

# National Legal Profession Reform Project

Legal Profession National Law  
14 May 2010  
Consultation Draft



# Legal Profession National Law

## CONSULTATION DRAFT

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The overall structure is as follows:

<p><b>Chapter 1 Preliminary</b> Part 1.1 Introduction Part 1.2 Interpretation Part 1.3 Exercise of special functions</p> <p><b>Chapter 2 Threshold requirements regarding legal practice</b> Part 2.1 Unqualified legal practice Part 2.2 Admission to the Australian legal profession Part 2.3 Prohibitions regarding associates</p> <p><b>Chapter 3 Legal practice</b> Part 3.1 Introduction Part 3.2 Law practices—general provisions Part 3.3 Australian legal practitioners Part 3.4 Foreign lawyers Part 3.5 Variation, suspension and cancellation of certificates Part 3.6 Appeal or review about certificates Part 3.7 Incorporated and unincorporated legal practices Part 3.8 Community legal services</p> <p><b>Chapter 4 Business practice and professional conduct</b> Part 4.1 Introduction Part 4.2 Trust money and trust accounts Part 4.3 Legal costs Part 4.4 Professional indemnity insurance Part 4.5 Fidelity cover Part 4.6 Business management and control Part 4.7 Professional rules</p> <p><b>Chapter 5 Dispute resolution and professional discipline</b> Part 5.1 Introduction Part 5.2 Complaints Part 5.3 Consumer matters Part 5.4 Disciplinary matters Part 5.5 Compensation orders Part 5.6 Appeal or review</p>	<p><b>Chapter 6 External intervention</b> Part 6.1 Introduction Part 6.2 Initiation of external intervention Part 6.3 Supervisors of trust money Part 6.4 Managers Part 6.5 Receivers Part 6.6 General</p> <p><b>Chapter 7 Investigatory powers</b> Part 7.1 Introduction Part 7.2 Requirements relating to documents, information and other assistance Part 7.3 Entry and search of premises Part 7.4 Additional powers in relation to incorporated legal practices Part 7.5 Miscellaneous</p> <p><b>Chapter 8 National regulatory authorities</b> Part 8.1 Standing Committee of Attorneys-General Part 8.2 National Legal Services Board Part 8.3 National Legal Services Ombudsman</p> <p><b>Chapter 9 Miscellaneous</b> Part 9.1 Legal Profession National Rules Part 9.2 Australian Legal Profession Register Part 9.3 Co-operative and other arrangements Part 9.4 Notices and evidentiary matters Part 9.5 Injunctions Part 9.6 Criminal and civil proceedings Part 9.7 General</p> <p><b>Schedules</b> 1 Provisions relating to Board 2 Provisions relating to Ombudsman 3 Local representatives of Board 4 Local representatives of Ombudsman 5 Professional associations 6 Savings and transitional provisions</p>
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# Legal Profession National Law

## Chapter 1 Preliminary

### Part 1.1 Introduction

#### 1.1.1 Citation

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

#### 1.1.2 Commencement

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

#### 1.1.3 Objectives

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

- (a) providing and promoting national uniformity in the law applying to the Australian legal profession; and
- (b) ensuring lawyers are competent and maintain high ethical standards in the provision of legal services; and
- (c) enhancing the protection of clients of law practices and the protection of the public generally; and
- (d) empowering clients of law practices to make informed choices about the services they access and the costs involved; and
- (e) promoting efficient and effective regulation of the legal profession, which is targeted, proportionate and assists and facilitates the legal profession to comply with regulatory responsibilities and engage in legal practice on a national basis.

#### 1.1.4 Extraterritorial operation of this Law

It is the intention of the Legislature of this jurisdiction that the operation of this Law is, as far as possible, to include operation, according to its terms, in relation to the following:

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

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## Part 1.2 Interpretation

### 1.2.1 Definitions

(1) In this Law:

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

*admission* or *admission to the Australian legal profession* means admission to the Australian legal profession as an Australian lawyer in any jurisdiction under section 2.2.2.

*affairs* of a law practice includes the following:

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

*APRA* means the Australian Prudential Regulation Authority.

*ASIC* means the Australian Securities and Investments Commission.

