver or manager.

6.5.3 Role of receivers

- (1) The role of a receiver for a law practice is:
 - (a) to be the receiver of regulated property of the law practice; and
 - (b) to wind up and terminate the affairs of the law practice.
- (2) For the purpose of winding up the affairs of the law practice and in the interests of the law practice's clients, the designated tribunal of this jurisdiction may, by order, authorise:
 - (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
 - (b) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money, or a law practice whose principals are or include one or more Australian legal practitioners who hold Australian practising certificates authorising the receipt of trust money, specified in the instrument to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the designated tribunal of this jurisdiction, the receiver, if authorised under subsection (2) to carry on the legal practice engaged in by a law practice, has all the powers and other functions of a manager under this Chapter and is taken to have been appointed as manager for the law practice.
- (4) The designated tribunal may, by order, terminate an authorisation to carry on a legal practice granted under subsection (2).
- (5) For the purpose of exercising his or her powers and other functions under this section, the receiver may exercise any or all of the following powers:
 - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the receiver:
 - (i) access to the files and documents the receiver reasonably requires; and
 - (ii) information relating to client matters the receiver reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a

Section 6.5.4

- purpose relevant to his or her appointment;
- (d) to take possession of any relevant material and retain it for as long as may be necessary;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (6) If the receiver takes anything from the premises, the receiver must issue a receipt in a form approved by the Commissioner and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
 - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

6.5.4 Records and accounts of law practice under receivership and dealings with trust money

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages:
- (a) separately from the management of the affairs of the law practice before his or her appointment as receiver; and
 - (b) separately from the affairs of any other law practice that the receiver is managing or for which the receiver is appointed as external intervener; and
 - (c) in the manner specified in the National Rules for the purposes of this section.
- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

6.5.5 Power of receiver to take possession of regulated property

- (1) A receiver for a law practice may take possession of regulated property of the law practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the designated tribunal may, on application by the receiver, order the person to deliver the regulated property to the receiver.
- (4) If, on application made by the receiver, the designated tribunal is satisfied that an order made under subsection (3) has not been complied with, the tribunal may order the seizure of any regulated property of the law practice that is located on

Section 6.5.6

the premises specified in the order and make any further orders it thinks fit.

- (5) An order under subsection (4) operates to authorise:
- (a) any member of the police force; or
 - (b) the receiver or a person authorised by the receiver, together with any member of the police force;

to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

- (6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

6.5.6 Power of receiver to take delivery of regulated property

- (1) If a receiver for a law practice believes on reasonable grounds that another person is under an obligation, or will later be under an obligation, to deliver regulated property to the law practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.
- (2) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property to the law practice, the person must deliver the property to the receiver.

Maximum civil penalty: 100 penalty units.

- (3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

6.5.7 Power of receiver to deal with regulated property

- (1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the law practice.
- (2) The receiver may deal with the regulated property in any manner in which the law practice might lawfully have dealt with the property.

6.5.8 Power of receiver to require documents or information

- (1) A receiver for a law practice may require:
- (a) a person who is an associate or former associate of the law practice; or
 - (b) a person who has or has had control of documents relating to the affairs of the law practice; or
 - (c) a person who has information relating to regulated property of the law practice or property that the receiver believes on reasonable grounds to be regulated property of the law practice;

to give the receiver, within a period and in a manner specified by the receiver, either or both of the following:

- (d) access to the documents relating to the affairs of the law practice the receiver reasonably requires;
- (e) information relating to the affairs of the law practice the receiver reasonably requires (verified by statutory declaration if the requirement so states) and within a period and in a manner specified by the receiver.

Section 6.5.9

- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Maximum civil penalty: 50 penalty units.

Note. Section 9.7.4 contains provisions relating to compliance with this section.

6.5.9 Examinations about regulated property

- (1) The designated tribunal may, on the application of a receiver for a law practice, make an order directing that an associate or former associate of the law practice or any other person appear before the designated tribunal for examination on oath or affirmation in relation to the regulated property of the law practice.
- (2) On an examination of a person under this section, the person must answer all questions that the designated tribunal allows to be put to the person.

6.5.10 Lien for costs on regulated property

- (1) This section applies if:
 - (a) a receiver has been appointed for a law practice; and
 - (b) the law practice or a legal practitioner associate of the law practice claims a lien for legal costs on regulated property of the law practice.
- (2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the law practice or associate to give the receiver within a specified period of not less than one month:
 - (a) particulars sufficient to identify the regulated property; and
 - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the law practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

6.5.11 Regulated property not to be attached

Regulated property of a law practice (including regulated property held by a receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

6.5.12 Recovery of regulated property where there has been a breach of trust etc

- (1) This section applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been taken by, paid to, or transferred to, a person (the transferee) in breach of trust, improperly or unlawfully and the transferee:
 - (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
 - (b) did not provide to the law practice or any other person any or any adequate

Section 6.5.13

consideration for the taking, payment or transfer; or

- (c) because of the taking, payment or transfer, became indebted or otherwise liable to the law practice or to a client of the law practice in the amount of the payment or in another amount.

- (2) The receiver is entitled to recover from the transferee:

- (a) if subsection (1) (a) applies—the amount of the payment or the value of the regulated property taken or transferred; or
- (b) if subsection (1) (b) applies—the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or
- (c) if subsection (1) (c) applies—the amount of the debt or liability;

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

- (3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been paid in breach of trust, improperly or unlawfully to a person (the prospective plaintiff) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party:

- (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
- (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.

- (4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person (the debtor), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.

- (5) A person authorised by the Commissioner to do so may give a certificate with respect to all or any of the following facts:

- (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt, and the identity of the person from whom it was received;
- (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;
- (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the law practice and the truth or falsity of those entries;
- (d) the money and securities held by the law practice at the specified time.

- (6) If the receiver brings proceedings under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the

Section 6.5.13

contrary, is proof of the facts specified in it.

6.5.13 Improperly destroying property etc

A person must not, with intent to defeat the operation of this Part or of the National Rules relating to receivers, and whether before or after the appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Maximum criminal penalty: 250 penalty units or imprisonment for 5 years, or both.

6.5.14 Deceased estates

- (1) It is the duty of the receiver for a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate of the law practice for the orderly winding up of the estate.
- (2) The receiver is not, in the exercise of powers and other functions as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising powers or other function as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and other functions are not affected by the death.

6.5.15 Termination of receiver's appointment

- (1) The appointment of a receiver for a law practice terminates in the following circumstances:
 - (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 6.6.3;
 - (c) an order of a designated tribunal that the appointment be terminated has taken effect.
- (2) The following provisions apply where a receiver for a law practice is appointed by the designated tribunal of this jurisdiction:
 - (a) the Commissioner or receiver may at any time apply to the designated tribunal of this jurisdiction for an order terminating the appointment immediately or with effect from a specified date;
 - (b) the receiver must apply to the designated tribunal of this jurisdiction for termination of the appointment when the affairs of the law practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (3) The designated tribunal may make any order it considers appropriate in relation to an application under this section.

Note. Section 6.1.3 (2) provides that an order of the designated tribunal of another jurisdiction has effect in and in respect of this jurisdiction as if it were an

Section 6.6.1

order of the designated tribunal of this jurisdiction.

- (4) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the designated tribunal's decision on the application except to the extent (if any) that the tribunal otherwise directs.
- (5) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice:
 - (a) to another external intervener appointed for the law practice within the period of 14 days beginning with the day after the date of the termination; or
 - (b) to the law practice, if another external intervener is not appointed for the law practice within that period and if paragraph (c) does not apply; or
 - (c) to another person in accordance with arrangements approved by the Commissioner, if it is not practicable to transfer and deliver the regulated property to the law practice.
- (6) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (5) unless the expenses of receivership have been paid.
- (7) The Commissioner must serve a written notice of the termination on all persons originally served with notice of the appointment.

Part 6.6 General

6.6.1 Conditions on appointment of external intervener

- (1) An appointment of an external intervener is subject to:
 - (a) any conditions imposed by the appropriate authority; and
 - (b) any conditions imposed by or under the National Rules for the purposes of this section.
- (2) The appropriate authority may impose conditions:
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection (2).
- (4) The *appropriate authority* is:
 - (a) the Commissioner in the case of a supervisor of trust accounts or a manager; or
 - (b) the designated tribunal of this jurisdiction in the case of a receiver.

6.6.2 Status of acts of external intervener

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of:
 - (a) any proceedings; or

Section 6.6.3

- (b) any transaction that relies on that act or omission;
taken to have been done or omitted to be done by the law practice.
- (2) Nothing in this section subjects an associate of the law practice to any personal liability.

6.6.3 Right of appeal or review about appointment of external intervener

- (1) An aggrieved person referred to in subsection (2) may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal of this jurisdiction against, or seek a review by that tribunal of, the appointment in this jurisdiction of an external intervener for the law practice.
- (2) An *aggrieved person* is:
 - (a) the law practice; or
 - (b) an associate of the law practice; or
 - (c) any person authorised to operate a trust account of the law practice; or
 - (d) a client of the law practice whose interests may be adversely affected by the appointment; or
 - (e) any other person whose interests may be adversely affected by the appointment.
- (3) The appeal or application for review is to be lodged within 7 days after notice of the appointment is served on:
 - (a) the person who proposes to appeal or seek review; or
 - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal or seek review.
- (4) The designated tribunal may by order do any one or more of the following:
 - (a) confirm the appointment;
 - (b) set aside the appointment;
 - (c) impose or vary any conditions of the appointment;
 - (d) make any other orders it thinks fit.
- (5) The appointment of an external intervener is not stayed by the making of an appeal, and the external intervener may accordingly continue to exercise his or her powers and other functions as external intervener during the currency of the appeal except to the extent (if any) that the designated tribunal otherwise directs.
- (6) To avoid doubt, this section has effect subject to section 6.1.3.

6.6.4 Directions of designated tribunal

Where the designated tribunal of this jurisdiction has appointed an external intervener for a law practice, the tribunal may, on application by:

- (a) the external intervener; or
 - (b) a principal of the law practice; or
 - (c) any other person affected by the external intervention;
- give directions in relation to any matter affecting the intervention or the intervener's powers or other functions under this Law.

Section 6.6.5

6.6.5 Manager and receiver appointed for law practice

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

6.6.6 ADI disclosure requirements

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener, without charge:
 - (a) whether or not the law practice, or an associate of the law practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) details identifying every account so maintained.

Maximum civil penalty: 100 penalty units.

- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge:
 - (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
 - (b) provide the intervener with full details of any transactions relating to any such account or money.

Maximum civil penalty: 100 penalty units.

- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener, without charge:
 - (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) the details of any such account.

Maximum civil penalty: 100 penalty units.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

6.6.7 Confidentiality

- (1) An external intervener must not disclose information obtained as a result of his or

Section 6.6.8

her appointment except:

- (a) so far as is necessary for exercising his or her powers or other functions; or
- (b) as provided in subsection (2).

Maximum civil penalty: 50 penalty units.

