

House of Assembly

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South Australia

Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Bill 2019

A BILL FOR

An Act to amend the *Legal Practitioners Act 1981*.

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1	Transitional provision
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Legal Practitioners Act 1981*

4—Amendment of section 5—Interpretation

- (1) Section 5(1)—before the definition of *associate* insert:

amend includes—

- (a) in relation to a practising certificate—
 - (i) impose a condition on the certificate; and
 - (ii) amend or revoke a condition already imposed on the certificate; and
- (b) in relation to registration as a foreign lawyer—
 - (i) amend the lawyer's registration certificate; and
 - (ii) impose a condition on the registration; and
 - (iii) amend or revoke a condition already imposed on the registration;

- (2) Section 5(1)—after the definition of *Australian Government Solicitor* insert:

Australian-registered foreign lawyer means a locally registered foreign lawyer or an interstate-registered foreign lawyer;

- (3) Section 5(1)—after the definition of *fiduciary or professional default* insert:
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;
home jurisdiction—see section 5B;
- (4) Section 5(1)—after the definition of *interstate practising certificate* insert:
interstate-registered foreign lawyer means a person who is registered as a foreign lawyer under a corresponding law;
- (5) Section 5(1)—after the definition of *local legal practitioner* insert:
locally registered foreign lawyer means a person who is registered as a foreign lawyer under this Act;
- (6) Section 5(1), definition of *regulatory authority*—after paragraph (b) insert:
(c) in relation to another jurisdiction—
(i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority, unless subparagraph (iii) applies; or
(ii) if there are separate regulatory authorities for the other jurisdiction for different branches of the legal profession or for persons who practise in a particular style of legal practice—the regulatory authority relevant to the branch or style concerned, unless subparagraph (iii) applies; or
(iii) if the regulations specify or provide for the determination of 1 or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the regulatory authority or authorities specified or determined in accordance with the regulations;
- (7) Section 5(1), definition of *show cause event*, (d)(ii)—after "legal practitioner" insert:
or was practising foreign law as an Australian-registered foreign lawyer, as the case requires
- (8) Section 5(1), definition of *trustee company*—delete the definition

5—Amendment of section 5A—Terms relating to associates and principals of law practices

Section 5A(1)—after paragraph (c) insert:

- or
- (d) an Australian-registered foreign lawyer who is a partner in the law practice; or
- (e) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations.

6—Insertion of section 5B

After section 5A insert:

5B—Home jurisdiction

- (1) The *home jurisdiction* for a legal practitioner is the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted.
- (2) The *home jurisdiction* for an Australian-registered foreign lawyer is the jurisdiction in which the lawyer's only or most recent current registration was granted.

7—Amendment of section 20AI—Refusal, amendment, suspension or cancellation of practising certificate—failure to show cause

Section 20AI—after subsection (1) insert:

- (1a) If an applicant for, or holder of, a practising certificate has provided a written statement in accordance with section 20AG or 20AH, the Supreme Court may make an order imposing conditions on the practising certificate—
 - (a) relating to the legal practice of the applicant or holder; or
 - (b) requiring that the applicant or holder, within a specified time, complete further education or training, or receive counselling, of a specified type.

8—Amendment of section 21—Entitlement to practise

- (1) Section 21(2)—delete "subsections (3) and (3a)" and substitute:
subsection (3)
- (2) Section 21(3)(s)—before "a body corporate" insert:
an officer or employee of
- (3) Section 21(3)—after paragraph (s) insert:
 - (sa) an officer or employee of a trustee company from providing for fee or reward traditional trustee company services (within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth);
or
- (4) Section 21(3a)—delete subsection (3a) and substitute:
 - (3a) Subsection (1) does not apply to the practice of foreign law by an Australian-registered foreign lawyer in accordance with Schedule 1A.
- (5) Section 21(5)—after the definition of *tribunal* insert:
trustee company means a trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth.

9—Insertion of Part 3 Division 4A

Part 3—after Division 4 insert:

Division 4A—Provisions regulating the practise of foreign law

24A—Application of Schedule 1A

The provisions set out in Schedule 1A apply in relation to the practise of foreign law in this jurisdiction.