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

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

- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) a consultant to the law practice;
- (d) an Australian-registered foreign lawyer who is a partner in the law practice or in a business that includes the law practice;
- (e) a person who is a partner in a business that includes the law practice;
- (f) a person who shares the receipts, revenue or other income arising from the law practice.

*Australian Bar Association* means The Australian Bar Association.

*Australian lawyer* means a person admitted to the Australian legal profession.

*Australian legal practitioner* means an Australian lawyer who holds a current

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Australian practising certificate.

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

**Australian practising certificate** means a practising certificate granted under Part 3.3 to an Australian lawyer.

**Australian registration certificate** means a registration certificate granted under Part 3.4 to a foreign lawyer.

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

**automatic show cause event**—see section 3.5.8.

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

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

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

**barrister** means an Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only, whether or not his or her home jurisdiction is a fused jurisdiction or a non-fused jurisdiction.

**Board** means the National Legal Services Board established by Part 8.2.

**borrower** (in section 4.6.3)—section 4.6.3 (3).

**business day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

**certificate** (in Part 3.5)—see section 3.5.2.

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

**civil penalty provision**—see Part 9.6.

**claim** (in Part 4.5)—see section 4.5.2.

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

**commercial or government client**—see section 4.3.2.

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

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

**complaint** means a complaint under Part 5.2.

**complaint investigation** means an investigation of complaint under section 5.2.17.

**compliance audit** means an audit under section 4.6.1.

**compliance certificate** means a certificate issued under section 2.2.4.

**concerted interstate default**—see section 4.5.2.

**conditional costs agreement**—see section 4.3.11.

**conditions** includes terms, limitations and restrictions.

**consumer matter**—see section 5.2.5.

**contributor** (in section 4.6.3)—section 4.6.3 (3).

**contributory mortgage** (in section 4.6.3)—section 4.6.3 (3).

**controlled money**—see section 4.2.2.

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

**corporate lawyer** means an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a related entity.

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

**Corporations Act administrator** (in section 3.7.11)—see section 3.7.11 (7).

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

**costs assessor** means:

- (a) a person appointed by a court, judicial officer or other official to have the responsibility of conducting costs assessments; or

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- (b) a judicial officer or other official designated by jurisdictional legislation to have that responsibility.

*costs dispute*—see section 5.2.5.

*declaration of early assessment of eligibility for a compliance certificate* means a declaration made by the Board under section 2.2.6 or the Supreme Court under section 2.2.10.

*default*—see section 4.5.2.

*designated show cause event*—see section 3.5.12.

*designated tribunal* means the court or tribunal specified or described in the Legal Profession National Law Act of a jurisdiction for the purposes of a provision of this Law in which the term is used.

*disqualified person* means any of the following persons:

- (a) a person whose name has been removed from a Supreme Court roll and who has not subsequently been admitted or re-admitted; or
- (b) a person whose Australian practising certificate is suspended; or
- (c) a person whose Australian practising certificate has been cancelled and who has not been granted an Australian practising certificate at a later time; or
- (d) a person who has been refused the grant or renewal of an Australian practising certificate and who has not been granted an Australian practising certificate at a later time; or
- (e) a person who is the subject of an order under section 2.3.1 or 3.7.8.

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

*entity* includes a natural person, an incorporated body and an unincorporated body or other organisation.

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

*external administrator* (in section 3.7.12)—see section 3.7.12 (6).

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

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

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

*fidelity fund*—see sections 4.5.2, 4.5.4 and 4.5.6.

*financial institution* (in section 4.6.3)—section 4.6.3 (3).

*financial year* means a year ending on 30 June.

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

***foreign country*** means:

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

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

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

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

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

***fused jurisdiction*** means a jurisdiction whose Legal Profession National Law Act contains a provision declaring that the jurisdiction is a fused jurisdiction.

***government authority*** includes a Minister, government department or public authority of the Commonwealth, a State or a Territory.

***government lawyer*** means an Australian legal practitioner who engages in legal practice only for or at the direction of a government authority.