- (2) An external intervener may disclose information to any of the following:
 - (a) any court, tribunal or other person acting judicially;
 - (b) the Board or the Commissioner or both;
 - (c) any officer of or Australian legal practitioner instructed by or on behalf of:
 - (i) a local representative of the Board or the Commissioner; or
 - (ii) the Commonwealth, a State or a Territory; or
 - (iii) an authority of the Commonwealth or of a State or Territory;in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;
 - (d) a member of the police force of any jurisdiction if the Commissioner or external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
 - (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
 - (f) a client or former client of the law practice concerned if the information relates to the client or former client;
 - (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
 - (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned;
 - (i) the fidelity authority of the fidelity fund for this jurisdiction or any other jurisdiction.

6.6.8 Provisions relating to requirements under this Chapter

- (1) This section applies to a requirement imposed on a person under this Chapter or the National Rules made for the purposes of this Chapter to give an external intervener access to documents or information.
- (2) The external intervener imposing the requirement may:
 - (a) inspect any document provided pursuant to the requirement; and
 - (b) make copies of the document or any part of the document; and
 - (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.

6.6.9 Obstruction of external intervener

A person must not, without reasonable excuse, obstruct an external intervener exercising a power or other function under this Law.

Section 6.6.11

Maximum civil penalty: 50 penalty units.

6.6.10 Fees, costs and expenses

- (1) The fees, costs and expenses of an external intervener are payable in accordance with the National Rules and payable by and recoverable from the law practice concerned.
- (2) The Commissioner may recover any unpaid fees, costs and expenses from the law practice.
- (3) Fees, costs and expenses not paid to the external intervener by a law practice are payable from the fund specified or described in the Legal Profession National Law Act of this jurisdiction for the purposes of this section.
- (4) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the fund referred to in subsection (3) are to be paid into that fund or refunded in accordance with an applicable law of this jurisdiction.

6.6.11 Protection from liability

- (1) No liability attaches to a protected person in respect of any act or omission by an external intervener done in good faith and in the exercise or purported exercise of the intervener's functions under this Chapter.
- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the National Rules.
- (3) A *protected person* is the Commissioner, an external intervener or a person acting at the direction of the Commissioner or an external intervener.

6.6.12 National Rules for external intervention

- (1) The National Rules may make provision with respect to any aspect of external intervention.
- (2) Without limitation, the National Rules may make provision with respect to the following:
 - (a) the content of and service of notices of appointment and termination of external interveners;
 - (b) reports by external interveners;
 - (c) the entitlement of external interveners to remuneration and the recovery by them of remuneration to which they are entitled;
 - (d) the assessment and recovery of legal costs and expenses incurred in relation to external interventions.

Chapter 7 Investigatory powers

Part 7.1 Introduction

7.1.1 Objective

- (1) The objective of this Chapter is to set out powers that are exercisable in connection with:
 - (a) trust records examinations; and
 - (b) trust records investigations; and
 - (c) compliance audits; and
 - (d) complaint investigations.
- (2) A person who may exercise any of those powers is referred to in this Chapter (including the Commissioner when exercising those powers) as an *investigator*.

7.1.2 References to lawyers

The term *lawyer* when used alone in this Chapter has the same meaning as in section 5.1.2.

Part 7.2 Requirements relating to documents, information and other assistance

7.2.1 Requirements—trust records examinations, trust records investigations and compliance audits

- (1) For the purpose of carrying out a trust records examination, trust records investigation or compliance audit in relation to a law practice, an investigator may, on production of evidence of his or her appointment for inspection, require the law practice or any person who has or has had control of documents relating to the affairs of the law practice to give the investigator either or both of the following:
 - (a) access to the documents relating to the affairs of the law practice the investigator reasonably requires;
 - (b) information relating to the affairs of the law practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Maximum civil penalty: 50 penalty units.

Note. Section 9.7.4 contains provisions relating to compliance with this section.

7.2.2 Requirements—complaint investigations

- (1) For the purpose of carrying out a complaint investigation in relation to a lawyer

Section 7.2.3

or law practice, an investigator may, by notice served on the lawyer or a legal practitioner associate of the law practice (as the case requires), require the lawyer or associate to do any one or more of the following:

- (a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
 - (b) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);
 - (c) to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to a lawyer or law practice, the investigator may, on production of evidence of his or her appointment, require any person (other than the lawyer) who has or has had control of documents relating to the subject matter of the complaint to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;
 - (b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.

Maximum criminal penalty: 50 penalty units.

- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.
- (5) If a notice under subsection (1) is served on the lawyer or legal practitioner associate by the investigator personally, the investigator must produce evidence of his or her appointment for inspection at the time of service.

Note. Section 9.7.4 contains provisions relating to compliance with this section.

7.2.3 Inspection and copying of documents

An investigator may inspect any document provided pursuant to a requirement under this Part and may make copies of the document or any part of the document.

7.2.4 Retention and return of documents

- (1) Subject to this section, an investigator may retain a document provided pursuant to a requirement under this Part if, and for so long as, the investigator considers that retention of the document is reasonably necessary:
 - (a) for the purposes of the trust records examination, trust records investigation, compliance audit or complaint investigation concerned; or
 - (b) to enable evidence to be obtained for the purposes of any disciplinary or other proceedings in relation to it under this Law or the National Rules.
- (2) If an investigator retains a document under this section, he or she must take reasonable steps to return it to the person who provided it when the reason for its retention no longer exists.

Section 7.3.1

- (3) Nothing in this section prevents an investigator from retaining a copy of a document or other thing seized, or making a copy and retaining it.

Part 7.3 Entry and search of premises

7.3.1 Investigator's power to enter premises—trust records investigations, compliance audits and complaint investigations

- (1) For the purpose of carrying out a trust records investigation, compliance audit or complaint investigation, an investigator may enter and remain on premises to exercise the powers in section 7.3.2.
- (2) The investigator may enter premises:
- (a) with the consent of the occupier; or
 - (b) under the authority of a search warrant issued under this Part; or
 - (c) in the case of non-residential premises—without the consent of the occupier and without a warrant, but only if:
 - (i) the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material; and
 - (ii) the Commissioner in the particular case has authorised the investigator (orally or in writing) to do so.

7.3.2 Powers of investigator while on premises

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers:
- (a) search the premises and examine anything on the premises;
 - (b) search for any information, document or other material relating to the matter to which the investigation relates;
 - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;
 - (d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
 - (e) make copies of any relevant material or any part of any relevant material;
 - (f) use (free of charge) photocopying or other equipment on the premises for the purpose of copying any relevant material;
 - (g) seize and take away any relevant material or any part of any relevant material;
 - (h) with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material:
 - (i) inspect and gain access to a computer or equipment; and
 - (ii) download or otherwise obtain any documents or information; and
 - (iii) make copies of any documents or information held in it; and
 - (iv) seize and take away any computer or equipment or any part of it;

Section 7.3.3

- (i) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;
- (j) require any person who is on the premises to do any of the following:
 - (i) to state his or her full name, date of birth and address;
 - (ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;
 - (iii) to produce relevant material;
 - (iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;
 - (v) to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
 - (vi) to give other assistance the investigator reasonably requires to carry out the investigation;

Note. Section 7.5.1 provides that a failure to comply with a requirement under paragraph (j) is an offence, except where entry was obtained with the occupier's consent. Note. Section 9.7.4 contains provisions relating to compliance with the paragraph.

- (k) do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.
- (2) Any documents, information or anything else obtained by the investigator may be used for the purposes of the investigation.
- (3) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.

7.3.3 Provisions relating to entry and search with consent

- (1) An investigator must not enter and search any premises under this Part with the consent of the occupier unless, before the occupier consents to that entry and search, the investigator has:
 - (a) produced evidence of his or her appointment for inspection; and
 - (b) informed the occupier:
 - (i) of the purpose of the entry and search; and
 - (ii) that the occupier may refuse to give or may withdraw consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent, or may withdraw consent, to the taking of any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in any disciplinary or other proceedings under this Law or the National Rules.
- (2) If an occupier consents to an entry and search, the investigator who requested

Section 7.3.4

consent must before entering the premises ask the occupier to sign an acknowledgment stating:

- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in disciplinary or other proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any copy or extract; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (3) If an occupier consents to the seizure or taking of any thing during a search, the investigator must before seizing or taking the thing ask the occupier to sign an acknowledgment stating:
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (4) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the investigator leaves the premises.
- (5) If, in any proceedings, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.
- (6) The occupier may withdraw consent to an entry or search, but withdrawal does not affect the validity of anything done or omitted before the withdrawal.

7.3.4 Search warrants

- (1) For the purpose of carrying out a trust records investigation or complaint investigation, an investigator may apply for a search warrant, to an issuing authority (however described) authorised under the legislation of this jurisdiction to issue search warrants, if:
 - (a) a search is proposed to be undertaken in this jurisdiction; and
 - (b) the investigator believes there are reasonable grounds for the issue of a search warrant.
- (2) A search warrant may, in response to an application made under this section, be issued if:
 - (a) an investigator satisfies the issuing authority that there are reasonable grounds to suspect that relevant material is located at the premises; and
 - (b) the issuing authority is satisfied that there are reasonable grounds for issuing the warrant; and
 - (c) any other requirements of the applicable jurisdictional legislation are satisfied.
- (3) A search warrant authorises an investigator named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment:
 - (a) to enter the premises specified in the warrant at the time or within the

Section 7.3.5

period specified in the warrant; and

- (b) to exercise the powers in section 7.3.2.
- (4) A search warrant may restrict the powers that may be exercised under section 7.3.2.

7.3.5 Search warrants—announcement before entry

- (1) On executing a search warrant, the investigator executing the warrant:
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the investigator has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An investigator need not comply with subsection (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.

7.3.6 Search warrants—details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the investigator must:
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the investigator must:
 - (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.
- (3) An investigator executing a search warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.

7.3.7 Retention and return of things seized during search

- (1) Subject to this section, an investigator may retain a document or other thing seized during a search if, and for so long as, the investigator considers that retention of the document or thing is reasonably necessary:
 - (a) for the purposes of the trust records investigation or complaint investigation concerned; or
 - (b) to enable evidence to be obtained for the purposes of any disciplinary or other proceedings in relation to it under this Law or the National Rules.
- (2) If an investigator retains a document or thing under this section, he or she must take reasonable steps to return it to the person from whom it was seized when the reason for its retention no longer exists.
- (3) Nothing in this section prevents an investigator from retaining a copy of a document or other thing seized, or making a copy and retaining it.

7.3.8 Copies of seized things to be provided

- (1) This section applies if:
 - (a) a person in charge of premises, or someone else who apparently represents

Section 7.4.1

- the person, is present at the premises where an investigator enters the premises with or without consent; and
- (b) the investigator seizes:
 - (i) a document, film, computer file or something else that can be readily copied; or
 - (ii) a data storage device containing information that can be readily copied.
 - (2) The person in charge or other person may ask the investigator to give the person a copy of the thing or information.
 - (3) The investigator must give the person the copy as soon as practicable after the seizure.
 - (4) However, the investigator is not required to give the copy if:
 - (a) the thing seized was a copy produced by the use of equipment on the premises; or
 - (b) possession of the thing or information by a person in charge of the premises or someone else would be an offence.