10—Amendment of section 39—Delivery up of legal papers

- (1) Section 39(1)—delete "legal practitioner or former legal practitioner, or an incorporated legal practice," and substitute:

person to whom this section applies
- (2) Section 39(1)(a) and (b)—delete "practitioner, former practitioner or legal practice" wherever occurring and substitute in each case:

person
- (3) Section 39(3)—delete "legal practitioner, former practitioner or legal practice" and substitute:

person against whom the order is made
- (4) Section 39(3)—delete "practitioner or practice" and substitute:

person
- (5) Section 39—after subsection (3) insert:
 - (4) This section applies to—
 - (a) a legal practitioner; and
 - (b) a former legal practitioner; and
 - (c) an Australian-registered foreign lawyer; and
 - (d) a former Australian-registered foreign lawyer; and
 - (e) an incorporated legal practice.

11—Amendment of section 40—Authority of legal practitioner or foreign lawyer to act on behalf of person of unsound mind

- (1) Section 40(1)—after "legal practitioner" insert:

or Australian-registered foreign lawyer
- (2) Section 40(2)—after "legal practitioner" insert:

or Australian-registered foreign lawyer
- (3) Section 40(2)—after "practitioner" second occurring insert:

or lawyer

- (4) Section 40(2)—delete "the practitioner's authority" and substitute:
the authority of the practitioner or lawyer
- (5) Section 40(3)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (6) Section 40(3)—after "practitioner" second and third occurring insert:
or lawyer

12—Amendment of section 43A—Interpretation

Section 43A, definition of *legal practitioner*—after paragraph (b) insert:

- (ba) an Australian-registered foreign lawyer who has established an office in this State; or

13—Amendment of section 49—Supreme Court may grant authority permitting director to practise

- (1) Section 49(1)—delete subsection (1) and substitute:
 - (1) A legal practitioner or Australian-registered foreign lawyer who is or has been a director of an incorporated legal practice, or a corporate entity entitled to engage in legal practice in a foreign country, during the winding up of the corporation or other corporate entity for the benefit of creditors must not, without the authority of the Supreme Court, practise the profession of the law.
Maximum penalty: \$10 000.
- (2) Section 49(1a)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (3) Section 49(1a)—after "incorporated legal practice" insert:
or other corporate entity
- (4) Section 49(3)—after "legal practitioner" insert:
or Australian-registered foreign lawyer

14—Amendment of section 57—Fidelity Fund

Section 57(3)(d)—delete "or former legal practitioners" and substitute:

, former legal practitioners, Australian-registered foreign lawyers or former Australian registered foreign lawyers

15—Amendment of section 77N—Investigation of allegation of overcharging

Section 77N(10)—after paragraph (b) insert:

and

- (c) the costs of any assessment undertaken by a legal practitioner under subsection (4)(b) for the purposes of investigating the complaint are recoverable from the legal practitioner or former legal practitioner as a debt due to the Commissioner.

16—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Foreign lawyers

Part 1—Preliminary

1—Definitions

(1) In this Schedule—

approved form means a form approved by the Society;

Australia includes the external territories;

Australian law means the law of the Commonwealth or of a jurisdiction;

Australian legal practitioner means a legal practitioner who holds a current practising certificate or a current interstate practising certificate;

external territory means a Territory of the Commonwealth (not being the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory of Australia) for the government of which as a Territory provision is made by a Commonwealth Act;

foreign law practice means a partnership or corporate entity that is entitled to engage in legal practice in a foreign country;

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

information notice—see subclause (2);

local registration certificate means a registration certificate given under this Schedule;

overseas-registered foreign lawyer means a natural person who is properly registered to engage in legal practice in a foreign country by the foreign registration authority for the country;

practise foreign law means do work, or transact business, in this jurisdiction concerning foreign law, being work or business of a kind that, if it concerned the law of this jurisdiction, would ordinarily be done or transacted by an Australian legal practitioner;

registered, when used in connection with a foreign country, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required by or under legislation for engaging in legal practice in that country.

(2) For the purposes of this Schedule, an *information notice* is a written notice to a person about a decision stating—

(a) the decision; and

- (b) the reasons for the decision; and
- (c) the rights of appeal available to the person in respect of the decision and the period within which any such appeal must be made or applied for.

2—This Schedule does not apply to Australian legal practitioners

- (1) This Schedule does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer).
- (2) Accordingly, nothing in this Schedule requires or enables an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer) to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.

3—Professional conduct rules

The Society's professional conduct rules may include rules about practising the profession of the law in this jurisdiction as an Australian-registered foreign lawyer.

Part 2—Practice of foreign law

4—Requirement for registration

- (1) A person must not practise foreign law in this jurisdiction unless the person is—
 - (a) an Australian-registered foreign lawyer; or
 - (b) an Australian legal practitioner.

Maximum penalty: \$50 000.