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

***home jurisdiction*** means:

- (a) in the case of an applicant for or the holder of an Australian practising certificate—the jurisdiction last notified to the Board under section 3.3.5; or
- (b) in the case of an applicant for or the holder of an Australian registration certificate—the jurisdiction last notified to the Board under section 3.4.6; or
- (c) in the case of an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer:
  - (i) where only one jurisdiction is the home jurisdiction for the only associate of the law practice who is an Australian legal practitioner or for all the associates of the law practice who are Australian legal practitioners—that jurisdiction; or
  - (ii) where no single jurisdiction is the home jurisdiction for all the associates of the law practice who are Australian legal practitioners:
    - (A) the jurisdiction in which the office is situated at which the

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associate performs most of his or her duties for the law practice; or

(B) if a jurisdiction cannot be determined under subparagraph (A)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or

(C) if a jurisdiction can be determined under neither subparagraph (A) nor (B)—the jurisdiction of the associate's place of residence in Australia (or if he or she does not have a place of residence in Australia) the jurisdiction of his or her last place of residence in Australia; or

(d) in any other case—the jurisdiction determined in accordance with the National Rules.

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

**host jurisdiction** means [the principal enacting jurisdiction];

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

(a) it is:

(i) a company within the meaning of the Corporations Act; or

(ii) a body corporate, or a body corporate of a kind, approved by the Board or specified in the National Rules for the purposes of this definition; and

(b) it has given notice under section 3.7.3 that it intends to engage in legal practice in Australia and that notice is still operative; and

(c) the legal services it provides or proposes to provide are not limited to either or both of the following services:

(i) in-house legal services for the corporation or a related entity;

(ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner;

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

but does not include a community legal service.

**insolvent under administration** means:

(a) a person who is an undischarged bankrupt within the meaning of the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory); or



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- (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory) if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory) if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory) if the debt agreement has not ended or has not been terminated; or
- (e) a person who has executed a personal insolvency agreement under Part X of the Bankruptcy Act (or the corresponding provisions of the law of a foreign country or external territory) but not if the agreement has been set aside or terminated or all of the obligations that the agreement created have been discharged.

**jurisdiction** means a State or Territory.

**jurisdictional legislation** means legislation of a jurisdiction.

**Law Council of Australia** means Law Council of Australia Limited.

**law firm** means a partnership consisting only of:

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

**law practice** means:

- (a) a sole practitioner; or
- (b) a law firm; or
- (c) a community legal service; or
- (d) an incorporated legal practice; or
- (e) an unincorporated legal practice.

**lawyer:**

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

**lay associate** of a law practice means:

- (a) an associate of the law practice who is not an Australian legal practitioner; or

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

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

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

**Legal Profession Conduct Rules** means the provisions of the National Rules designated as such under Part 4.7.

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

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

**local representative** of:

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

**managed investment scheme** has the same meaning as in Chapter 5C of the Corporations Act.

**management system direction** means a direction under section 4.6.2.

**maximum civil penalty**—see Part 9.6.

**maximum criminal penalty**—see Part 9.6.

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

**member of the staff** of the Board, the Ombudsman or a local representative includes a person engaged or assigned to provide assistance in the exercise of their respective functions.

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

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

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

- (a) acting as an intermediary to match a prospective lender and borrower, or

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- (b) arranging the loan; or
- (c) receiving or dealing with payments for the purposes of, or under, the loan;

but does not include providing legal advice or preparing an instrument for the loan.

**national authority** (in Division 3 of Part 1.3)—see section 1.3.5.

**National Law receiver** (in sections 3.7.11 and 3.7.12)—see sections 3.7.11 (7) and 3.7.12 (6).

**National Rules** means the National Rules made under Part 9.1, and includes the National Rules referred to in Part 4.7.

**nominated authority:**

- (a) in section 4.2.23—see section 4.2.23 (5); and
- (b) in Part 4.5—see section 4.5.2.

**nominated fund** (in section 4.2.23)—see section 4.2.23 (5).

**non-fused jurisdiction** means a jurisdiction whose Legal Profession National Law Act contains a provision declaring the jurisdiction is a non-fused jurisdiction.

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

**officer** of a law practice that is an incorporated legal practice or an unincorporated legal practice includes a person who has a relationship with the law practice that is of a kind approved under section 3.7.4 (1) (a) (iii).

**Ombudsman** means the person appointed to or acting in the office of the National Legal Services Ombudsman established under Part 8.3.