Part 7.4 Additional powers in relation to incorporated legal practices

7.4.1 Application and operation of Part

- (1) This Part applies to:
 - (a) trust records investigations; and
 - (b) compliance audits; and
 - (c) complaint investigations;conducted in relation to incorporated legal practices.
- (2) An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.
- (3) The provisions of this Part are additional to the other provisions of this Chapter.

Note. Section 9.7.4 contains provisions relating to compliance with a requirement of this Part to produce documents, provide information or do anything else under this Part.

7.4.2 Examination of persons

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on ASIC by Division 2 of Part 3 of the ASIC Act.
- (2) The provisions of Division 2 of Part 3 of the ASIC Act apply to the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC is taken to be a reference to the investigator;
 - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 of that Act is taken to be a reference to a matter that is being or

Section 7.4.3

is to be investigated, examined or audited by the investigator;

- (c) a reference in section 19 of that Act to a person is taken to be a reference to a lawyer or an incorporated legal practice;
 - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Commissioner.
- (3) Sections 22 (2) and (3), 25 (2) and (2A), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred by this section.

7.4.3 Inspection of books

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on ASIC by sections 30 (1), 34 and 37–39 of the ASIC Act.
- (2) Those provisions apply to the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is taken to be a reference to the investigator;
 - (b) a reference to a corporation (including a corporation that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;
 - (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;
 - (d) a reference to a member or staff member is taken to be a reference to the Commissioner or a person authorised by the Commissioner who is a member of the staff of the Commissioner;
 - (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies.

7.4.4 Power to hold hearings

- (1) The investigator may hold hearings for the purposes of an investigation, examination or audit to which this Part applies.
- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to a hearing, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is taken to be a reference to the investigator;
 - (b) a reference to a member or staff member is taken to be a reference to the Commissioner or a person authorised by the Commissioner who is an officer or employee of the Commissioner;
 - (c) a reference to a prescribed form is taken to be a reference to a form approved by the Commissioner.

Section 7.5.1

Part 7.5 Miscellaneous

7.5.1 Obstruction of investigator

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a function under this Law.

Maximum criminal penalty: 50 penalty units.

- (2) A person required to do anything under section 7.3.2 (1) (j) must not, without reasonable excuse, fail to comply with the requirement.

Maximum criminal penalty: 50 penalty units.

- (3) Subsections (1) and (2) do not apply in relation to premises where entry is effected with the consent of the occupier.

7.5.2 Obligation of lawyers

- (1) The duties imposed on a lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.

- (2) A lawyer must not mislead an investigator in the exercise of any power or other function under this Chapter.

Maximum criminal penalty: 100 penalty units.

- (3) A lawyer who is subject to a requirement under section 7.2.2 must not, without reasonable excuse, fail to comply with the requirement.

7.5.3 Protection from liability

- (1) No liability attaches to a protected person in respect of any act or omission by an investigator done in good faith and in the exercise or purported exercise of the investigator's functions under this Chapter.

- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the National Rules.

- (3) For the purposes of this section, a *protected person* is the Commissioner, an investigator or a person acting at the direction of the Commissioner or an investigator.

7.5.4 National Rules

- (1) The National Rules may make provision with respect to any aspect of trust records examinations, trust records investigations, compliance audits and complaint investigations.

- (2) Without limitation, the National Rules may make provision with respect to the following:

- (a) the manner in which powers under this Chapter are to be exercised;
(b) reports by investigators.

Chapter 8 National regulatory authorities

Part 8.1 Standing Committee

8.1.1 Role of Standing Committee

- (1) The Standing Committee has a general supervisory role in relation to the Board and the Commissioner to ensure they are fulfilling their duties under this Law consistently with the objectives of this Law.
- (2) Subject to this section, the Standing Committee may request reports from the Board and the Commissioner regarding specified aspects of their operations.
- (3) A request for a report cannot be about a particular person or a particular matter.
- (4) The Board and the Commissioner must provide the Standing Committee with any requested reports.
- (5) The Standing Committee may receive and consider annual and other reports from the Board and the Commissioner.

Note. The Standing Committee also has the role of considering National Rules under section 9.1.7.

8.1.2 Decisions of Standing Committee

- (1) Decisions of the Standing Committee for the purposes of this Law are to be determined by a majority of the votes of the Standing Committee.
- (2) A certificate signed by the Secretary of the Standing Committee of Attorneys-General stating that a decision of the Standing Committee for the purposes of this Law was as set out in the certificate is conclusive evidence of the decision.

Part 8.2 National Legal Services Board

8.2.1 Objectives of Board

The objectives of the Board are:

- (a) to ensure the efficient, targeted and effective regulation of the legal profession and the maintenance of professional standards; and
- (b) to address the concerns of clients of law practices through the regulatory system and provide for the protection of clients of law practices; and
- (c) to promote national consistency in the regulation of the Australian legal profession; and
- (d) to ensure the Australian system is at the forefront of regulation of legal professionals.

8.2.2 Provisions relating to Board

- (1) The Board has the functions conferred or imposed on it by or under this Law as applied by the Legal Profession National Law Acts of this jurisdiction and other jurisdictions.

Section 8.1.2

- (2) The Board:
 - (a) is a corporation with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) has all the powers of an individual and, in particular, may do anything necessary or convenient to be done in the performance of its functions.
- (3) The Board has the status, privileges and immunities of the jurisdiction in which its primary office is based (whether or not it is the host jurisdiction).
- (4) The Board is appointed for a cycle of terms, each of 3 years and referred to as an *operational term*. The first operational term is the period of 3 years commencing on the commencement of this Law in the host jurisdiction.
- (5) The Board may exercise its functions in relation to:
 - (a) one jurisdiction; or
 - (b) two or more or all jurisdictions collectively.
- (6) Schedule 1 has effect.

8.2.3 Responsibility of Board

- (1) The Board is responsible for:
 - (a) the general administration of this Law and the National Rules; and
 - (b) oversight of the implementation and application of:
 - (i) this Law and the National Rules; and
 - (ii) the policies and practices determined or adopted by the Board in connection with this Law and the National Rules.
- (2) Subsection (1) does not affect the responsibilities of the Standing Committee and the Commissioner under this Law and the National Rules.

8.2.4 Kinds of functions of Board

- (1) The Board has the following kinds of functions:
 - (a) independent functions;
 - (b) special functions;
 - (c) admission functions.
- (2) The independent functions of the Board are all its functions other than its special functions and admissions functions.
- (3) The special functions of the Board are:
 - (a) its functions under:
 - (i) Part 2.1 (which deals with unqualified practice); and
 - (ii) Part 3.3 (which deals with Australian legal practitioners and Australian practising certificates); and
 - (iii) Part 3.5 so far as that Part relates to Australian practising certificates; and

Section 8.1.2

- (iv) sections 3.7.7, 3.7.8 and 3.7.9 (which deal with incorporated legal practices); and
- (v) Part 3.9 (which deals with disqualifications); and
- (b) any functions of the Board under this Law or the National Rules that are associated with any of the functions referred to in paragraph (a).

The special functions of the Board do not include any functions specified in the National Rules as excluded functions for the purposes of this section.

- (4) The admission functions of the Board are:
 - (a) its functions under Part 2.2; and
 - (b) any functions of the Board under this Law or the National Rules that are associated with any of the functions referred to in paragraph (a).

8.2.5 Exercise of independent functions of Board

- (1) The Board may exercise its independent functions directly or by delegation.
- (2) The Board may, by instrument in writing, delegate any of its independent functions (other than those referred to in subsection (3)) to:
 - (a) a committee established by the Board; or
 - (b) a member of the staff of the Board; or
 - (c) an entity specified, or of a kind specified, in the National Rules for the purposes of this section.
- (3) The independent functions of the Board that cannot be delegated are as follows:
 - (a) the function of approving corporations for the purposes of the definition of *incorporated legal practice* in section 1.2.1;
 - (b) the function of approving relationships with law practices for the purposes of the definition of *principal* in section 1.2.1;
 - (c) the function of approving unincorporated bodies or groups for the purposes of the definition of *unincorporated legal practice* in section 1.2.1;
 - (d) the function of approving insurers, providers and policies (in connection with professional indemnity insurance) under section 4.4.2 (1) (a) (ii) and (b) (ii);
 - (e) the functions relating to its responsibility (in connection with special functions) under section 8.2.7;
 - (f) the functions in relation to the Commissioner under section 8.4.2;
 - (g) the function of issuing guidelines and directions under section 8.5.2;
 - (h) the function of approving forms (see section 9.7.13);
 - (i) the function of fixing fees (see section 9.7.14);
 - (j) the functions relating to the establishment of committees;
 - (k) the functions relating to the making of National Rules;
 - (l) the function of delegating powers and other functions.

Section 8.2.8

8.2.6 Exercise of special functions of Board by local representatives

- (1) The following provisions have effect in relation to the special functions of the Board:
 - (a) the special functions in relation to an applicant for or the holder of an Australian practising certificate whose home jurisdiction is this jurisdiction are to be exercised on behalf of the Board by a local representative for this jurisdiction;
 - (b) the Board is not to exercise the special functions itself or through persons appointed or engaged by it.
- (2) References to the Board in provisions of this Law (other than this section and section 8.4.1) and the National Rules relating to the special functions of the Board are taken to include references to the Board's local representative for this jurisdiction.
- (3) A local representative must exercise its special functions consistently with applicable guidelines and directions of the Board.

8.2.7 Responsibilities of Board regarding special functions

- (1) The Board is responsible for:
 - (a) monitoring and co-ordinating the exercise of special functions by the local representatives; and
 - (b) promoting consistency in the application of provisions of this Law and National Rules that confer or impose those functions; and
 - (c) including in its annual report a report on the implementation of those provisions.
- (2) No liability attaches to the Board or a member or acting member of the Board for any act or omission done or omitted by a local representative of the Board or the Commissioner, or a delegate of a local representative, in the exercise or purported exercise of special functions under this Law or the National Rules.

8.2.8 Exercise of admission functions of Board by Admissions Committee

- (1) The following provisions have effect in relation to the admission functions of the Board:
 - (a) the admission functions are to be exercised on behalf of the Board by the Admissions Committee;
 - (b) the Board is not to exercise the admission functions itself or through persons who are appointed (otherwise than as members of the Admissions Committee) or engaged by it.
- (2) References to the Board in provisions of this Law (other than this section) and the National Rules relating to the admission functions of the Board are taken to include references to the Admissions Committee.
- (3) Nothing in this section prevents the Board from providing staff and other assistance to the Admissions Committee.

Section 8.2.8

8.2.9 Establishment of Admissions Committee

The Board must establish an Admissions Committee.

Note. Schedule 1 contains provisions relating to the Admissions Committee.

Part 8.3 National Legal Services Commissioner

8.3.1 Provisions relating to Commissioner

- (1) The Commissioner has the functions conferred or imposed on him or her by or under this Law as applied by the Legal Profession National Law Acts of this jurisdiction and other jurisdictions.
- (2) The Commissioner may exercise his or her functions in relation to:
 - (a) one jurisdiction; or
 - (b) two or more or all jurisdictions collectively.
- (3) Schedule 2 has effect.

