

South Australia

Legal Practitioners (Miscellaneous) Amendment Act 2013

An Act to amend the *Legal Practitioners Act 1981*; and to make related amendments to the *Fair Work Act 1994*, the *Freedom of Information Act 1991* and the *Legal Services Commission Act 1977*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Legal Practitioners Act 1981*

- 4 Amendment of section 5—Interpretation
- 5 Insertion of section 5A
 - 5A Terms relating to associates and principals of law practices
- 6 Amendment of section 6—Fusion of legal profession
- 7 Amendment of section 8—Officers and employees of Society
- 8 Amendment of section 12—Minutes of proceedings
- 9 Amendment of section 13—Society's right of audience
- 10 Amendment of section 14AB—Certain matters to be reported by Society
- 11 Amendment of section 14B—Establishment of LPEAC
- 12 Amendment of section 14C—Functions of LPEAC
- 13 Amendment of section 14E—Procedures of LPEAC
- 14 Amendment of section 15—Entitlement to admission
- 15 Amendment of section 16—Issue of practising certificate
- 16 Amendment of section 18—Term and renewal of practising certificates
- 17 Insertion of Part 3 Divisions 2A to 2C
 - Division 2A—Amendment, suspension or cancellation of practising certificates
 - 20AB Application of Division
 - 20AC Grounds for amending, suspending or cancelling practising certificate
 - 20AD Amending, suspending or cancelling practising certificates
 - 20AE Operation of amendment, suspension or cancellation of practising certificate
 - 20AF Revocation of amendment, suspension or cancellation of practising certificate
 - Division 2B—Special powers in relation to practising certificates—show cause events
 - 20AG Applicant for practising certificate—show cause event
 - 20AH Holder of practising certificate—show cause event
 - 20AI Refusal, amendment, suspension or cancellation of practising certificate—failure to show cause
 - Division 2C—Further provisions relating to practising certificates
 - 20AJ Immediate suspension of practising certificate

20AK	Surrender and cancellation of practising certificate
18	Amendment of section 21—Entitlement to practise
19	Amendment of section 23AA—Employment of disqualified person
20	Amendment of section 23B —Limitations or conditions on practice under laws of participating States
21	Amendment of section 23D—Notification of establishment of office required
22	Insertion of Part 3 Division 3B
	Division 3B—Provisions relating to community legal centres
23E	Community legal centres
23F	Obligations and privileges of practitioners who are officers or employees
23G	Undue influence
23H	Application of legal profession rules
23I	Costs
23	Substitution of Part 3 Division 4
	Division 4—Provisions regulating legal practice by corporations
24	Application of Schedule 1
24	Substitution of Part 3 Division 5
	Division 5—Provisions regulating trust money and trust accounts
25	Application of Schedule 2
25	Amendment of section 39—Delivery up of legal papers
26	Substitution of Part 3 Division 8
	Division 8—Costs disclosure and adjudication
41	Application of Schedule 3
27	Amendment of section 43A—Interpretation
28	Amendment of section 48—Remuneration etc of persons appointed to exercise powers conferred by this Division
29	Substitution of heading to Part 3 Division 10
30	Amendment of section 49—Supreme Court may grant authority permitting director to practise
31	Amendment of section 50—Supreme Court may authorise personal representative etc to carry on legal practice
32	Amendment of section 51—Right of audience
33	Amendment of section 52—Professional indemnity insurance scheme
34	Substitution of section 52AA
52AA	Professional indemnity insurance required by interstate practitioners etc
35	Substitution of section 53
52B	Application to incorporated legal practices
53	Duty to deposit trust money in combined trust account
36	Substitution of heading to Part 4 Division 3
37	Amendment of section 57—Fidelity Fund
38	Amendment of section 60—Claims
39	Amendment of section 61—Limitation of claims
40	Amendment of section 64—Satisfaction of claims
41	Insertion of section 64A
64A	Advance payments
42	Amendment of section 66—Claims by legal practitioners and incorporated legal practices
43	Amendment of section 67A—Annual report
44	Substitution of Part 6 Divisions 1 and 2
	Division 1—Preliminary
68	Unsatisfactory professional conduct
69	Professional misconduct
70	Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Division 2—Legal Profession Conduct Commissioner

Subdivision 1—Legal Profession Conduct Commissioner

- 71 Legal Profession Conduct Commissioner
- 72 Functions
- 73 Terms and conditions of appointment
- 74 Acting Commissioner
- 75 Honesty and accountability
- 76 Staff of Commissioner
- 77 Delegation
- 77A Exchange of information between Commissioner and Council

Subdivision 2—Investigation of unsatisfactory professional conduct and professional misconduct

- 77B Investigations by Commissioner
- 77C Closure of whole or part of complaint
- 77D Notification of complaint to practitioner
- 77E Submissions by legal practitioner
- 77F Exceptions to requirement for notification of complaint

Subdivision 3—Action following investigation

- 77G Interpretation
- 77H Report on investigation
- 77I Commissioner to notify persons of suspected loss
- 77J Powers of Commissioner to deal with certain unsatisfactory professional conduct or professional misconduct
- 77K Appeal against determination of Commissioner
- 77L Commissioner must lay charge in certain circumstances
- 77M Commissioner to provide reasons

Subdivision 4—Complaints of overcharging

- 77N Investigation of allegation of overcharging

Subdivision 5—Conciliation

- 77O Commissioner may conciliate complaints

- 45 Amendment of section 78—Establishment of Tribunal
- 46 Amendment of section 80—Constitution and proceedings of Tribunal
- 47 Amendment of section 82—Inquiries
- 48 Amendment of section 84—Powers of Tribunal
- 49 Insertion of section 84C
 - 84C Stay of proceedings
- 50 Amendment of section 85—Costs
- 51 Insertion of section 88A
 - 88A Supreme Court's inherent jurisdiction
- 52 Amendment of section 89—Proceedings before Supreme Court
- 53 Amendment of section 89A—Court may order interim suspension of legal practitioner or impose interim conditions
- 54 Substitution of Part 6 Division 6

Division 6—Publicising disciplinary action

- 89B Definitions
- 89C Register of Disciplinary Action
- 89D Other means of publicising disciplinary action
- 89E Quashing of disciplinary action
- 89F Liability for publicising disciplinary action
- 90 General
- 55 Amendment of section 90AF—Local legal practitioners are subject to interstate regulatory authorities
- 56 Amendment of section 90A—Annual reports
- 57 Insertion of Part 6 Division 8

	Division 8—Professional mentoring agreements
	90B Professional mentoring agreements
58	Substitution of section 95D
	95D Service of notices and documents
59	Amendment of section 97—Regulations
60	Insertion of section 98
	98 Review of operation of Act in relation to barristers
61	Insertion of Schedules 1 to 4
	Schedule 1—Incorporated legal practices
1	Nature of incorporated legal practice
2	Prohibition of non-legal services and businesses
3	Corporations eligible to be incorporated legal practice
4	Notice of intention to start providing legal services
5	Notice to be given by companies that were formerly legal practitioners
6	Prohibition on representations that corporation is incorporated legal practice
7	Notice of termination of provision of legal services
8	Incorporated legal practice must have legal practitioner director
9	Obligations of legal practitioner director relating to misconduct
10	Incorporated legal practice without legal practitioner director
11	Obligations and privileges of practitioners who are officers or employees
12	Professional indemnity insurance
13	Conflicts of interest
14	Application of legal profession rules
15	Requirements relating to advertising
16	Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices
17	Sharing of receipts, revenue or other income
18	Disqualified persons
19	Audit of incorporated legal practice
20	Application of Schedule 4 (Investigatory powers)
21	Banning of incorporated legal practices
22	Disqualification from managing incorporated legal practice
23	Disclosure of information to Australian Securities and Investments Commission
24	External administration proceedings under <i>Corporations Act 2001</i>
25	External administration proceedings under other legislation
26	Cooperation between courts
27	Relationship of Act to constitution of incorporated legal practice
28	Relationship of Act to legislation establishing incorporated legal practice
29	Relationship of Act to Corporations legislation
30	Undue influence
31	Obligations of individual practitioners not affected
32	Regulations
	Schedule 2—Trust money and trust accounts
	Part 1—Preliminary
1	Definitions
2	Money granted or provided under contract to community legal centre
3	Determinations about status of money
4	Application of Schedule to law practices and trust money
5	Protocols for determining where trust money is received
6	When money is received
7	Discharge by legal practitioner associate of obligations of law practice
8	Liability of principals of law practice
9	Former practices, principals and associates
10	Barristers not to receive trust money
	Part 2—Trust accounts and trust money
11	Maintenance of general trust account
12	Certain trust money to be deposited in general trust account
13	Holding, disbursing and accounting for trust money
14	Manner of withdrawal of trust money from general trust account

15	Controlled money
16	Manner of withdrawal of controlled money from controlled money account
17	Transit money
18	Trust money subject to specific powers
19	Trust money received in form of cash
20	Protection of trust money
21	Intermixing money
22	Dealing with trust money—legal costs and unclaimed money
23	Deficiency in trust account
24	Reporting certain irregularities and suspected irregularities
25	Keeping trust records
26	False names
27	Interest payable if law practice fails to deposit trust money

Part 3—Investigations and external examinations

Division 1—Investigations

28	Appointment of investigators
29	Investigations
30	Application of Schedule 4
31	Investigator's report
32	When costs of investigation are debt

Division 2—External examinations

33	Designation of external examiners
34	Trust records to be externally examined
35	Examination of affairs in connection with examination of trust records
36	Designation and appointment of associates as external examiners
37	Final examination of trust records
38	Carrying out examination
39	External examiner's report
40	Law practice liable for costs of examination

Part 4—Provisions relating to ADIs

41	Approval of ADIs
42	ADI not subject to certain obligations and liabilities
43	Reports, records and information

Part 5—Miscellaneous

44	Restrictions on receipt of trust money
45	Protection from liability
46	Application of Schedule to incorporated legal practices
47	Disclosure to clients—money not received as trust money
48	Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate
49	Regulations

Schedule 3—Costs disclosure and adjudication

Part 1—Preliminary

1	Interpretation
2	Terms relating to third party payers

Part 2—Application of Schedule

3	Application of Schedule—first instructions rule
4	Schedule also applies by agreement or at client's election
5	Displacement of Schedule
6	First instructions to law practice
7	Substantial connection of matter with State
8	Application of different laws

Part 3—Costs disclosure

9	Disclosure not required by barrister
10	Disclosure of costs to clients
11	Disclosure if another law practice is to be retained

- 12 Timing of disclosure to client
- 13 Exceptions to requirement for disclosure
- 14 Additional disclosure—settlement of litigious matters
- 15 Additional disclosure—uplift fees
- 16 Form of disclosure
- 17 Ongoing obligation to disclose
- 18 Effect of failure to disclose
- 19 Progress reports
- 20 Disclosures to associated third party payers

Part 4—Legal costs generally

- 21 Recovery of legal costs
- 22 Security for legal costs
- 23 Interest on unpaid legal costs

Part 5—Costs agreements

- 24 Making costs agreements
- 25 Conditional costs agreements
- 26 Conditional costs agreements involving uplift fees
- 27 Contingency fees are prohibited
- 28 Effect of costs agreement
- 29 Certain costs agreements are void
- 30 Setting aside costs agreements

Part 6—Billing

- 31 Legal costs cannot be recovered unless bill has been served
- 32 Bills
- 33 Notification of client's rights
- 34 Request for itemised bill
- 35 Interim bills

Part 7—Adjudication of costs

- 36 Definition
- 37 Application by clients or third party payers for adjudication of costs
- 38 Application for adjudication by law practice retaining another law practice
- 39 Application for adjudication of costs by law practice giving bill
- 40 Application may be dismissed
- 41 Power of Supreme Court on application for adjudication
- 42 Commissioner may institute proceedings
- 43 Court may order plaintiff to apply for adjudication
- 44 Consequences of application
- 45 Persons to be notified of application
- 46 Criteria for adjudication
- 47 Adjudication of costs by reference to costs agreement
- 48 Adjudication of costs by reference to scale of costs
- 49 Costs of adjudication
- 50 Referral for disciplinary action
- 51 Contracting out of Part by sophisticated clients

Part 8—Miscellaneous

- 52 Application of Schedule to incorporated legal practices
- 53 Imputed acts, omissions or knowledge

Schedule 4—Investigatory powers

Part 1—Preliminary

- 1 Definitions

Part 2—Requirements relating to documents, information and other assistance

- 2 Application of Part
- 3 Requirements that may be imposed for investigations, examinations and audits under Schedule 2
- 4 Requirements that may be imposed for investigations under Part 6
- 5 Provisions relating to requirements under this Part

Part 3—Entry and search of premises

- 6 Application of Part
- 7 Investigator's power to enter premises
- 8 Search warrants
- 9 Powers of investigator while on premises

Part 4—Additional powers in relation to incorporated legal practices

- 10 Application of Part
- 11 Investigative powers relating to investigations and audits
- 12 Examination of persons
- 13 Inspection of books
- 14 Power to hold hearings
- 15 Failure to comply with investigation

Part 5—Miscellaneous

- 16 Obstruction of investigator
- 17 Obligation of legal practitioners
- 18 Protection from liability
- 19 Permitted disclosure of confidential information

Schedule 1—Further amendments of *Legal Practitioners Act 1981***Schedule 2—Related amendments and transitional provisions****Part 1—Amendment of *Fair Work Act 1994***

- 1 Amendment of section 152A—Inquiries into conduct of registered agents or other representative

Part 2—Amendment of *Freedom of Information Act 1991*

- 2 Amendment of Schedule 2—Exempt agencies

Part 3—Amendment of *Legal Services Commission Act 1977*

- 3 Amendment of section 26—Commission and trust money
- 4 Amendment of section 31—Discipline of legal practitioner employed by Commission

Part 4—Transitional provisions

- 5 Interpretation
 - 6 Practising certificates
 - 7 Deficiencies in trust accounts
 - 8 Combined trust account
 - 9 Costs
 - 10 Fidelity Fund
 - 11 Claims against Fidelity Fund
 - 12 Investigations
 - 13 Transfer of functions from Board to Commissioner
 - 14 Application of principal Act as amended to complaints, investigations, disciplinary proceedings and conduct
 - 15 Transfer of employment
 - 16 Contracts, etc
 - 17 Continuing obligation of confidentiality
 - 18 Tribunal members
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Legal Practitioners (Miscellaneous) Amendment Act 2013*.

2—Commencement

This Act will come 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)—after the definition of *approved auditor* insert:

associate—see section 5A;

- (2) Section 5(1), definition of *Board*—delete the definition and substitute:

Chief Executive of the Society means the principal executive officer employed by the Society and includes any person who is, for the time being, discharging the duties of that officer;

- (3) Section 5(1), definition of *community legal centre*—delete the definition and substitute:

Commissioner means the person holding or acting in the office of Legal Profession Conduct Commissioner under Part 6 Division 2;

community legal centre means a body that provides legal services to the community, or a section of the community, on a non-profit basis, and includes the Aboriginal Legal Rights Movement, but does not include the Legal Services Commission;

- (4) Section 5(1), definition of *company*—delete the definition

- (5) Section 5(1)—after the definition of *conduct* insert:

conviction includes a formal finding of guilt;

corporation means—

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations;

corresponding disciplinary body means—

- (a) a court or tribunal having powers or functions under a corresponding law that correspond to any of the powers and functions of the Tribunal; or
 - (b) the Supreme Court of another jurisdiction exercising—
 - (i) its inherent jurisdiction or powers in relation to the control and discipline of legal practitioners; or
 - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to legal practitioners;
- (6) Section 5(1), definition of *director*—delete the definition and substitute:
director, in relation to—
- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth—means a director as defined in section 9 of that Act; or
 - (b) any other body corporate, or body corporate of a kind, prescribed by the regulations—means a person specified or described in the regulations;
- (7) Section 5(1), definition of *the Executive Director*—delete the definition and substitute:
Fidelity Fund means the Legal Practitioners Fidelity Fund maintained by the Society under Part 4;
- (8) Section 5(1), definition of *fiduciary or professional default*—delete "a firm" wherever occurring and substitute in each case:
an incorporated legal practice or firm
- (9) Section 5(1), definition of *the guarantee fund*—delete the definition and substitute:
incorporated legal practice has the same meaning as in Schedule 1;
- (10) Section 5(1)—after the definition of *interstate practising certificate* insert:
jurisdiction means a State or Territory of the Commonwealth;
law practice means—
- (a) a legal practitioner who is a sole practitioner; or
 - (b) a firm of legal practitioners; or
 - (c) an incorporated legal practice; or
 - (d) a community legal centre;
- (11) Section 5(1), definition of *legal practitioner* or *practitioner*, (b)—delete paragraph (b)
- (12) Section 5(1)—after the definition of *legal practitioner* or *practitioner* insert:
legal practitioner director means a director of an incorporated legal practice who is a legal practitioner holding an unrestricted practising certificate;
legal profession rules means—
- (a) the Society's professional conduct rules;

- (b) any other rules prescribed by the regulations for the purposes of this definition;

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

- (13) Section 5(1)—after the definition of *mortgage financing* insert:

officer means—

- (a) in relation to a company within the meaning of the *Corporations Act 2001* of the Commonwealth—an officer as defined in section 9 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations—a person specified or described in the regulations;

- (14) Section 5(1), definition of *practise the profession of the law, legal practice* or *practise*—delete the definition and substitute:

practise the profession of the law, in relation to a legal practitioner or incorporated legal practice—see section 21 (and *engage in legal practice* and *practise* have the same meaning);

- (15) Section 5(1)—after the definition of *practising certificate* insert:

principal—see section 5A;

professional mentoring agreement—see section 90B;

professional misconduct—see section 69;

professional obligations of a legal practitioner or an incorporated legal practice include—

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

Regulator means—

- (a) in relation to this jurisdiction—the Commissioner; or
- (b) in relation to another jurisdiction—the person or body defined as the Regulator in relation to that jurisdiction by the corresponding law of that jurisdiction or, if there is no such definition, the person or body with functions or powers under the corresponding law that correspond to those of the Commissioner under this Act;

- (16) Section 5(1), definition of *regulatory authority*, (a)—delete "Board" and substitute:
Commissioner

(17) Section 5(1)—after the definition of *regulatory authority* insert:

related body corporate means—

- (a) in relation to a company within the meaning of the *Corporations Act 2001* of the Commonwealth—a related body corporate within the meaning of section 50 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations—a person specified or described in the regulations.

serious offence means an offence, whether committed in or outside this State, that is—

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

show cause event, in relation to a person, means the person—

- (a) becoming bankrupt or being served with notice of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth; or
- (b) presenting (as a debtor) a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor's petition or presenting (as a debtor) such a petition under section 55 of that Act; or
- (c) applying to take the benefit of any law 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; or
- (d) being convicted of a serious offence or a tax offence, whether or not—
 - (i) the offence was committed in or outside this State; or
 - (ii) the offence was committed while the person was practising the law as a legal practitioner; or
 - (iii) other persons are prohibited from disclosing the identity of the offender;

sole practitioner means a legal practitioner who practices the profession of the law on his or her own account;

- (18) Section 5(1)—after the definition of *the statutory interest account* insert:
tax offence means an offence under the *Taxation Administration Act 1953* of the Commonwealth, whether committed in or outside this State;
- (19) Section 5(1), definition of *trust account*—delete the definition and substitute:
trust account has the meaning given in Schedule 2;
- (20) Section 5(1), definition of *trust money*—delete the definition and substitute:
trust money has the meaning given in Schedule 2;
- (21) Section 5(1), definition of *unprofessional conduct*—delete the definition
- (22) Section 5(1), definition of *unsatisfactory conduct*—delete the definition and substitute:
unrestricted practising certificate means a practising certificate that is not subject to any condition under this Act or a corresponding law requiring the holder to engage in supervised legal practice or restricting the holder to practise as, or in the manner of, a barrister;
unsatisfactory professional conduct—see section 68.
- (23) Section 5(4) and (5)—delete subsections (4) and (5) and substitute:
- (4) Nothing in this Act or the legal profession rules affects the exercise by the Director of Public Prosecutions, the Crown Solicitor or a prosecutor instructed by the Director of Public Prosecutions or the Crown Solicitor of any discretion in the context of a prosecution.

5—Insertion of section 5A

After section 5 insert:

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

- (1) For the purposes of this Act, an *associate* of a law practice is—
- (a) a legal practitioner who is—
- (i) a sole practitioner (in the case of a law practice constituted by the practitioner); or
- (ii) a partner in the law practice (in the case of a firm of legal practitioners); or
- (iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
- (iv) an employee of, or consultant to, the law practice;
or
- (b) an agent of the law practice who is not a legal practitioner;
or
- (c) an employee of the law practice who is not a legal practitioner.
- (2) For the purposes of this Act, a *legal practitioner associate* of a law practice is an associate of the practice who is a legal practitioner.

- (3) For the purposes of this Act, a *principal* of a law practice is a legal practitioner who is—
- (a) a sole practitioner (in the case of a law practice constituted by the practitioner); or
 - (b) a partner in the law practice (in the case of a firm of legal practitioners); or
 - (c) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
 - (d) a legal practitioner who is generally responsible for the provision of legal services by the law practice (in the case of a community legal centre).

6—Amendment of section 6—Fusion of legal profession

Section 6(3a)—after ""Queen's Counsel"" insert:

, "King's Counsel" or "Senior Counsel"

7—Amendment of section 8—Officers and employees of Society

- (1) Section 8(2)—delete "an Executive Director" and substitute:
a Chief Executive
- (2) Section 8(3)—delete "Executive Director" and substitute:
Chief Executive

8—Amendment of section 12—Minutes of proceedings

Section 12(2) and (6)—delete "Executive Director" wherever occurring and substitute in each case:

Chief Executive

9—Amendment of section 13—Society's right of audience

- (1) Section 13(2)(c)—delete "unprofessional or unsatisfactory conduct" and substitute:
unsatisfactory professional conduct or professional misconduct
- (2) Section 13—after subsection (2) insert:
 - (3) The Society must, as soon as practicable after appointing a legal practitioner to appear before a court, commission or tribunal under subsection (1), notify the Attorney-General of the appointment.

10—Amendment of section 14AB—Certain matters to be reported by Society

- (1) Section 14AB(1)(a)—delete "an inspector under Division 5 of Part 3" and substitute:
an investigator or external examiner under Schedule 3
- (2) Section 14AB(1) and (2)—delete "Board" wherever occurring and substitute in each case:
Commissioner

- (3) Section 14AB(1)(c)—delete "unprofessional or unsatisfactory conduct" and substitute:
unsatisfactory professional conduct or professional misconduct

11—Amendment of section 14B—Establishment of LPEAC

Section 14B(5)—after paragraph (e) insert:

- (ea) the Dean (or acting Dean) of the faculty or school of law at the University of South Australia; and
- (eb) the presiding member of the Board of Examiners; and

12—Amendment of section 14C—Functions of LPEAC

Section 14C(1)(a)—after subparagraph (ii) insert:

and

- (iii) the categories (if any) of practising certificate to be issued by the Supreme Court under Part 3 and the limitations on the practice of the profession of the law that apply in relation to those categories;

13—Amendment of section 14E—Procedures of LPEAC

Section 14E(1)—delete "Seven" and substitute:

Eight

14—Amendment of section 15—Entitlement to admission

- (1) Section 15(1)(a)—delete paragraph (a) and substitute:
- (a) that he or she is a fit and proper person to practise the profession of the law; and
- (2) Section 15—after subsection (1) insert:
- (1a) The Supreme Court must refer each application for admission and enrolment by a person whose name has been removed from the roll of legal practitioners maintained under this Act to the Attorney-General, the Commissioner and the Society, each of whom is entitled to be heard by the Court on the application in accordance with the rules of the Court.