**partnership** includes a limited partnership.

**pecuniary loss**—see section 4.5.2.

**penalty unit** has the same meaning as in an Act of the host jurisdiction.

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

**practical legal training** means either or both of the following:

- (a) legal training by participation in course work; or
- (b) supervised legal training, whether involving articles of clerkship or otherwise.

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

- (a) in the case of a sole practitioner—the sole practitioner; or
- (b) in the case of a law firm—a partner in the firm; or
- (c) in the case of a community legal service—a supervising legal practitioner of the service; or

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- (d) in the case of an incorporated legal practice or an unincorporated legal practice—a supervising legal practitioner of the practice.

**professional association** means an entity specified in Schedule 5.

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

**professional misconduct**—see section 5.4.3.

**professional obligations** includes:

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

but does not include obligations arising under this Law or the National Rules.

**qualified entity** (in Part 2.1)—see section 2.1.2.

**quashing** of a conviction for an offence includes:

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

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

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

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

**related entity**, in relation to a person, means:

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

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definition.

**relevant person:**

- (a) in section 9.6.1—see section 9.6.1 (3); and
- (b) in section 9.6.4—see section 9.6.4 (3).

**respondent** means the lawyer (within the meaning of Chapter 5) or law practice that is the subject of a complaint.

**serious offence** means an offence that is:

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

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

**Standing Committee** means those members of the Standing Committee of Attorneys-General who are the Attorneys-General of the Commonwealth, the States and the Territories.

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

- (a) as an employee of, or other person working under supervision in, a law practice, where:
  - (i) at least one legal practitioner associate of the law practice holds an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or
- (b) as a partner in a law firm, where:
  - (i) at least one other partner is an Australian legal practitioner who holds an Australian practising certificate as a principal of a law practice; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or
- (c) as an employee of, or other person working under supervision in, a body corporate or government authority; or
- (d) in a capacity or in circumstances approved under the National Rules for the purposes of this definition.

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***supervising legal practitioner*** of:

- (a) an incorporated legal practice or an unincorporated legal practice—see section 3.7.4; or
- (b) a community legal service—see section 3.8.2.

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

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

***third party payer***—see section 4.3.3.

***transit money***—see section 4.2.2.

***trust money***—see section 4.2.2.

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

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

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

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

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

but does not include:

- (e) a law firm; or

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

*unsatisfactory professional conduct*—see section 5.4.2.

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

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

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

- (2) Notes included in this Law do not form part of this Law.

### 1.2.2 Interpretation generally

The Act of the host jurisdiction that provides for the interpretation of legislation of the host jurisdiction applies to this Law and the National Rules in the same way as it applies to an Act or subordinate legislation of the host jurisdiction.

## Part 1.3 Exercise of special functions

### Division 1 Exercise of special functions of Board

#### 1.3.1 Special functions of Board

- (1) The special functions of the Board are:
  - (a) the functions of the Board under:
    - (i) Parts 2.3 and 3.3; and
    - (ii) Part 3.5 so far as that Part relates to Australian practising certificates; and
  - (b) any functions of the Board under this Law or the National Rules that are associated with any of the functions referred to in paragraph (a).
- (2) The special functions of the Board do not include:
  - (a) functions relating to the making of National Rules; and
  - (b) any functions specified in the National Rules for the purposes of this section as functions to which subsection (1) does not apply.

#### 1.3.2 Exercise of special functions of Board

- (1) Subject to section 1.3.7:

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- (a) the special functions of the Board in relation to an applicant for or the holder of an Australian practising certificate whose home jurisdiction is this jurisdiction are to be exercised on behalf of the Board by the Board's local representative for this jurisdiction; and
  - (b) the Board is not to exercise the special functions itself or through persons appointed or engaged by it.
- (2) References to the Board in provisions of this Law and the National Rules relating to the special functions of the Board are taken to include references to the Board's local representative for this jurisdiction.

## **Division 2 Exercise of special functions of Ombudsman**

### **1.3.3 Special functions of Ombudsman**

- (1) The special functions of the Ombudsman are:
- (a) the functions of the Ombudsman under:
    - (i) Parts 4.2 and 4.6; and
    - (ii) Chapters 5, 6 and 7; and
  - (b) any functions of the Ombudsman under this Law or the National Rules that are associated with any of the functions referred to in paragraph (a).
- (2) The special functions of the Ombudsman do not include any functions specified in the National Rules for the purposes of this section as functions to which subsection (1) does not apply.