8.3.2 Objectives of office of Commissioner

The objectives of the office of Commissioner are:

- (a) to ensure that complaints against law practices, Australian legal practitioners, Australian-registered foreign lawyers and other lawyers as referred to in section 5.1.2 and disputes and other issues involving law practices are dealt with in a timely and effective manner; and
- (b) to ensure compliance with requirements of this Law and the National Rules by law practices, Australian legal practitioners, Australian-registered foreign lawyers and other lawyers as referred to in section 5.1.2; and
- (c) to educate the legal profession about issues of concern to the profession and to clients of law practices; and
- (d) to educate the community about legal issues and obligations that flow from the client-practitioner relationship; and
- (e) to promote national consistency in the application of this Law and the National Rules to the Australian legal profession.

8.3.3 Kinds of functions of Commissioner

- (1) The Commissioner has the following kinds of functions:
 - (a) independent functions;
 - (b) special functions.
- (2) The independent functions of the Commissioner are:
 - (a) his or her functions under this Chapter and Schedules 1 and 2; and
 - (b) without limiting paragraph (a):
 - (i) his or her functions as chief executive of the Board; and
 - (ii) his or her functions to make guidelines and give directions; and
 - (c) the function of approving forms (see section 9.7.13); and

Section 8.3.5

- (d) any other functions specified in the National Rules as independent functions of the Commissioner for the purposes of this section; and
 - (e) any functions of the Commissioner under this Law or the National Rules that are associated with those referred to in paragraphs (a)–(d), except any functions specified in the National Rules as excluded functions for the purposes of this section.
- (3) The special functions of the Commissioner are all his or her functions other than the independent functions.

8.3.4 Exercise of independent functions of Commissioner

- (1) The Commissioner may exercise his or her independent functions directly or by delegation.
- (2) The Commissioner may, by instrument in writing, delegate any of his or her independent functions (other than those referred to in subsection (3)) to:
- (a) a member of the staff of the Commissioner; or
 - (b) an entity specified, or of a kind specified, in the National Rules for the purposes of this section.
- (3) The independent functions of the Commissioner that cannot be delegated are as follows:
- (a) his or her functions as chief executive of the Board;
 - (b) the functions relating to his or her responsibility (in connection with special functions) under section 8.3.6;
 - (c) the function of issuing guidelines and directions under section 8.5.2;
 - (d) the function of delegating powers and other functions.

8.3.5 Exercise of special functions of Commissioner by local representatives

- (1) The following provisions have effect in relation to the special functions of the Commissioner:
- (a) the special functions in relation to:
 - (i) a law practice that carries on business in this jurisdiction; or
 - (ii) a person who is or was an Australian lawyer, an Australian legal practitioner or an Australian-registered foreign lawyer whose home jurisdiction is or was this jurisdiction;are to be exercised on behalf of the Commissioner by the local representative for this jurisdiction;
 - (b) the Commissioner is not to exercise the special functions himself or herself or through persons appointed or engaged by him or her.
- (2) References to the Commissioner in provisions of this Law (other than this section, section 8.4.1 and Part 8.5) and the National Rules relating to the special functions of the Commissioner are taken to include references to the local representative for this jurisdiction.
- (3) A local representative must exercise its special functions consistently with

Section 8.3.5

applicable guidelines and directions of the Commissioner.

- (4) A local representative of the Commissioner must be an independent statutory body (not being a professional legal association) or an independent statutory office holder.

8.3.6 Responsibilities of Commissioner regarding special functions

- (1) The Commissioner is responsible for:
 - (a) promoting consistency in the application of provisions of this Law and National Rules that confer or impose special functions; and
 - (b) for the purpose of promoting consistency—monitoring, reviewing, co-ordinating and reporting on the exercise of the special functions by the local representatives; and
 - (c) reporting to the Board, with such comments as the Commissioner thinks fit, on any matter relating to or connected with the exercise of the representatives' functions under this Law or the National Rules to which, in the opinion of the Commissioner, the attention of the Standing Committee should be directed; and
 - (d) recommending to the Board for reporting to the Standing Committee any changes to the role or functions of the representatives under this Law or the National Rules that the Commissioner thinks desirable.
- (2) Without limiting subsection (1) (c), the Commissioner may report to the Board, with such comments as the Commissioner thinks fit, on compliance with the Commissioner's guidelines or directions by local representatives or their delegates.
- (3) No liability attaches to the Commissioner for any act or omission done or omitted by a local representative of the Board or the Commissioner, or a delegate of a local representative, in the exercise or purported exercise of special functions under this Law or the National Rules.

8.3.7 Power of local representative to take over exercise of special function

- (1) A local representative at its discretion may take over from the delegate responsibility for a particular matter that involves or may involve a special function. The local representative may do so if of the opinion that it is appropriate to take over the matter.
- (2) When a local representative takes over a matter from a delegate:
 - (a) the representative may deal with and determine the matter afresh, but may adopt or take into account anything done or received by the delegate to date; and
 - (b) the delegate is to provide any assistance required by the representative to deal with the matter (including copies of or access to all documents held by the delegate that relate to the matter); and
 - (c) the delegate otherwise ceases to have responsibility for the matter unless the representative refers the matter back to the delegate under subsection (3).

Section 8.3.5

- (3) The local representative may refer a matter back to the delegate at any time to be dealt with and determined by the delegate, with such directions as to how the matter should be dealt with as the representative thinks fit.
- (4) This section does not limit any other power that a local representative has to take over or otherwise deal with a matter, whether under another law or the terms of a delegation or otherwise.

Part 8.4 Relationship of Commissioner with Board

8.4.1 Independence

In exercising any independent or special functions, but subject to section 8.4.2, the Commissioner, the Commissioner's local representatives and their respective delegates are to be independent of the Board.

8.4.2 Functions of Board in relation to Commissioner

The Board has the following functions in relation to the Commissioner:

- (a) to monitor and review the exercise of the functions of the Commissioner;
- (b) to report to the Standing Committee, with such comments as it thinks fit, on compliance with the Commissioner's guidelines or directions by local representatives or their delegates to which, in the opinion of the Board, the attention of the Standing Committee should be directed;
- (c) to examine each annual and other report of the Commissioner and report to the Standing Committee on any matter appearing in, or arising out of, any such report;
- (d) to recommend to the Standing Committee any changes to the role or functions of the Commissioner that the Board thinks desirable;
- (e) to inquire into any question in connection with the Commissioner's functions that is referred to it by the Standing Committee and report to the Standing Committee on that question.

Part 8.5 General

8.5.1 Exercise of functions in accordance with Law and National Rules

A national authority, its local representatives, their respective delegates and the Admissions Committee are to exercise their functions under this Law and the National Rules in accordance with applicable provisions of this Law and the National Rules.

8.5.2 Guidelines and directions regarding special functions

- (1) A national authority may issue guidelines or directions or both to its local representatives about the exercise of special functions by local representatives and their delegates.
- (2) A direction may be issued by a national authority under subsection (1) only if the authority is of the opinion:
 - (a) in relation to a particular matter—that the matter could result in an actual

Section 8.5.5

or perceived conflict of interest if managed by the local representative or its delegate without the direction; and

- (b) both in relation to a particular matter and more generally—that the direction is necessary or appropriate to ensure that the local representative acts in a manner that promotes national consistency in the application of this Law and the National Rules.
- (3) A local representative of a national authority may issue guidelines or directions or both to its delegates about the exercise of special functions by its delegates.
- (4) Guidelines and directions issued by a national authority may, without limitation, provide for determining which local representative should deal with a matter where more than one jurisdiction is or may be involved or there is uncertainty as to which jurisdiction is relevant in the circumstances.
- (5) Guidelines and directions issued by a local representative cannot be inconsistent with guidelines and directions issued by a national authority.
- (6) A local representative of a national authority must comply with guidelines and directions issued by the authority.
- (7) A delegate of a local representative of a national authority must comply with guidelines and directions issued by the authority and the representative.

8.5.3 Delegation by local representatives

- (1) A local representative of a national authority may delegate any functions that the representative has by virtue of this Chapter to a member of the staff of the representative, other than this power of delegation.
- (2) If a local representative of a national authority is not a professional association, it may delegate any functions it has by virtue of this Chapter to a professional association, other than:
 - (a) this power of delegation; and
 - (b) the power to take over a matter under section 8.3.7; and
 - (c) the power to issue guidelines and directions under section 8.5.2 (3).

8.5.4 Registers of delegations

- (1) A national authority is to maintain a register of delegations in a form determined by the authority.
- (2) The register is to contain a copy of all instruments of delegation issued by the national authority and its local representatives and currently in force.
- (3) The national authority must arrange for a review of the register of delegations to be carried out at least on an annual basis and for a report of the review to be submitted to the authority for its consideration.
- (4) The national authority must ensure that a current version of the register of delegations is publicly available at all reasonable times on its website or another publicly accessible website.

8.5.5 Documents lodged with national authority instead of local representative

- (1) If a person lodges with a national authority a document (including, for example, a

Section 8.5.5

complaint) that should have been lodged with a local representative for this jurisdiction of either national authority, the authority must forward the document, if appropriate, to the authority's local representative for this jurisdiction.

- (2) A document forwarded to a local representative under this section is taken to have been lodged with the representative when it was lodged with the authority.

8.5.6 Limitation as to individual matters

Nothing in this Chapter authorises the Standing Committee or a national authority:

- (a) to investigate a matter relating to any particular conduct; or
- (b) to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter; or
- (c) to reconsider the findings, recommendations or other decisions of a local representative (or its delegate) in relation to any particular matter.

Chapter 9 Miscellaneous

Part 9.1 Legal Profession National Rules

9.1.1 Power to make National Rules

- (1) The Board may make Legal Profession National Rules for or with respect to any matter that by this Law is required or permitted to be specified or that is necessary or convenient to be specified for carrying out or giving effect to this Law.

Note. National Rules cannot be inconsistent with the provisions of this Law.

- (2) Without limiting the scope of National Rules, the National Rules may apply to:
 - (a) qualified entities; and
 - (b) Australian lawyers who are not Australian legal practitioners; and
 - (c) former Australian legal practitioners, former Australian-registered foreign lawyers and former Australian lawyers.
- (3) The National Rules may provide for the application to and modification of provisions of this Law for the various categories of law practices and persons referred to in subsection (2).
- (4) The National Rules may authorise any matter to be determined, applied or regulated, from time to time, by any specified person or body.
- (5) The National Rules may contain civil penalty provisions. A contravention of a civil penalty provision in the National Rules is punishable by the imposition of a civil penalty of an amount not exceeding 50 penalty units specified in the National Rules.
- (6) A reference in this Part to National Rules or proposed National Rules includes a reference to the amendment, repeal or substitution of National Rules or the proposed amendment, repeal or substitution of National Rules.

Note. Schedule 7 contains transitional provisions relating to the initial National Rules.