15—Amendment of section 16—Issue of practising certificate

- (1) Section 16(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:
- (2) If LPEAC has made rules prescribing different categories of practising certificate and a legal practitioner has applied for a particular category of certificate under subsection (1), the practising certificate issued by the Supreme Court in the practitioner's name may be of that category.
- (2) Section 16(6)—delete subsection (6) and substitute:
- (6) If LPEAC has made rules prescribing different categories of practising certificate, the regulations may prescribe different fees and levies for different categories of certificate.

16—Amendment of section 18—Term and renewal of practising certificates

Section 18—after subsection (2) insert:

- (2a) If the Supreme Court is satisfied that any particulars appearing on a practising certificate are incorrect, the Court may cancel the practising certificate and issue a replacement practising certificate.

17—Insertion of Part 3 Divisions 2A to 2C

Part 3—after Division 2 insert:

Division 2A—Amendment, suspension or cancellation of practising certificates

20AB—Application of Division

This Division does not apply in relation to matters referred to in Division 2B.

20AC—Grounds for amending, suspending or cancelling practising certificate

Each of the following is a ground for amending, suspending or cancelling a practising certificate:

- (a) the holder of the certificate is not a fit and proper person to hold the certificate;
- (b) if a condition of the certificate is that the holder of the certificate is or has been limited to legal practice specified in the certificate—the holder of the certificate is engaging in legal practice that the holder is not entitled to engage in under this Act.

Note—

Such conditions could be imposed under section 17A(1)(b) or by the Commissioner or the Tribunal under Part 6. A particular category of certificate may also limit the holder of the certificate to specified legal practice.

20AD—Amending, suspending or cancelling practising certificates

- (1) The Supreme Court may, on the application of the Attorney-General, the Society or the Commissioner, make an order amending, suspending or cancelling a practising certificate if the Court considers that a ground exists for the amendment, suspension or cancellation.
- (2) An application under this section—
 - (a) must be served on the holder of the certificate in accordance with the rules of the Supreme Court; and
 - (b) must—

- (i) specify the order sought by the applicant (including details of any amendment or suspension period proposed in the application); and
 - (ii) state the ground for seeking the proposed order; and
 - (iii) invite the holder to make written representations to the Court, within a time specified by the Court of not less than 7 days and not more than 28 days, as to why the order should not be made.
- (3) If, after considering all written representations made within the specified time and, in its discretion, written representations made after the specified time, the Supreme Court considers that a ground exists to—
 - (a) make an order amending, suspending or cancelling the certificate as proposed in the application; or
 - (b) make an order for the amendment or suspension of the certificate that is less onerous than the order proposed in the application,the Court may make the order.
- (4) If the Supreme Court makes an order amending, suspending or cancelling the practising certificate, the Court must give the holder a written notice about the order setting out—
 - (a) the terms of the order; and
 - (b) the reasons for the order.

Note—

Under some provisions of this Act, a practising certificate is taken to be suspended by force of the provision. See, for example, section 19(1) and Schedule 1 clause 12(2).

This section does not derogate from the power of LPEAC to cancel a practising certificate under section 17A.

20AE—Operation of amendment, suspension or cancellation of practising certificate

- (1) This section applies if an order is made to amend, suspend or cancel a practising certificate under section 20AD.
- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the practising certificate takes effect on the later of the following:
 - (a) the day notice of the order is given to the holder of the certificate;
 - (b) the day specified in the notice.

- (3) If the practising certificate is amended, suspended or cancelled because the holder of the certificate has been convicted of an offence—
- (a) the Supreme Court may, on the application of the holder, order that the operation of the amendment, suspension or cancellation of the practising certificate 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 practising certificate is amended, suspended or cancelled because the holder 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 certificate is restored as if it had merely been suspended.

20AF—Revocation of amendment, suspension or cancellation of practising certificate

- (1) The holder of a practising certificate that has been amended, suspended or cancelled under section 20AD may make written representations to the Registrar of the Supreme Court about the amendment, suspension or cancellation and the Court must consider the representations.
- (2) The Supreme Court may revoke the amendment, suspension or cancellation at any time, whether or not in response to any written representations made to it by the holder.

Division 2B—Special powers in relation to practising certificates—show cause events

20AG—Applicant for practising certificate—show cause event

- (1) This section applies if—
 - (a) a person is applying for a practising certificate; and
 - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person was first admitted to the legal profession in this or another jurisdiction (however the admission was expressed at the time of the admission).

- (2) As part of the application, the person must provide to the Supreme Court a written statement, in accordance with any prescribed requirements—
 - (a) setting out particulars of 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 practising certificate.
- (3) However, the applicant need not provide a statement under subsection (2) if the person (as a previous applicant for a practising certificate or as the holder of a practising certificate previously in force) has previously provided to the Supreme Court—
 - (a) a statement under this section; or
 - (b) a notice and statement under section 20AH,
explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a practising certificate.
- (4) A notice or written statement provided to the Supreme Court under this section must be served by the applicant on the Commissioner and the Society, each of whom may make written representations to the Court in relation to the holder of the practising certificate within the time, and in accordance with the procedure, prescribed by rules of the Court.

20AH—Holder of practising certificate—show cause event

- (1) This section applies to a show cause event that happens in relation to the holder of a practising certificate.
- (2) The holder must provide to the Supreme Court both of the following:
 - (a) within 7 days after the happening of the event—notice, in the form approved by the Court, 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 himself or herself to be a fit and proper person to hold a practising certificate.
- (3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Supreme Court may accept the statement and take it into consideration.
- (4) A notice and written statement provided to the Supreme Court under this section must be served by the holder on the Commissioner and the Society, each of whom may make written representations to the Court in relation to the holder of the practising certificate within the time, and in accordance with the procedure, prescribed by rules of the Court.

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

- (1) The Supreme Court may refuse to issue or renew, or may amend, suspend or cancel, a practising certificate if the applicant or holder—
 - (a) is required by section 20AG or 20AH 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 section 20AG or 20AH but the Court does not consider that the applicant or holder has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to hold a practising certificate.
- (2) For the purposes of this section only, a written statement accepted by the Supreme Court under section 20AH(3) is taken to have been provided in accordance with section 20AH.
- (3) If the Supreme Court makes a determination under this section, the Court must, as soon as practicable, give the applicant or holder written notice of the determination.

Division 2C—Further provisions relating to practising certificates

20AJ—Immediate suspension of practising certificate

- (1) This section applies, despite Division 2A and Division 2B, if the Supreme Court considers, on application by the Attorney-General, the Society or the Commissioner, or on the Court's own initiative, that it is necessary in the public interest to immediately suspend a practising certificate on—
 - (a) any of the grounds on which the certificate could be suspended or cancelled under Division 2A; or
 - (b) the ground of the happening of a show cause event in relation to the holder; or
 - (c) any other ground that the Court considers warrants suspension of the certificate in the public interest,whether or not any action has been taken or commenced under Division 2A or Division 2B in relation to the holder.
- (2) The Supreme Court may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following:
 - (a) the time at which the Court informs the holder of the Court's decision by notice under section 20AD;
 - (b) the end of the period of 56 days after the notice is given to the holder under this section.

- (3) The notice under this section must—
 - (a) include a statement of—
 - (i) the decision to suspend the practising certificate;
and
 - (ii) the reasons for the decision; and
 - (b) state that the practitioner may make written representations to the Supreme Court about the suspension.
- (4) The holder may make written representations to the Supreme Court about the suspension, and the Court must consider the representations.
- (5) The Supreme Court may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

20AK—Surrender and cancellation of practising certificate

- (1) The holder of a practising certificate may surrender the certificate to the Supreme Court.
- (2) The Supreme Court may cancel the certificate.

18—Amendment of section 21—Entitlement to practise

- (1) Section 21(1)—delete subsection (1) and substitute:
 - (1) A natural person must not practise the profession of the law, or hold himself or herself out, or permit another to hold him or her out, as being entitled to practise the profession of the law unless the person—
 - (a) is a local legal practitioner; or
 - (b) is an interstate legal practitioner.Maximum penalty: \$50 000.
- (2) Section 21(2)(c)—delete "memorandum or articles of association" and substitute:
constitution
- (3) Section 21—after subsection (4) insert:
 - (4a) In proceedings for an offence against subsection (1), a certificate purporting to be signed by the Chief Executive and stating that a person is not a local legal practitioner or not an interstate legal practitioner is, in the absence of proof to the contrary, prima facie evidence of that fact.

19—Amendment of section 23AA—Employment of disqualified person

- Section 23AA(7)—delete "Board" wherever occurring and substitute in each case:
Commissioner

20—Amendment of section 23B —Limitations or conditions on practice under laws of participating States

Section 23B(4)—delete "unprofessional conduct" and substitute:

professional misconduct

21—Amendment of section 23D—Notification of establishment of office required

Section 23D(4)—delete "Board" and substitute:

Commissioner

22—Insertion of Part 3 Division 3B

Part 3—after Division 3A insert:

Division 3B—Provisions relating to community legal centres

23E—Community legal centres

- (1) A community legal centre does not contravene this Act merely because—
 - (a) it employs, or otherwise uses the services of, legal practitioners to provide legal services; or
 - (b) it has a contractual relationship with a person to whom those legal services are provided.
- (2) The regulations may modify or exclude the application of a provision of this Act to community legal centres or legal practitioners employed by community legal centres.
- (3) This section has effect despite anything to the contrary in this Act.

23F—Obligations and privileges of practitioners who are officers or employees

- (1) A legal practitioner who provides legal services on behalf of a community legal centre—
 - (a) is not excused from compliance with professional obligations as a legal practitioner, or any obligations as a legal practitioner under any law; and
 - (b) does not lose the professional privileges of a legal practitioner.
- (2) The regulations may make further provision in relation to the application of the professional obligations and professional privileges of a legal practitioner for the purposes of subsection (1).
- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because a legal practitioner is providing legal services on behalf of a community legal centre.

- (4) A legal practitioner who is providing legal services on behalf of a community legal centre may, for any proper purpose, disclose a matter to the officers of the centre (whether or not those officers are legal practitioners) and such disclosure will be taken not to affect the operation of client legal privilege (or other legal professional privilege).

23G—Undue influence

A person must not cause or induce or attempt to cause or induce a legal practitioner who is providing legal services on behalf of a community legal centre to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as a legal practitioner.

Maximum penalty: \$50 000.

23H—Application of legal profession rules

The legal profession rules, so far as they apply to legal practitioners, also apply to legal practitioners who provide legal services on behalf of a community legal centre, unless the rules otherwise provide.

23I—Costs

If legal assistance has been provided to a person by a community legal centre, the centre is subrogated to the rights of the assisted person to costs in respect of that legal assistance.

23—Substitution of Part 3 Division 4

Part 3 Division 4—delete Division 4 and substitute:

Division 4—Provisions regulating legal practice by corporations

24—Application of Schedule 1

The provisions set out in Schedule 1 apply in relation to a corporation that engages in legal practice in this jurisdiction.

24—Substitution of Part 3 Division 5

Part 3 Division 5—delete Division 5 and substitute:

Division 5—Provisions regulating trust money and trust accounts

25—Application of Schedule 2

The provisions set out in Schedule 2 apply to law practices in respect of trust money and associated matters as specified in clause 4 of the Schedule.

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

- (1) Section 39(1)—delete subsection (1) and substitute:
- (1) A court may, on the application of any person, order a legal practitioner or former legal practitioner, or an incorporated legal practice, to deliver up documents—
 - (a) held by the practitioner, former practitioner or legal practice on behalf of the applicant; or
 - (b) relating to proceedings taken or work done by the practitioner, former practitioner or legal practice on behalf of the applicant.
- (2) Section 39(3)—delete "Supreme Court" and substitute:
court
- (3) Section 39(3)—delete " or former legal practitioner to costs for legal work done by the practitioner" and substitute:
, former practitioner or legal practice to costs for legal work done by the practitioner or practice

26—Substitution of Part 3 Division 8

Part 3 Division 8—delete Division 8 and substitute:

Division 8—Costs disclosure and adjudication

41—Application of Schedule 3

The provisions set out in Schedule 3 apply in relation to the recovery of legal costs and adjudication of legal costs.

27—Amendment of section 43A—Interpretation

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

or

- (c) an incorporated legal practice.

28—Amendment of section 48—Remuneration etc of persons appointed to exercise powers conferred by this Division

Section 48(3)—delete "taxed" and substitute:

adjudicated

29—Substitution of heading to Part 3 Division 10

Heading to Part 3 Division 10—delete the heading and substitute:

Division 10—Restriction on practice if corporation wound up

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

- (1) Section 49(1)(a)—delete paragraph (a)
- (2) Section 49(1)(b)—delete "practitioner during the winding up of the company" and substitute:

practice during the winding up of the corporation
- (3) Section 49(1a)—delete "or is about to become bankrupt or subject to a composition or deed of arrangement or assignment with or for the benefit of creditors or who is "
- (4) Section 49(1a)—delete "incorporated legal practitioner" and substitute:

incorporated legal practice
- (5) Section 49—after subsection (1a) insert:
 - (1b) An application for an authority under this section must be served on the Commissioner and the Society, each of whom is entitled to be heard by the Supreme Court on the application in accordance with the rules of the Court.

31—Amendment of section 50—Supreme Court may authorise personal representative etc to carry on legal practice

- Section 50(3)—delete "a company that is a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the company" and substitute:
- an incorporated legal practice may, with the authority of the Supreme Court, carry on the practice of the incorporated legal practice

32—Amendment of section 51—Right of audience

- (1) Section 51(1)(ca)—delete "Australian Securities Commission" and substitute:

Australian Securities and Investments Commission
- (2) Section 51(1)(g)—delete paragraph (g) and substitute:
 - (g) the Commissioner (if he or she is a legal practitioner) and a legal practitioner employed by the Commissioner; and
 - (h) the Independent Commissioner Against Corruption and a legal practitioner engaged by the Independent Commissioner Against Corruption.

33—Amendment of section 52—Professional indemnity insurance scheme

- (1) Section 52(1)—after "legal practitioners" insert:

and law practices
- (2) Section 52(2)—after "legal practitioner" wherever occurring insert:

or law practices
- (3) Section 52(3)(b)—after "legal practitioners" insert:

and law practices

- (4) Section 52(5), definition of *legal practitioner*, (a)—after "university;" insert:
and
- (5) Section 52(5), definition of *legal practitioner*—after paragraph (b) insert:
and
(c) an interstate legal practitioner;
- (6) Section 52(5), definition of *professional indemnity insurance*, (b)—after "legal practitioner" insert:
or law practice

34—Substitution of section 52AA

Section 52AA—delete the section and substitute:

52AA—Professional indemnity insurance required by interstate practitioners etc

- (1) A prescribed practitioner or practice must not engage in legal practice in this jurisdiction unless there is in force approved professional indemnity insurance in respect of that practitioner or practice.
Maximum penalty:
(a) for an offence committed by an interstate legal practitioner—\$10 000;
(b) in any other case—\$50 000.
- (2) If an interstate legal practitioner fails to comply with this section, the Supreme Court may, on application by the Attorney-General or the Society, suspend the practitioner's right to practise the profession of the law in this State until this section is complied with.
- (3) If an incorporated legal practice fails to comply with this section, the Supreme Court may, on application by the Attorney-General or the Society, suspend any legal practitioner director's right to practise the profession of the law in this State until this section is complied with.
- (4) The Supreme Court must give notice of a suspension imposed under subsection (3) to any regulatory authority that is authorised to seek or impose a corresponding suspension in a State in which the practitioner is admitted as a legal practitioner.
- (5) In this section—
approved professional indemnity insurance means insurance—
(a) that has been approved by the Attorney-General; or
(b) that is of a class or kind that has been approved by the Attorney-General.
prescribed practitioner or practice means—
(a) an interstate legal practitioner who—

- (i) establishes an office in this State; and
 - (ii) if he or she were a local legal practitioner, would be covered by a scheme providing professional indemnity insurance; or
- (b) an incorporated legal practice that is not required to be insured under a scheme established under section 52;

35—Substitution of section 53

Section 53—delete the section and substitute:

52B—Application to incorporated legal practices

The regulations may provide that specified provisions of this Division, and any other provisions of this Act, the regulations or the legal profession rules relating to this Division, do not apply to incorporated legal practices (or a specified class of incorporated legal practices) or apply to them with specified modifications.

53—Duty to deposit trust money in combined trust account

- (1) A law practice must, within 14 days after 31 May, and within 14 days after 30 November, in each year, out of trust money held in the practice's general trust account, deposit the appropriate amount in the combined trust account.
- (2) The appropriate amount is the amount (if any) necessary to ensure that the following formula is satisfied:

$$A_1 \geq \frac{2}{3}A_2$$

Where—

A_1 is the amount held on the practice's behalf in the combined trust account

A_2 is the lowest aggregate (determined by reference to the relevant ADI statements) of the amount held in the practice's general trust account and the amount (if any) simultaneously held in the combined trust account on the practice's behalf during the period of 6 months ending on 31 May or 30 November (as the case requires).

- (3) The combined trust account is a composite account consisting of separate accounts established by the Society at each approved ADI.
- (4) If a law practice maintains 2 or more general trust accounts, those accounts will, for the purposes of this section, be taken to be a single trust account the balance of which is the aggregate of the respective balances of each of those trust accounts.
- (5) A law practice—
 - (a) may withhold money from deposit under subsection (1) if—

- (i) the money is necessary to meet an immediate claim on the practice's general trust account or to establish or maintain a reasonable balance in the general trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future; and
 - (ii) the practice has, on or before the day on which a deposit under subsection (1) is required to be made, given written notice to the Society accordingly; and
 - (b) is not obliged to deposit money under subsection (1) in relation to a particular period of 6 months if the lowest aggregate referred to in subsection (2) was, during that period, less than \$10 000 (or some other sum fixed by regulation for the purposes of this subsection).
- (6) If a general trust account is maintained by a firm of legal practitioners, the general trust account will, for the purposes of this section, be taken to be the general trust account of each member of the firm, and the members of the firm are each liable to perform the obligations imposed by this section, but the discharge by 1 member of the firm of the obligations under this section in relation to the general trust account will be taken as a discharge by all the members of the firm of their obligations in relation to that general trust account.
- (7) If the Council has reasonable cause to suspect that a law practice has not complied with the obligations of this section, it may, by notice in writing served on the practice, require the practice to attend before it and to produce evidence of the trust money received by the practice, the amount from time to time standing to the credit of the general trust account, and such other relevant matters as may be specified in the notice.
- (8) If a law practice establishes a general trust account and has, at the time of establishing the account, no other trust account, the balance of the general trust account during the first month after its establishment is, for the purposes of this section, to be ignored.
- (9) A law practice that fails to make the appropriate deposit by the last date for payment is liable to pay the Society, for the credit of the statutory interest account, interest on the outstanding amount at the prescribed rate for the period of the default but, if the appropriate deposit is made within 7 days after that date, no liability for interest arises under this subsection.
- (10) A law practice may withdraw money held on the practice's account in the combined trust account if, and only if, the withdrawal is necessary to meet an immediate claim on the practice's general trust account or to establish a reasonable balance in the general trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future.

- (11) If a law practice withholds money from deposit under subsection (5)(a) or withdraws money under subsection (10), the external examiner for the law practice must, in the external examiner's report for the relevant year, express an opinion on whether the withholding or withdrawal was justified, and if the amount exceeds the amount that could, in the external examiner's opinion, be reasonably justified, on the amount of the excess (but before the external examiner includes a statement expressing such an opinion in the report, the external examiner must allow the practice a reasonable opportunity to comment on the proposed statement and may make any modification to the proposed statement that the external examiner considers justified in the light of the practice's comments).
- (12) If the withholding or withdrawal of money is not justified, or exceeds an amount that could be reasonably justified, the law practice is liable to pay to the Society, for the credit of the statutory interest account, interest at the prescribed rate on the amount withheld or withdrawn, or the amount of the excess, (as the case requires), from the date of the withholding or withdrawal until the amount on deposit in the combined trust account is restored to the level required by this section.
- (13) The Society may, for any proper reason, remit interest payable under subsection (9) or (12) wholly or in part.
- (14) The Society—
 - (a) may approve an ADI for the purposes of this section if satisfied that the ADI is prepared to pay a reasonable rate of interest on money deposited in the combined trust account; and
 - (b) may revoke an approval previously given under this subsection.
- (15) If the Society revokes the approval of an ADI under subsection (14) the combined trust account, so far as it was kept at that ADI, must be transferred to an ADI that continues as an approved ADI.
- (16) In this section—

general trust account has the same meaning as in Schedule 2.

36—Substitution of heading to Part 4 Division 3

Heading to Part 4 Division 3—delete the heading and substitute:

Division 3—Legal Practitioners Fidelity Fund

37—Amendment of section 57—Fidelity Fund

- (1) Section 57(1)—delete subsection (1) and substitute:
 - (1) The Society must continue to maintain the Legal Practitioners Fidelity Fund (formerly known as the legal practitioners' guarantee fund).

- (2) Section 57(2), (3), (5) and (6)—delete "guarantee fund" wherever occurring and substitute in each case:

Fidelity Fund

- (3) Section 57(3)(d)—delete "Board" and substitute:

Commissioner

- (4) Section 57(3)(da)—delete "Board" and substitute:

Commissioner

- (5) Section 57(4)—delete subsection (4) and substitute:

- (4) Subject to subsection (5), money in the Fidelity Fund may be applied for any of the following purposes:

- (a) meeting any expenses incurred by LPEAC or members of LPEAC in exercising functions and powers under this Act;
- (b) meeting any expenses incurred by the Board of Examiners or members of the Board of Examiners in exercising functions and powers under this Act;
- (c) meeting any expenses incurred by the Tribunal or members of the Tribunal in exercising functions and powers under this Act;
- (d) meeting any expenses incurred by the Commissioner in exercising the Commissioner's functions and powers under this Act;
- (e) the costs incurred by the Society in appointing a legal practitioner to appear in proceedings in which a person seeks admission as a legal practitioner;
- (f) the costs of investigating complaints under this Act and of disciplinary proceedings under this Act;
- (g) the costs of conducting an audit or bringing proceedings under Schedule 1;
- (h) the costs of proceedings instituted by the Commissioner for the adjudication of legal costs;
- (i) the costs of prosecutions for offences against this Act;
- (j) costs consequent on the appointment of a supervisor or manager under this Act;
- (k) the costs of an investigation or examination under Schedule 2 Part 3;
- (l) the payment of honoraria, approved by the Attorney-General, to members of LPEAC and the Tribunal;

- (m) the legal costs payable by any person in relation to any action arising from an honest act or omission in the exercise or purported exercise of powers or functions under Schedule 2 or 4 or by the Commissioner or delegated by the Commissioner;
- (n) the payment of money towards the costs of an arrangement under Part 3 Division 13 to the extent that those costs are, in accordance with the terms of the scheme and with the approval of the Attorney-General, to be paid from the Fidelity Fund;
- (o) the costs of processing claims under Part 5 and of paying out those claims to the extent authorised by that Part;
- (p) defraying any management fee or other expenditure relating to the management or administration of the Fidelity Fund;
- (q) educational or publishing programs conducted for the benefit of legal practitioners or members of the public.