### **1.3.4 Exercise of special functions of Ombudsman**

- (1) Subject to section 1.3.7:
- (a) the special functions of the Ombudsman in relation to:
    - (i) a law practice that carries on business in this jurisdiction; or
    - (ii) a person who is or was an Australian lawyer, an Australian legal practitioner or an Australian-registered foreign lawyer whose home jurisdiction is or was this jurisdiction;are to be exercised on behalf of the Ombudsman by the Ombudsman's local representative for this jurisdiction; and
  - (b) the Ombudsman is not to exercise the special functions himself or herself or through persons appointed or engaged by him or her.
- (2) References to the Ombudsman in provisions of this Law and the National Rules relating to the special functions of the Ombudsman are taken to include references to the Ombudsman's local representative for this jurisdiction.



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**Division 3 General provisions relating to special functions**

**1.3.5 Meaning of national authority**

In this Division, the term *national authority* refers to the Board or the Ombudsman.

**1.3.6 Monitoring and co-ordinating role of national authority**

- (1) A national authority is responsible for:
  - (a) monitoring the exercise of its special functions by its local representative for this jurisdiction; and
  - (b) including in its annual report a report on the implementation of provisions of this Law and National Rules that confer or impose those functions; and
  - (c) promoting consistency in the application of those provisions.
- (2) A national authority's local representative for this jurisdiction is required to provide information and other assistance to the authority in order to assist it in exercising its responsibilities under subsection (1), and for that purpose the national authority may specify the kind of information or other assistance it requires and the periods within which or times by which it is to be provided.

**1.3.7 Power of national authority to take over exercise of special function**

- (1) A national authority at its discretion may, by notice given to the local representative for this jurisdiction and after consulting with the representative, take over from it (or its delegate) responsibility for a particular matter that involves or may involve a special function. The national authority may do so if of the opinion that it is appropriate to take over the matter on the ground that:
  - (a) the matter is likely to set a precedent; or
  - (b) the matter should be resolved in a manner that would promote national uniformity; or
  - (c) the matter could result in an actual or perceived conflict of interest if managed by the representative or its delegate; or
  - (d) the representative or its delegate has acted against or not acted on:
    - (i) a direction of the national authority; or
    - (ii) a recommendation of the Ombudsman made under this Law in relation to an Australian practising certificate.
- (2) When the national authority takes over a matter from a local representative or its delegate:
  - (a) the national authority may, despite section 1.3.2 or 1.3.4, deal with and determine the matter afresh, but may adopt or take into account anything done or received by the representative or its delegate to date; and

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- (b) the representative or its delegate is to provide any assistance required by the national authority to deal with the matter (including copies of or access to all documents held by the representative or its delegate that relate to the matter); and
  - (c) the representative or its delegate otherwise ceases to have responsibility for the matter unless the national authority refers the matter back to the representative under subsection (3).
- (3) The national authority may refer a matter back to the local representative or its delegate at any time to be dealt with and determined by the local representative or its delegate, with such directions under section 1.3.9 as to how the matter should be dealt with as the national authority thinks fit.
- (4) A reference in this section to a delegate includes a reference to a sub-delegate.

#### **1.3.8 Documents lodged with national authority instead of local representative**

- (1) Subject to section 1.3.7, if a person lodges with a national authority a document (including, for example, a complaint) that should have been lodged with a local representative of the authority, the authority must forward the document, if appropriate, to the authority's local representative for this jurisdiction.
- (2) A document forwarded to the local representative under this section is taken to have been lodged with the representative when it was lodged with the authority.

#### **1.3.9 Directions**

- (1) A national authority may issue directions about the exercise of its special functions by its local representatives and their delegates.
- (2) Directions may, without limitation, provide for determining which local representative should deal with a matter where more than one jurisdiction is involved or there is uncertainty as to which jurisdiction is relevant in the circumstances.