9.1.2 Legal Practice Rules

- (1) The National Rules may contain provisions designated as Legal Practice Rules.
- (2) The Legal Practice Rules may provide for any aspect of legal practice by Australian legal practitioners, Australian-registered foreign lawyers and law practices.

9.1.3 Legal Profession Conduct Rules

- (1) The National Rules may contain provisions designated as Legal Profession Conduct Rules.
- (2) The Legal Profession Conduct Rules may provide for any aspect of:
 - (a) the professional conduct of Australian legal practitioners, Australian-registered foreign lawyers and law practices; and

Section 9.1.4

- (b) the conduct of Australian legal practitioners and Australian-registered foreign lawyers as it affects or may affect their suitability as Australian legal practitioners and Australian-registered foreign lawyers.
- (3) Without limitation, the Legal Profession Conduct Rules may include provisions with respect to what Australian legal practitioners, Australian-registered foreign lawyers and law practices must do, or refrain from doing, in order to:
 - (a) uphold their duty to the courts and the administration of justice, including rules relating to:
 - (i) advocacy; and
 - (ii) obeying and upholding the law; and
 - (iii) maintaining professional independence; and
 - (iv) maintaining the integrity of the legal profession; and
 - (b) promote and protect the interests of clients, including:
 - (i) rules relating to client confidentiality; and
 - (ii) rules for informing clients about reasonably available alternatives to fully contested adjudication of cases; and
 - (c) avoid conflicts of interest.

9.1.4 Continuing Professional Development Rules

- (1) The National Rules may contain provisions designated as Continuing Professional Development Rules.
- (2) The Continuing Professional Development Rules may require Australian legal practitioners to comply with provisions for continuing professional development and may provide for any aspect of continuing professional development.

9.1.5 Development of general National Rules

- (1) This section applies to all proposed National Rules other than those referred to in section 9.1.6, and has effect subject to sections 9.1.8 and 9.1.9.
- (2) The Board may develop proposed National Rules to which this section applies.
- (3) In developing proposed National Rules to which this section applies, the Board:
 - (a) must consult with the Commissioner and such of the Board's advisory committees as it considers appropriate, and may consult more broadly if it so chooses, for a minimum period of 30 days; and
 - (b) must release a draft of the proposed National Rules for public consultation and invite written submissions about the draft to be made to the Board during a specified period of at least 30 days before finalising the draft; and
 - (c) must consider all reasonable submissions duly made and received.
- (4) The Board may, after considering the submissions and making any amendments to the draft, submit the proposed National Rules to the Standing Committee.

9.1.6 Development of National Rules for legal practice, conduct and continuing professional development

- (1) This section applies to proposed National Rules designated as Legal Practice

Section 9.1.7

Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules, and has effect subject to sections 9.1.8 and 9.1.9.

- (2) The Law Council of Australia may develop proposed National Rules (to which this section applies) for solicitors.
- (3) The Australian Bar Association may develop proposed National Rules (to which this section applies) for barristers.
- (4) The Law Council of Australia and Australian Bar Association may develop proposed National Rules (to which this section applies) for Australian-registered foreign lawyers.
- (5) In developing proposed National Rules to which this section applies, the Law Council of Australia or Australian Bar Association or both (as the case requires):
 - (a) must consult with the Board, the Commissioner, and such of the Board's advisory committees as the Board considers appropriate, for a minimum period of 30 days; and
 - (b) must, with the approval of the Board, release a draft of the proposed National Rules for public consultation and invite written submissions about the draft to be made to the Law Council or Australian Bar Association or both (as the case requires) during a specified period of at least 30 days; and
 - (c) must consider all reasonable submissions duly made and received and provide the Board with a copy of all submissions received; and
 - (d) after considering the submissions and making any amendments to the draft, submit a final draft to the Board, together with a report demonstrating compliance with the requirements of this subsection.
- (6) If the Board approves the final draft as submitted to the Board, or with amendments agreed to with the Law Council of Australia or Australian Bar Association or both (as the case requires), the Board may submit the proposed National Rules to the Standing Committee.

9.1.7 Making of National Rules

- (1) The Board may make a National Rule as submitted to the Standing Committee under section 9.1.5 or 9.1.6 if:
 - (a) the Standing Committee approves the National Rule within 30 days of its submission to the Standing Committee; or
 - (b) the 30-day period expires without the National Rule being vetoed under subsection (2) during that period.
- (2) Subject to subsection (3), the Standing Committee may veto the National Rule within the 30-day period. If it does so, the Board must not make the National Rule as submitted to the Standing Committee, but the National Rule may be resubmitted to the Standing Committee with amendments.
- (3) The Standing Committee may veto a proposed Legal Practice Rule, Legal Profession Conduct Rule or Continuing Professional Development Rule only where the Standing Committee considers that the rule or a part of the rule would:
 - (a) impose restrictive or anti-competitive practices that are not in the public interest; or

Section 9.1.8

- (b) otherwise not be in the public interest because it conflicts with the objectives of this Law; or
 - (c) impact on the public funding of the scheme for the regulation of the legal profession.
- (4) The Standing Committee must cause a notice setting out the reasons for vetoing a rule to be published as soon as practicable.
- (5) Without limiting the powers of the Standing Committee with respect to a National Rule submitted to it, the Standing Committee may require a draft of a proposed National Rule to be released for further consideration or further public consultation or both.

9.1.8 Cases where public consultation not required

The requirements of section 9.1.5 or 9.1.6 for public consultation do not apply to a proposed National Rule if the Board considers the National Rule:

- (a) corrects a minor error in the National Rules; or
- (b) involves a non-material change to the National Rules; or
- (c) relates to a matter of a kind that the Standing Committee approves as not requiring public consultation.

9.1.9 Urgent matters

- (1) The requirements of section 9.1.5 or 9.1.6 do not apply to a proposed National Rule if the Board considers it needs to be made urgently.
- (2) In the case of an amendment to the Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules, the Board must first consult with the Law Council of Australia and the Australian Bar Association.
- (3) As soon as practicable after taking action under this section, the Board must provide the Standing Committee with a report of its action and a statement of its reasons for taking the action.

9.1.10 Gazettal or notification of National Rules

- (1) When the Board makes a National Rule, it takes effect on gazettal or notification in the host jurisdiction or on a later date or on the occurrence of a later event specified in the National Rule.
- (2) The Board must ensure that a current version of the National Rules is publicly available at all reasonable times on its website or another publicly accessible website.

Part 9.2 Australian Legal Profession Register

9.2.1 Australian Legal Profession Register

- (1) The Board is to maintain an Australian Legal Profession Register.
- (2) The Register is, subject to this Part, to be kept in a form determined by the Board.
- (3) The National Rules may provide for information to be given to the Board that must or may be included in the Register.

Section 9.3.1

9.2.2 Contents of Australian Legal Profession Register

- (1) The Australian Legal Profession Register must contain the following:
 - (a) the names, addresses and contact details of all Australian legal practitioners;
 - (b) the names, addresses and contact details of all Australian-registered foreign lawyers;
 - (c) the conditions to which Australian practising certificates and Australian registration certificates are individually subject;
 - (d) details of determinations and orders made under sections 2.2.9, 5.4.5 and 5.4.8;
 - (e) the names of disqualified persons and disqualified entities;
 - (f) other details required by the National Rules.
- (2) Despite subsection (1), the Register must not include details specified in the National Rules.
- (3) The Board must remove details as required by the National Rules.
- (4) The Board may remove details as permitted by the National Rules.

9.2.3 Public availability of Australian Legal Profession Register

- (1) Subject to subsection (2), the Board must ensure that a current version of the Australian Legal Profession Register is:
 - (a) publicly available for inspection, without charge, at the Board's office during normal business hours; and
 - (b) publicly available, without charge, at all reasonable times on its website or another publicly accessible website.
- (2) The National Rules may provide for certain information to be excluded from the publicly available version of the Register in order:
 - (a) to protect the personal safety of any person; or
 - (b) to avoid prejudicing any investigation, inquiry or legal or other proceedings; or
 - (c) to balance the privacy of any person to whom the details relate with consumer and public interests in making the details publicly available.

Part 9.3 Co-operative and other arrangements

9.3.1 Arrangements with authorities

- (1) The Board may negotiate and enter into arrangements with Australian or foreign authorities or courts for exchanging, obtaining or disclosing information relevant to the functions of the Board or of any such authority or court, including but not limited to information relevant to the consideration of an application for a compliance certificate.
- (2) The Board may negotiate and enter into arrangements with foreign authorities for the mutual recognition for admission purposes of academic courses and practical legal training programs.

Section 9.3.2

- (3) A reference in this section to the Board includes a reference to the Admissions Committee.

9.3.2 Ad hoc communication with authorities

- (1) Without limiting any other functions that it has to seek or obtain information, the Board may communicate with and obtain relevant information from Australian or foreign authorities or courts in connection with the consideration of an application for a compliance certificate.
- (2) Without limiting any other power that it has to disclose information, the Board may disclose information to a foreign authority or court in response to a request for relevant information, but may do so only if satisfied that it is not likely that the information provided will be inappropriately disclosed by such an authority or court.
- (3) A reference in this section to the Board includes a reference to the Admissions Committee.

9.3.3 Disclosure of information to ASIC

- (1) The Commissioner may disclose to ASIC information concerning a corporation that is or was an incorporated legal practice that the Commissioner acquired in the course of exercising functions under this Law and that is relevant to ASIC's functions.
- (2) Information may be provided under this section despite any law relating to secrecy or confidentiality, including any provisions of this Law.
- (3) A reference in this section to the Commissioner includes a reference to a local representative of the Commissioner or a delegate of a local representative of the Commissioner.

9.3.4 Disclosure of information between relevant persons

- (1) A relevant person may disclose information obtained in the administration of this Law or the National Rules to another relevant person.
- (2) In this section:

relevant person means:

- (a) a national authority; or
- (b) a member of the Board; or
- (c) a committee established by the Board or a member of a committee; or
- (d) a local representative of a national authority; or
- (e) a delegate of a national authority or local representative; or
- (f) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a)–(e).

9.3.5 Information, assistance and co-operation

- (1) The national authorities are to ensure, as far as practicable, that:
- (a) relevant information in connection with the exercise of their respective functions is:
- (i) shared between them in accordance with arrangements agreed

Section 9.4.1

- between them; and
- (ii) provided expeditiously, at the request of one of them to the other; and
 - (b) their respective functions are, where relevant, exercised in a co-operative manner.
- (2) The national authorities, any of their local representatives and the Admissions Committee are to ensure, as far as practicable, that:
- (a) relevant information in connection with the exercise of their respective functions is:
 - (i) shared between them in accordance with arrangements agreed between them; and
 - (ii) provided expeditiously, at the request of one of them to the other; and
 - (b) their respective functions are, where relevant, exercised in a co-operative manner.
- (3) The local representatives of a national authority are to provide information and other assistance to the authority or Admissions Committee in order to assist the authority or committee in exercising responsibilities and functions under this Chapter. For that purpose, the authority or committee may specify the kind of information or other assistance the authority or committee requires and the periods within which or times by which it is to be provided.