(6) Section 57(6)—delete "Board" and substitute:

Commissioner

38—Amendment of section 60—Claims

(1) Section 60—after subsection (1) insert:

- (1a) In determining whether there is a reasonable prospect of recovering the full amount of a loss for the purposes of subsection (1)(b), potential action for the recovery of the amount that would not be taken by an ordinarily prudent, self-funded litigant is to be disregarded.

(2) Section 60(5)(a)—delete paragraph (a) and substitute:

- (a) a claim can only be made in relation to a fiduciary or professional default by—

- (i) an interstate legal practitioner; or
- (ii) an incorporated legal practice that is not required to be insured under a scheme established under section 52,

in circumstances provided for by an agreement or arrangement made by the Society with the approval of the Attorney-General under section 95AA; and

39—Amendment of section 61—Limitation of claims

Section 61(1)—delete "three" and substitute:

6

40—Amendment of section 64—Satisfaction of claims

Section 64(2)—delete "the prescribed percentage" and substitute:

a percentage (which must not be less than 20%) prescribed by regulation for the purposes of this subsection

41—Insertion of section 64A

After section 64 insert:

64A—Advance payments

- (1) The Society may, at its absolute discretion, make payments 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.
- (2) A payment may be made under this section even if there is some prospect that the whole or a part of the claimant's pecuniary loss will be recovered from another source.
- (3) Any payments made in advance are to be taken into account when the claim is determined.
- (4) Payments under this section are to be made from the Fidelity Fund.
- (5) If the claim is disallowed, the amounts paid under this section are recoverable by the Society as a debt due to the Fidelity Fund.
- (6) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the Society as a debt due to the Fidelity Fund.

42—Amendment of section 66—Claims by legal practitioners and incorporated legal practices

(1) Section 66(1)—delete subsection (1) and substitute:

- (1) A legal practitioner or incorporated legal practice who has paid compensation to any person for pecuniary loss suffered in consequence of a fiduciary or professional default by a partner, director, clerk, officer or employee of the legal practitioner or legal practice may make a claim under this Part in respect of the payment provided that, in the case of a fiduciary or professional default by a partner or a legal practitioner director, the default consisted of a defalcation, misappropriation or misapplication of trust money or dishonest conduct.

(2) Section 66(2)(b)—after "legal practitioner" insert:

or incorporated legal practice

43—Amendment of section 67A—Annual report

Section 67A(2)—delete subsection (2) and substitute:

- (2) The report must—
 - (a) state the amount of the payments from the Fidelity Fund during the financial year and the nature of the claims in respect of which payments were made; and
 - (b) contain the audited statement of accounts of the Fidelity Fund for the period to which the report relates.

44—Substitution of Part 6 Divisions 1 and 2

Part 6 Divisions 1 and 2—delete Divisions 1 and 2 and substitute:

Division 1—Preliminary

68—Unsatisfactory professional conduct

In this Act—

unsatisfactory professional conduct includes conduct of a legal practitioner 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 legal practitioner.

69—Professional misconduct

In this Act—

professional misconduct includes—

- (a) unsatisfactory professional conduct of a legal practitioner, 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 legal practitioner 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 practitioner is not a fit and proper person to practise the profession of the law.

70—Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Without limiting section 68 or 69, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct:

- (a) conduct consisting of a contravention of this Act, the regulations or the legal profession rules;
- (b) charging of excessive legal costs in connection with the practice of law;

- (c) 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;
- (d) conduct of a legal practitioner as or in becoming an insolvent under administration;
- (e) conduct of a legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the *Corporations Act 2001* of the Commonwealth;
- (f) conduct of a legal practitioner in failing to comply with an order of the Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law);
- (g) conduct of a legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law;
- (h) conduct of a legal practitioner in failing to comply with the terms of a professional mentoring agreement entered into with the Society.

Division 2—Legal Profession Conduct Commissioner

Subdivision 1—Legal Profession Conduct Commissioner

71—Legal Profession Conduct Commissioner

- (1) There will be a Legal Profession Conduct Commissioner.
- (2) The Commissioner will be appointed by the Governor, following consultation about the appointment by the Attorney-General with the Society and the South Australian Bar Association Incorporated, and is an agency of the Crown.
- (3) Although a person appointed as Legal Profession Conduct Commissioner need not be a legal practitioner, the Commissioner must be a person who, in the opinion of the Attorney-General—
 - (a) is familiar with the nature of the legal system and legal practice; and
 - (b) possesses sufficient qualities of independence, fairness and integrity.

72—Functions

- (1) The functions of the Commissioner are—
 - (a) to investigate suspected unsatisfactory professional conduct or professional misconduct by legal practitioners in accordance with Subdivision 2; and
 - (b) following an investigation, to take action authorised under Subdivision 3 or to lay charges before the Tribunal; and
 - (c) to receive and deal with complaints of overcharging in accordance with Subdivision 4; and
 - (d) to arrange for the conciliation of complaints in accordance with Subdivision 5; and
 - (e) to commence disciplinary proceedings against legal practitioners or former legal practitioners in the Supreme Court on the recommendation of the Tribunal or under section 88A or 89; and
 - (f) to carry out such other functions as are assigned to the Commissioner under this Act.
- (2) The Commissioner may, with the approval of the Attorney-General, fix, and require the payment of, fees in connection with the performance of functions of the Commissioner under this Act.
- (3) The Commissioner may exercise any of his or her functions or powers in relation to a person who is a former legal practitioner if, at the time of the alleged unsatisfactory professional conduct, professional misconduct or overcharging, the person was a legal practitioner.
- (4) The Commissioner may be represented in proceedings before any court or tribunal by a legal practitioner employed or engaged by the Commissioner.

73—Terms and conditions of appointment

- (1) The Commissioner will be appointed for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
 - (a) has been guilty of misconduct; or
 - (b) has been convicted of an offence punishable by imprisonment; or
 - (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

- (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (f) is incompetent or has neglected the duties of the position.
- (3) The appointment of the Commissioner is terminated if the Commissioner—
- (a) becomes a member, or a candidate for election as a member, of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or of a Legislative Assembly of a Territory of the Commonwealth; or
 - (b) is sentenced to imprisonment for an offence.
- (4) The Commissioner may resign by notice in writing to the Minister of not less than 3 months (or such shorter period as is accepted by the Minister).

74—Acting Commissioner

- (1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties.
- (2) The terms and conditions of appointment of a person appointed to act as the Commissioner will be determined by the Minister.

75—Honesty and accountability

The Commissioner and any person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

76—Staff of Commissioner

The Commissioner may appoint staff to assist in carrying out the Commissioner's functions.

77—Delegation

- (1) The Commissioner may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this or any other Act.
- (2) A delegation—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.
- (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

77A—Exchange of information between Commissioner and Council

- (1) The Commissioner and the Council may enter into an agreement or arrangement providing for the exchange of information relating to legal practitioners.
- (2) An agreement or arrangement must be reduced to writing and be approved by the Attorney-General.

Subdivision 2—Investigation of unsatisfactory professional conduct and professional misconduct

77B—Investigations by Commissioner

- (1) The Commissioner may, on his or her own initiative, make an investigation into the conduct of a legal practitioner or former legal practitioner who the Commissioner has reasonable cause to suspect has been guilty of unsatisfactory professional conduct or professional misconduct.
- (2) Subject to section 77C, the Commissioner must make an investigation into the conduct of a legal practitioner or former legal practitioner if—
 - (a) the Commissioner has been directed to make the inquiry by the Attorney-General or the Society; or
 - (b) a complaint has been received in relation to the conduct of the legal practitioner or former legal practitioner.
- (3) No direction may be given to the Commissioner under this section unless the Attorney-General or the Society (as the case may require) has reasonable cause to suspect that the legal practitioner or former legal practitioner to whom the proposed investigation relates has been guilty of unsatisfactory professional conduct or professional misconduct.
- (4) The provisions of Schedule 4 apply in relation to an investigation under this section.

77C—Closure of whole or part of complaint

- (1) At any stage after receipt 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 complainant has not responded, or has responded inadequately, to a request for further information or has unreasonably failed to cooperate in the investigation or conciliation of the complaint;

- (c) the subject-matter of the complaint has been or is already being investigated, whether by the Commissioner or another authority;
 - (d) the subject-matter of the complaint would be better investigated or dealt with by police or another investigatory or law enforcement body;
 - (e) the subject-matter of the complaint is the subject of civil proceedings, except so far as it is a disciplinary matter;
 - (f) the complaint is not one that the Commissioner has power to deal with;
 - (g) the Commissioner is satisfied that it is otherwise in the public interest to close the complaint.
- (2) A complaint may be closed under this section without an investigation or without completing an investigation.
- (3) The Commissioner is not required to give a complainant, a legal practitioner, a former legal practitioner, a law practice or the Legal Services Commission an opportunity to be heard or make a submission to the Commissioner before determining whether or not to close a complaint under this section.
- (4) The power to close a complaint under this section extends to closure of part of a complaint.

77D—Notification of complaint to practitioner

- (1) The Commissioner—
- (a) may, after receiving a complaint about a legal practitioner or former legal practitioner, notify the practitioner or former practitioner of the complaint or give the practitioner or former practitioner a summary or details of the complaint; and
 - (b) subject to section 77F, must, as soon as practicable after the Commissioner decides to investigate a complaint about a legal practitioner or former legal practitioner under section 77B and if he or she has not already done so, give the practitioner or former practitioner a summary or details of the complaint and a notice informing the practitioner or former practitioner 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 legal practitioner or former legal practitioner a summary or details of the complaint and a notice informing the practitioner or former practitioner of the right to make submissions.

- (2) The Commissioner must—
 - (a) subject to section 77F, as soon as practicable after deciding on his or her own initiative to make an investigation into the conduct of a legal practitioner or former legal practitioner or being directed to make an inquiry into the conduct of a legal practitioner or former legal practitioner by the Attorney-General or the Society, give the practitioner or former practitioner a summary or details of the reasons for the investigation and a notice informing the practitioner or former practitioner of the right to make submissions; and
 - (b) before making a determination and if he or she has not already done so, give the legal practitioner or former legal practitioner a summary or details of the reasons for the investigation and a notice informing the practitioner or former practitioner of the right to make submissions.
- (3) A notice informing the legal practitioner or former legal practitioner 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.

77E—Submissions by legal practitioner

- (1) A legal practitioner or former legal practitioner who has received a notice of a decision or direction to make an investigation into his or her conduct may, within the period specified under section 77D, make submissions to the Commissioner about the subject-matter of the investigation, unless the matter 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 legal practitioner or former legal practitioner within the specified period in response to the notice before deciding what action is to be taken in relation to the matter, and may consider submissions received afterwards.

77F—Exceptions to requirement for notification of complaint

- (1) Section 77D(1)(b) and (2)(a) do not require the Commissioner to give a legal practitioner or former legal practitioner a summary or details of a complaint or the reasons for an investigation or a notice about making submissions if the Commissioner reasonably believes that to do so will or is likely to—
 - (a) prejudice the investigation; or
 - (b) prejudice an investigation by the police or another investigatory or law enforcement body of any matter with which the Commissioner's investigation is concerned; or

- (c) in the case of an investigation of a complaint—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 legal practitioner or former legal practitioner 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 legal practitioner or former legal practitioner the notice and a statement of the general nature of the complaint or reasons for investigation.

Subdivision 3—Action following investigation

77G—Interpretation

In this Subdivision—

complainant means—

- (a) in the case of an investigation made into the conduct of a legal practitioner or former legal practitioner because of a direction by the Attorney-General or the Society—the Attorney-General or the Society, as required; and
- (b) in the case of an investigation made into the conduct of a legal practitioner or former legal practitioner because of a complaint—the person who made the complaint.

77H—Report on investigation

- (1) If, in the course or in consequence of an investigation under this Division, the Commissioner is satisfied that there is evidence of professional misconduct by a legal practitioner or former legal practitioner, the Commissioner must make a report on the matter to the Attorney-General and the Society.
- (2) If, in the course or in consequence of an investigation under this Division, the Commissioner comes into possession of information or evidence suggesting to the Commissioner that a criminal offence may have been committed, the Commissioner must pass the information or evidence on to the Crown Solicitor.
- (3) The Commissioner must, at the request of the Crown Solicitor or a prosecution authority, furnish the Crown Solicitor or authority with any material in the Commissioner's possession relevant to the investigation or prosecution of the suspected offence.
- (4) If it appears to the Crown Solicitor or a prosecution authority from a report or material furnished under this section that criminal proceedings should be taken against a person, the Crown Solicitor or authority may take any action that may be appropriate for that purpose.

77I—Commissioner to notify persons of suspected loss

If, in the course or in consequence of an investigation under this Division, the Commissioner has reason to believe that a person has suffered loss as a result of unsatisfactory professional conduct or professional misconduct by a legal practitioner or former legal practitioner, the Commissioner may notify the person.

77J—Powers of Commissioner to deal with certain unsatisfactory professional conduct or professional misconduct

- (1) If, after conducting an investigation into conduct by a legal practitioner under this Division, the Commissioner is satisfied that there is evidence of unsatisfactory professional conduct and that the conduct in question can be adequately dealt with under this subsection—
 - (a) the Commissioner may determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
 - (i) the Commissioner may reprimand the legal practitioner;
 - (ii) the Commissioner may order the legal practitioner to apologise to any person affected by the practitioner's conduct;
 - (iii) the Commissioner may order the legal practitioner—
 - (A) to redo the work that is the subject of the investigation at no cost or to waive or reduce the fees for the work; or
 - (B) to pay the costs of having the work that is the subject of the investigation redone;
 - (iv) the Commissioner may order the legal practitioner to undertake training, education or counselling or be supervised;
 - (v) the Commissioner may order the legal practitioner to pay a fine not exceeding \$5 000;
 - (vi) the Commissioner may make an order imposing specified conditions on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
 - (A) relating to the practitioner's legal practice; or

- (B) requiring that the practitioner, within a specified time, complete further education or training, or receive counselling, of a type specified by the Commissioner;
- (vii) the Commissioner may, with the consent of the legal practitioner, make any other order the Commissioner considers appropriate in the circumstances; or
- (b) the Commissioner may, if the legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
 - (i) if the Commissioner believes that the legal practitioner may be suffering from an illness or a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that has detrimentally affected his or her ability to practise the law, the Commissioner may order the legal practitioner to—
 - (A) submit to a medical examination by a medical practitioner nominated by the Commissioner and to undertake any treatment recommended by the medical practitioner; or
 - (B) receive counselling of a type specified by the Commissioner; or
 - (C) participate in a program of supervised treatment or rehabilitation designed to address behavioural problems, substance abuse or mental impairment;
 - (ii) the Commissioner may order the legal practitioner to enter into a professional mentoring agreement with the Commissioner and to comply with all conditions of the agreement;
 - (iii) the Commissioner may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Commissioner (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
 - (iv) the Commissioner may order the legal practitioner to pay a fine not exceeding \$10 000;

- (v) the Commissioner may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order (not exceeding 3 months);
 - (vi) the Commissioner may make an order requiring that the legal practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with legal practice.
- (2) If, after conducting an investigation into conduct by a legal practitioner under this Division, the Commissioner is satisfied that there is evidence of professional misconduct and that the misconduct in question can be adequately dealt with under this subsection, the Commissioner may, if the legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
- (a) the Commissioner may reprimand the legal practitioner;
 - (b) the Commissioner may order the legal practitioner to apologise to any person affected by the practitioner's conduct;
 - (c) if the Commissioner believes that the legal practitioner may be suffering from an illness or a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that has detrimentally affected his or her ability to practise the law, the Commissioner may order the legal practitioner to—
 - (i) submit to a medical examination by a medical practitioner nominated by the Commissioner and to undertake any treatment recommended by the medical practitioner; or
 - (ii) receive counselling of a type specified by the Commissioner; or
 - (iii) participate in a program of supervised treatment or rehabilitation designed to address behavioural problems, substance abuse or mental impairment;
 - (d) the Commissioner may order the legal practitioner to enter into a professional mentoring agreement with the Commissioner and to comply with all conditions of the agreement;

- (e) the Commissioner may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Commissioner (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
 - (f) the Commissioner may order the legal practitioner to pay a fine not exceeding \$20 000;
 - (g) the Commissioner may make an order imposing specified conditions on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
 - (i) relating to the practitioner's legal practice; or
 - (ii) requiring that the practitioner, within a specified time, complete further education or training, or receive counselling, of a type specified by the Commissioner;
 - (h) the Commissioner may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order (not exceeding 6 months);
 - (i) the Commissioner may make an order requiring that the legal practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with legal practice.
- (3) Despite section 72(3), subsections (1) and (2) do not apply in relation to a former legal practitioner, but if, after conducting an investigation into conduct by a former legal practitioner under this Division, the Commissioner is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct that occurred while the former legal practitioner remained a legal practitioner and that the conduct in question can be adequately dealt with under this subsection—
- (a) in the case of unsatisfactory professional conduct, the Commissioner may —
 - (i) determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$5 000; or
 - (ii) if the former legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$10 000; and

- (b) in the case of professional misconduct, the Commissioner may, if the former legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$20 000.
- (4) If the Commissioner proposes to exercise a power under subsection (1), (2) or (3), the Commissioner—
 - (a) must provide the complainant (if any) and, in the case of the exercise of a power that does not require the consent of the legal practitioner or former legal practitioner, the legal practitioner or former legal practitioner with details of the proposal and invite them to make written submissions to the Commissioner within a specified period; and
 - (b) 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) is not required to repeat the process if the Commissioner decides to exercise the power in a different way, or exercise a different power, after taking into account any written submissions received during the specified period.
- (5) The Commissioner may, in determining whether to exercise a power under this section in relation to a legal practitioner or former legal practitioner, take into account—
 - (a) any previous action relating to the practitioner under this section or a corresponding previous enactment; or
 - (b) any finding relating to the practitioner by the Tribunal, the Supreme Court or a corresponding disciplinary body of—
 - (i) professional misconduct or unsatisfactory professional conduct; or
 - (ii) unprofessional conduct or unsatisfactory conduct (within the meaning of this Act as in force before the commencement of this Division).
- (6) An order under this section must be reduced to writing and be signed—
 - (a) by or on behalf of the Commissioner; and
 - (b) if it is an order requiring the consent of the legal practitioner or former legal practitioner—by the legal practitioner or former legal practitioner to whom it applies.
- (7) A condition imposed on a practising certificate by an order under this section may be varied or revoked at any time on application by the legal practitioner to the Tribunal.
- (8) The Commissioner must, as soon as possible after determining to exercise a power under this section, provide the complainant with written notification of the determination.

- (9) An apparently genuine document purporting to be a copy of an order under this section and providing for the payment of a monetary sum by a legal practitioner (other than a fine), will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.
- (10) A contravention of an order under this section is professional misconduct.
- (11) If the Commissioner has ordered payment of a fine, a certificate of the fine must be filed in the Supreme Court.
- (12) If a certificate has been filed under subsection (11), proceedings may be taken for the recovery of the fine as if the certificate were a judgment of the Supreme Court.
- (13) The cost of a medical examination, medical treatment, counselling or a program of supervised treatment or rehabilitation undertaken by a legal practitioner pursuant to an order of the Commissioner is to be borne by the practitioner.
- (14) In this section—
medical practitioner means a person registered under the *Health Practitioners Regulation National Law* to practise in the medical profession (other than as a student).

77K—Appeal against determination of Commissioner

- (1) Subject to subsection (3), an appeal to the Tribunal against a determination of the Commissioner under section 77J(1)(a) or (3)(a)(i) may be instituted by—
 - (a) the legal practitioner or former legal practitioner in relation to whom the determination was made; or
 - (b) the complainant.
- (2) Subject to subsection (3), an appeal to the Tribunal against a determination of the Commissioner under section 77J(1)(b), (2) or (3)(a)(ii) or (b) after conducting an investigation into the conduct of a legal practitioner or former legal practitioner following receipt of a complaint may be instituted by the person who made the complaint.
- (3) An appeal must be instituted within 1 month of the date on which the appellant is notified of the determination unless the Tribunal is satisfied that there is good reason to dispense with the requirement that the appeal should be so instituted.
- (4) The Tribunal may, on the hearing of the appeal—
 - (a) affirm, vary, quash or reverse the determination subject to the appeal and administer any reprimand, or make any order, that should have been administered or made in the first instance; and
 - (b) make such orders as to costs as it considers appropriate.

- (5) Section 85(2) to (4) (inclusive) apply in relation to an order as to costs made under subsection (4).

77L—Commissioner must lay charge in certain circumstances

If, after conducting an investigation into conduct by a legal practitioner or former legal practitioner under this Division, the Commissioner is satisfied that—

- (a) there is evidence of unsatisfactory professional conduct or professional misconduct by the practitioner or former practitioner; and
- (b) the conduct in question cannot be adequately dealt with under section 77J,

the Commissioner must, subject to section 82(2a), lay a charge before the Tribunal in relation to the conduct unless the Commissioner determines that it would not be in the public interest to do so.

77M—Commissioner to provide reasons

If the Commissioner determines—

- (a) not to investigate a complaint; or
- (b) to close a complaint under section 77C; or
- (c) after conducting an investigation into conduct by a legal practitioner or former legal practitioner under this Division that is the subject of a direction from the Attorney-General or the Society or a complaint—
 - (i) that there is no evidence of unsatisfactory professional conduct or professional misconduct; or
 - (ii) that there is evidence of unsatisfactory professional conduct or professional misconduct but—
 - (A) the conduct in question cannot be adequately dealt with under section 77J; and
 - (B) it would not be in the public interest to lay a charge in relation to the conduct before the Tribunal,

the Commissioner must provide the complainant and the legal practitioner or former legal practitioner with written reasons for the determination.