#### **1.3.10 Delegation by local representatives**

- (1) A local representative may delegate any functions it has by virtue of this Part to a member of the staff of the representative, other than this power of delegation.
- (2) If a local representative is not a professional association, it may delegate any functions it has by virtue of this Part to a professional association, other than:
  - (a) functions under Part 3.3; and
  - (b) this power of delegation.
- (3) A professional association that is a delegate under subsection (2) may sub-delegate any delegated function, but only to the extent permitted by the instrument of delegation.
- (4) Without limiting the powers that a local representative has apart from this

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subsection as a delegator, the provisions of sections 1.3.6 and 1.3.7 apply to the local representative in relation to its delegates in the same way as those sections apply to a national authority in relation to a local representative and its delegates. Those sections so apply as if:

- (a) references to a national authority and a local representative for this jurisdiction were respectively references to the local representative for this jurisdiction and its delegates; and
  - (b) section 1.3.6 (1) (b) were omitted.
- (5) A reference in subsection (4) to a delegate includes a reference to a sub-delegate.

**1.3.11 Protection from liability**

No liability attaches to a national authority for:

- (a) any act or omission of a local representative (or its delegate or a sub-delegate) in the exercise or purported exercise of a special function by the representative; or
- (b) not taking over from a local representative (or its delegate or a sub-delegate) responsibility for a particular matter that involves or may involve a special function.

## **Chapter 2 Threshold requirements regarding legal practice**

### **Part 2.1 Unqualified legal practice**

#### **2.1.1 Objectives**

The objectives of this Part are:

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

#### **2.1.2 Meaning of qualified entity**

In this Part, the term *qualified entity* refers to an entity that is:

- (a) an Australian legal practitioner; or
- (b) a law practice; or
- (b) an overseas-qualified foreign lawyer who is not an Australian-registered foreign lawyer, but only while the foreign lawyer's legal practice is limited to the practice of foreign law and is carried out in accordance with the applicable requirements of Part 3.4; or
- (c) engaged in legal practice under the authority of a law of the Commonwealth, a State or a Territory (other than this Law or the National Rules); or
- (d) engaged in legal practice of a kind specified in the National Rules for the purposes of this section, but only while the person engages in the legal practice in accordance with any applicable requirements of the National Rules.

#### **2.1.3 Prohibition on engaging in legal practice by unqualified entities**

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

Criminal maximum penalty: for a body corporate—500 penalty units; for a natural person—100 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply to an entity or class of entities declared by the National Rules to be exempt from the operation of subsection (1), but only to the extent (if any) specified in the declaration.
- (3) An entity is not entitled to recover any amount, and must repay any amount received, in respect of anything the entity did in contravention of subsection (1).

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Any amount so received may be recovered as a debt by the person who paid it.

**2.1.4 Prohibition on advertisements or representations by or about unqualified entities**

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

Criminal maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Criminal maximum penalty: 50 penalty units.

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

- (1) **Titles**

This section applies to the following titles:

- (a) lawyer, legal practitioner, barrister, solicitor, attorney, counsel or proctor;
- (b) Senior Counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel or His Majesty's Counsel;
- (c) any other title specified in the National Rules for the purposes of this section.

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

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

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

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

The taking or use of a title to which this section applies by a person gives rise to a rebuttable presumption (for the purposes of section 2.1.4 (1)) that the person represented that he or she is entitled to engage in legal practice.

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

The taking or use of a title to which this section applies by a person in connection with an entity, of which the person is a partner, director, officer, employee or

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agent, gives rise to a rebuttable presumption (for the purposes of section 2.1.4 (2)) that the person represented that the entity is entitled to engage in legal practice.

## **Part 2.2 Admission to the Australian legal profession**

### **Division 1 Introduction**

#### **2.2.1 Objective**

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

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

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

### **Division 2 Admission**

#### **2.2.2 Admission**

- (1) The Supreme Court of this jurisdiction may admit a natural person aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if:
  - (a) the Board has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and
  - (b) this jurisdiction is specified as the nominated jurisdiction under section 2.2.4 (2); and
  - (c) the person is not already admitted to the Australian legal profession; and
  - (d) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.
- (2) Residence in or any other connection with this jurisdiction is not a requirement for admission by the Supreme Court.

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

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

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**2.2.3 Prerequisites for compliance certificates**

- (1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:
  - (a) has attained the academic qualifications approved under the National Rules for the purposes of this section; and
  - (b) has satisfactorily completed the practical legal training requirements specified in the National Rules for the purposes of this section; and
  - (c) is a fit and proper person to be admitted to the Australian legal profession, having regard to the matters provided in the National Rules for the purposes of this section.
  