9.3.6 Co-operation with Commonwealth, States and Territories

- (1) A national authority may exercise any of its functions in co-operation with or with the assistance of the Commonwealth, a State or a Territory, including in co-operation with or with the assistance of any of the following entities:
- (a) a government agency of the Commonwealth, a State or a Territory;
 - (b) a professional association;
 - (c) an educational body or other body established by or under a law of the Commonwealth, a State or a Territory.
- (2) In particular, a national authority may:
- (a) ask an entity referred to in subsection (1) for information that the authority requires to exercise its functions under this Law or the National Rules; and
 - (b) use the information to exercise its functions under this Law or the National Rules.
- (3) An entity referred to in subsection (1) of this jurisdiction that receives a request for information from a national authority is authorised to give the information to the authority.
- (4) A reference in this section to a national authority includes a reference to its local representatives and the Admissions Committee.

Section 9.4.1

Part 9.4 Notices and evidentiary matters

9.4.1 Service of notices on lawyers and law practices

- (1) For the purposes of this Law, a notice or other document may be served on, or given to, an Australian legal practitioner or Australian-registered foreign lawyer by:
 - (a) delivering it personally to the practitioner or lawyer; or
 - (b) sending it by post to the practitioner or lawyer at his or her address for service appearing on the Australian Legal Profession Register.
- (2) For the purposes of this Law, a notice or other document may be served on, or given to, a law practice by:
 - (a) delivering it personally to a principal of the law practice; or
 - (b) sending it by post to the law practice at its usual or last known business address; or
 - (c) leaving it at the practice's usual or last known business address with a person on the premises who is apparently at least 16 years of age and apparently employed there.
- (3) A notice or other document may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a corporation.

9.4.2 Service of notices on Board, Commissioner, local representative or Admissions Committee

For the purposes of this Law, a notice or other document may be served on, lodged with or given to a national authority, a local representative or the Admissions Committee by delivering it personally, or sending it by post, to the office of the authority, representative or committee.

9.4.3 Service of notices on other persons

For the purposes of this Law, a notice or other document may be served on, or given to, a person (other than a person referred to in section 9.4.1 or 9.4.2):

- (a) if the person is an individual, by:
 - (i) delivering it personally to the person; or
 - (ii) sending it by post to the person at his or her usual or last known residential or business address; or
 - (iii) leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act:
 - (i) by delivering it personally to the registered office of the company; or
 - (ii) by sending it by post to the registered office of the company; or
 - (iii) in any other way that service of documents may be effected on a corporation; or

Section 9.4.4

- (c) in any other case—in any way permitted by law.

9.4.4 Time of service

For the purposes of this Law, a notice or other document is taken to have been served on, or given to, a person or law practice:

- (a) in the case of delivery in person, at the time the document is delivered; or
(b) in the case of posting, 2 business days after the day on which the document was posted.

9.4.5 Evidentiary matters

- (1) A certificate sealed by, or signed on behalf of, the Board or a local representative, specifying that, on a date or during a period specified in the certificate:
- (a) a person held or did not hold an Australian practising certificate or an Australian registration certificate; or
(b) the Australian practising certificate or Australian registration certificate of a person was subject to a specified condition or restriction;
- is, in the absence of proof to the contrary, proof of the matters stated in it.
- (2) A certificate sealed by, or signed on behalf of, the Board, specifying that a matter specified in the certificate is, or was at any time specified in the certificate, on the Australian Legal Profession Register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.

Part 9.5 Injunctions

9.5.1 Injunctions to restrain offences against Law

- (1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Law.
- (2) The Board or the Commissioner may apply to the Supreme Court of this jurisdiction for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction restraining the person from contravening this Law (including by requiring the person to do something).
- (4) The Supreme Court may grant the injunction:
- (a) whether or not it appears to the Court that the person intends to contravene this Law, contravene this Law again or continue to contravene this Law; and
(b) whether or not the person has previously contravened this Law; and
(c) whether or not there is a likelihood of substantial damage to anyone else if the person contravenes this Law; and
(d) whether or not proceedings for a contravention of this Law have begun or are about to begin.
- (5) The Supreme Court may grant an interim injunction restraining the person from contravening this Law (including requiring the person to do something) before deciding an application for an injunction under this section.

Section 9.5.2

9.5.2 Amendment or discharge of injunctions

The Supreme Court of this jurisdiction may amend or discharge an injunction (including an interim injunction) made under this Part on the application of the Board, the Commissioner or any other interested person.

9.5.3 Interim injunctions—undertakings about damages

- (1) If the Board or the Commissioner or a local representative (in its capacity as a local representative) applies for an injunction under this Part, the Supreme Court must not require the applicant to give an undertaking about costs or damages as a condition of granting an interim injunction.
- (2) The Supreme Court must accept an undertaking from the Board or the Commissioner or a local representative (in that capacity) about costs or damages, and not require a further undertaking from anyone else, if:
 - (a) the applicant for an injunction under this Part is someone else; and
 - (b) the Court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and
 - (c) the Board, the Commissioner or the local representative gives the undertaking.

9.5.4 Supreme Court's other powers not limited

- (1) The powers given to the Supreme Court under this Part are in addition to any other powers of the Court.
- (2) In particular, an application to the Supreme Court for an injunction under this Part may be made without notice to the person against whom the injunction is sought.

Part 9.6 Criminal and civil penalties

Division 1 Criminal penalties

9.6.1 References to maximum criminal penalty

- (1) A subsection of a section of this Law, or a section of this Law that is not divided into subsections, creates a criminal offence if the words “criminal penalty” are set out at the foot of the subsection or section.
- (2) An offence referred to in subsection (1) is punishable by the maximum penalty set out at the foot of the subsection or section. The maximum penalty so set out is referred to in this Law as a *maximum criminal penalty*.
- (3) Proceedings for an offence referred to in subsection (1) against this Law as applied by the Legal Profession National Law Act of this jurisdiction are to be dealt with in accordance with that Act or law.

9.6.2 Indictable offences and summary offences

- (1) An offence against this Law that is not punishable by imprisonment is punishable summarily.
- (2) An offence against this Law that is punishable by imprisonment is, subject to subsection (3), punishable on indictment.

Section 9.6.3

- (3) If:
- (a) proceedings for an offence against this Law that is punishable by imprisonment are instituted in a court of summary jurisdiction; and
 - (b) the prosecutor requests the court to hear and determine the proceedings;
- the offence is punishable summarily and the court must hear and determine the proceedings.
- (4) A court of summary jurisdiction must not:
- (a) impose, in relation to a single offence against this Law, a period of imprisonment of more than 2 years; or
 - (b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than 5 years.
- (5) Nothing in this section renders a person liable to be punished more than once in relation to the same offence.

Division 2 Civil penalties

9.6.3 References to maximum civil penalty

- (1) A provision that is:
- (a) a subsection of a section of this Law; or
 - (b) a section of this Law that is not divided into subsections; or
 - (c) a subrule of a National Rule; or
 - (d) a National Rule that is not divided into subrules;
- is a civil penalty provision if the words “civil penalty” are set out at the foot of the subsection, section, subrule or rule.
- (2) A contravention of a provision referred to in subsection (1) is punishable by the maximum penalty set out at the foot of the subsection, section, subrule or rule. The maximum penalty so set out is referred to in this Law as a *maximum civil penalty*.
- (3) Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.

9.6.4 Designated tribunal may order payment of pecuniary penalty

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the Commissioner may apply to a designated tribunal for an order that the wrongdoer pay a pecuniary penalty.
- (2) If the designated tribunal is satisfied that the wrongdoer has contravened a civil penalty provision, the tribunal may order the wrongdoer to pay for each contravention the pecuniary penalty that the tribunal determines is appropriate (but not more than the relevant amount specified for the provision).
- (3) In determining the pecuniary penalty, the designated tribunal must have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the

Section 9.6.5

contravention; and

- (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.
- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Law against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.
- (5) Proceedings for a civil penalty order are civil proceedings, and the rules of evidence and procedure apply accordingly.

9.6.5 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

9.6.6 Persons involved in contravening civil penalty provision

- (1) A person must not:
- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

9.6.7 Recovery of a pecuniary penalty

If a designated tribunal of this jurisdiction orders a person to pay a pecuniary penalty:

- (a) the penalty is to be paid to a fund specified in the Legal Profession National Law Act of this jurisdiction or is to be dealt with in another manner so specified; and
- (b) the order is enforceable as a judgment or order of a court.

9.6.8 Civil proceedings after criminal proceedings

A designated tribunal must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

9.6.9 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the

Section 9.6.10

conduct alleged to constitute the contravention.

- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

9.6.10 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

9.6.11 Evidence given in proceedings for penalty order not admissible in criminal proceedings

- (1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the person if:
- (a) the person previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the pecuniary penalty order.

Part 9.7 General

9.7.1 Prohibition on disclosure of information

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any information obtained in the execution or administration of this Law or the National Rules unless permitted to do so under subsection (2).

Maximum civil penalty: 50 penalty units.

- (2) A relevant person is permitted, for the purposes of this Law, to disclose information obtained in the execution or administration of this Law or the National Rules:
- (a) to the extent the disclosure is reasonably required to exercise functions under this Law, the National Rules or any other legislation; or
 - (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Law, the National Rules or any other legislation; or
 - (c) with the prior consent in writing of the person to whom the information relates; or
 - (d) to a court or tribunal in the course of legal proceedings; or
 - (e) pursuant to an order of a court or tribunal under any law; or
 - (f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter;

Section 9.7.2

or

(g) to the Attorney-General of any jurisdiction.

(3) In this section:

relevant person means:

- (a) the Board or a member or former member of the Board; or
- (b) the Commissioner or a former Commissioner; or
- (c) any of their local representatives or delegates; or
- (d) a delegate of any of their local representatives; or
- (e) a person who is or was a member of the staff of, or acting at the direction of, any of the entities referred to in paragraph (a), (b), (c) or (d); or
- (f) an external examiner or external investigator under Part 4.2; or
- (g) an external intervener under Chapter 6; or
- (h) an investigator under Chapter 7; or
- (i) a committee of the Board or a member or former member of a committee of the Board; or
- (j) a designated body or a member or former member of a designated body.

9.7.2 General provisions about appeal or review

- (1) If a decision under this Law relating to a person can be the subject of an appeal or review under this Law, the decision-maker must (except in circumstances referred to in the National Rules) ensure the person is given a notice as soon as practicable stating:
 - (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) the rights of appeal or review available to the person in respect of the decision and the period within which any such appeal or review must be made or applied for.
- (2) The National Rules may specify circumstances in which a notice need not or must not be given under subsection (1).
- (3) A failure to comply with subsection (1) does not affect the validity of the decision concerned.
- (4) For the purposes of provisions of this Law relating to a right of appeal or review about a decision, a failure of the decision-maker to make a decision on a person's application within a period specified in the National Rules for the purposes of this section is taken to be a decision (the ***constructive decision***) to refuse the application.
- (5) However, the decision-maker may make a decision (the ***late decision***) on the person's application after that period if the decision-maker is satisfied that:
 - (a) no appeal or application for review has been made about the constructive decision; or
 - (b) an appeal or application for review has been made about the constructive decision but the appeal or application has been withdrawn; or

Section 9.7.3

- (c) the late decision would be to the person's benefit.
- (6) The late decision is as valid as if it had been made during that period.