- (2) However, a person does not contravene subclause (1) if the person is an overseas-registered foreign lawyer—
 - (a) who—
 - (i) practises foreign law in this jurisdiction for 1 or more periods that do not in aggregate exceed 90 days in any period of 12 months; or
 - (ii) is subject to a restriction imposed under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and
 - (b) who—
 - (i) does not maintain an office for the purpose of practising foreign law in this jurisdiction; or

- (ii) does not become a partner or director of a law practice.

5—Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

6—Scope of practice

- (1) An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction:
 - (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered by the foreign registration authority for the country;
 - (b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed by the regulations;
 - (c) 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 essential;
 - (d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed by the regulations.
- (2) Nothing in this Act authorises an Australian-registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practise Australian law in this jurisdiction.
- (3) Despite subclause (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if—
 - (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
 - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

7—Form of practice

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law—
 - (a) on the foreign lawyer's own account; or

- (b) in partnership with 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or
 - (c) as a director or employee of an incorporated legal practice; or
 - (d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or
 - (e) as an employee of an Australian-registered foreign lawyer.
- (2) An affiliation referred to in subclause (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

8—Application of Australian professional ethical and practice standards

- (1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.
- (2) Part 6 of this Act applies to a person who—
- (a) is an Australian-registered foreign lawyer; or
 - (b) was an Australian-registered foreign lawyer when the relevant conduct allegedly occurred, but is no longer an Australian-registered foreign lawyer (in which case Part 6 of this Act applies as if the person were an Australian-registered foreign lawyer),
- and so applies as if a reference in Part 6 to a legal practitioner were a reference to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Part 6 of this Act for the purposes of this clause.
- (4) Without limiting the matters that may be taken into account in determining whether a person should be disciplined for a contravention of subclause (1), the following matters may be taken into account:
- (a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;
 - (b) whether the person contravened the subclause wilfully or without reasonable excuse.

- (5) Without limiting any other provision of this clause or the orders that may be made under Part 6 of this Act as applied by this clause, the following orders may be made by the Supreme Court under section 89 as applied by this clause:
- (a) an order that a person's registration under this Act as a foreign lawyer be cancelled;
 - (b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

9—Designation

- (1) An Australian-registered foreign lawyer may use only the following designations:
- (a) the lawyer's own name;
 - (b) a title or business name the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;
 - (c) subject to this clause, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);
 - (d) if the lawyer is a principal of any law practice in Australia whose principals include both 1 or more Australian-registered foreign lawyers and 1 or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, "Solicitors and locally registered foreign lawyers" or "Australian solicitors and US attorneys").
- (2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in connection with practising foreign law in this jurisdiction only if—
- (a) the lawyer indicates, on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and
 - (b) the lawyer has provided the Society with acceptable evidence that the lawyer is a principal of the foreign law practice.
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as referred to in this clause whether or not other principals of the practice are Australian-registered foreign lawyers.

- (4) This clause does not authorise the use of a name or other designation that contravenes any requirements of the law of this jurisdiction concerning the use of business names or that is likely to lead to any confusion with the name of any established domestic law practice or foreign law practice in this jurisdiction.

10—Letterhead and other identifying documents

- (1) An Australian-registered foreign lawyer must indicate, on the lawyer's website (if any) and in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.
- (2) Subclause (1) is satisfied if the lawyer includes on the website or in the public document the words—
- (a) "registered foreign lawyer" or "registered foreign practitioner"; and
 - (b) "entitled to practise foreign law only".
- (3) An Australian-registered foreign lawyer may (but need not) include any or all of the following on the lawyer's website (if any) and on any public document:
- (a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;
 - (b) a description of themselves, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in clause 9.
- (4) In this clause—
- public document* includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

11—Advertising

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the Society or by law on legal practice engaged in by an Australian legal practitioner that are relevant to the practice of law in this jurisdiction.
- (2) Without limiting subclause (1), an Australian-registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as a lawyer) in any way that—
- (a) might reasonably be regarded as—
 - (i) false, misleading or deceptive; or
 - (ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner; or
 - (b) contravenes any requirements of the regulations.

12—Foreign lawyer employing Australian legal practitioner

- (1) An Australian-registered foreign lawyer may employ 1 or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.
- (3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.
- (4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not—
 - (a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer; or
 - (b) otherwise practise Australian law in this jurisdiction in the course of that employment.
- (5) Subclause (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least 1 other partner is an Australian legal practitioner.
- (6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

13—Trust money and trust accounts

- (1) The provisions of Schedule 2, and any other provisions of this Act, the regulations or any legal profession rule relating to requirements for trust money and trust accounts, apply (subject to this clause) to Australian-registered foreign lawyers in the same way as they apply to Australian legal practitioners.
- (2) In this clause, a reference to money is not limited to a reference to money in this jurisdiction.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act relating to trust money and trust accounts for the purposes of this clause.