Subdivision 4—Complaints of overcharging

77N—Investigation of allegation of overcharging

- (1) Subject to subsections (2) and (3) and section 77C, if a complaint of overcharging is made against a legal practitioner or former legal practitioner, the Commissioner must investigate the complaint unless the complaint is received by the Commissioner more than 2 years after the final bill to which the complaint relates was delivered to the client or the complaint is resolved before the Commissioner commences an investigation.
- (2) The Commissioner may require a complainant to pay a reasonable fee, fixed by the Commissioner, for investigation of the complaint and decline to proceed with the investigation unless the fee is paid.
- (3) The Commissioner may not proceed with the investigation of a complaint of overcharging while the bill to which the complaint relates is the subject of an application for adjudication of costs before the Supreme Court under Schedule 3.
- (4) For the purposes of an investigation the Commissioner may do either or both of the following:
 - (a) by notice in writing—
 - (i) require the legal practitioner or former legal practitioner to make a detailed report to the Commissioner, within the time specified in the notice, on the work carried out for the client to whom the bill was delivered; and
 - (ii) require the legal practitioner or former legal practitioner to produce to the Commissioner, within the time specified in the notice, documents relating to the work;
 - (b) arrange for the costs that are the subject of the complaint of overcharging to be assessed by a legal practitioner who is, in the opinion of the Commissioner, qualified to make such an assessment.
- (5) A legal practitioner or former legal practitioner must comply with a requirement under subsection (4)(a).

Maximum penalty: \$10 000 or imprisonment for 1 year.
- (6) At the conclusion of the investigation, the Commissioner—
 - (a) must report to the complainant and the legal practitioner or former legal practitioner on the results of the investigation; and
 - (b) may recommend that the legal practitioner or former legal practitioner reduce a charge or refund an amount to the complainant or the client to whom the bill was delivered.

- (7) If—
- (a) the amount in dispute in a complaint of overcharging is no more than \$10 000; and
 - (b) the costs the subject of the complaint have been assessed by a legal practitioner in accordance with subsection (4)(b); and
 - (c) the Commissioner has, by written notice, given the complainant and the legal practitioner or former legal practitioner details of the assessment and invited them to make written submissions within the period (which must be at least 7 days) specified in the notice,
- the Commissioner may, after the end of the specified period and after having regard to any submissions received, make a determination as to whether or not there has been overcharging and, if so, the amount that has been overcharged.
- (8) If the Commissioner makes a determination under subsection (7)—
- (a) the Commissioner must give the complainant and the legal practitioner or former legal practitioner a certificate certifying the determination; and
 - (b) the determination is binding on, and enforceable by or against, the legal practitioner or former legal practitioner in relation to whom the complaint was made and the client to whom the bill was delivered.
- (9) Subsection (8)(b) does not apply if the Supreme Court has adjudicated and settled the bill that is the subject of the complaint of overcharging.
- (10) If a complaint of overcharging made against a legal practitioner or former legal practitioner results in a determination or finding that there has been overcharging or a recommendation, order or agreement that the legal practitioner or former legal practitioner reduce a charge or refund an amount to the complainant—
- (a) the complainant is entitled to a refund of any fee paid to the Commissioner for investigation of the complaint; and
 - (b) the amount of the fee refunded to the complainant is recoverable from the legal practitioner or former legal practitioner as a debt due to the Commissioner.
- (11) The provisions of Schedule 4 apply to an investigation under this section.

Subdivision 5—Conciliation

77O—Commissioner may conciliate complaints

- (1) The Commissioner may, at any time, arrange for a conciliation to be conducted in relation to a matter before the Commissioner.

- (2) Nothing said or done in the course of a conciliation under this section can subsequently be given in evidence in any proceedings (other than proceedings for a criminal offence).
- (3) A person who has been involved in a conciliation in relation to a matter under this section is disqualified from investigating or further investigating the matter and from otherwise dealing with the matter.
- (4) If agreement is reached through a conciliation under this section—
 - (a) the agreement must be recorded in writing and signed by the parties to the agreement and the Commissioner or on behalf of the Commissioner by a person authorised by the Commissioner for the purpose; and
 - (b) a copy of the agreement must be given to each of the parties.
- (5) An apparently genuine document purporting to be an agreement signed in accordance with this section and providing for the payment of a monetary sum by a party to the agreement, will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.
- (6) If a legal practitioner contravenes or fails to comply with the terms of an agreement reached following conciliation under this section, the contravention or non-compliance is professional misconduct.
- (7) The fact that a conciliation is conducted or an agreement is reached in relation to a matter does not prevent investigation or further investigation or the laying of a charge in relation to conduct to which the matter relates.

45—Amendment of section 78—Establishment of Tribunal

- (1) Section 78(2)—after "Chief Justice" insert:
of whom—
 - (a) 10 must be legal practitioners; and
 - (b) 5 must be persons who are not legal practitioners but who are familiar with the nature of the legal system and legal practice.
- (2) Section 78(3)—after "Tribunal" insert:
under subsection (2)(a)
- (3) Section 78(4)—after "member of the Tribunal" insert:
who is a legal practitioner
- (4) Section 78(4)—after "another member" insert:
who is a legal practitioner

46—Amendment of section 80—Constitution and proceedings of Tribunal

- (1) Section 80(1)—delete "In relation to any proceedings instituted before the Tribunal alleging unprofessional conduct" and substitute:

Subject to subsection (1a), in relation to proceedings instituted before the Tribunal alleging professional misconduct

- (2) Section 80(1a)—delete subsection (1a) and substitute:

(1a) In relation to—

- (a) proceedings instituted before the Tribunal alleging professional misconduct by a legal practitioner where—
 - (i) the charge is laid by the Commissioner; and
 - (ii) the Commissioner indicates to the Tribunal when laying the charge that, in the opinion of the Commissioner, the alleged misconduct does not warrant any of the following orders:
 - (A) an order that the legal practitioner's name be struck off the roll of legal practitioners;
 - (B) an order suspending the practitioner's practising certificate for a period exceeding 3 months;
 - (C) an order that the legal practitioner pay a fine exceeding \$10 000; or
- (b) proceedings instituted before the Tribunal alleging only unsatisfactory professional conduct by a legal practitioner; or
- (c) proceedings on an appeal against a determination of the Commissioner under section 77J,

the Tribunal consists of 1 of its members chosen by the presiding member to constitute the Tribunal for the purposes of those proceedings (and that member may be the presiding member).

- (1b) Despite subsections (1) and (1a), the Tribunal may, for the purposes of dealing with a procedural or interlocutory matter, consist of 1 of its members chosen by the presiding member to constitute the Tribunal or be otherwise constituted as determined by the presiding member.
- (1c) The Tribunal when constituted of a panel of 3 of its members must include at least 1 member who is a legal practitioner and at least 1 member who is not a legal practitioner but when the Tribunal consists of only 1 of its members the member constituting the Tribunal must be a legal practitioner.

47—Amendment of section 82—Inquiries

- (1) Section 82(1)—delete "A charge" and substitute:

Subject to this section, a charge

- (2) Section 82(1)—delete "unprofessional or unsatisfactory conduct" wherever occurring and substitute in each case:
- unsatisfactory professional conduct or professional misconduct
- (3) Section 82—after subsection (1) insert:
- (1a) A charge may not be laid before the Tribunal relating to conduct by a legal practitioner or former legal practitioner if the Commissioner has exercised a power under section 77J in relation to the conduct.
- (4) Section 82(2)(b)—delete paragraph (b) and substitute:
- (b) the Commissioner; or
- (5) Section 82(2)(d)—delete "unprofessional or unsatisfactory conduct" and substitute:
- unsatisfactory professional conduct or professional misconduct
- (6) Section 82(2a) and (2b)—delete subsections (2a) and (2b) and substitute:
- (2a) A charge relating to conduct by a legal practitioner must be laid before the Tribunal within 3 years of the conduct unless—
- (a) the charge is laid by the Attorney-General; or
- (b) the Tribunal allows an extension of time.
- (7) Section 82(5)—after "vexatious" insert:
- and may, for the purpose of dealing with such a charge, consist of 1 member
- (8) Section 82(6)(a)—delete "unprofessional or unsatisfactory conduct it may, subject to subsection (6a)," and substitute:
- unsatisfactory professional conduct or professional misconduct it may
- (9) Section 82(6)(a)(ii)—delete subparagraph (ii) and substitute:
- (ii) it may order the legal practitioner to pay a fine not exceeding—
- (A) \$50 000; or
- (B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$10 000;
- (10) Section 82(6)(a)(iv) and (v)—delete subparagraphs (iv) and (v) and substitute:
- (iv) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order, not exceeding—
- (A) 12 months; or
- (B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—3 months;
- (v) it may, unless constituted of 1 member in accordance with section 80(1a)(a), recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court; or

- (11) Section 82(6)(b) and (c)—delete paragraphs (b) and (c) and substitute:
- (b) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of professional misconduct—it may order the former legal practitioner to pay a fine not exceeding—
 - (i) \$50 000; or
 - (ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$10 000; or
 - (c) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of unsatisfactory professional conduct—it may order the former legal practitioner to pay a fine not exceeding—
 - (i) \$25 000; or
 - (ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$5 000.
- (12) Section 82(6a)—delete subsection (6a)
- (13) Section 82(7)—delete "Board" and substitute:
Commissioner
- (14) Section 82(8)—delete "unprofessional conduct" wherever occurring and substitute in each case:
professional misconduct
- (15) Section 82(8)—delete "unsatisfactory conduct" wherever occurring and substitute in each case:
unsatisfactory professional conduct

48—Amendment of section 84—Powers of Tribunal

Section 84(1)(f)—delete "a bill of costs in taxable form" and substitute:
an itemised bill (within the meaning of Schedule 3)

49—Insertion of section 84C

After section 84B insert:

84C—Stay of proceedings

- (1) The Tribunal may, if it thinks fit, stay any proceedings before the Tribunal until further order on such terms as it considers proper.
- (2) If proceedings are stayed, the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) is suspended until the proceedings are completed unless the Tribunal considers that there is good reason for not suspending the certificate and orders accordingly.
- (3) If a legal practitioner's practising certificate is suspended under subsection (2), the Supreme Court may, on application by the practitioner, terminate the suspension.

50—Amendment of section 85—Costs

(1) Section 85—after subsection (1) insert:

(1a) If—

- (a) the Commissioner has laid a charge under section 82 alleging unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or former legal practitioner who has refused to consent to the exercise of a power by the Commissioner under section 77J in relation to the alleged unsatisfactory professional conduct or professional misconduct; and
- (b) the Tribunal finds the legal practitioner or former legal practitioner guilty of unsatisfactory professional conduct or professional misconduct; and
- (c) the Tribunal considers that the refusal of the legal practitioner or former legal practitioner to consent to the exercise of the power by the Commissioner was unreasonable,

the Tribunal may order the legal practitioner or former legal practitioner to reimburse the Commissioner for costs incurred by the Commissioner in the conduct of the proceedings except to the extent that the legal practitioner or former legal practitioner shows them to have been unreasonably incurred.

(2) Section 85(2)—delete "taxed" and substitute:

adjudicated

51—Insertion of section 88A

Before section 89 insert:

88A—Supreme Court's inherent jurisdiction

- (1) This Part does not derogate from the inherent jurisdiction of the Supreme Court to control and discipline legal practitioners.
- (2) Without limiting the operation of subsection (1), the Court may act under its inherent jurisdiction to control and discipline legal practitioners on the application of the Attorney-General, the Commissioner or the Society.

52—Amendment of section 89—Proceedings before Supreme Court

(1) Section 89(1) and (6)—delete "Board" wherever occurring and substitute in each case:

Commissioner

(2) Section 89—after subsection (1) insert:

(1a) If the Commissioner is of the opinion that the name of a legal practitioner should be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act because the practitioner has been found guilty of a serious offence, or for any other reason, the Commissioner may, without laying a charge before the Tribunal, institute disciplinary proceedings in the Supreme Court against the practitioner.

(1b) If—

(a) —

- (i) a recommendation is made by the Tribunal that disciplinary proceedings be commenced against a legal practitioner in the Supreme Court; or
- (ii) the Commissioner has advised a legal practitioner in writing of his or her intention to institute disciplinary proceedings against a legal practitioner in the Supreme Court; and

(b) the legal practitioner informs the Court in writing that he or she would consent to an order that his or her name be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act,

the Court may, despite the fact that disciplinary proceedings have not been instituted, order that the name of the legal practitioner be struck off the roll maintained under this Act or kept in the other State (as appropriate).

(3) Section 89(3)—delete subsection (3)

53—Amendment of section 89A—Court may order interim suspension of legal practitioner or impose interim conditions

Section 89A—delete "Board" and substitute:

Commissioner

54—Substitution of Part 6 Division 6

Part 6 Division 6—delete Division 6 and substitute:

Division 6—Publicising disciplinary action

89B—Definitions

In this Division—

disciplinary action means—

- (a) the making of an order by a court or tribunal for or following a finding of unsatisfactory professional conduct or professional misconduct by a legal practitioner or former legal practitioner under this Act or under a corresponding law; or
- (b) the exercise by the Commissioner or a corresponding authority of a power under section 77J or a corresponding law where the Commissioner or corresponding authority is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct by a legal practitioner; or
- (c) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of unsatisfactory professional conduct or professional misconduct by a legal practitioner:
 - (i) removal of the name of the practitioner from a roll of legal practitioners maintained under this Act or a corresponding law;
 - (ii) the suspension or cancellation of the practising certificate of the practitioner;
 - (iii) the refusal to issue or renew a practising certificate to the practitioner;
 - (iv) the appointment of—
 - (A) a supervisor of trust money of the practitioner's practice; or
 - (B) a receiver for the practitioner's practice; or
 - (C) a manager for the practitioner's practice;
- (d) removal of the name of a practitioner from the roll of legal practitioners maintained under this Act pursuant to section 89(1b);

Register means the Register of Disciplinary Action referred to in section 89C.

89C—Register of Disciplinary Action

- (1) The Commissioner is to maintain a register (the *Register of Disciplinary Action*) of—
 - (a) disciplinary action taken in relation to professional misconduct under this Act against legal practitioners and former legal practitioners; and
 - (b) disciplinary action taken in relation to professional misconduct under a corresponding law against legal practitioners and former legal practitioners who are or were enrolled or practising the law in this State when the conduct that is the subject of the disciplinary action occurred.
- (2) The Commissioner may also include in the Register—
 - (a) disciplinary action taken in relation to unsatisfactory professional conduct under this Act against legal practitioners and former legal practitioners; and
 - (b) disciplinary action taken in relation to unsatisfactory professional conduct under a corresponding law against legal practitioners and former legal practitioners who are or were enrolled or practising the law in this State when the conduct that is the subject of the disciplinary action occurred; and
 - (c) disciplinary action consisting of the removal of the name of a legal practitioner from the roll of legal practitioners maintained under this Act pursuant to section 89(1b);
- (3) The following particulars are to be included when information about disciplinary action is entered into the Register:
 - (a) the full name of the person against whom the disciplinary action was taken;
 - (b) the person's business address or former business address;
 - (c) the person's home jurisdiction or most recent home jurisdiction;
 - (d) particulars of the disciplinary action taken;
 - (e) other particulars prescribed by the regulations or determined by the Commissioner.
- (4) The Register may be kept in a form determined or identified by the Commissioner and may form part of other registers.
- (5) The Register is to be made available for public inspection on—
 - (a) the Internet site of the Commissioner; or
 - (b) an Internet site identified on the Internet site of the Commissioner.
- (6) Information recorded in the Register may be provided to members of the public in any other manner approved by the Commissioner.

- (7) The Commissioner may cause any error in or omission from the Register to be corrected.
- (8) The requirement to keep the Register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the Register.

89D—Other means of publicising disciplinary action

- (1) The Commissioner may publicise disciplinary action taken against a legal practitioner or former legal practitioner in any manner the Commissioner thinks fit.
- (2) Nothing in this section affects the provisions of this Division relating to the Register.

89E—Quashing of disciplinary action

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the Commissioner under section 89D, the result of the appeal or review must be publicised with equal prominence by the Commissioner.

89F—Liability for publicising disciplinary action

- (1) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of—
 - (a) publicising disciplinary action taken against a legal practitioner or former legal practitioner; or
 - (b) exercising the powers or functions of the Commissioner under this Division; or
 - (c) keeping, publishing or enabling access to the Register.
- (2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith—
 - (a) information about disciplinary action—
 - (i) recorded in the Register; or
 - (ii) otherwise publicised by the Commissioner under this Division,or matter purporting to contain information of that kind where the matter is incorrect in any respect; or
 - (b) a fair report or summary of information referred to in paragraph (a).
- (3) In this section—

protected person means—

 - (a) the Crown; or

- (b) the Society; or
- (c) the Council; or
- (d) an officer, employee or agent of the Society; or
- (e) the Commissioner; or
- (f) an employee or agent of the Commissioner; or
- (g) a person responsible for keeping the whole or any part of the Register; or
- (h) an Internet service provider or Internet content host; or
- (i) a person acting at the direction of the State or of any person or body referred to in this definition.

90—General

- (1) The provisions of this Division are subject to any order made by—
 - (a) the Supreme Court or the Tribunal in relation to disciplinary action taken under this Part; or
 - (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Part; or
 - (c) a court or tribunal of this or another jurisdiction,
so far as the order prohibits or restricts the disclosure of information.
- (2) Despite subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Division and may be otherwise publicised under this Division.

55—Amendment of section 90AF—Local legal practitioners are subject to interstate regulatory authorities

Section 90AF(2)—delete "unprofessional conduct" and substitute:
professional misconduct

56—Amendment of section 90A—Annual reports

Section 90A(1) and (3)—delete "Board" wherever occurring and substitute in each case:

Commissioner

57—Insertion of Part 6 Division 8

Part 6—after Division 7 insert:

Division 8—Professional mentoring agreements

90B—Professional mentoring agreements

- (1) The Society or the Commissioner may enter into an agreement with a legal practitioner (a *professional mentoring agreement*) for the appointment of a professional mentor for the practitioner.
- (2) A person is not eligible for appointment as a professional mentor for a legal practitioner unless he or she is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State).
- (3) A professional mentor appointed for a legal practitioner—
 - (a) is to provide guidance to the practitioner in relation to the conduct of the practitioner's practice and the meeting of his or her professional obligations; and
 - (b) has, in relation to the practitioner and the practitioner's practice, for the period of the appointment, the duties, obligations and powers prescribed in the regulations; and
 - (c) must report on the practitioner and the practitioner's practice as required by the regulations to the Society and, if the professional mentor was appointed under an agreement entered into with the Commissioner, the Commissioner.
- (4) A professional mentoring agreement—
 - (a) must be in writing; and
 - (b) must state the term for which the professional mentor has been appointed; and
 - (c) must comply with any requirements prescribed by the regulations.
- (5) The initial term of appointment of a professional mentor for a legal practitioner may not exceed 6 months but the professional mentor may, at the end of the initial term of appointment, be appointed for a further term not exceeding 6 months.
- (6) A professional mentor for a legal practitioner is to be remunerated by the legal practitioner or the relevant law practice in accordance with the method prescribed by the regulations.
- (7) Any charge for which a legal practitioner or law practice is liable in accordance with the regulations is recoverable from the practitioner or law practice as a debt due to the professional mentor.
- (8) The regulations may make further provision for the recovery of charges owing to professional mentors.

- (9) If the Commissioner enters into a professional mentoring agreement with a legal practitioner, the Commissioner must provide the Society with a copy of the agreement.
- (10) A legal practitioner who has entered into a professional mentoring agreement may, for any proper purpose, disclose a matter to the professional mentor and such disclosure will be taken not to affect the operation of client legal privilege (or other legal professional privilege).

58—Substitution of section 95D

Section 95D—delete the section and substitute:

95D—Service of notices and documents

- (1) A notice or document required or authorised by this Act to be served on or given to a person may be served on or given to the person—
 - (a) by delivering it personally to the person or to an agent of the person; or
 - (b) by sending it by post to the person or agent at—
 - (i) the usual or last known business or residential address of the person or agent; or
 - (ii) an address nominated for the purpose by the person or agent; or
 - (c) by leaving it for the person or agent at—
 - (i) the usual or last known business or residential address of the person or agent; or
 - (ii) an address nominated for the purpose by the person or agent,
with a person on the premises who is apparently at least 16 years old and apparently employed or residing there; or
 - (d) by transmitting it by fax or email to a fax number or email address provided by the person or agent; or
 - (e) by sending or delivering it to the person or agent in a manner prescribed by regulation.
- (2) A reference in subsection (1) to any method of giving a notice or document to a person includes a reference to arranging for the notice or document to be given to that person by that method (for example, by delivery by courier).
- (3) In this section—

agent of a person means an agent, law practice or legal practitioner who has authority to accept service of legal process on behalf of the person.

59—Amendment of section 97—Regulations

- (1) Section 97(2)(c)—delete paragraph (c)
- (2) Section 97(3)—delete subsection (3) and substitute:
 - (3) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.
 - (3aa) A provision of a regulation made under subsection (3) may, if the regulation so provides, take effect from the commencement of the amendment or from a later day.
 - (3aab) To the extent to which a provision takes effect under subsection (3aa) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

60—Insertion of section 98

After section 97 insert:

98—Review of operation of Act in relation to barristers

- (1) The Minister must, within 6 months after the commencement of this section, cause a review to be undertaken into—
 - (a) the operation of this Act insofar as it affects legal practitioners who practise the profession of the law solely as barristers; and
 - (b) the operation of section 6, with particular reference to the role of a separate bar.
- (2) A report on the review must be submitted to the Minister within 3 months after the commencement of the review.
- (3) The Minister must, within 12 sitting days after receiving the report under this section, cause copies of the report to be laid before both Houses of Parliament.

61—Insertion of Schedules 1 to 4

After Part 8 insert:

Schedule 1—Incorporated legal practices

1—Nature of incorporated legal practice

- (1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction.

- (2) However, a corporation is not an incorporated legal practice if—
 - (a) the corporation does not receive any form of, or have any expectation of, a fee, gain or reward for the legal services it provides; or
 - (b) the only legal services that the corporation provides are any or all of the following services:
 - (i) in-house legal services, namely, legal services provided to the corporation concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party;
 - (ii) services that are not legally required to be provided by a legal practitioner and that are provided by an officer or employee who is not a legal practitioner; or
 - (c) this Schedule or the regulations so provide.
- (3) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to corporations that are not incorporated legal practices because of the operation of subclause (2).
- (4) Nothing in this Schedule affects or applies to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions.

2—Prohibition of non-legal services and businesses

An incorporated legal practice may not provide any service, or conduct any business, that does not involve engaging in legal practice.

Note—

Contravention of this clause is a ground for banning an incorporated legal practice—see clause 21.

3—Corporations eligible to be incorporated legal practice

- (1) Any corporation is, subject to this Schedule, eligible to be an incorporated legal practice.
- (2) This clause does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by any Act or law (whether of this jurisdiction, the Commonwealth or any other jurisdiction) under which it is incorporated or its affairs are regulated.
- (3) An incorporated legal practice is not itself required to hold a practising certificate.

4—Notice of intention to start providing legal services

- (1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the Supreme Court written notice, in the approved form and accompanied by the prescribed fee, of its intention to do so.
- (2) A corporation must not engage in legal practice in this jurisdiction if it is in default of this clause.
Maximum penalty: \$50 000.
- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subclause (1) is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has started to engage in legal practice.
- (4) The giving of a notice under subclause (3) does not affect a corporation's liability under subclause (1) or (2).
- (5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subclause (2).
- (6) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subclause (2).
- (7) This clause does not apply to—
 - (a) a corporation referred to in clause 1(2)(a) or (b); or
 - (b) a corporation that was a legal practitioner within the meaning of this Act immediately before the commencement of this clause.