9.7.3 Duty to report suspected offences

- (1) This section applies if a relevant person suspects on reasonable grounds, after investigation or otherwise, that a person has committed a serious offence, except in the case of an offence against this Law for which the Board or the Commissioner, or a local representative or delegate of the Board or the Commissioner, is the appropriate prosecuting authority.
- (2) The relevant person must:
 - (a) report the suspected offence (if it has not already been reported) to the police or other appropriate prosecuting authority; and
 - (b) make available to the police or authority the information and documents relevant to the suspected offence in the possession of, or under the control of, the person (regardless of who reported it).
- (3) The obligation under subsection (2) (b) to make available the information and documents continues while the relevant person holds the relevant suspicion.
- (4) In this section:

relevant person means:

- (a) a national authority; or
- (b) a local representative of a national authority; or
- (c) a delegate of a national authority or local representative; or
- (d) a person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraphs (a)–(c).

9.7.4 Provisions relating to certain requirements under this Law

- (1) This section applies to a requirement under:
 - (a) section 4.2.30 to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
 - (b) section 6.5.8 to give access to documents or information; or
 - (c) section 7.2.1 to produce documents or provide information; or
 - (d) section 7.2.2 to produce documents, provide information or otherwise assist in, or co-operate with, an investigation; or
 - (e) section 7.3.2 (1) (j) to comply with a request (see section 7.5.1 (2)); or
 - (f) Part 7.4 to produce documents, provide information or do anything else under that Part.
- (2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on:
 - (a) the ground of legal professional privilege or any other duty of confidence; or
 - (b) the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.

Section 9.7.6

- (3) A person is not excused from complying with the requirement on the ground that compliance with the requirement, or an answer, document, information or assistance provided in complying with the requirement, may tend to incriminate the person.
- (4) If a client of a law practice makes a complaint about the law practice or lawyer (within the meaning of Chapter 5), the complainant does not waive legal professional privilege, or the benefit of any duty of confidentiality, to enable the law practice or lawyer to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint unless the client is requested to do so and does so.
- (5) Any information, document or other thing obtained as a direct or indirect consequence of a person complying with the requirement is admissible against the person in proceedings or procedures:
 - (a) for making a false or misleading statement; or
 - (b) for an offence against this Law; or
 - (c) for an offence reported under section 9.7.3; or
 - (d) relating to a disciplinary matter;but is not otherwise admissible in evidence against that person.
- (6) A person complying with the requirement is not subject to any liability, claim or demand merely because of compliance with the requirement and, without limitation, is not liable for any loss or damage suffered by another person as a result of the person's compliance with the requirement.
- (7) A failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (8) The Commissioner may recommend to the Board that an Australian practising certificate or an Australian registration certificate be suspended while a failure by the holder to comply with the requirement continues.

9.7.5 Protection from liability

No liability attaches to:

- (a) the Board or a member or acting member of the Board; or
 - (b) the Commissioner; or
 - (c) a local representative or delegate of the Board or of the Commissioner; or
 - (d) a delegate of a local representative; or
 - (e) a person acting at the direction of the Board or of the Commissioner; or
 - (f) the Admissions Committee or a member of the Admissions Committee;
- for any act or omission done or omitted in good faith and in the exercise or purported exercise of functions under this Law or the National Rules.

9.7.6 Indexation of amounts

If a provision of this Law or the National Rules refers to an indexed amount, the amount is, in accordance with the National Rules, to be indexed:

Section 9.7.7

- (a) on a basis that reflects movements in the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician; or
- (b) on another basis specified in the National Rules for the purposes of this section.

9.7.7 Supreme Court may order delivery up of documents etc

- (1) On the application of a client of a law practice, the Supreme Court of this jurisdiction may order the law practice:
 - (a) to give to the client a bill of costs in respect of any legal services provided by the law practice; and
 - (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the law practice in relation to those services.
- (2) Subsection (1) does not affect the provisions of Division 7 of Part 4.3 with respect to the assessment of costs.
- (3) This section does not apply to the client of a law practice retained on the client's behalf by another law practice.
- (4) In this section, a reference to a law practice includes a reference to:
 - (a) in the case of a person who was a sole practitioner when the legal services concerned were provided:
 - (i) the former sole practitioner; or
 - (ii) the executor of the will of the former sole practitioner; or
 - (iii) the trustee or administrator of the estate of the former sole practitioner; and
 - (b) subject to any other applicable arrangements:
 - (i) the persons who were the partners of a former law firm or unincorporated legal practice when the legal services concerned were provided; and
 - (ii) in the case of a law firm or unincorporated legal practice where there has been a change of partners since the legal services concerned were provided—subject to any other applicable arrangements, the firm or practice as currently constituted; and
 - (iii) the assignee of a law practice or former law practice; and
 - (iv) the receiver of a law practice or former law practice appointed under this Law; and
 - (c) any person of a class prescribed by the National Rules for the purposes of this section.

9.7.8 Local representatives of Board

- (1) The host Attorney-General may, by order made with the approval of the Standing Committee, amend Schedule 3 to insert, amend, substitute or omit the name or description of an entity so that the name or description specified in that Schedule opposite the name of this jurisdiction corresponds with the entity specified in the

Section 9.7.15

Legal Profession National Law of this jurisdiction as a local representative of the Board for this jurisdiction.

- (2) The Board may have only one local representative for a jurisdiction or it may have 2 or more local representatives for a jurisdiction in respect of different classes of persons or matters.

9.7.9 Local representatives of Commissioner

- (1) The host Attorney-General may, by order made with the approval of the Standing Committee, amend Schedule 4 to insert, amend, substitute or omit the name or description of an entity so that the name or description specified in that Schedule opposite the name of this jurisdiction corresponds with the entity specified in the Legal Profession National Law of this jurisdiction as a local representative of the Commissioner for this jurisdiction.
- (2) The Commissioner may have only one local representative for a jurisdiction.

9.7.10 Professional associations

The host Attorney-General may, by order made with the approval of the Standing Committee, amend Schedule 5 to insert, amend, substitute or omit the name or description of an entity in relation to a specified jurisdiction.

9.7.11 Fidelity authorities

The host Attorney-General may, by order made with the approval of the Standing Committee, amend Schedule 6 to insert, amend, substitute or omit the name or description of an entity in relation to a specified jurisdiction.

9.7.12 Orders

An order made by the host Attorney-General for the purposes of section 9.7.8, 9.7.9, 9.7.10 or 9.7.11 is to be published in the same way as a regulation of the host jurisdiction must or may be published and takes effect on the date of its publication or a later date specified or referred to in the order.

9.7.13 Forms

A national authority may approve forms for use under this Law or the National Rules in relation to their respective functions, to the extent forms are not specified in or otherwise provided for by this Law or the National Rules.

9.7.14 Fees

A national authority may fix fees for payment in relation to their respective independent functions, to the extent fees are not specified in or otherwise provided for by this Law or the National Rules.

9.7.15 Savings and transitional provisions

Schedule 7 has effect.

Schedule 1 Provisions relating to Board

Section 8.2.2

Part 1 Introduction

1 Definitions

In this Schedule:

Chair means the Chair of the Board.

member means a member of the Board.

Part 2 Constitution of Board

2 Membership of Board

- (1) The Board is to consist of 7 members as follows:
 - (a) 2 members appointed by the host Attorney-General on the recommendation of the Law Council of Australia;
 - (b) 1 member appointed by the host Attorney-General on the recommendation of the Australian Bar Association;
 - (c) 3 members appointed by the host Attorney-General on the recommendation of the Standing Committee on the basis of their expertise in one or more of the following areas:
 - (i) the practice of law;
 - (ii) the protection of consumers;
 - (iii) the regulation of the legal profession;
 - (iv) financial management;
 - (d) 1 member appointed as the Chair by the host Attorney-General on the recommendation of the Standing Committee made in accordance with subsection (2).
- (2) In recommending a person to the host Attorney-General for appointment as the Chair, the Standing Committee must ensure that:
 - (a) it has consulted with the President of the Law Council of Australia, the President of the Australian Bar Association and a member of the Council of Chief Justices nominated by the Council for the purpose; and
 - (b) the President of the Law Council of Australia, the President of the Australian Bar Association and a member of the Council of Chief Justices nominated by the Council for the purpose have had an opportunity to nominate candidates for appointment as the Chair; and
 - (c) it does not recommend a person without the concurrence of the President of the Law Council of Australia, the concurrence of the President of the Australian Bar Association and the concurrence of a member of the Council of Chief Justices nominated by the Council for the purpose.
- (3) The Standing Committee must ensure that the members are appointed so that, as

far as practicable, the members reflect a balance of jurisdictions and a balance of expertise.

- (4) A member does not have a representational role in relation to any particular area of expertise or in relation to any particular organisation or jurisdiction.

3 Terms of office of members

- (1) Subject to this Schedule, a member holds office for the operational term of the Board specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Note. An operational term of the Board is 3 years: see section 8.2.2 (4).

- (2) For the first operational term of the Board, a member may be appointed for a period of 18 months.
- (3) A person appointed as a member to fill a vacancy during an operational term holds office for the balance of the period for which his or her predecessor was appointed.
- (4) A member cannot hold office for periods, whether consecutive or non-consecutive, that total more than 6 years.
- (5) A member may be appointed for a shorter period than that referred to in subclause (1), (2) or (3), to ensure the member does not hold office for periods that total more than 6 years.

4 Diversity of membership

- (1) The Standing Committee must ensure that, over a cycle of two operational terms of the Board, at least one member is drawn from each jurisdiction.
- (2) The Standing Committee is to arrange for consultation to take place between representatives of the Law Council of Australia, the Australian Bar Association and the Standing Committee to ensure compliance with subclause (1).

Note 1. A memorandum of understanding between the Standing Committee and the Law Council of Australia and the Standing Committee and the Australian Bar Association is intended to provide for all of the parties to work together to bring about the result set out in this clause.

Note 2. An inter-governmental agreement is intended to provide more detailed arrangements for rotating Board membership amongst the jurisdictions.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if he or she:
- (a) completes a term of office and is not re-appointed; or
 - (b) resigns the office by written instrument addressed to the host Attorney-General; or
 - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
 - (d) dies.
- (2) The host Attorney-General may, at any time, terminate the appointment of a member:
- (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or

- (b) for contravening a condition of the member's appointment contained in his or her instrument of appointment; or
- (c) without limitation, if:
 - (i) the member has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-General, renders the member unfit to continue to hold the office of member; or
 - (ii) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.
- (3) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

6 Extension of term of office during vacancy in membership

- (1) If:
 - (a) the office of a member becomes vacant because the member has completed the member's term of office; and
 - (b) the member has not yet served a total of 6 years as a member;the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by re-appointment of the member or appointment of a successor to the member).
- (2) However, this clause ceases to apply to the member if:
 - (a) the member resigns the member's office by instrument in writing addressed to the host Attorney-General; or
 - (b) the host Attorney-General determines that the services of the member are no longer required.
- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months or the unexpired portion of the maximum 6-year term, whichever is the shorter.
- (4) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

7 Remuneration of members

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Standing Committee may from time to time determine with respect to the member.