14—Professional indemnity insurance

- (1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with 1 of the following:
 - (a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;

- (b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a)—the foreign lawyer—
 - (i) must have professional indemnity insurance that covers the practise of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and
 - (ii) if the insurance is for less than \$1.5 million per claim (inclusive of defence costs)—must provide a disclosure statement to each client disclosing the level of cover;
- (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b)—the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.

Maximum penalty: \$10 000.

- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
- (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this clause.
- (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

15—Fidelity Fund

The regulations may provide that Part 4 Division 3 and Part 5 of this Act, or specified provisions of Part 4 Division 3 and Part 5 of this Act, apply to Australian-registered foreign lawyers, or to prescribed classes of Australian-registered foreign lawyers, and so apply with any modifications specified in the regulations.

Part 3—Local registration of foreign lawyers generally

16—Local registration of foreign lawyers

Overseas-registered foreign lawyers may be registered as foreign lawyers under this Act.

17—Duration of registration

- (1) Registration as a foreign lawyer granted under this Act is in force from the day specified in the local registration certificate until the end of the financial year in which it is granted, unless the registration is sooner suspended or cancelled.

- (2) Registration as a foreign lawyer renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the registration is sooner suspended or cancelled.
- (3) If an application for the renewal of registration as a foreign lawyer has not been determined by the following 1 July, the registration—
 - (a) continues in force on and from that 1 July until the Society renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and
 - (b) if renewed, is taken to have been renewed on and from that 1 July.

18—Locally registered foreign lawyer is not officer of Supreme Court

A locally registered foreign lawyer is not an officer of the Supreme Court.

Part 4—Applications for grant or renewal of local registration

19—Application for grant or renewal of registration

An overseas-registered foreign lawyer may apply to the Society for the grant or renewal of registration as a foreign lawyer under this Act.

20—Manner of application

- (1) An application for the grant or renewal of registration as a foreign lawyer must be—
 - (a) made in the approved form; and
 - (b) accompanied by the prescribed fees.
- (2) The fees are not to be greater than the maximum fees for a practising certificate.
- (3) The Society may also require the applicant to pay any reasonable costs and expenses incurred by the Society in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.
- (4) The fees and costs must not include any component for compulsory membership of any professional association.
- (5) The approved form may require the applicant to disclose—
 - (a) matters that may affect the Society's consideration of the application for the grant or renewal of registration; and

- (b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause.
- (6) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.
- (7) The approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular manner need not be disclosed for the purposes of the current application.
- (8) The prescribed proportion of fees paid to the Society under this clause must be credited by the Society to the Fidelity Fund.
- (9) The balance of those fees must be applied by the Society towards the Society's costs in exercising powers and functions under this Schedule and any powers or functions delegated to the Society under this Act.

21—Requirements regarding applications for grant or renewal of registration

- (1) An application for grant of registration must state the applicant's educational and professional qualifications.
- (2) An application for grant or renewal of registration must—
 - (a) state that the applicant is registered to engage in legal practice by 1 or more specified foreign registration authorities in 1 or more foreign countries; and
 - (b) state that the applicant is not an Australian legal practitioner; and
 - (c) state that the applicant 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 the applicant's capacity as—
 - (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian legal practitioner; and
 - (d) state whether the applicant has been convicted of an offence in Australia or a foreign country, and if so—
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the applicant's age when the offence was committed; and
 - (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and
 - (f) state—

- (i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to carry out the practice of law in any place; and
 - (ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place,
as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and
 - (g) specify any special conditions imposed in Australia or a foreign country as a restriction on legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and
 - (h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities the Society considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and
 - (i) specify which of the paragraphs of clause 14(1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and
 - (j) provide the information or be accompanied by the other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the Society.
- (3) The application must (if the Society so requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that—
- (a) verifies the applicant's educational and professional qualifications; and
 - (b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned, and the date of registration; and
 - (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.
- (4) The applicant must (if the Society so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.

- (5) The Society may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the Society.
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Society.

Part 5—Grant or renewal of registration

22—Grant or renewal of registration

- (1) The Society must consider an application that has been made for the grant or renewal of registration as a foreign lawyer and may—
 - (a) grant or refuse to grant the registration; or
 - (b) renew or refuse to renew the registration.
- (2) The Society may, when granting or renewing registration, impose conditions as referred to in clause 42.
- (3) If the Society grants or renews registration, the Society must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.
- (4) If the Society—
 - (a) refuses to grant or renew registration; or
 - (b) imposes a condition on the registration and the applicant does not agree to the condition,the Society must, as soon as practicable, give the applicant an information notice.
- (5) A notice of renewal may be in the form of a new registration certificate or any other form the Society considers appropriate.