5—Notice to be given by companies that were formerly legal practitioners

- (1) This clause applies to a corporation that was a legal practitioner within the meaning of this Act immediately before the commencement of clause 4.
- (2) A corporation to which this clause applies must, if it intends to continue to engage in legal practice in this jurisdiction, within 28 days following the commencement of clause 4, give the Supreme Court written notice, in the approved form and accompanied by the prescribed fee, of that intention.
- (3) A corporation to which this clause applies that engages in legal practice in this jurisdiction after the end of the 28 day period referred to in subclause (2) without giving a notice under that subclause is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has continued to engage in legal practice.

- (4) A corporation is not entitled to recover any amount for anything the corporation did while in default of this clause.
- (5) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did while in default of this clause.

6—Prohibition on representations that corporation is incorporated legal practice

- (1) A corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under clause 4.
Maximum penalty: \$50 000.
- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under clause 4.
Maximum penalty: \$50 000.
- (3) A reference in this clause to a person, being—
 - (a) a corporation—representing or advertising that the corporation is an incorporated legal practice; or
 - (b) a director, officer, employee or agent of a corporation—representing or advertising that the corporation is an incorporated legal practice,

includes a reference to the person doing anything that states or implies that the corporation is entitled to engage in legal practice.

7—Notice of termination of provision of legal services

- (1) A corporation must, within the prescribed period after it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice, give the Supreme Court a written notice, in the approved form, of that fact.
Maximum penalty: \$50 000.
- (2) The regulations may make provision for or with respect to determining whether and when a corporation ceases to engage in legal practice in this jurisdiction.

8—Incorporated legal practice must have legal practitioner director

- (1) An incorporated legal practice is required to have at least 1 legal practitioner director.
- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes of this Act only, responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice.

- (3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice—
 - (a) in accordance with the professional obligations of legal practitioners and other obligations imposed by or under this Act, the regulations or legal profession rules; and
 - (b) so that those obligations of legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.
- (4) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of legal practitioners or other obligations imposed by or under this Act, the director must take all reasonable action available to the director to ensure that—
 - (a) the breaches do not occur; and
 - (b) appropriate remedial action is taken in respect of breaches that do occur.
- (5) Nothing in this Schedule derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (6) The reference in subclause (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director (but this subclause does not affect the meaning of the expression “legal practitioner director” in other provisions of this Act).

9—Obligations of legal practitioner director relating to misconduct

- (1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director:
 - (a) unsatisfactory professional conduct or professional misconduct of a legal practitioner employed by the incorporated legal practice;
 - (b) conduct of any other director (not being a legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the practice;
 - (c) the unsuitability of any other director (not being a legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.

- (2) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subclause (1) if the director establishes that he or she took all reasonable steps to ensure that—
 - (a) legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subclause (1)(a); or
 - (b) directors (not being legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subclause (1)(b); or
 - (c) unsuitable directors (not being legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subclause (1)(c),as the case requires.
- (3) A legal practitioner director of an incorporated legal practice must ensure that all reasonable action available to the legal practitioner director is taken to deal with any unsatisfactory professional conduct or professional misconduct of a legal practitioner employed by the practice.

10—Incorporated legal practice without legal practitioner director

- (1) An incorporated legal practice contravenes this clause if it does not have any legal practitioner directors for a period exceeding 7 days.
Maximum penalty: \$50 000.
- (2) If an incorporated legal practice ceases to have any legal practitioner directors, the incorporated legal practice must notify the Supreme Court as soon as possible.
Maximum penalty: \$50 000.
- (3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this clause.
Maximum penalty: \$50 000.
- (4) An incorporated legal practice that contravenes subclause (1) is taken to be in default of director requirements under this clause for the period from the end of the period of 7 days until—
 - (a) it has at least 1 legal practitioner director; or
 - (b) a person is appointed under this clause or a corresponding law in relation to the practice.

- (5) The Supreme Court may, if it thinks it appropriate, appoint a legal practitioner who is an employee of the incorporated legal practice or another person nominated by the Court, in the absence of a legal practitioner director, to exercise or perform the functions or duties conferred or imposed on a legal practitioner director under this Schedule.
- (6) A legal practitioner is not eligible to be appointed under this clause unless the practitioner holds an unrestricted practising certificate.
- (7) The appointment under this clause of a person to exercise or perform functions or duties of a legal practitioner director does not, for any other purpose, confer or impose on the person any of the other functions or duties of a director of the incorporated legal practice.
- (8) An incorporated legal practice does not contravene subclause (1) during any period during which a person holds an appointment under this clause in relation to the practice.
- (9) A reference in this clause to a legal practitioner director does not include a reference to a person who is not validly appointed as a director (but this subclause does not affect the meaning of the expression “legal practitioner director” in other provisions of this Act).

11—Obligations and privileges of practitioners who are officers or employees

- (1) A legal practitioner who provides legal services on behalf of an incorporated legal practice in the capacity of an officer or employee of the practice—
 - (a) is not excused from compliance with professional obligations as a legal practitioner, or any obligations as a legal practitioner under any law; and
 - (b) does not lose the professional privileges of a legal practitioner.
- (2) For the purposes only of subclause (1), the professional obligations and professional privileges of a practitioner apply as if—
 - (a) where there are 2 or more legal practitioner directors of an incorporated legal practice—the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; or
 - (b) where there is only 1 legal practitioner director of an incorporated legal practice—the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.

- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because a legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by a legal practitioner employed by the practice.

12—Professional indemnity insurance

- (1) If a scheme under section 52 is in force requiring incorporated legal practices, or specified classes of incorporated legal practices, to be insured against liabilities that may arise in the course of, or in relation to, legal practice, an incorporated legal practice, or the specified classes of incorporated legal practices, must have the insurance required by the scheme.

Note—

See also section 52AA

- (2) If the obligation referred in subclause (1) is not complied with, the practising certificate held by each legal practitioner director of the incorporated legal practice will be taken to be suspended until the legal practice obtains such insurance.
- (3) Subclause (1) does not affect an obligation of a legal practitioner, who is an officer or employee of an incorporated legal practice, to comply with the provisions of this Act relating to insurance.

13—Conflicts of interest

For the purposes of the application of any law (including the common law) or legal profession rules relating to conflicts of interest to the conduct of a legal practitioner who is—

(a) a legal practitioner director of an incorporated legal practice;
or

(b) an officer or employee of an incorporated legal practice,
the interests of the incorporated legal practice or any related body corporate are also taken to be those of the practitioner (in addition to any interests that the practitioner has apart from this clause).

14—Application of legal profession rules

- (1) The legal profession rules, so far as they apply to legal practitioners, also apply to legal practitioners who are officers or employees of an incorporated legal practice, unless the rules otherwise provide.
- (2) Nothing in this clause prevents legal profession rules prescribing additional duties and obligations in connection with the conduct of an incorporated legal practice.

15—Requirements relating to advertising

- (1) Any restriction imposed by or under this or any other Act, the regulations or the legal profession rules in connection with advertising by legal practitioners applies to advertising by an incorporated legal practice with respect to the provision of legal services.
- (2) If a restriction referred to in subclause (1) is limited to a particular branch of the legal profession or for persons who practise in a particular style of legal practice, the restriction applies only to the extent that the incorporated legal practice carries on the business in that branch of the legal profession or in that style of legal practice.
- (3) Any advertisement of the kind referred to in this clause is, for the purposes of disciplinary proceedings taken against a legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.
- (4) This clause does not apply if the provision by which the restriction is imposed expressly excludes its application to incorporated legal practices.

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

- (1) This clause 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 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;
 - (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by a legal practitioner who is an 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 clause) 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.

17—Sharing of receipts, revenue or other income

- (1) Nothing in this Act, the regulations or the legal profession rules prevents a legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.
- (2) This clause does not extend to the sharing of receipts, revenue or other income in contravention of clause 18.

18—Disqualified persons

- (1) An incorporated legal practice is guilty of an offence if a person who is a disqualified person—
 - (a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate; or
 - (b) is a partner of the incorporated legal practice; or
 - (c) shares the receipts, revenue or other income arising from the provision of legal services by the incorporated legal practice; or
 - (d) is engaged or paid in connection with the provision of legal services by the incorporated legal practice.

Maximum penalty: \$50 000.

- (2) The failure of a legal practitioner director of an incorporated legal practice to ensure that the practice complies with subclause (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) On application, the Tribunal may authorise an incorporated legal practice to be a party to an agreement or arrangement of a kind referred to in subclause (1), subject to conditions (if any) specified by the Tribunal.
- (4) An application for such an authorisation may be made to the Tribunal by an incorporated legal practice.
- (5) The Tribunal may grant such an authorisation in its discretion but only if satisfied—
 - (a) that the disqualified person will not practise the profession of the law; and
 - (b) that granting the authorisation on the specified conditions (if any) is not likely to create a risk to the public.
- (6) For the purposes of a hearing of an application under this clause, the Tribunal is constituted of a panel of 3 of its members chosen by the presiding member (1 of whom may be the presiding member).

- (7) The Tribunal must give to the Commissioner, and to the incorporated legal practice on whose application a hearing is to be held, not less than 7 days written notice of the time and place at which it intends to conduct the hearing, and must afford the Commissioner, and any such person, a reasonable opportunity to call and give evidence, to examine witnesses, and to make submissions to the Tribunal.
- (8) Subject to this clause, sections 80, 84, 84B, 85, 86 and 88 apply to a hearing of an application under this clause in the same way as to proceedings before the Tribunal under Part 6.
- (9) If an application is granted by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the authorisation has been instituted, or is intended, it may suspend the operation of the authorisation until the determination of the appeal.
- (10) If the Tribunal has suspended the operation of an authorisation under subclause (9), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.
- (11) An incorporated legal practice must comply with any conditions imposed on an authorisation by the Tribunal or the Supreme Court.
Maximum penalty: \$50 000.
- (12) An incorporated legal practice is not guilty of an offence against this clause in relation to an agreement or arrangement to which the legal practice is a party at the commencement of this clause if—
 - (a) the agreement or arrangement is authorised under this clause on an application made within 12 months after that commencement; and
 - (b) the incorporated legal practice complies with any conditions imposed on the authorisation.
- (13) In this clause—

disqualified person means any of the following persons whether the thing that has happened to the person happened before or after the commencement of this definition:

 - (a) a person whose name has (whether or not at his or her request) been removed from the roll of legal practitioners maintained under this Act, or the roll kept in a participating State that corresponds to the roll maintained under this Act, and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
 - (b) a person whose practising certificate has been cancelled or suspended under this Act or a corresponding law and who, because of the cancellation, is not a legal practitioner or in relation to whom that suspension has not finished;

- (c) a person who has been refused a renewal of a practising certificate under this Act or a corresponding law, and to whom a practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting a legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (f) a person who is the subject of an order under this Act or the provisions of a corresponding law disqualifying the person from being involved in the management of an incorporated legal practice or a firm that provides legal services (however described).

19—Audit of incorporated legal practice

- (1) The Society may conduct an audit of—
 - (a) the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of this Act, the regulations or the legal profession rules, so far as they relate specifically to incorporated legal practices; and
 - (b) the management of the provision of legal services by the incorporated legal practice (including the supervision of officers and employees providing the services).

Note—

Clause 8 requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (2) The Society may, in writing, appoint a suitably qualified person to conduct an audit under this clause.
- (3) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit.
- (4) An audit may be conducted whether or not a complaint has been made against a legal practitioner with respect to the provision of legal services by the incorporated legal practice.
- (5) A report of an audit—
 - (a) is to be provided to the incorporated legal practice concerned; and
 - (b) may be provided by the Society to the Regulator or a corresponding authority; and

- (c) may be provided by the Regulator to a corresponding authority; and
- (d) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the grant, amendment, suspension or cancellation of practising certificates.

20—Application of Schedule 4 (Investigatory powers)

The investigatory powers set out in Schedule 4 apply to an audit under this Schedule.

21—Banning of incorporated legal practices

- (1) The Supreme Court may, on the application of the Regulator, the Attorney-General or the Society, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the Court considers appropriate if satisfied that—
 - (a) a ground for disqualifying the corporation under this clause has been established; and
 - (b) the disqualification is justified.
- (2) An order under this clause may, if the Supreme Court thinks it appropriate, be made—
 - (a) subject to conditions as to the conduct of the incorporated legal 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 incorporated legal practice.
- (3) Action may be taken against an incorporated legal practice on any of the following grounds:
 - (a) that a legal practitioner director or a legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;
 - (b) that the Society is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;
 - (c) that the incorporated legal practice (or a related body corporate) has contravened clause 2;
 - (d) that the incorporated legal practice has contravened clause 18;

- (e) that a person who is an officer of the incorporated legal practice, and who is acting in the management of the incorporated legal practice, is the subject of an order under this Act or the provisions of a corresponding law disqualifying the person from being involved in the management of an incorporated legal practice or a firm that provides legal services (however described).
- (4) If a corporation is disqualified under this clause, the applicant for the order must, as soon as practicable, notify the Regulator of every other jurisdiction.
- (5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Regulator may determine that the corporation is taken to be disqualified from providing legal services in this jurisdiction for the same period, but nothing in this subclause prevents the Regulator, the Attorney-General or the Society from instead applying for an order under this clause.
- (6) A corporation that provides legal services in contravention of a disqualification under this clause is guilty of an offence.
Maximum penalty: \$50 000.
- (7) A corporation that is disqualified under this clause ceases to be an incorporated legal practice.
- (8) Conduct of a legal practitioner who provides legal services on behalf of a corporation in the capacity of an officer or employee of the corporation is capable of constituting unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the corporation is disqualified under this clause.
- (9) The regulations may make provision for or with respect to the publication and notification of orders made under this clause, including notification of appropriate authorities of other jurisdictions.

22—Disqualification from managing incorporated legal practice

- (1) The Supreme Court may, on the application of the Regulator, the Attorney-General or the Society, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate if satisfied that—
 - (a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the *Corporations Act 2001* of the Commonwealth from managing corporations; and
 - (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of a person subject to a disqualification order under this clause, revoke the order.

- (3) A disqualification order made under this clause has effect for the purposes only of this Act and does not affect the application or operation of the *Corporations Act 2001* of the Commonwealth.
- (4) The regulations may make provision for or with respect to the publication and notification of orders made under this clause.
- (5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this clause is taken to be disqualified from managing a corporation under this clause.

23—Disclosure of information to Australian Securities and Investments Commission

- (1) This clause applies if the Regulator, the Attorney-General or the Society, in connection with exercising powers or performing functions under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.
- (2) The Regulator, the Attorney-General or the Society may disclose to the Australian Securities and Investments Commission information concerning the corporation that is relevant to the Commission's functions.
- (3) Information may be provided under subclause (2) despite any law relating to secrecy or confidentiality, including any provisions of this Act.

24—External administration proceedings under *Corporations Act 2001*

- (1) This clause applies to proceedings in any court under Chapter 5 (External administration) of the *Corporations Act 2001* of the Commonwealth—
 - (a) relating to a corporation that is an externally-administered body corporate under that Act; or
 - (b) relating to a corporation becoming an externally-administered body corporate under that Act, being a corporation that is or was an incorporated legal practice.
- (2) The Regulator, the Attorney-General and the Society 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.
- (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 practice.
- (4) Subclause (3) does not authorise the court to make any decision that is contrary to a specific provision of the *Corporations Act 2001* of the Commonwealth.

- (5) The provisions of subclauses (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

Note—

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

25—External administration proceedings under other legislation

- (1) This clause applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which clause 24 applies.
- (2) The Regulator, the Attorney-General and the Society 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.
- (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 practice.
- (4) Subclause (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applicable to the incorporated legal practice.

26—Cooperation between courts

Courts of this jurisdiction may make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this Schedule.

27—Relationship of Act to constitution of incorporated legal practice

The provisions of this Act or the regulations that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.

28—Relationship of Act to legislation establishing incorporated legal practice

- (1) This clause applies to a corporation that is established by or under a law (whether or not of this jurisdiction), is an incorporated legal practice, but is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

- (2) The provisions of this Act or the regulations that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over provisions of the legislation by or under which the corporation is established or regulated that are specified or described in the regulations.

29—Relationship of Act to Corporations legislation

- (1) The regulations may declare any provision of this Act or the regulations that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth.
- (2) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth 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 clause—
matter includes act, omission, body, person or thing.

30—Undue influence

A person (whether or not an officer or an employee of an incorporated legal practice) must not cause or induce or attempt to cause or induce—

- (a) a legal practitioner director; or
- (b) another legal practitioner who provides legal services on behalf of an incorporated legal practice,

to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as a legal practitioner.

Maximum penalty: \$250 000 or imprisonment for 2 years.

31—Obligations of individual practitioners not affected

Except as provided by this Schedule, nothing in this Schedule affects any obligation imposed on a legal practitioner director or a legal practitioner who is an employee of an incorporated legal practice under this or any other Act, the regulations or the legal profession rules in his or her capacity as a legal practitioner.

32—Regulations

- (1) The regulations may (without limitation)—
 - (a) make provision for or with respect to the legal services provided by incorporated legal practices;
 - (b) prescribe requirements to be observed by incorporated legal practices in this jurisdiction.
- (2) A regulation prevails over any inconsistent provision of the legal profession rules.
- (3) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director, or by a legal practitioner responsible for the breach, or both.

Schedule 2—Trust money and trust accounts

Part 1—Preliminary

1—Definitions

- (1) In this Schedule—

approved ADI means an ADI approved under clause 41 by the Society;

barrister means a legal practitioner who practises the profession of the law solely as a barrister;

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

Note—

See clause 15(6), which prevents pooling of controlled money.

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

deposit record includes a deposit slip or duplicate deposit slip;

external examination means an external examination under Part 3 Division 2 of a law practice's trust records;

external examiner means a person holding an appointment as an external examiner under Part 3 Division 2;

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

investigation means an investigation under Part 3 Division 1 of the affairs of a law practice;

investigator means a person holding an appointment as an investigator under Part 3 Division 1;

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

power includes authority;

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 practice;

trust account means an account maintained by a law practice with an approved ADI to hold trust money;

trust money means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice to which the practice is not wholly entitled, and includes—

- (a) money received by the practice on account of legal costs in advance of providing the services (other than money paid to the practice as a retainer); and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and
- (d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person,

but does not include money received by a practitioner in the course of mortgage financing;

trust records includes the following documents:

- (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 regulations;
- (l) registers required to be kept under the regulations;

- (m) monthly statements required to be kept under the regulations;
 - (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 Act or the regulations;
 - (p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.
- (2) A reference in this Schedule 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 Schedule 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) 1 or more associates of the practice;
 - (ii) the person, or 1 or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

2—Money granted or provided under contract to community legal centre

Money granted, or provided under contract, to a community legal centre to enable the centre to deliver legal services to the community or a section of the community is not trust money or controlled money for the purposes of this Act.

3—Determinations about status of money

- (1) This clause applies to money received by a law practice if the Society considers that there is doubt or a dispute as to whether the money is trust money.
- (2) The Society may determine that the money is or is not trust money.
- (3) The Society may revoke or modify a determination under this clause.
- (4) While a determination under this clause is in force that money is trust money, the money is taken to be trust money for the purposes of this Act.

- (5) While a determination under this clause is in force that money is not trust money, the money is taken not to be trust money for the purposes of this Act.
- (6) This clause has effect subject to a decision of a court made in relation to the money concerned.

4—Application of Schedule to law practices and trust money

- (1) This Schedule applies to the following law practices in respect of trust money received by them in this jurisdiction:
 - (a) a law practice that has an office in this jurisdiction, whether or not the practice has an office in another jurisdiction;
 - (b) a law practice that does not have an office in any jurisdiction at all.

Note—

It is intended that a law practice that receives trust money in this jurisdiction, that does not have an office in this jurisdiction, but that has an office in another jurisdiction, must deal with the money in accordance with the corresponding law of the other jurisdiction.

- (2) This Schedule applies to the following law practices in respect of trust money received by them in another jurisdiction:
 - (a) a law practice that has an office in this jurisdiction and in no other jurisdiction;
 - (b) a law practice that has an office in this jurisdiction and in 1 or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with in accordance with the corresponding law of another jurisdiction.
- (3) However, this Schedule does not apply to—
 - (a) prescribed law practices or classes of law practices; or
 - (b) prescribed law practices, or classes of law practices, in prescribed circumstances; or
 - (c) prescribed kinds of trust money; or
 - (d) prescribed kinds of trust money in prescribed circumstances.
- (4) A reference in this clause 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.

Note—

The requirements of this Schedule will not apply in relation to a law practice that is a legal practitioner practising solely in the manner of a barrister because a legal practitioner may not, in the course of practising as a barrister, receive trust money—see clause 10.

5—Protocols for determining where trust money is received

- (1) The Society may enter into arrangements (referred to in this Schedule as *protocols*) with corresponding authorities about any or all of the following:
 - (a) determining the jurisdiction where a law practice receives trust money;
 - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.
- (2) For the purposes of this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the protocols.
- (3) The Society may enter into arrangements that amend, revoke or replace a protocol.

6—When money is received

- (1) For the purposes of this Act, a law practice receives money when—
 - (a) the practice obtains possession or control of it directly; or
 - (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
 - (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of another person.
- (2) For the purposes of this Act, a law practice or associate is taken to have received money if the money is available to the 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.

7—Discharge by legal practitioner associate of obligations of law practice

- (1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money:
 - (a) the establishment of a trust account;
 - (b) the maintenance of a trust account;
 - (c) the payment of trust money into and out of a trust account and other dealings with trust money;
 - (d) the maintenance of trust records;
 - (e) engaging an external examiner to examine trust records;

- (f) the payment of an amount into an ADI account as referred to in section 53;
 - (g) the obtaining of a Supreme Court approval in relation to trust money or a trust account;
 - (h) an action of a kind prescribed by the regulations.
- (2) If the legal practitioner associate maintains a trust account in relation to trust money received by the law practice, the provisions of this Schedule and the regulations made for the purposes of this Schedule apply to the associate in the same way as they apply to a law practice.
- (3) Subclause (1) does not apply to the extent that the associate is prevented by the regulations from taking any action referred to in that subclause.

8—Liability of principals of law practice

- (1) A provision of this Schedule or the regulations made for the purposes of this Schedule expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.
- (2) References in this Schedule and the regulations made for the purposes of this Schedule to a law practice include references to the principals of the law practice.

9—Former practices, principals and associates

- (1) This Schedule 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.
- (2) For the purposes of this Schedule, a law practice that is a sole practitioner does not cease to be a law practice solely because of the cancellation or suspension of the practitioner's practising certificate.