- (2) In considering the prerequisites as applying to a particular person, the Board may exempt the person from having to satisfy a prerequisite referred to in subsection (1) (a) or (b) or both if satisfied that the person has either or both of the following:
  - (a) sufficient academic qualifications;
  - (b) sufficient legal skills or sufficient relevant experience:
    - (i) obtained in legal practice or in service with any entity; or
    - (ii) otherwise obtained;

so as to render the person suitable for admission, whether the qualifications, skills or experience were obtained wholly in Australia or overseas or were obtained partly in Australia and partly overseas.

**2.2.4 Compliance certificates**

- (1) A person may apply, in accordance with the National Rules, to the Board for a compliance certificate.
- (2) An application for a compliance certificate must nominate the jurisdiction (the *nominated jurisdiction*) where the applicant proposes to be admitted. A compliance certificate, if issued, must specify the nominated jurisdiction.
- (3) The Board may require an applicant for a compliance certificate to provide further information to the Board within a specified time.
- (4) The Board may issue and provide to the Supreme Court a compliance certificate stating that the applicant has satisfied the Board that he or she:
  - (a) has satisfied the prerequisites referred to in section 2.2.3 (1) (a) and (b) or is exempted under section 2.2.3 (2); and
  - (b) is a fit and proper person to be admitted to the Australian legal profession (as referred to in section 2.2.3 (1) (c)).
  
- (5) The Board may revoke a compliance certificate issued in respect of a person if

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the Board is satisfied that the certificate was issued on the basis of information provided by the person that was false, misleading or incomplete in a material particular.

- (6) However, revocation of a compliance certificate under this section does not of itself affect the person's admission if he or she is already admitted.
- (7) Any person may object to the Board against the issue of a compliance certificate to a particular person.
- (8) The Board must ensure that notice is given, in accordance with the National Rules, on the Board's website of an application for admission.
- (9) The Board is not to issue a compliance certificate until after it has:
  - (a) given notice under subsection (8) of the decision to do so; and
  - (b) afforded a reasonable opportunity for persons to object to the issue of the certificate; and
  - (c) considered all objections received within a reasonable period.

**2.2.5 Conditional admission of foreign lawyers**

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



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**2.2.6 Declaration of early assessment of eligibility for a compliance certificate**

- (1) A person may apply to the Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board as to whether the person is a fit and proper person to be admitted.
- (2) The Board may make the declaration applied for in relation to any or all of the matters disclosed and specified in the declaration or may refuse to do so.
- (3) A declaration made under this section is binding on the Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

**2.2.7 Supreme Court roll**

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

**2.2.8 Removal from Supreme Court roll**

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

**Division 3 Appeals**

**2.2.9 Right of appeal about compliance certificates**

- (1) An applicant for a compliance certificate may appeal to the Supreme Court of this jurisdiction against the refusal of the Board to issue a compliance certificate, where this jurisdiction is specified in the application for the compliance certificate as the nominated jurisdiction under section 2.2.4 (2).
- (2) A person for whom a compliance certificate has been issued may appeal to the Supreme Court of this jurisdiction against the revocation of the compliance certificate, where this jurisdiction is specified in the compliance certificate as the nominated jurisdiction under section 2.2.4 (2).
- (3) The Supreme Court may make any order it considers appropriate on the appeal.

**2.2.10 Right of appeal about early assessment**

- (1) An applicant for a declaration of early assessment of eligibility for a compliance certificate may appeal to the Supreme Court of this jurisdiction against the refusal of the Board to make the declaration.

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- (2) The Supreme Court may make any order it considers appropriate on the appeal, including without limitation a declaration of early assessment of eligibility for a compliance certificate.
- (3) A declaration made under this section is binding on the Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

#### **2.2.11 Provisions relating to appeals**

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

## **Division 4 Miscellaneous**

#### **2.2.12 Notification of information to Board**

- (1) The Supreme Court of this jurisdiction must ensure that the name and other relevant particulars of:
  - (a) a person admitted by the Court; or
  - (b) a person whose name is removed by the Court from the Supreme Court roll for this jurisdiction;are provided to the Board as soon as practicable for the purposes of maintaining the Australian Legal Profession Register.
- (2) The Supreme Court must ensure that the name and other relevant particulars of a person for whom the Court has refused admission, together with a statement of its reasons for refusal, are provided to the Board as soon as practicable.