23—Requirement to grant or renew registration if criteria satisfied

- (1) The Society must grant an application for registration as a foreign lawyer if the Society—
 - (a) is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and
 - (b) considers an effective system exists for regulating engaging in legal practice in 1 or more of the foreign countries; and
 - (c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to—
 - (i) any special conditions in engaging in legal practice in any of the foreign countries; or

- (ii) any undertakings concerning engaging in legal practice in any of the foreign countries,
that would make it inappropriate to register the person; and
 - (d) is satisfied the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were to be granted,
unless the Society refuses the application under this Schedule.
- (2) The Society must grant an application for renewal of a person's registration unless the Society refuses renewal under this Schedule.
 - (3) Residence or domicile in this jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant or renewal of registration.

24—Refusal to grant or renew registration

- (1) The Society may refuse to consider an application if it is not made in accordance with this Act or the regulations.
- (2) The Society may refuse to grant or renew registration if—
 - (a) the application is not accompanied by, or does not contain, the information required by this Schedule or prescribed by the regulations; or
 - (b) the applicant has contravened this Act or a corresponding law; or
 - (c) the applicant has contravened an order of the Tribunal or a corresponding disciplinary body, including but not limited to an order to pay any fine or costs; or
 - (d) the applicant has contravened an order of a regulatory authority of any jurisdiction to pay any fine or costs; or
 - (e) the applicant has failed to comply with a requirement under this Act to pay a contribution to, or levy for, the Fidelity Fund; or
 - (f) the applicant has contravened a requirement of or made under this Act about professional indemnity insurance; or
 - (g) the applicant has failed to pay any expenses of receivership payable under this Act; or
 - (h) the applicant's foreign legal practice is in receivership (however described).
- (3) The Society may refuse to grant or renew registration if an authority of another jurisdiction has under a corresponding law—
 - (a) refused to grant or renew registration for the applicant; or
 - (b) suspended or cancelled the applicant's registration.

- (4) The Society may refuse to grant registration if the Society is satisfied that the applicant is not a fit and proper person to be registered after considering—
 - (a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.
- (5) The Society may refuse to renew registration if the Society is satisfied that the applicant is not a fit and proper person to continue to be registered after considering—
 - (a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause, other than an offence disclosed in a previous application to the Society; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.
- (6) The Society may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the Society refuses to grant or renew registration, the Society must, as soon as practicable, give the applicant an information notice.
- (8) Nothing in this clause affects the operation of Part 7 of this Schedule.

Part 6—Amendment, suspension or cancellation of local registration

25—Application of Part

This Part does not apply in relation to matters referred to in Part 7 of this Schedule.

26—Grounds for amending, suspending or cancelling registration

- (1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer:
 - (a) the registration was obtained because of incorrect or misleading information;
 - (b) the person fails to comply with a requirement of this Schedule;
 - (c) the person fails to comply with a condition imposed on the person's registration;

- (d) the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the person's capacity as—
 - (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian legal practitioner;
 - (e) the person has been convicted of an offence in Australia or a foreign country;
 - (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action taken in Australia or a foreign country;
 - (g) the person does not meet the requirements of clause 14;
 - (h) another ground the Society considers sufficient.
- (2) Subclause (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under clause 42.

27—Amending, suspending or cancelling registration

- (1) If the Society considers reasonable grounds exist to amend, suspend or cancel a person's registration as a foreign lawyer (the *action*), the Society must give the person a notice that—
- (a) states the action proposed and—
 - (i) if the proposed action is to amend the registration in any way—states the proposed amendment; and
 - (ii) if the proposed action is to suspend the registration—states the proposed suspension period; and
 - (b) states the grounds for proposing to take the action; and
 - (c) outlines the facts and circumstances that form the basis for the Society's belief; and
 - (d) invites the person to make written representations to the Society, within a specified time not less than 7 days and not more than 28 days, as to why the action proposed should not be taken.
- (2) If, after considering all written representations made within the specified time, the Society still believes grounds exist to take the action, the Society may—
- (a) if the notice stated the action proposed was to amend the registration—amend the registration in the way specified or in another way the Society considers appropriate in the light of the representations; or

- (b) if the notice stated the action proposed was to suspend the registration for a specified period—suspend the registration for a period no longer than the specified period; or
- (c) if the notice stated the action proposed was to cancel the registration—
 - (i) cancel the registration; or
 - (ii) suspend the registration for a period; or
 - (iii) amend the registration in a less onerous way the Society considers appropriate because of the representations.
- (3) The Society may, at its discretion, consider representations made after the specified time.
- (4) The Society must give the person notice of the Society's decision.
- (5) If the Society amends, suspends or cancels the registration, the Society must give the person an information notice.
- (6) In this clause—

amend registration means amend the registration under clause 42 during its currency, otherwise than at the request of the foreign lawyer concerned.