10—Barristers not to receive trust money

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

Part 2—Trust accounts and trust money

11—Maintenance of general trust account

- (1) A law practice that receives trust money to which this Schedule applies must maintain a general trust account in this jurisdiction.
Maximum penalty: \$50 000.

- (2) A law practice that is required to maintain a general trust account in this jurisdiction must establish and maintain the account in accordance with the regulations.
Maximum penalty: \$50 000.
- (3) Subclause (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following:
 - (a) controlled money;
 - (b) transit money received in a form other than cash.
- (4) Subject to any requirements of the regulations, a requirement of this clause for a law practice to maintain, or establish and maintain, a general trust account in this jurisdiction does not prevent the practice from maintaining, or establishing and maintaining, more than 1 general trust account in this jurisdiction, whether during the same period or during different periods.
- (5) Without limiting the other provisions of this clause, the regulations may provide that a law practice must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

12—Certain trust money to be deposited in general trust account

- (1) Subject to clause 19, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—
 - (a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
 - (b) the money is controlled money; or
 - (c) the money is transit money; or
 - (d) 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 penalty: \$50 000.

- (2) Subject to clause 19, a law practice that has received money that is the subject of a written direction mentioned in subclause (1)(a) must deal with the money in accordance with the direction—
 - (a) within the period (if any) specified in the direction; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Maximum penalty: \$50 000.

- (3) The law practice must keep a written direction mentioned in subclause (1)(a) for the period prescribed by the regulations.
Maximum penalty: \$50 000.
- (4) A person is an *appropriate person* for the purposes of this clause if the person is legally entitled to give the law practice directions in respect of dealings with the trust money.

13—Holding, disbursing and accounting for trust money

- (1) A law practice must—
 - (a) hold trust money deposited in a general trust account of the practice 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 penalty: \$50 000.
- (2) Subclause (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.
- (3) The law practice must account for the trust money as required by the regulations.
Maximum penalty: \$50 000.

14—Manner of withdrawal of trust money from general trust account

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.
Maximum penalty: \$50 000.
- (2) Without limiting subclause (1), the following are specifically prohibited:
 - (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This clause has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the trust money.

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 penalty: \$50 000.

- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subclause (1) exclusively for the person on whose behalf it was received.
Maximum penalty: \$50 000.
- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subclause (1) must not disburse the money except in accordance with—
 - (a) the written direction mentioned in that subclause; or
 - (b) a later written direction given by or on behalf of the person on whose behalf the money was received.Maximum penalty: \$50 000.
- (4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the regulations.
Maximum penalty: \$50 000.
- (5) The law practice must keep a written direction mentioned in this clause for the period prescribed by the regulations.
Maximum penalty: \$50 000.
- (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 subclause (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the regulations otherwise permit.
Maximum penalty: \$50 000.
- (7) Subclause (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

16—Manner of withdrawal of controlled money from controlled money account

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
Maximum penalty: \$50 000.
- (2) Without limiting subclause (1), the following are specifically prohibited:
 - (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.

- (4) This clause has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.

17—Transit money

- (1) Subject to clause 19, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—
- (a) within the period (if any) specified in the instructions; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Maximum penalty: \$50 000.

- (2) The law practice must account for the money as required by the regulations.

Maximum penalty: \$50 000.

18—Trust money subject to specific powers

- (1) Subject to clause 19, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Maximum penalty: \$50 000.

- (2) The law practice must account for the money in the way prescribed by the regulations.

Maximum penalty: \$2 500.

19—Trust money received in form of cash

- (1) **General trust money**

A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.

Maximum penalty: \$50 000.

- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—

- (a) the money must nevertheless be deposited in the general trust account of the practice in accordance with subclause (1); and
- (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

(3) **Controlled money**

Controlled money received in the form of cash must be deposited in a controlled money account in accordance with clause 15.

(4) **Transit money**

A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.

Maximum penalty: \$50 000.

(5) **Trust money subject of a power**

A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.

Maximum penalty: \$50 000.

(6) **Paramount operation of this clause**

This clause has effect despite anything to the contrary in any relevant direction, instruction or power.

(7) **Definitions**

In this clause—

appropriate person, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in respect of dealings with the money;

general trust money means trust money, other than—

- (a) controlled money; and
- (b) transit money; and
- (c) money that is the subject of a power.

20—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 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 practice or any of its associates.
- (3) This clause does not apply to money to which a law practice or associate is entitled.

21—Intermixing money

- (1) A law practice must not, otherwise than as permitted by subclause (2), mix trust money with other money.
Maximum penalty: \$50 000.
- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the Society and in accordance with any conditions imposed by the Society in relation to the authorisation.

22—Dealing with trust money—legal costs and unclaimed money

- (1) A law practice may do any of the following in relation to trust money held in a general trust account or controlled money account of the practice for a person:
 - (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
 - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are complied with;
 - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (2) Subclause (1) applies despite any other provision of this Schedule but has effect subject to Schedule 3.

23—Deficiency in trust account

- (1) A legal practitioner is guilty of an offence if he or she, without reasonable excuse, causes—
 - (a) a deficiency in any trust account or trust ledger account; or
 - (b) a failure to pay or deliver any trust money.Maximum penalty: \$50 000.
- (2) A reference in subclause (1) to an account includes a reference to an account of the practitioner or of the law practice of which the practitioner is an associate.
- (3) In this clause—

cause includes be responsible for;

deficiency in a trust account or trust ledger includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account.

24—Reporting certain irregularities and suspected irregularities

- (1) As soon as practicable after a legal practitioner associate of a law practice becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, the associate must give written notice of the irregularity to—
 - (a) the Society; and
 - (b) if a corresponding authority is responsible for the regulation of the accounts concerned—the corresponding authority.

Maximum penalty: \$50 000.

- (2) If a 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—
 - (a) the Society; and
 - (b) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money concerned—the corresponding authority.

Maximum penalty: \$50 000.

- (3) The validity of a requirement imposed on a legal practitioner under subclause (1) or (2) is not affected, and the practitioner is not excused from complying with subclause (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.
- (4) A legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subclause (1) or (2).

25—Keeping trust records

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

Maximum penalty: \$50 000.

- (2) The law practice must keep the trust records—
 - (a) in accordance with the regulations; 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 determined in accordance with the regulations.

Maximum penalty: \$50 000.

26—False names

- (1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.
Maximum penalty: \$50 000.
- (2) If a person on whose behalf trust money is received by a law practice is commonly known by more than 1 name, the practice must ensure that the practice's trust records record all names by which the person is known.
Maximum penalty: \$50 000.

27—Interest payable if law practice fails to deposit trust money

- (1) A law practice that fails to deposit trust money in a trust account as required by this Part is liable to pay the Society interest on the amount of the trust money at the prescribed rate for the period of the default.
- (2) The Society may, for proper reasons, remit interest payable under subclause (1) wholly or in part.
- (3) Any interest received or recovered by the Society under subclause (1) must be paid into the statutory interest account.

Part 3—Investigations and external examinations

Division 1—Investigations

28—Appointment of investigators

- (1) The Society 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.

29—Investigations

- (1) The instrument of appointment may authorise the investigator to conduct either or both of the following:
 - (a) routine investigations on a regular or other basis;
 - (b) investigations in relation to particular allegations or suspicions regarding trust money, trust accounts or any other aspect of the affairs of the law practice.
- (2) The principal purposes of an investigation are to ascertain whether the law practice has complied with or is complying with the requirements of this Schedule and to detect and prevent fraud or defalcation, but this subclause does not limit the scope of the investigation or the powers of the investigator.

30—Application of Schedule 4

Schedule 4 applies to an investigation under this Division.

31—Investigator's report

- (1) As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the Society.
- (2) The investigator must not disclose information in the report or acquired in carrying out the investigation except—
 - (a) to the practice that or person who is a subject of the investigation or report; or
 - (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
 - (c) as provided in Schedule 4 Part 5 clause 19.

Maximum penalty: \$50 000.

32—When costs of investigation are debt

- (1) If—
 - (a) an investigator states in his or her report of an investigation that there is evidence that a breach of this Act or the regulations has been committed or evidence that a fiduciary or professional default has occurred in relation to the law practice whose affairs are under investigation; and
 - (b) the Society is satisfied that the breach or default is wilful or of a substantial nature,

the Society may decide that the whole or part of the costs of carrying out the investigation is payable to the Society and may specify the amount payable.

- (2) The amount specified by the Society is a debt payable to the Society by the law practice whose affairs are under investigation.
- (3) The Society must, before seeking to recover the amount payable, give the law practice written notice of the Society's decision, the reasons for the decision and the amount specified as being payable.

Division 2—External examinations

33—Designation of external examiners

- (1) The Society may, in writing, designate persons (referred to in this Division as *designated persons*) as being eligible to be appointed as external examiners.
- (2) Only designated persons may be appointed as external examiners.
- (3) An employee or agent of the Society may be a designated person.
- (4) The Society may revoke a person's designation under this clause.

34—Trust records to be externally examined

- (1) A law practice must, as soon as practicable after the end of each financial year, have its trust records for that year externally examined by an external examiner appointed in accordance with the regulations.
Maximum penalty: \$50 000.
- (2) The Society may appoint an external examiner to examine a law practice's trust records if the Society is not satisfied—
 - (a) that the practice has had its trust records externally examined as required by this clause; or
 - (b) that an external examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of clause 49, this clause has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this clause.

35—Examination of affairs in connection with examination of trust records

- (1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for the purposes of and in connection with an examination of the trust records.
- (2) A reference in this Division and Schedule 4 to *trust records* includes a reference to the affairs of a law practice that may be examined under this clause for the purposes of and in connection with an examination of the practice's trust records.

36—Designation and appointment of associates as external examiners

- (1) The Society may designate an associate of a law practice under this Division only if the Society is satisfied that it is appropriate to do so.
- (2) However, an associate of a law practice cannot be appointed as an external examiner under this Division to examine the practice's trust records.

37—Final examination of trust records

- (1) This clause applies if a law practice—
 - (a) ceases to be authorised to receive trust money; or
 - (b) ceases to engage in legal practice in this jurisdiction.
- (2) The law practice must appoint an external examiner to examine the practice's trust records—
 - (a) in respect of the period since an external examination was last conducted; and

- (b) in respect of each period thereafter, comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

Maximum penalty: \$50 000.

- (3) The law practice must lodge with the Society—
 - (a) a report of each examination under subclause (2) within 60 days after the end of the period to which the examination relates; and
 - (b) a statutory declaration in a form approved by the Attorney-General or the Society within 60 days of ceasing to hold trust money.

Maximum penalty: \$50 000.

- (4) If a legal practitioner who is a principal or an associate of a law practice dies, the practitioner's legal personal representative must assist the law practice to comply with this clause as if the representative were the practitioner.
- (5) Nothing in this clause affects any other requirements under this Schedule.

38—Carrying out examination

- (1) Schedule 4 applies to an external examination under this Division.
- (2) Subject to Schedule 4, an external examination of trust records is to be carried out in accordance with the regulations.
- (3) Without limiting subclause (2), the regulations may provide for the following:
 - (a) the standards to be adopted and the procedures to be followed by external examiners;
 - (b) the form and content of an external examiner's report on an examination.

39—External examiner's report

- (1) Subject to subclause (2), as soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the Society.
- (2) A written report of an external examination completed pursuant to clause 34(1) must, if reasonably practicable, be given by the external examiner to the Society on or before 31 October following the financial year to which the report relates.
- (3) The examiner must not disclose information in the report or acquired in carrying out the examination, unless permitted to do so under subclause (4) or under Schedule 4 Part 5 clause 19.

Maximum penalty: \$50 000.

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

40—Law practice liable for costs of examination

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.
- (2) If the Society appointed the external examiner to carry out the examination, the Society may specify the amount payable as the costs of the examination, and the specified amount is a debt payable to it by the law practice.
- (3) The Society must, before seeking to recover the amount payable, give the law practice written notice of the Society’s decision, the reasons for the decision and the amount specified as being payable.

Part 4—Provisions relating to ADIs

41—Approval of ADIs

- (1) Subject to subclause (2), the Society may approve ADIs at which trust accounts to hold trust money may be maintained.
- (2) The Society may not approve an ADI unless the ADI is prepared to pay interest on trust accounts at a rate equal to or above the rate determined by the Society.
- (3) The Society may impose conditions, of the kinds prescribed by the regulations, on and under this clause, when the approval is given or during the currency of the approval, and may amend or revoke any conditions imposed.
- (4) The Society may revoke an approval given under this clause.

42—ADI not subject to certain obligations and liabilities

- (1) 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 (whether by way of set-off counterclaim, charge or otherwise) against money in the account.
- (2) Subclause (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

43—Reports, records and information

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the Society as soon as practicable after becoming aware of the deficiency.
Maximum penalty: \$50 000.
- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the Society as soon as practicable after forming the suspicion.
Maximum penalty: \$50 000.
- (3) An ADI must furnish to the Society reports about trust accounts in accordance with the regulations.
Maximum penalty: \$50 000.
- (4) An ADI at which a trust account is maintained must without charge—
 - (a) produce for inspection or copying by an investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; and
 - (b) provide the investigator or external examiner with full details of any transactions relating to the trust account or trust money,

on demand by the investigator or the external examiner and on production to the ADI of evidence of the appointment of the investigator or the external examiner in relation to the law practice concerned.
Maximum penalty: \$50 000.
- (5) Subclauses (1) to (4) apply despite any rule of legislation or duty of confidence to the contrary.
- (6) 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—
 - (a) reporting a deficiency in accordance with subclause (1); or
 - (b) making or furnishing a report in accordance with subclause (2) or (3); or
 - (c) producing records or providing details in accordance with subclause (4).

Part 5—Miscellaneous

44—Restrictions on receipt of trust money

- (1) A law practice (other than an incorporated legal practice or a community legal centre) must not receive trust money unless each principal holds a practising certificate that does not prohibit the receipt of trust money.

Maximum penalty: \$50 000.

- (2) An incorporated legal practice must not receive trust money unless—

- (a) at least 1 legal practitioner director of the practice holds a practising certificate that does not prohibit the receipt of trust money; or
- (b) a person is holding an appointment under Schedule 1 clause 10 in relation to the practice and the person holds a practising certificate that does not prohibit the receipt of trust money; or
- (c) the money is received during any period during which the practice—

- (i) does not have any legal practitioner directors; and
- (ii) is not in default of director requirements under Schedule 1 clause 10,

so long as there was, immediately before the start of that period, at least 1 legal practitioner director of the practice who held a practising certificate that did not prohibit the receipt of trust money.

Maximum penalty: \$50 000.

45—Protection from liability

- (1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Schedule, subject the person to any action, liability, claim or demand.

- (2) In this clause—

protected person means—

- (a) the Society; or
- (b) the Council; or
- (c) an officer, employee or agent of the Society; or
- (d) an investigator; or
- (e) an external examiner.

46—Application of Schedule to incorporated legal practices

The regulations may provide that specified provisions of this Schedule, and any other provisions of this Act, the regulations or the legal profession rules relating to trust money and trust accounts, do not apply to incorporated legal practices or apply to them with specified modifications.

47—Disclosure to clients—money not received as trust money

- (1) In this clause—

non-trust money means money that is not trust money for the purposes of this Act because of a determination under clause 3.

- (2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this clause and the regulations, notify the person who entrusted the money to the practice that—
- (a) the money is not treated as trust money for the purposes of this Act and is not subject to any supervision, investigation or external examination requirements of this Act; and
 - (b) a claim against the Fidelity Fund under this Act cannot be made in respect of the money.

Maximum penalty: \$50 000.

- (3) The notification must be given, in writing, to the person at the time—
- (a) the money is entrusted to the law practice, if the money is non-trust money when it is entrusted to the practice; or
 - (b) the money becomes non-trust money, if the money was trust money when it was entrusted to the practice.
- (4) The regulations may make provision for or with respect to the form and manner in which notification required by this clause is to be given and the contents of the notification.

48—Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate

- (1) A law practice must in accordance with the regulations notify the Society of the details required by the regulations 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 practice or legal practitioner associate.

Maximum penalty: \$50 000.

- (2) Subclause (1) applies whether or not the money is trust money and whether or not clause 3 applies to the money.

49—Regulations

The regulations may make provision for or with respect to any matter to which this Schedule relates, including for or with respect to—

- (a) the establishment, maintenance and closure of general trust accounts and controlled money accounts; and
- (b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money; and
- (c) without limiting paragraph (a) or (b)—
 - (i) the keeping and reconciliation of trust records; and
 - (ii) the establishment and keeping of trust ledger accounts; and
 - (iii) the establishment and keeping of records about controlled money and transit money; and
 - (iv) the establishment and keeping of registers of powers and estates where trust money is involved; and
 - (v) the recording of information about the investment of trust money; and
 - (vi) the furnishing of statements regarding trust money; and
- (d) the notification to the Society of information relating directly or indirectly to matters to which this Schedule relates, including information about—
 - (i) trust accounts, trust money and trust records; and
 - (ii) the proposed or actual termination of a law practice that holds trust money; and
 - (iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money; and
 - (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money; and
- (e) the creation and exercise of liens over trust money; and
- (f) providing exemptions, or providing for the giving of exemptions, from all or any specified requirements of this Schedule.

Schedule 3—Costs disclosure and adjudication

Part 1—Preliminary

1—Interpretation

In this Schedule—

adjudication means an adjudication of legal costs under Part 7;

barrister means a legal practitioner who practises the profession of the law solely as a barrister;

business day means a day other than a Saturday, a Sunday or a public holiday;

client includes a person to whom or for whom legal services are provided;

conditional costs agreement means a costs agreement that provides 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, as referred to in clause 25, but does not include a costs agreement to the extent to which clause 27(1) applies;

costs agreement means an agreement about the payment of legal costs;

itemised bill means a bill that specifies in detail how the legal costs are made up;

legal costs means amounts that a person has been or may be charged by, or is or may become liable to pay, a law practice for the provision of legal services including disbursements but not including interest;

legal services means work done, or business transacted, in the ordinary course of practising the profession of the law;

litigious matter means a matter that involves, or is likely to involve, the issue or defence 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 likely.

lump sum bill means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs;

public authority means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest;

scale of costs means a scale of costs of a court or tribunal of this State;

sophisticated client means a client to whom, because of clause 13(1)(c) or (d), disclosure under clause 10 or 11(1) is or was not required;

third party payer—see clause 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.

2—Terms relating to third party payers

- (1) For the purposes of this Schedule—
 - (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) being under that obligation, has already paid all or a part of those legal costs; 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 subclause (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.

Part 2—Application of Schedule

3—Application of Schedule—first instructions rule

This Schedule applies to a matter if the client first instructs the law practice in relation to the matter in this State.

4—Schedule also applies by agreement or at client's election

- (1) This Schedule applies to a matter if—
 - (a) either—
 - (i) this Schedule does not currently apply to the matter; or
 - (ii) it is not possible to determine the jurisdiction in which the client first instructs the law practice in relation to the matter; and
 - (b) either—

- (i) the legal services are or will be provided wholly or primarily in this State; or
 - (ii) the matter has a substantial connection with this State,or both; and
- (c) either—
 - (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subclause (2)(a) in respect of the matter; or
 - (ii) the client gives a notification under subclause (2)(b) in respect of the matter.
- (2) For the purposes of subclause (1)(c), the client may—
 - (a) accept, in writing or by other conduct, a written offer that complies with subclause (3) to enter into an agreement with the law practice that this Schedule is to apply to the matter; or
 - (b) notify the law practice in writing that the client requires this Schedule to apply to the matter.
- (3) An offer referred to in subclause (2)(a) must clearly state—
 - (a) that it is an offer to enter into an agreement that this Schedule is to apply to the matter; and
 - (b) that the client may accept it in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.
- (4) A notification has no effect for the purposes of subclause (2)(b) if it is given after the period of 28 days after the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind, but nothing in this subclause prevents an agreement referred to in subclause (2)(a) from coming into effect at any time.

5—Displacement of Schedule

- (1) This clause applies if this Schedule applies to a matter by the operation of clause 3 or 4.
- (2) This Schedule ceases to apply to the matter if—
 - (a) either—
 - (i) the legal services are or will be provided wholly or primarily in another jurisdiction; or
 - (ii) the matter has a substantial connection with another jurisdiction,or both; and

- (b) either—
- (i) the client enters, under the corresponding law of the other jurisdiction, into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
 - (ii) the client notifies, under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law), the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.
- (3) Nothing in this clause prevents the application of this Schedule to the matter by means of a later agreement or notification under clause 4.

6—First instructions to law practice

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

7—Substantial connection of matter with State

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does not have a substantial connection with this State for the purposes of this Schedule.

8—Application of different laws

- (1) This clause applies if this Schedule applies to a matter for a period and a corresponding law applies for another period.
- (2) If this Schedule applied to a matter for a period and a corresponding law applies to the matter afterwards, this Schedule continues to apply in respect of legal costs (if any) incurred while this Schedule applied to the matter.
- (3) If a corresponding law applied to a matter for a period and this Schedule applies to the matter afterwards, this Schedule does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.
- (4) However—
 - (a) the client may enter into a written agreement with the law practice that the adjudication of costs provisions of this Schedule are to apply in respect of all legal costs incurred in relation to the matter, and Part 7 accordingly applies in respect of those legal costs; or

- (b) if the client enters into a written agreement with the law practice that the adjudication of costs provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Part 7 accordingly does not apply in respect of those legal costs.
- (5) A written agreement referred to in subclause (4) need not be signed by the client but, in that case, the client's acceptance must be communicated to the law practice by fax, email or some other written form.
- (6) If a corresponding law applied to a matter for a period and this Schedule applies to the matter afterwards, this Schedule does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.
- (7) This clause has effect despite any other provisions of this Schedule.

Part 3—Costs disclosure

9—Disclosure not required by barrister

Disclosure to a client under this Part is not required to be made by a barrister engaged for the purposes of the client's matter.

10—Disclosure of costs to clients

- (1) A law practice must disclose to a client in accordance with this Part—
 - (a) the basis on which legal costs will be calculated, including whether a scale of costs, or a recommendation as to the calculation of barristers' costs, applies to any of the legal costs; and
 - (b) if the law practice will not be calculating legal costs in accordance with an applicable scale of costs—that another law practice may calculate legal costs in accordance with the scale; and
 - (c) the client's right to—
 - (i) negotiate a costs agreement with the law practice; and
 - (ii) receive a bill from the law practice; and
 - (iii) request an itemised bill after receipt of a lump sum bill; and
 - (iv) be notified under clause 17 of any substantial change to the matters disclosed under this clause; and
 - (d) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and

- (e) details of the intervals (if any) at which the client will be billed; and
 - (f) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subclause (2)); and
 - (g) if the matter is a litigious matter, an estimate of—
 - (i) the range of costs that may be recovered if the client is successful in the litigation; and
 - (ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and
 - (h) the client's right to progress reports in accordance with clause 19; and
 - (i) details of the person whom the client may contact to discuss the legal costs; and
 - (j) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
 - (i) raising the matter with the practice;
 - (ii) adjudication of costs under Part 7;
 - (iii) the setting aside of a costs agreement under clause 30;
 - (iv) if the client believes there has been overcharging—making a complaint to the Commissioner; and
 - (k) any time limits that apply to the taking of any action referred to in paragraph (j); and
 - (l) that the law of this State applies to legal costs in relation to the matter; and
 - (m) information about the client's right—
 - (i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
 - (ii) to notify under a corresponding law (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.
- (2) For the purposes of subclause (1)(f), a ***benchmark rate of interest*** is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.