8 Disclosure of conflict of interest

- (1) If:
 - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) Particulars of any disclosure made under this clause must be recorded by the Board.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Standing Committee or the Board otherwise determines:
 - (a) be present during any deliberation of the Board with respect to the matter; or
 - (b) take part in any decision of the Board with respect to the matter.
- (4) For the purposes of the making of a determination by the Board under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in the making by the Board of the determination.
- (5) A contravention of this clause does not invalidate any decision of the Board.

Part 3 Procedure of Board

9 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Board.

10 Quorum

The quorum for a meeting of the Board is a majority of its members.

11 Chief executive officer may attend meetings

The chief executive officer may attend meetings of the Board and may participate in discussions of the Board, but is not entitled to vote at a meeting.

12 Presiding member

- (1) The Chair (or, in the absence of the Chair, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

14 Transaction of business outside meetings or by telecommunication

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1); or
 - (b) a meeting held in accordance with subclause (2);the Chair and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

15 Defects in appointment of members

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

16 First meeting

The Chair may call the first meeting of the Board in any manner the Chair thinks fit.

Part 4 Chief Executive Officer of Board

17 Chief Executive Officer of Board

- (1) The office of Chief Executive Officer of the Board is established.
- (2) The Chief Executive Officer of the Board is to administer the affairs of the Board in accordance with the policies and directions of the Board.
- (3) The functions of Chief Executive Officer of the Board are exercised by the Commissioner.
- (4) A person cannot otherwise be appointed to be or to act as Chief Executive Officer of the Board.

Part 5 Staff, consultants and contractors of Board

18 Staff of Board

- (1) The Chief Executive Officer of the Board may employ staff for the purpose of assisting the Board to exercise its functions.
- (2) The staff are to be employed on the terms and conditions decided by the Board from time to time.
- (3) Subclause (2) is subject to any relevant industrial award or agreement that applies to the staff.

19 Secondment of staff to Board

The Chief Executive Officer of the Board may arrange for the services of any of the following persons to be made available to the Board in connection with the exercise of its functions:

- (a) members of the staff of a government agency of the Commonwealth, a State or a Territory;
- (b) members of the staff of any of its local representatives;

- (c) members of the staff of the Commissioner.

20 Consultants and contractors of Board

- (1) The Chief Executive Officer of the Board may engage persons with suitable qualifications and experience as consultants or contractors for the purpose of providing services to the Board.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Board from time to time.

Part 6 Committees established by Board

21 Admissions Committee

- (1) The Admissions Committee is to consist of the following persons appointed by the Board:
 - (a) 3 current or former Supreme Court Judges;
 - (b) 3 persons nominated by the Law Council of Australia;
 - (c) 1 person nominated by the Australian Bar Association;
 - (d) 1 person who represents a State or Territory Justice Department or a government department with equivalent functions;
 - (e) 1 person who is the Dean of a Law School or of a Faculty of Law or who is of equivalent status or has equivalent functions.
- (2) The Board must ensure that there is at least one member of the Admissions Committee from each jurisdiction.
- (3) A member does not have a representational role in relation to any particular group or body to which the member belongs or in relation to any particular jurisdiction or jurisdictions.
- (4) The terms on which members of the Admissions Committee are appointed and hold their positions on the committee are to be as determined from time to time by the Board.
- (5) The procedures of the Admissions Committee are as determined by the committee.
- (6) The Admissions Committee may appoint a member of the committee as its Chair.
- (7) In addition to its admission functions, the Admissions Committee may give advice to the Board about:
 - (a) National Rules relating to admission; and
 - (b) any matter as requested by the Board.

Note. Section 8.2.9 provides for the establishment of the Admissions Committee.

22 Advisory committees

- (1) The Board must establish one or more advisory committees to provide advice, recommendations or assistance to the Board in the exercise of the Board's functions.
- (2) Membership of an advisory committee is to include persons with relevant expertise and experience, including relevant expertise and experience from or in any or all of the following:

- (a) courts or court administration;
 - (b) consumer interest groups;
 - (c) legal education institutions;
 - (d) insurance providers;
 - (e) the Australian legal profession;
 - (f) government.
- (3) Membership of an advisory committee may, but need not, include one or more members of the Board.
- (4) The terms on which members of an advisory committee are appointed and hold their positions on the committee are to be as determined from time to time by the Board.
- (5) The procedures of an advisory committee are as determined by the committee.

23 Other committees

- (1) The Board may establish other committees, which may include persons who are not members of the Board.
- (2) The appointment and tenure of members of a committee and its charter are to be as determined from time to time by the Board.
- (3) The procedures of a committee are as determined by the committee.

24 Remuneration of members of committees

- (1) A member of a committee (other than the Admissions Committee) is entitled to be paid such remuneration (including travelling and subsistence allowances), if any, as the Board may from time to time determine with respect to the member.
- (2) A member of the Admissions Committee is entitled to be paid such remuneration (including travelling and subsistence allowances), if any, as the Standing Committee may from time to time determine with respect to the member.

25 Committees are committees of Board

Committees established by the Board are committees of the Board.

Part 7 Annual reports of Board

26 Annual reports

- (1) The Board must, within 4 months after the end of each financial year, submit an annual report for the financial year to the Standing Committee.
- (2) The annual report must include a financial statement for the Board for the period to which the report relates.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Rules.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Standing Committee is to make arrangements for the tabling of the annual report of the Board, and the report of the auditor with respect to the financial statement in the report, in the Parliament of the Commonwealth and the Legislature of each jurisdiction.

- (6) The Standing Committee may extend, or further extend, the period for submission of an annual report to the Committee by a total period of up to 2 months.

Schedule 2 Provisions relating to Commissioner

Section 8.3.1

Part 1 Appointment and tenure of office

1 Appointment of Commissioner

The host Attorney-General is to appoint a person as National Legal Services Commissioner on the recommendation of the Standing Committee and with the concurrence of the Board.

2 Term of office of Commissioner

- (1) The Commissioner is to be appointed for a term, not exceeding 5 years, specified in his or her instrument of appointment, but is eligible for re-appointment.
- (2) The Commissioner cannot be appointed for terms, whether consecutive or non-consecutive, that total more than 10 years.

3 Remuneration of Commissioner

The Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Standing Committee may from time to time determine.

4 Vacancy in office of Commissioner

- (1) The office of Commissioner becomes vacant if he or she:
 - (a) completes a term of office and is not re-appointed; or
 - (b) resigns the office by written instrument addressed to the host Attorney-General; or
 - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
 - (d) dies.
- (2) The host Attorney-General may terminate the Commissioner's appointment after consultation with the Standing Committee:
 - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or
 - (b) for contravening a condition of the Commissioner's appointment contained in his or her instrument of appointment; or
 - (c) without limitation, if:
 - (i) the Commissioner has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-General, renders the Commissioner unfit to continue to hold the office of Commissioner; or
 - (ii) the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

5 Acting Commissioner

- (1) The Board may appoint a person to act as Commissioner:
 - (a) during a vacancy in the office of Commissioner; or
 - (b) during a period, or all periods, when the Commissioner is absent from duty or, for any other reason, is unable to perform the duties of the office.
- (2) The Board may appoint a person as Acting Commissioner only if the Board considers that he or she has sufficient knowledge of legal practice and the legal system to be able to exercise the functions of the Commissioner.
- (3) An acting appointment is for the term (not exceeding 6 months) specified in the instrument of appointment and a person appointed to act is eligible for re-appointment.
- (4) The Acting Commissioner:
 - (a) has all the functions of the Commissioner; and
 - (b) is entitled to be paid the remuneration and allowances that the Commissioner would have been entitled to for exercising those functions.
- (5) The Board may remove the Acting Commissioner from office at any time.

Part 2 Staff, consultants and contractors of Commissioner

65 Staff of Commissioner

- (1) The Commissioner may employ staff for the purpose of assisting the Commissioner to exercise his or her functions.
- (2) The staff are to be employed on the terms and conditions decided by the Commissioner from time to time.
- (3) Subclause (2) is subject to any relevant industrial award or agreement that applies to the staff.

7 Secondment of staff to Commissioner

The Commissioner may arrange for the services of any of the following persons to be made available to the Commissioner in connection with the exercise of his or her functions:

- (a) members of the staff of a government agency of the Commonwealth, a State or a Territory;
- (b) members of the staff of any of his or her local representatives;
- (c) members of the staff of the Board.

8 Consultants and contractors of Commissioner

- (1) The Commissioner may engage persons with suitable qualifications and experience as consultants or contractors for the purpose of providing services to the Commissioner.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Commissioner from time to time.

Part 3 Annual reports of Commissioner

9 Annual reports

- (1) The Commissioner must, within 4 months after the end of each financial year, submit an annual report for the financial year to the Board.
- (2) The annual report must include:
 - (a) a financial statement for the Commissioner for the period to which the report relates; and
 - (b) statistical information about complaints received, resolved and determined; and
 - (c) a report containing information regarding compliance functions; and
 - (d) audit information submitted by fidelity authorities for fidelity funds.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Rules.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Board may extend, or further extend, the period for submission of an annual report to the Board by a total period of up to 2 months.
- (6) The Board is to provide the Standing Committee with a copy of the Commissioner's annual report as soon as practicable after it is received by the Board.
- (7) The Standing Committee is to make arrangements for the tabling of the annual report of the Commissioner and the report of the auditor with respect to the financial statement in the report, in the Parliament of the Commonwealth and the Legislature of each State and Territory.

Schedule 3 Local representatives of Board

<i>Jurisdiction</i>	<i>Local representatives</i>
State of New South Wales	
State of Victoria	
State of Queensland	
State of Western Australia	
State of South Australia	
State of Tasmania	
Australian Capital Territory	
Northern Territory	

Schedule 4 Local representatives of Commissioner

<i>Jurisdiction</i>	<i>Local representatives</i>
State of New South Wales	
State of Victoria	
State of Queensland	
State of Western Australia	
State of South Australia	
State of Tasmania	
Australian Capital Territory	
Northern Territory	

Schedule 5 Professional associations

Schedule 6 Fidelity authorities

Schedule 7 Savings and transitional provisions

1 Initial National Rules

- (1) The host Attorney-General may make the initial National Legal Profession Rules (other than those referred to in clause 2).
- (2) National Rules may be made under this clause without complying with any or all of the provisions of Part 9.1, and have effect as National Rules made in accordance with this Law.
- (3) The power to make National Rules under subclause (1) expires when the initial National Rules are made under that subclause.

2 Initial Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules

- (1) The host Attorney-General may make initial Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules after consultation with the Law Council of Australia and the Australian Bar Association.
- (2) National Rules may be made under this clause without complying with any or all of the provisions of Part 9.1, and have effect as Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules made in accordance with this Law.
- (3) The power to make National Rules under subclause (1) expires when the initial National Rules are made under that subclause.

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