28—Operation of amendment, suspension or cancellation of registration

- (1) This clause applies if a decision is made to amend, suspend or cancel a person's registration under clause 27.
- (2) Subject to subclauses (3) and (4), the amendment, suspension or cancellation of the registration takes effect on the later of the following:
 - (a) the day notice of the decision is given to the person;
 - (b) the day specified in the notice.
- (3) If the registration is amended, suspended or cancelled because the person has been convicted of an offence—
 - (a) the Society may, on the application of the person, order that the operation of the amendment, suspension or cancellation of the registration be stayed until—
 - (i) the end of the time to appeal against the conviction; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and
 - (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.

- (4) If the registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed—
- (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
 - (b) the cancellation ceases to have effect when the conviction is quashed and the registration is restored as if it had merely been suspended.

29—Other ways of amending or cancelling registration

- (1) This clause applies if—
- (a) a locally registered foreign lawyer requests the Society to amend or cancel the registration and the Society proposes to give effect to the request; or
 - (b) the Society proposes to amend a locally registered foreign lawyer's registration only—
 - (i) for a formal or clerical reason; or
 - (ii) in another way that does not adversely affect the lawyer's interests.
- (2) The Society may amend or cancel the registration as referred to in subclause (1) by written notice given to the lawyer, and clause 27 does not apply in that case.

30—Relationship of this Part with Part 6 of Act

Nothing in this Part prevents a complaint from being made under Part 6 of this Act about a matter to which this Part relates.

Part 7—Special powers in relation to local registration—show cause events

31—Applicant for local registration—show cause event

- (1) This clause applies if—
- (a) a person is applying for registration as a foreign lawyer under this Act; and
 - (b) a show cause event in relation to the person happened, whether before or after the commencement of this clause, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must provide to the Society a written statement, in accordance with the regulations—
- (a) about the show cause event; and
 - (b) explaining why, despite the show cause event, the applicant considers themselves to be a fit and proper person to be a locally registered foreign lawyer.

- (3) However, the person need not provide a statement under subclause (2) if the person has previously provided to the Society a statement under this clause, or a notice and statement under clause 32, explaining why, despite the show cause event, the person considers themselves to be a fit and proper person to be a locally registered foreign lawyer.

32—Locally registered foreign lawyer—show cause event

- (1) This clause applies to a show cause event that happens in relation to a locally registered foreign lawyer.
- (2) The locally registered foreign lawyer must provide to the Society both of the following:
- (a) within 7 days after the happening of the event—notice, in the approved form, that the event happened;
 - (b) within 28 days after the happening of the event—a written statement explaining why, despite the show cause event, the person considers themselves to be a fit and proper person to be a locally registered foreign lawyer.
- (3) If a written statement is provided after the 28 days mentioned in subclause (2)(b), the Society may accept the statement and take it into consideration.

33—Refusal, amendment, suspension or cancellation of local registration—failure to show cause

- (1) The Society may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer—
- (a) is required by clause 31 or 32 to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
 - (b) has provided a written statement in accordance with clause 31 or 32 but the Society does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, they are a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this clause only, a written statement accepted by the Society under clause 32(3) is taken to have been provided in accordance with clause 32.
- (3) If the Society makes a determination under this clause, the Society must, as soon as practicable, give the applicant or lawyer an information notice.

34—Restriction on making further applications

- (1) If the Society determines under this Part to cancel a person's registration, the Society may also determine that the person is not entitled to apply for registration under this Schedule for a specified period (being a period not exceeding 5 years).
- (2) A person in respect of whom a determination has been made under this clause, or under a provision of a corresponding law that corresponds to this clause, is not entitled to apply for registration under this Schedule during the period specified in the determination.

35—Relationship of this Part with Part 6 and Schedule 4

- (1) The Commissioner has and may exercise powers under Part 6 of this Act, and Schedule 4, in relation to a matter under this Part, as if the matter were the subject of a complaint under Part 6 of this Act.
- (2) Accordingly, the provisions of Part 6 Division 2 of this Act, and Schedule 4, apply in relation to a matter under this Part, and so apply with any necessary modifications.
- (3) Nothing in this Part prevents a complaint from being made under Part 6 Division 2 of this Act, or an investigation from being initiated under Schedule 4, about a matter to which this Part relates.