- (3) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.
- (4) For the purposes of subclause (1)(g), the disclosure must include—
 - (a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client's legal costs; and
 - (b) if applicable, a statement that disbursements may be payable by the client even if the client enters a conditional costs agreement.
- (5) A law practice is taken to have complied with the requirement to disclose the details referred to in subclause (1)(c)(i) to (iii), (h), (j), (k) and (m) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subclause at the same time as the other details are disclosed as required by this clause.
- (6) A form prescribed for the purposes of subclause (5) may, instead of itself containing details of the kind referred to in that subclause, refer to publicly accessible sources of information (such as an Internet website) from which those details can be obtained.
- (7) The regulations may—
 - (a) require the Society to develop a statement of the relevant details and to revise it as necessary to keep it up to date; and
 - (b) require the Society to make the statement publicly available in the prescribed manner.

11—Disclosure if another law practice is to be retained

- (1) If a law practice intends to retain another law practice on behalf of the client, the first law practice must disclose to the client the details specified in clause 10(1)(a), (d) and (e) in relation to the other law practice, in addition to any information required to be disclosed to the client under clause 10.
- (2) A law practice retained or to be retained on behalf of a client by another law practice is not required to make disclosure to the client under clause 10, but must disclose to the other law practice the information necessary for the other law practice to comply with subclause (1).
- (3) This clause does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

12—Timing of disclosure to client

- (1) Disclosure under clause 10 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.

- (2) Disclosure under clause 11(1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of clauses 10 and 11.

13—Exceptions to requirement for disclosure

- (1) Disclosure under clause 10 or 11(1) is not required to be made in any of the following circumstances:
 - (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher);
 - (b) if—
 - (i) the client has received 1 or more disclosures under clause 10 or 11(1) from the law practice in the previous 12 months; and
 - (ii) the client has agreed in writing to waive the right to disclosure; and
 - (iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not warranted;
 - (c) if the client is—
 - (i) a law practice or a legal practitioner; or
 - (ii) 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 (each within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (iii) a financial services licensee (within the meaning of that Act); or
 - (iv) a liquidator, administrator or receiver (as respectively referred to in that Act); or
 - (v) 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 that Act) if it were a company; or

- (vi) a proprietary company (within the meaning of that Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or
 - (vii) an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth;
- (d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;
 - (e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

Note—

For instance, disclosure would not be required where the law practice acts in the matter on a pro bono basis.

- (f) in any circumstances prescribed by the regulations.
- (2) Despite subclause (1)(a), if a law practice becomes aware that the total legal costs are likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher), the law practice must disclose the matters in clause 10 or 11 (as the case requires) to the client as soon as practicable.
 - (3) A law practice must ensure that a written record of a principal's decision that further disclosure is not warranted as mentioned in subclause (1)(b) is made and kept with the files relating to the matter concerned.
 - (4) The reaching of a decision referred to in subclause (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.
 - (5) Nothing in this clause affects or takes away from any client's right—
 - (a) to progress reports in accordance with clause 19; or
 - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in clause 10; or
 - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

14—Additional disclosure—settlement of litigious matters

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is agreed—
 - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
 - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subclause (1), if the other law practice makes the disclosure to the client before the settlement is executed.

15—Additional disclosure—uplift fees

- (1) A law practice must, before entering into a costs agreement that involves an uplift fee—
 - (a) provide the client with—
 - (i) an estimate of the total legal costs the client would be likely to incur if the agreement did not involve an uplift fee; or
 - (ii) if it is not reasonably practicable to provide an estimate of the total legal costs—a range of estimates of the total legal costs the client would be likely to incur if the agreement did not involve an uplift fee and an explanation of the major variables that would affect the calculation of those costs; and
 - (b) disclose to the client in writing—
 - (i) the uplift fee (or the basis of the calculation of the uplift fee); and
 - (ii) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subclause (1) to a sophisticated client.

16—Form of disclosure

- (1) Written disclosures under this Part—
 - (a) must be expressed in clear plain language; and
 - (b) may be in a language other than English if the client is more familiar with that language.
- (2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Part to be conveyed orally to the client in addition to providing the written disclosure.

17—Ongoing obligation to disclose

A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under this Part as soon as is reasonably practicable after the law practice becomes aware of that change.

18—Effect of failure to disclose

- (1) If a law practice does not disclose to a client or an associated third party payer anything required by this Part to be disclosed, the client or associated third party payer need not pay the legal costs unless they have been adjudicated under Part 7.
- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this Part to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been adjudicated under Part 7.
- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this Part to be disclosed and the client or associated third party payer has entered a costs agreement with the law practice, the client or associated third party payer may also apply under clause 30 for the costs agreement to be set aside.
- (4) If a law practice does not disclose to a client or an associated third party payer anything required by this Part to be disclosed, then, on an adjudication of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the Supreme Court to be proportionate to the seriousness of the failure to disclose.
- (5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by clause 11(2), then subclauses (1) to (4)—
 - (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and
 - (b) do apply to the legal costs owing to the retained law practice.
- (6) In a matter involving both a client and an associated third party payer where disclosure has been made to 1 of them but not the other—
 - (a) subclause (1) does not affect the liability of the 1 to whom disclosure was made to pay the legal costs; and
 - (b) subclause (2) does not prevent proceedings being maintained against the 1 to whom the disclosure was made for the recovery of those legal costs.

- (7) Failure by a law practice to comply with this Part is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any legal practitioner involved in the failure.

19—Progress reports

- (1) A law practice must give a client, on reasonable request—
- (a) a written report of the progress of the matter in which the law practice is retained; and
 - (b) 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 may charge a client a reasonable amount for a report under subclause (1)(a) but must not charge a client for a report under subclause (1)(b).
- (3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subclause (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subclause.
- (4) Subclause (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

20—Disclosures to associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the law practice under this Part, the law practice must, in accordance with subclauses (2) and (3), 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 subclause (1) must be made in writing—
- (a) at the time the disclosure to the client is required under this Part; 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 law practice became aware of the obligation.
- (3) Clause 16 applies to a disclosure to an associated third party payer under subclause (1) in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under clause 19(1)(b) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that clause accordingly.

Part 4—Legal costs generally

21—Recovery of legal costs

Legal costs are recoverable—

- (a) under a costs agreement made in accordance with Part 5 or the corresponding provisions of a corresponding law; or
- (b) if paragraph (a) does not apply, in accordance with an applicable scale of costs or any applicable recommendations as to the calculation of barristers' costs; or
- (c) if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.

22—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.

23—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 practice has given a bill for the costs in accordance with this Schedule.
- (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 subclause (1) or (2) 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 may not charge interest under this clause or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

Part 5—Costs agreements

24—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 in accordance with subclause (4) that is accepted in writing or by other conduct.

Note—

Acceptance by other conduct is not permitted for conditional costs agreements—see clause 25.

- (4) The offer must clearly state—
- (a) that it is an offer to enter into a costs agreement; and
 - (b) that the offer can be accepted in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.
- (5) Except as provided by clause 51, a costs agreement cannot provide that the legal costs to which it relates are not subject to adjudication of costs under Part 7.

Note—

If it attempts to do so, the costs agreement will be void—see clause 29(1).

- (6) A reference in clause 30 and in prescribed provisions of this Schedule to a *client* is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subclause (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

25—Conditional costs agreements

- (1) A 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.
- (2) A conditional costs agreement may relate to any matter, except—
- (a) a criminal matter; or
 - (b) a matter that relates to or involves child protection, custody or guardianship or adoption; or
 - (c) proceedings under any of the following Acts of the Commonwealth:
 - (i) the *Family Law Act 1975*;
 - (ii) the *Migration Act 1958*;
 - (iii) the *Child Support (Assessment) Act 1989*; or
 - (d) any other matter of a kind prescribed by regulation.
- (3) A conditional costs agreement—
- (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and
 - (b) may provide for disbursements to be paid irrespective of the outcome of the matter; and

- (c) must be—
 - (i) in writing; and
 - (ii) in clear plain language; and
 - (iii) signed by the client; and
 - (d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and
 - (e) 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.
- (4) Subclause (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made under clause 24(1)(c).
 - (5) Subclause (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made with a sophisticated client.
 - (6) If a client terminates an agreement within the period referred to in subclause (3)(e), 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) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

26—Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable—
 - (a) a range of estimates of the uplift fee; and
 - (b) an explanation of the major variables that will affect the calculation of the uplift fee.
- (4) 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 risk of the claim failing, and of the client having to meet his or her own costs, is significant; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.

- (5) A law practice must not enter into a costs agreement in contravention of this clause.

Maximum penalty: \$50 000.

27—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 penalty: \$50 000.

- (2) Subclause (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

28—Effect of costs agreement

Subject to this Part and Part 7, a costs agreement may be enforced in the same way as any other contract.

29—Certain costs agreements are void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Part is void.
- (2) Subject to this clause and Part 7, legal costs under a void costs agreement are recoverable as set out in clause 21(b) or (c).
- (3) However, 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.
- (4) A law practice that has entered into a costs agreement in contravention of clause 26 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.
- (5) A law practice that has entered into a costs agreement in contravention of clause 27 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.
- (6) If a law practice does not repay an amount required by subclause (3), (4) or (5) 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.

30—Setting aside costs agreements

- (1) On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair and reasonable.

- (2) In determining whether or not a costs agreement is fair and reasonable, and without limiting the matters to which the Supreme Court can have regard, the Court may have regard to any or all of the following matters:
 - (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;
 - (b) whether any legal practitioner acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;
 - (c) whether the law practice failed to make any of the disclosures required under Part 3;
 - (d) the circumstances and the conduct of the parties before and when the agreement was made;
 - (e) the circumstances and the conduct of the parties in the matters after the agreement was made;
 - (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;
 - (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.
- (3) The Supreme Court may adjourn the hearing of an application under this clause pending the completion of any investigation or determination of any charge in relation to the conduct of any legal practitioner.
- (4) If the Supreme Court orders that a costs agreement be set aside, it may make an order in relation to the payment of legal costs the subject of the agreement.
- (5) In making an order under subclause (4)—
 - (a) the Supreme Court must apply the applicable scale of costs (if any) and any applicable recommendations as to the calculation of barristers' costs; or
 - (b) if there is no applicable scale of costs or recommendations—the Court must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account—
 - (i) the seriousness of the conduct of the law practice or any legal practitioner acting on its behalf; and
 - (ii) whether or not it was reasonable to carry out the work; and

- (iii) whether or not the work was carried out in a reasonable manner.
- (6) In making an order under subclause (4), the Supreme Court may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.
- (7) For the purposes of subclause (5), the Supreme Court may have regard to any or all of the following matters:
 - (a) whether the law practice and any legal practitioner acting on its behalf complied with any relevant legislation or legal profession rules;
 - (b) any disclosures made by the law practice under Part 3, or the failure to make any disclosures required under that Part;
 - (c) any relevant advertisement as to—
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any legal practitioner acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the legal practitioner responsible for the matter;
 - (e) the retainer and whether the work done was within the scope of the retainer;
 - (f) the complexity, novelty or difficulty of the matter;
 - (g) the quality of the work done;
 - (h) the place where, and circumstances in which, the work was done;
 - (i) the time within which the work was required to be done;
 - (j) any other relevant matter.
- (8) The Supreme Court may determine whether or not a costs agreement exists.
- (9) The Supreme Court may order the payment of the costs of and incidental to an application under this clause.
- (10) In this clause—

client means a person to whom or for whom legal services are or have been provided.

Part 6—Billing

31—Legal costs cannot be recovered unless bill has been served

- (1) A law practice must not commence legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person in accordance with clauses 32 and 33.

- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that—
 - (a) the law practice has given a bill to the person in accordance with clauses 32 and 33; and
 - (b) the person is about to leave this State.
- (3) A court or tribunal before which any proceedings are brought in contravention of subclause (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This clause applies whether or not the legal costs are the subject of a costs agreement.

32—Bills

- (1) A bill may be in the form of a lump sum bill or an itemised bill.
- (2) A bill must be signed on behalf of a law practice by a legal practitioner or an employee of the law practice authorised by a principal of the law practice to sign bills.
- (3) It is sufficient compliance with subclause (2) if a letter signed on behalf of a law practice by a legal practitioner or an employee of the law practice authorised by a principal of the law practice to sign bills is attached to, or enclosed with, the bill.
- (4) If an employee of a law practice who is authorised by a principal of the practice to sign bills on behalf of the practice signs a bill or a letter attached to, or enclosed with, a bill, the bill or letter will be taken to have been signed by the principal.
- (5) A bill is to be given to a person in accordance with section 95D.

33—Notification of client's rights

- (1) A bill must include or be accompanied by a written statement setting out—
 - (a) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
 - (i) raising the matter with the law practice;
 - (ii) adjudication of costs by the Supreme Court under Part 7;
 - (iii) the setting aside of a costs agreement under clause 30;
 - (iv) if the client believes there has been overcharging—making a complaint to the Commissioner; and
 - (b) if the bill is not an itemised bill—the law practice's obligation to provide an itemised bill on request by the client; and

- (c) any time limits that apply to the taking of any action referred to in paragraph (a).

Note—

These matters will already have been disclosed under clause 10(1).

- (2) Subclause (1) does not apply in relation to a sophisticated client.
- (3) A law practice is taken to have complied with the requirement to provide the written statement referred to in subclause (1) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subclause.
- (4) A form prescribed for the purposes of subclause (3) may, instead of itself containing details of the kind referred to in that subclause, refer to publicly accessible sources of information (such as an Internet website) from which those details can be obtained.
- (5) The regulations may—
 - (a) require the Society to develop a statement of the relevant details and to revise it as necessary to keep it up to date; and
 - (b) require the Society to make the statement publicly available in the prescribed manner.

34—Request for itemised bill

- (1) If a bill that is not an itemised bill is given by a law practice, any person who is entitled to apply for an adjudication of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.
- (3) 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) Subject to subclause (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.
- (5) If the person makes a request for an itemised bill in accordance with this clause, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.
- (6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this clause.
- (7) Section 95D applies to the giving of an itemised bill under this clause.

35—Interim bills

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be adjudicated under Part 7, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been adjudicated or paid.

Part 7—Adjudication of costs

36—Definition

In this Part—

client means a person to whom or for whom legal services are or have been provided.

37—Application by clients or third party payers for adjudication of costs

- (1) The Supreme Court may—
 - (a) on the application of a client for an adjudication of the whole or any part of legal costs; or
 - (b) on the application of a third party payer for an adjudication of the whole or any part of legal costs payable by the third party payer,
adjudicate and settle the bill for those costs.
- (2) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.
- (3) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for an adjudication.
- (4) An application by a client or third party payer for an adjudication of costs under this clause must be made within 6 months after—
 - (a) the bill was given or the request for payment was made to the client or third party payer; or
 - (b) the costs were paid if neither a bill was given nor a request was made.
- (5) However, an application that is made out of time, otherwise than by—
 - (a) a sophisticated client; or
 - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned,

may be dealt with by the Supreme Court if the Court, on application by the client or third party payer who made the application for adjudication, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for adjudication to be dealt with after the 6 month period.

- (6) If the third party payer is a non-associated third party payer, the law practice 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 an adjudication of costs under this clause.
- (7) If there is an associated third party payer for a client of a law practice—
- (a) nothing in this clause prevents—
 - (i) the client from making 1 or more applications for adjudication under this clause in relation to costs for which the client is solely liable; and
 - (ii) the associated third party payer from making 1 or more applications for adjudication under this clause in relation to costs for which the associated third party payer is solely liable,and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and
 - (b) the client or the associated third party payer—
 - (i) may participate in the adjudication of costs process where the other of them makes an application for adjudication under this clause in relation to costs for which they are both liable; and
 - (ii) is taken to be a party to the adjudication and is bound by the adjudication; and
 - (c) the law practice is taken to be a party to the adjudication and is bound by the adjudication.
- (8) If there is a non-associated third party payer for a client of a law practice—
- (a) nothing in this clause prevents—
 - (i) the client from making 1 or more applications for adjudication under this clause in relation to costs for which the client is liable; and
 - (ii) the non-associated third party payer from making 1 or more applications for adjudication under this clause in relation to costs for which the non-associated third party payer is liable,

and those applications may be made by them at the same time or at different times but must be dealt with separately; and

- (b) the client—
 - (i) may participate in the adjudication of costs process where the non-associated third party payer makes an application for adjudication under this clause in relation to the legal costs for which the non-associated third party payer is liable; and
 - (ii) is taken to be a party to the adjudication and is bound by the adjudication; and
 - (c) despite any other provision of this Part, the adjudication 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.
- (9) In this clause—
- client* includes the following:
- (a) an executor or administrator of a client;
 - (b) a trustee of the estate of a client;
- third party payer* includes the following:
- (a) an executor or administrator of a third party payer;
 - (b) a trustee of the estate of a third party payer.

38—Application for adjudication by law practice retaining another law practice

- (1) If a law practice retains another law practice to act on behalf of a client, the law practice—
 - (a) may apply to the Supreme Court; and
 - (b) if instructed to do so by the client or third party payer (if any)—must apply to the Supreme Court,for an adjudication of the whole or any part of the legal costs to which a bill given by the other law practice in accordance with Part 6 relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for an adjudication.
- (3) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.
- (4) An application under this clause must be made within 60 days after—
 - (a) the bill was given or the request for payment was made; or

- (b) the costs were paid if neither a bill was given nor a request was made; or
 - (c) in the case of an application made on the instructions of a client or third party payer—within 60 days of the day on which the client or third party payer was given notification in writing of the legal costs to which the bill relates.
- (5) An application cannot be made under this clause if—
- (a) there is a costs agreement between the client and the other law practice; and
 - (b) the bill given by the other law practice is in accordance with the terms of the costs agreement.

39—Application for adjudication of costs by law practice giving bill

- (1) A law practice that has given a bill in accordance with Part 6 may apply to the Supreme Court for an adjudication of the whole or any part of the legal costs to which the bill relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for an adjudication.
- (3) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this clause unless at least 30 days have passed since—
 - (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid if neither a bill was given nor a request was made; or
 - (c) an application has been made under this Part by another person in respect of the legal costs.

40—Application may be dismissed

The Supreme Court may summarily dismiss an application for an adjudication of costs that it considers frivolous or vexatious.

41—Power of Supreme Court on application for adjudication

- (1) The Supreme Court's power to adjudicate and settle a bill (but no other power of the Court under this clause) may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.
- (2) Subject to the rules of the Supreme Court, an appeal lies to a Master against a decision of the Registrar pursuant to subclause (1).
- (3) If an application for adjudication of legal costs has been made in accordance with this Part, the Supreme Court may—
 - (a) restrain a person claiming to be entitled to the costs from commencing an action for recovery of the costs; or

- (b) stay any proceedings for recovery of the costs.
- (4) The Supreme Court may, on adjudication of a bill under this Part—
 - (a) order the refund of any amount overpaid; or
 - (b) if the proceedings have been instituted by the person seeking recovery of the costs—order payment of legal costs in accordance with the adjudicated bill.

42—Commissioner may institute proceedings

The Commissioner may institute proceedings for the adjudication of legal costs under clause 37 and must institute such proceedings if ordered to do so by the Tribunal.

43—Court may order plaintiff to apply for adjudication

Any court in which proceedings for the recovery of legal costs have been instituted may order the plaintiff to apply to have the legal costs adjudicated in accordance with this Part, and may adjourn the proceedings until the adjudication has been completed.

44—Consequences of application

If an application for an adjudication of costs is made in accordance with this Part—

- (a) a party to the adjudication cannot be required to pay money into court on account of the legal costs the subject of the application; and
- (b) any proceedings to recover the legal costs that may have been commenced by the law practice are stayed until the adjudication has been completed; and
- (c) the law practice must not commence any proceedings to recover the legal costs until the adjudication has been completed.

45—Persons to be notified of application

- (1) The Supreme Court may cause a copy of an application for adjudication of legal costs to be given to any law practice or client concerned or any other person whom the Court thinks it appropriate to notify.
- (2) A person who is notified by the Supreme Court under subclause (1)—
 - (a) is entitled to participate in the adjudication process; and
 - (b) is taken to be a party to the adjudication; and
 - (c) if the Court so determines, is bound by the adjudication.

46—Criteria for adjudication

- (1) In conducting an adjudication of legal costs, the Supreme Court must—
 - (a) consider—
 - (i) whether or not it was reasonable to carry out the work to which the legal costs relate; and
 - (ii) whether or not the work was carried out in a reasonable manner; and
 - (iii) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that clause 47 or 48 applies to any disputed costs; and
 - (b) if the legal costs have been the subject of a complaint to the Commissioner of overcharging—have regard to any recommendation made by the Commissioner that the charges be reduced or an amount refunded to the client.
- (2) In considering what is a fair and reasonable amount of legal costs, the Supreme Court may have regard to any or all of the following matters:
 - (a) whether the law practice and any legal practitioner acting on its behalf has complied with the law;
 - (b) any disclosures made by the law practice under Part 3;
 - (c) any relevant advertisement as to—
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any legal practitioner acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the legal practitioner responsible for the matter;
 - (e) the retainer and whether the work done was within the scope of the retainer;
 - (f) the complexity, novelty or difficulty of the matter;
 - (g) the quality of the work done;
 - (h) the place where, and circumstances in which, the legal services were provided;
 - (i) the time within which the work was required to be done;
 - (j) any other relevant matter.
- (3) In conducting an adjudication of legal costs payable by a non-associated third party payer, the Supreme Court 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.

47—Adjudication of costs by reference to costs agreement

- (1) The Supreme Court must adjudicate the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if—
 - (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
 - (b) the agreement has not been set aside under clause 30, unless the Court is satisfied—
 - (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of Part 3; or
 - (d) that Part 5 precludes the law practice concerned from recovering the amount of the costs; or
 - (e) that the parties otherwise agree.
- (2) The Supreme Court is not required to initiate an examination of the matters referred to in subclause (1)(c) and (d).

48—Adjudication of costs by reference to scale of costs

The Supreme Court must adjudicate the amount of any disputed costs that are subject to a scale of costs by reference to the scale.

49—Costs of adjudication

- (1) The Supreme Court must determine the costs of an adjudication of costs.
- (2) Unless the Supreme Court otherwise orders, the law practice to which the legal costs are payable or were paid must pay the costs of the adjudication if—
 - (a) on the adjudication the legal costs are reduced by 15% or more; or
 - (b) the Court is satisfied that the law practice failed to comply with Part 3.
- (3) Unless the Supreme Court otherwise orders, if the law practice is not, under subclause (2), liable to pay the costs of the adjudication, the costs of the adjudication must be paid by the applicant for the adjudication.
- (4) However, if an application for an adjudication of costs is made following the making of a determination by the Commissioner in relation to the costs under section 77N, the applicant is required to pay the costs of the adjudication unless the Supreme Court orders otherwise.