Part 8—Further provisions relating to local registration

36—Immediate suspension of registration

- (1) This clause applies, despite clauses 27 and 28, if the Society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.
- (2) The Society may, by written notice given to the person, immediately suspend the registration until the earlier of the following:
 - (a) the time at which the Society informs the person of the Society's decision by notice under clause 27;
 - (b) the end of the period of 56 days after the notice is given to the person under this clause.
- (3) The notice under this clause must state—
 - (a) the reasons for the suspension; and
 - (b) that the person may make written representations to the Society about the suspension.
- (4) The person may make written representations to the Society about the suspension and the Society must consider the representations.
- (5) The Society may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.

37—Surrender of local registration certificate and cancellation of registration

- (1) A person registered as a foreign lawyer under this Schedule may surrender the local registration certificate to the Society.
- (2) The Society may cancel the registration.

38—Automatic cancellation of registration on grant of practising certificate

A person's registration as a foreign lawyer under this Schedule is taken to be cancelled if the person becomes an Australian legal practitioner.

39—Suspension or cancellation of registration not to affect disciplinary processes

The suspension or cancellation of a person's registration as a foreign lawyer under this Schedule does not affect any disciplinary processes in respect of matters arising before the suspension or cancellation.

40—Return of local registration certificate on amendment, suspension or cancellation of registration

- (1) This clause applies if a person's registration under this Schedule as a foreign lawyer is amended, suspended or cancelled.
- (2) The Society may give the person a notice requiring the person to return the local registration certificate to the Society in the way specified in the notice within a specified period of not less than 14 days.
- (3) The person must comply with the notice, unless the person has a reasonable excuse.
Maximum penalty: \$50 000.
- (4) If the certificate is amended, the Society must return the certificate to the person as soon as practicable after amending it.

Part 9—Conditions on registration

41—Conditions generally

Registration as a foreign lawyer under this Schedule is subject to—

- (a) any conditions imposed by the Society; and
- (b) any statutory conditions imposed by this or any other Act; and
- (c) any conditions imposed by or under the legal profession rules; and
- (d) any conditions imposed under Part 6 Division 2 of this Act or under provisions of a corresponding law that correspond to Part 6 Division 2.

42—Conditions imposed by Society

- (1) The Society may impose conditions on registration as a foreign lawyer—
 - (a) when it is granted or renewed; or
 - (b) during its currency.
- (2) A condition imposed under this clause may be about any of the following:
 - (a) any matter in respect of which a condition could be imposed on a local practising certificate;
 - (b) a matter agreed to by the foreign lawyer.
- (3) The Society must not impose a condition under subclause (2)(a) that is more onerous than a condition that would be imposed on a local practising certificate of a local legal practitioner in the same or similar circumstances.
- (4) The Society may vary or revoke conditions imposed by it under this clause.

43—Statutory condition regarding notification of offence

- (1) It is a statutory condition of registration as a foreign lawyer that the lawyer—
 - (a) must notify the Society that the lawyer has been—
 - (i) convicted of an offence that would have to be disclosed in relation to an application for registration as a foreign lawyer under this Act; or
 - (ii) charged with a serious offence; and
 - (b) must do so within 7 days of the event and by a written notice.
- (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be sent or delivered.
- (3) This clause does not apply to an offence to which Part 7 of this Schedule applies.

44—Conditions imposed by legal profession rules

The legal profession rules may—

- (a) impose conditions on the registration of foreign lawyers or any class of foreign lawyers; or
- (b) authorise conditions to be imposed on the registration of foreign lawyers or any class of foreign lawyers.

45—Compliance with conditions

A locally registered foreign lawyer must not contravene a condition to which the registration is subject.

Maximum penalty: \$50 000.

Part 10—Interstate-registered foreign lawyers

46—Extent of entitlement of interstate-registered foreign lawyers to practise in this jurisdiction

- (1) This Schedule does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.
- (2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction—
 - (a) is subject to—
 - (i) any conditions imposed by the Society under clause 47; and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that clause; and
 - (b) is, to the greatest practicable extent and with all necessary changes—
 - (i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and
 - (ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.
- (3) If there is an inconsistency between conditions mentioned in subclause (2)(a) and conditions mentioned in subclause (2)(b), the conditions that are, in the opinion of the Society, more onerous prevail to the extent of the inconsistency.
- (4) An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a manner not authorised by this Act or in contravention of any condition referred to in this clause.

47—Additional conditions on practice of interstate-registered foreign lawyers

- (1) The Society may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally registered foreign lawyer.

- (2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.
- (3) Conditions imposed under or referred to in this clause must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.

Part 11—Miscellaneous

48—Consideration and investigation of applicants and locally registered foreign lawyers

- (1) To help it consider whether or not to grant, renew, suspend or cancel registration under this Part, or impose conditions on a person's registration under this Part, the Society may, by notice to the applicant or locally registered foreign lawyer, require the applicant or locally registered foreign lawyer—
 - (a) to give it specified documents or information; or
 - (b) to cooperate with any inquiries that it considers appropriate.
- (2) A failure to comply with a notice under subclause (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 Society.

49—Register of locally registered foreign lawyers

- (1) The Society must keep a register of the names of locally registered foreign lawyers.
- (2) The register must—
 - (a) state the conditions (if any) imposed on a foreign lawyer's registration; and
 - (b) include other particulars prescribed by the regulations.
- (3) The register may be kept in the way the Society decides.
- (4) The register must be available for inspection, without charge, at a place determined by the Society during normal business hours or at an Internet site maintained by the Society.

50—Publication of information about locally registered foreign lawyers

The Society may publish, in circumstances that it considers appropriate, the names of persons registered by it as foreign lawyers under this Schedule and any relevant particulars concerning those persons.

51—Exemption by Society

- (1) The Society may exempt an Australian-registered foreign lawyer or class of Australian-registered foreign lawyers from compliance with a specified provision of this Act or the regulations, or from compliance with a specified rule or part of a rule that would otherwise apply to the foreign lawyer or class of foreign lawyers.
- (2) An exemption may be granted unconditionally or subject to conditions specified in writing.
- (3) The Society may revoke or vary any conditions imposed under this clause or impose new conditions.

52—Membership of professional association

An Australian-registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

17—Amendment of Schedule 2—Trust money and trust accounts

Schedule 2, clause 1(1)—after the definition of *investigator* insert:

law practice includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
- (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;

18—Amendment of Schedule 3—Costs disclosure and adjudication

- (1) Schedule 3, clause 1—after the definition of *itemised bill* insert:

law practice includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
 - (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;
- (2) Schedule 3, clause 18(7)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
 - (3) Schedule 3, clause 30(2)(b)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
 - (4) Schedule 3, clause 30(3)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
 - (5) Schedule 3, clause 30(5)(b)(i)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
 - (6) Schedule 3, clause 30(7)(a)—after "legal practitioner" insert:
or Australian-registered foreign lawyer

- (7) Schedule 3, clause 30(7)(c)(ii)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (8) Schedule 3, clause 30(7)(d)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (9) Schedule 3, clause 46(2)(a)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (10) Schedule 3, clause 46(2)(c)(ii)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (11) Schedule 3, clause 46(2)(d)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (12) Schedule 3, clause 50(2)—after "legal practitioner" insert:
or Australian-registered foreign lawyer
- (13) Schedule 3, clause 53—delete the clause and substitute:

53—Imputed acts, omissions or knowledge

For the purposes of this Schedule—

- (a) anything done or omitted by, to or in relation to—
 - (i) a legal practitioner; or
 - (ii) an Australian-registered foreign lawyer (except for the purposes of clause 26(4) or for the purposes of any provision of this Schedule prescribed by the regulations for the purposes of this clause),

in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and
- (b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if—
 - (i) a legal practitioner; or
 - (ii) an Australian-registered foreign lawyer (except for the purposes of clause 26(4) or for the purposes of any provision of this Schedule prescribed by the regulations for the purposes of this clause),

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

19—Amendment of Schedule 4—Investigatory powers

- (1) Schedule 4, clause 1(1)—after the definition of *investigator* insert:

law practice includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
 - (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;
- (2) Schedule 4, clause 1—after subclause (2) insert:
- (3) In this Schedule—
 - (a) a reference to a legal practitioner is to be taken to include a reference to an Australian-registered foreign lawyer; and
 - (b) a reference to a former legal practitioner is to be taken to include a reference to a former Australian-registered foreign lawyer.

Schedule 1—Transitional provision

1—Transitional provision

Section 77N of the *Legal Practitioners Act 1981* as amended by this Act applies in relation to a complaint of overcharging received by the Legal Profession Conduct Commissioner after the commencement of the amendment irrespective of whether the final bill to which the complaint relates was delivered to the client before or after that commencement.