- (5) In determining whether to make an order under subclause (4), the Supreme Court must have regard to the extent (if any) to which the result of the adjudication is more favourable for the applicant than the Commissioner's determination.

50—Referral for disciplinary action

- (1) If, on an adjudication, the Supreme Court considers that the legal costs charged by a law practice are grossly excessive, the Court must refer the matter to the Commissioner to consider whether disciplinary action should be taken.
- (2) If the Supreme Court considers that an adjudication raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner, the Court may refer the matter to the Commissioner or a corresponding authority to consider whether disciplinary action should be taken.

51—Contracting out of Part by sophisticated clients

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Part (but no such contract affects the Commissioner's power to institute proceedings for the adjudication of legal costs under clause 42).

Part 8—Miscellaneous

52—Application of Schedule to incorporated legal practices

The regulations may provide that specified provisions of this Schedule do not apply to incorporated legal practices or apply to them with specified modifications.

53—Imputed acts, omissions or knowledge

For the purposes of this Schedule—

- (a) anything done or omitted by, to or in relation to a legal practitioner 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 a legal practitioner becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

Schedule 4—Investigatory powers

Part 1—Preliminary

1—Definitions

(1) In this Schedule—

complaint investigation means an investigation of a complaint under Part 6 and includes an investigation made into the conduct of a legal practitioner or former legal practitioner on the Commissioner's own initiative or at the request of the Attorney-General or the Society;

ILP compliance audit means the conduct of an audit under Schedule 1 clause 19 in relation to an incorporated legal practice;

investigator means—

- (a) an investigator under Schedule 2; or
- (b) an external examiner under Schedule 2; or
- (c) the Commissioner or a person authorised by the Commissioner to investigate a complaint or the conduct of a legal practitioner or former legal practitioner under Part 6 Division 2; or
- (d) a person appointed by the Society to conduct an ILP compliance audit;

trust account examination means an external examination of the trust records of a law practice under Schedule 2;

trust account investigation means an investigation of the affairs of a law practice under Schedule 2.

(2) For the purposes of this Schedule—

- (a) **law practice** includes the Legal Services Commission; and
- (b) an **associate** of the Commission is an employee of the Commission (whether or not a legal practitioner) who is not a principal of the Commission; and
- (c) a **principal** of the Commission is a legal practitioner who is generally responsible for the provision of legal services by the Commission.

Part 2—Requirements relating to documents, information and other assistance

2—Application of Part

This Part applies to—

- (a) trust account investigations; and
- (b) trust account examinations; and
- (c) complaint investigations; and

- (d) ILP compliance audits.

3—Requirements that may be imposed for investigations, examinations and audits under Schedule 2

- (1) For the purpose of carrying out a trust account investigation or trust account examination in relation to a law practice, an investigator may, on production of evidence of his or her appointment, require the practice or an associate or former associate of the practice or any other person (including, for example, an ADI, auditor or liquidator) who has or has had control of documents relating to the affairs of the practice to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the practice the investigator reasonably requires;
 - (b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subclause (1) must comply with the requirement.

Maximum penalty: \$50 000 or imprisonment for 1 year.

4—Requirements that may be imposed for investigations under Part 6

- (1) For the purpose of carrying out a complaint investigation in relation to a legal practitioner or former legal practitioner, an investigator may, by notice served on the practitioner or former practitioner, require the practitioner or former practitioner to do any 1 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 cooperate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to a legal practitioner or former legal practitioner, the investigator may, on production of evidence of his or her appointment, require an associate or former associate of a law practice of which the practitioner or former practitioner is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the practitioner) who has or has had control of documents relating to the affairs of the practitioner or former practitioner to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the practitioner or former practitioner the investigator reasonably requires;

- (b) information relating to the affairs of the practitioner or former practitioner the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subclause (1) or (2) must comply with the requirement.
Maximum penalty: \$50 000 or imprisonment for 1 year.
- (4) A requirement imposed on a person under this clause is to be notified in writing to the person and is to specify a reasonable time for compliance.

5—Provisions relating to requirements under this Part

- (1) This clause applies to a requirement imposed on a person under this Part.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on—
 - (a) the ground that the giving of the information or access to information may tend to incriminate the person; or
 - (b) the ground that a law practice or legal practitioner has a lien over a particular document or class of documents.
- (3) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—
 - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
 - (b) in any other case—the answer given in compliance with the requirement,
is not admissible in evidence against the person in proceedings other than disciplinary proceedings under this Act or proceedings—
 - (c) for an offence—
 - (i) against this Act; or
 - (ii) relating to the keeping of trust accounts or the receipt of trust money; or
 - (d) in respect of the making of a false or misleading statement.
- (4) The investigator 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 investigator thinks necessary for the purposes of the investigation in relation to which it was produced.
- (5) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (6) A failure by a legal practitioner to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) The Supreme Court may, on application by the Commissioner or the Society, or on its own initiative, suspend a legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

Part 3—Entry and search of premises

6—Application of Part

This Part applies to—

- (a) trust account investigations; and
- (b) complaint investigations;

but does not apply to—

- (c) trust account examinations; or
- (d) ILP compliance audits.

7—Investigator's power to enter premises

- (1) Subject to this clause, for the purpose of carrying out an investigation, an investigator may enter and remain on premises to exercise the powers in clause 9.
- (2) In the case of a trust account investigation—
 - (a) the investigator may enter premises, other than residential premises, without the need for consent or a search warrant; and
 - (b) the investigator may only enter residential premises as follows:
 - (i) the investigator may enter the premises at any time with the consent of the occupier;
 - (ii) the investigator may enter the premises under the authority of a search warrant issued under this Part;
 - (iii) the investigator may enter the premises at any time without the consent of the occupier and without a warrant, but only if 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.

- (3) In the case of a complaint investigation, the investigator may only enter premises as follows:
 - (a) the investigator may enter the premises at any time with the consent of the occupier;
 - (b) the investigator may enter the premises under the authority of a search warrant issued under this Part.
- (4) The investigator must not exercise the power in subclause (2)(b)(iii) unless the Society has, when appointing the investigator, authorised the use of that power.
- (5) An investigator may use reasonable force for the purposes of entering premises under subclause (2)(a) or (2)(b)(iii).
- (6) The investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce evidence of his or her appointment.
Maximum penalty: \$2 500.

8—Search warrants

- (1) For the purpose of carrying out an investigation, an investigator may apply to a Magistrate for a search warrant.
- (2) A Magistrate may, on application made under this clause, issue a search warrant to an investigator if—
 - (a) an investigator satisfies the Magistrate that there are reasonable grounds to suspect that relevant material is located at the premises; and
 - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A search warrant authorises an investigator to enter the premises specified in the warrant, by the use of reasonable force if necessary, at the time or within the period specified in the warrant.
- (4) A search warrant may be executed by the investigator to whom it is issued or by any other investigator engaged in the investigation to which the warrant relates.
- (5) An investigator executing a 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.
Maximum penalty: \$2 500.

9—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) seize and take away any relevant material or any part of any relevant material;
 - (g) use (free of charge) photocopying equipment on the premises for the purpose of copying 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;
 - (ii) download or otherwise obtain any documents or information;
 - (iii) make copies of any documents or information held in it;
 - (iv) seize and take away any computer or equipment or any part of it;
 - (i) if any relevant material found on the premises cannot be conveniently removed—secure it against interference;
 - (j) request 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;
 - (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) If an investigator takes anything away from the premises, the investigator must issue a receipt and—
 - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
 - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (4) 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.

Part 4—Additional powers in relation to incorporated legal practices

10—Application of Part

- (1) This Part applies to—
 - (a) trust account investigations; and
 - (b) complaint investigations; and
 - (c) ILP compliance audits,conducted in relation to incorporated legal practices.
- (2) The provisions of this Part are additional to the other provisions of this Schedule.

11—Investigative powers relating to investigations and audits

An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.

12—Examination of persons

- (1) The investigator, by force of this clause, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth applies to the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to the Australian Securities and Investments Commission (however expressed) 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 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 legal practitioner or an incorporated legal practice;
 - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Society.
- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth do not apply in respect of the exercise of the powers conferred by this clause.

13—Inspection of books

- (1) The investigator, by force of this clause, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30(1), 34 and 37 to 39 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) Those provisions apply to the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the investigator;
 - (b) a reference to a body corporate (including a body corporate 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 appropriate authority or a person authorised by the appropriate authority who is an officer or employee of the authority;
 - (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.
- (3) In this clause—

appropriate authority means—

 - (a) in the case of a complaint investigation—the Commissioner; and
 - (b) in the case of an ILP compliance audit, a trust account investigation or a trust account examination—the Society.

14—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 *Australian Securities and Investments Commission Act 2001* of the Commonwealth apply to a hearing, with the following modifications (and any other necessary modifications):
- (a) a reference to the Australian Securities and Investments Commission (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 appropriate authority or a person authorised by the appropriate authority who is an officer or employee of the authority;
 - (c) a reference to a prescribed form is taken to be a reference to a form approved by the Society.
- (3) In this clause—
appropriate authority has the same meaning as in clause 13.

15—Failure to comply with investigation

The following acts or omissions are capable of constituting unsatisfactory professional conduct or professional misconduct:

- (a) a failure by a legal practitioner to comply with any requirement made by the investigator, or a person authorised by the investigator, in the exercise of powers conferred by this Part;
- (b) a contravention by a legal practitioner of any condition imposed by the investigator in the exercise of powers conferred by this Part;
- (c) a failure by a legal practitioner director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:
 - (i) any requirement made by the investigator, or a person authorised by the investigator, in the exercise of powers conferred by this Part;
 - (ii) any condition imposed by the investigator in the exercise of powers conferred by this Part.

Part 5—Miscellaneous

16—Obstruction of investigator

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a power under this Act.
Maximum penalty: \$50 000.

- (2) A person requested to do anything under clause 9(1)(j) must not, without reasonable excuse, fail to comply with the request.

Maximum penalty: \$50 000.

- (3) In this clause—

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

17—Obligation of legal practitioners

- (1) The duties imposed on a legal practitioner by this clause are additional to obligations imposed under other provisions of this Schedule, whether or not the legal practitioner is the subject of the investigation, examination or audit concerned.
- (2) A legal practitioner must not mislead an investigator, the Commissioner or the Society in the exercise of—
- (a) any power or function under this Schedule; or
 - (b) any power or function under a provision of a corresponding law that corresponds to this Schedule.
- (3) A legal practitioner who is subject to—
- (a) a requirement under clause 4; or
 - (b) a requirement under provisions of a corresponding law that correspond to that clause,

must not, without reasonable excuse, fail to comply with the requirement.

18—Protection from liability

No liability attaches to an investigator for any act or omission by the investigator done in good faith and in the exercise or purported exercise of the investigator's powers or duties under this Act.

19—Permitted disclosure of confidential information

- (1) Subject to this clause, the Society, the Commissioner or an investigator, or a person employed or engaged on work related to the affairs of the Society or the Commissioner, must not divulge information that comes to his or her knowledge by virtue of that office or position except—
- (a) in the course of carrying out the duties of that office or position; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) as may be authorised by or under any law.

Maximum penalty: \$50 000.

- (2) The Commissioner or a person employed or engaged on work related to the affairs of the Commissioner may divulge information referred to in subclause (1) as authorised by an agreement or arrangement that has been approved by the Attorney-General under section 77A.
- (3) A person referred to in subclause (1) may disclose information obtained in the course of a trust account investigation, trust account examination or complaint investigation to any of the following:
- (a) any court, tribunal or other person acting judicially;
 - (b) any body regulating legal practitioners in any jurisdiction;
 - (c) the Attorney-General;
 - (d) a person authorised to appoint an investigator;
 - (e) any officer of or legal practitioner instructed by—
 - (i) the Society or Commissioner or any other body regulating legal practitioners in any jurisdiction; or
 - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
 - (iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth;
 - (f) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission);
 - (g) a law enforcement authority;
 - (h) if the subject of the investigation, examination or audit is or was—
 - (i) a law practice—a principal of the law practice; or
 - (ii) an incorporated legal practice—a director or shareholder in the practice; or
 - (iii) a legal practitioner—the practitioner or a principal of the law practice of which the practitioner is or was an associate;
 - (i) if the subject of the investigation, examination or audit is or was—
 - (i) a law practice—a client or former client of the practice; or
 - (ii) a legal practitioner—a client or former client of the law practice of which the legal practitioner is or was an associate,but only to the extent that the disclosure does not breach legal professional privilege or a duty of confidentiality;
 - (j) if the subject of the investigation, examination or audit is or was—

- (i) a law practice—a supervisor, manager or receiver appointed in relation to the law practice; or
 - (ii) a legal practitioner—a supervisor, manager or receiver appointed in relation to the law practice of which the legal practitioner is or was an associate;
or a legal practitioner or accountant employed by the supervisor, manager or receiver;
 - (k) an investigator carrying out another investigation, examination or audit in relation to the law practice or legal practitioner who is or was the subject of the investigation, examination or audit.
- (4) Nothing in this clause prevents the disclosure of information relating to a complaint to the complainant or a person acting on behalf of the complainant.
- (5) 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 under this clause.
- (6) In this clause—
protected person means—
- (a) the Commissioner; or
 - (b) an employee or agent of the Commissioner; or
 - (c) the Society; or
 - (d) the Council; or
 - (e) an officer, employee or agent of the Society; or
 - (f) an investigator; or
 - (g) a person acting at the direction of any person or entity referred to in this definition.

Schedule 1—Further amendments of *Legal Practitioners Act 1981*

Provision amended	How amended
Section 14AB(1)(b)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 47(2)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 48(2), (5) and (6)	Delete "guarantee fund" wherever occurring and substitute in each case: Fidelity Fund
Section 56(5) and (6)	Delete "guarantee fund" wherever occurring and substitute in each case: Fidelity Fund

Provision amended	How amended
Section 57A(2)(b)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 58(2)	Delete "guarantee fund" and substitute Fidelity Fund
Heading to Part 5	Delete " guarantee fund " and substitute: Fidelity Fund
Section 64(1) and (2)	Delete "guarantee fund" wherever occurring and substitute in each case: Fidelity Fund
Section 66(2)(a)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 67(1) and (2)	Delete "guarantee fund" wherever occurring and substitute in each case: Fidelity Fund
Section 95(1)(b)(ii)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 95AA(c)	Delete "guarantee fund" and substitute: Fidelity Fund
Section 95BA(2)	Delete "guarantee fund" and substitute: Fidelity Fund

Schedule 2—Related amendments and transitional provisions

Part 1—Amendment of *Fair Work Act 1994*

1—Amendment of section 152A—Inquiries into conduct of registered agents or other representative

Section 152A(3)(b)—delete "Legal Practitioners Conduct Board" and substitute:
Legal Profession Conduct Commissioner

Part 2—Amendment of *Freedom of Information Act 1991*

2—Amendment of Schedule 2—Exempt agencies

Schedule 2—after paragraph (l) insert:
(la) the Legal Profession Conduct Commissioner;

Part 3—Amendment of *Legal Services Commission Act 1977*

3—Amendment of section 26—Commission and trust money

Section 26(1)—delete "legal practitioner" and substitute:
law practice

4—Amendment of section 31—Discipline of legal practitioner employed by Commission

Section 31(a)—delete "unprofessional or unsatisfactory conduct" and substitute:
unsatisfactory professional conduct or professional misconduct

Part 4—Transitional provisions

5—Interpretation

(1) In this Part—

Board means the Legal Practitioners Conduct Board;

Commissioner has the same meaning as in the principal Act;

principal Act means the *Legal Practitioners Act 1981*;

relevant day means the day on which section 44 comes into operation.

(2) Unless the contrary intention appears, a term used in this Part and also in the principal Act has the same meaning in this Part as it has in that Act.

6—Practising certificates

Part 3 Divisions 2A to 2C of the principal Act, as inserted by section 17 of this Act, apply in relation to a practising certificate whether issued before, on or after the commencement of that section.

7—Deficiencies in trust accounts

Schedule 2 clauses 23 and 24 of the principal Act (as inserted by this Act) apply to trust money whether the money was received before, on or after the commencement of those clauses.

8—Combined trust account

An ADI that was, immediately before the commencement of this clause, an approved ADI within the meaning of section 53 of the principal Act is, on the commencement of this clause, taken to be an approved ADI for the purposes of section 53 as inserted by this Act.

9—Costs

- (1) Subject to this clause, Schedule 3 of the principal Act (as inserted by this Act) applies to a matter if the client first instructs the law practice in the matter on or after the commencement of that Schedule and Part 3 Division 8 of the principal Act as in force immediately before the relevant day continues to apply to a matter if the client first instructed the law practice in the matter before the commencement of Schedule 3.
- (2) Schedule 3 of the principal Act (as inserted by this Act) does not apply in respect of a law practice that is retained by another law practice on behalf of a client on or after the commencement of that Schedule in relation to a matter in which the other law practice was retained by the client before that commencement and in that case Part 3 Division 8 of the principal Act as in force immediately before that commencement continues to apply.

- (3) If Part 3 Division 8 of the principal Act as in force immediately before the commencement of Schedule 3 of the principal Act (as inserted by this Act) applies to a matter by virtue of subclause (1) or (2), the Division will cease to apply to the matter on the first anniversary of that commencement and Schedule 3 of the principal Act (as inserted by this Act) will then apply to the matter.

10—Fidelity Fund

The legal practitioners' guarantee fund maintained by the Society under Part 4 of the principal Act as in force immediately before the commencement of section 37 continues in existence as the Legal Practitioners Fidelity Fund maintained by the Society under Part 4 of the principal Act as amended by this Act.

11—Claims against Fidelity Fund

- (1) Subsection (1a) of section 60 of the principal Act (as inserted by this Act) does not apply in relation to a claim for compensation served on the Society before the commencement of that subsection.
- (2) Section 64 of the principal Act applies to any claim in relation to a fiduciary or professional default, or a series of fiduciary or professional defaults, in respect of which the Society has published a notice under Part 5 of the principal Act before the commencement of section 40 as if—
- (a) the amendment to section 64(2) made by that section had not been made; and
 - (b) the prescribed percentage for the purposes of section 64(2) were 5%.

12—Investigations

An investigation may be undertaken under Schedule 2 Part 3 of the principal Act (as inserted by this Act) in relation to an aspect of the affairs of a law practice whether the investigation relates to matters that occurred before or after the commencement of that Schedule.

13—Transfer of functions from Board to Commissioner

- (1) If a complaint received by the Board in relation to the conduct of a legal practitioner or former legal practitioner has not been resolved before the relevant day, the Commissioner will, on and from that day, assume the conduct of the complaint as if it had been received by the Commissioner.
- (2) If a direction by the Attorney-General or the Society to the Board to make an investigation into the conduct of a legal practitioner or former legal practitioner has not been resolved before the relevant day, the Commissioner will, on and from that day, assume the conduct of the investigation as if the direction had been given to the Commissioner.
- (3) An investigation commenced by the Board into—
- (a) the conduct of a legal practitioner or former legal practitioner; or
 - (b) a complaint of overcharging,

is, if the investigation has not been completed before the relevant day, to be continued by the Commissioner as if the investigation had been commenced under section 77B or (in the case of a complaint of overcharging) 77N of the principal Act as inserted by this Act.

- (4) If a charge laid by the Board under section 82 of the principal Act has not been determined before the relevant day, the Commissioner will, on and from that day, assume the conduct of the charge as if it had been laid by the Commissioner.
- (5) If disciplinary proceedings against a legal practitioner commenced by the Board in the Supreme Court have not been determined before the relevant day, the Commissioner will, on and from that day, assume the conduct of the proceedings as if they had been commenced by the Commissioner.
- (6) A notice issued by the Board under repealed section 76(3)(a) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by an investigator under Schedule 4 clause 4(1)(a) of the principal Act (as inserted by this Act).
- (7) A notice issued by the Board under repealed section 76(4a) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by the Commissioner under Schedule 4 clause 4(1)(b) of the principal Act (as inserted by this Act).
- (8) A notice issued by the Board under repealed section 77A(3) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by the Commissioner under section 77N(4) of the principal Act (as inserted by this Act).

14—Application of principal Act as amended to complaints, investigations, disciplinary proceedings and conduct

- (1) Subject to this Schedule, the principal Act as amended by this Act applies in relation to—
 - (a) any complaint received by the Commissioner or for which the Commissioner has assumed the conduct; and
 - (b) any investigation commenced or continued by the Commissioner; and
 - (c) any disciplinary proceedings commenced by the Commissioner, the Society or another person or for which the Commissioner has assumed the conduct,whether the conduct to which the complaint, investigation or proceedings relates occurred before or after the relevant day.
- (2) The principal Act as amended by this Act applies in relation to conduct that occurred before the relevant day as if—
 - (a) "unsatisfactory professional conduct" were replaced with "unsatisfactory conduct" wherever occurring; and
 - (b) "professional misconduct" were replaced with "unprofessional conduct" wherever occurring; and
 - (c) "unsatisfactory conduct" and "unprofessional conduct" had the same respective meanings as in the principal Act as in force immediately before the relevant day.

15—Transfer of employment

- (1) A person who, immediately before the relevant day, was a member of the staff of the Board will, on that day, be a member of the staff of the Commissioner.

- (2) The transfer of a person's employment under subclause (1)—
 - (a) will be taken to provide for continuity of employment without termination of the relevant person's service; and
 - (b) will not affect—
 - (i) existing conditions of employment or existing or accrued rights to leave; or
 - (ii) a process commenced for variation of those conditions or rights.
- (3) A person whose employment has been transferred under subclause (1) will be taken to have been appointed by the Commissioner to the Commissioner's staff under section 76 of the principal Act.
- (4) Subclause (1) does not apply in relation to the person occupying the position of Director under section 72 of the principal Act immediately before the relevant day.

16—Contracts, etc

- (1) All assets, rights and liabilities of the Board are transferred to the Commissioner.
- (2) A liability of the Board transferred to the Commissioner under subclause (1) may be paid from the Fidelity Fund.
- (3) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.
- (4) A reference to the Board in an instrument or agreement that gives rise to or evidences an asset, right or liability under subclause (1) will have effect as if it were a reference to the Commissioner.

17—Continuing obligation of confidentiality

- (1) Section 37 of the principal Act as in force immediately before the commencement of section 24 of this Act continues to apply to the Society and to a person employed or appointed before that commencement as an approved auditor or inspector to make an audit or examination of accounts.
- (2) Section 73 of the principal Act as in force immediately before the commencement of section 44 of this Act continues to apply to a person who was, before that commencement, a member of the Board or employed or engaged on work related to the affairs of the Board.

18—Tribunal members

- (1) The office of all members of the Legal Practitioners Disciplinary Tribunal will become vacant on the commencement of section 45 of this Act.
- (2) A person who ceases to hold office as a member of the Tribunal under subclause (1)—
 - (a) may be appointed to the vacant office; or
 - (b) may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard on the commencement of section 45.