#### **2.2.13 Australian lawyer is officer of Supreme Court**

An Australian lawyer is an officer of the Supreme Court of this jurisdiction for as long as he or she remains on the Supreme Court roll for any jurisdiction.

#### **2.2.14 National Rules for admission**

- (1) The National Rules may make provision with respect to any aspect of admission.
- (2) Without limitation, the National Rules may provide for the following:
  - (a) the prerequisites for the issue of a compliance certificate, as referred to in section 2.2.3; and
  - (b) the procedures for admission, including:

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- (i) the making and assessment of applications for compliance certificates; and
  - (ii) the issue of compliance certificates; and
  - (c) conditions on admission that may be applied in the case of foreign lawyers.
- (2) The National Rules may require the disclosure of matters that may affect consideration of the eligibility of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed.

## **Part 2.3            Prohibitions regarding associates**

### **2.3.1            Order disqualifying persons**

- (1) The Board may apply to the designated tribunal for an order that a person (other than an Australian legal practitioner) is a disqualified person for the purposes of this Law if the person:
- (a) has been convicted of a serious offence; or
  - (b) in the opinion of the Board has been a party to an act or omission that, if the person had been an Australian legal practitioner, may have resulted in the initiation of proceedings under Part 5.4.
- (2) The designated tribunal may order that the person is a disqualified person for the purposes of this Law, for a specified period or indefinitely.
- (3) If an order under this section specifies that a person is a disqualified person indefinitely, the person may apply to the designated tribunal to have the order revoked.
- (4) The designated tribunal, on application under subsection (3), may revoke an order if it considers it appropriate to do so.

### **2.3.2            Associates who are disqualified or convicted persons**

- (1) A law practice must not have a lay associate whom any principal or other legal practitioner associate of the practice knows to be:

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

unless the lay associate is approved by the Board under subsection (2).

Criminal maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (2) The Board may, on application, approve a lay associate for the purposes of this section.

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- (4) An approval under this section may be granted unconditionally or subject to specified conditions.
- (5) A disqualified person, or a person convicted of a serious offence, must not seek to become a lay associate of a law practice unless the person first informs the law practice of the disqualification or conviction.

Criminal maximum penalty: 50 penalty units.

- (6) Proceedings for an offence under subsection (5) may only be brought within 6 months after discovery of the offence by the law practice.
- (7) This section does not apply in circumstances specified in the National Rules for the purposes of this section.

## **Chapter 3      Legal practice**

### **Part 3.1      Introduction**

#### **3.1.1 Objectives**

The objectives of this Chapter are:

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

### **Part 3.2      Law practices—general provisions**

#### **3.2.1 Business structures**

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

#### **3.2.2 Obligations not affected by nature of business structures**

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

#### **3.2.3 Responsibilities of principals**

- (1) Each principal of a law practice is responsible for ensuring that all reasonable action is taken to ensure that:
  - (a) all legal practitioner associates of the law practice comply with their obligations under this Law and the National Rules and their professional obligations; and
  - (b) the legal services provided by the law practice are provided in accordance with this Law, the National Rules and the applicable professional

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obligations.

- (2) A failure to uphold that responsibility is capable of constituting unsatisfactory professional conduct or professional misconduct.

#### **3.2.4 Liability of principals**

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

#### **3.2.5 Discharge by legal practitioner associate of obligations of law practice**

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

#### **3.2.6 Involvement of practitioners**

Subject to the conditions of his or her Australian practising certificate, an

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Australian legal practitioner is not prevented from being a partner, director, officer or employee of a law practice merely because of one or more of the following:

- (a) the business of the law practice includes the provision of both legal services and other services;
- (b) one or more other persons who are not Australian legal practitioners are officers, partners or employees of the law practice;
- (c) the practitioner shares receipts, revenue or other income from the provision of his or her legal services with the law practice or one or more persons who are referred to in paragraph (b) but who are not disqualified persons.

### 3.2.7 Privileges of practitioners

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

### 3.2.8 Undue influence

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

Criminal maximum penalty: 100 penalty units.

### 3.2.9 Approval of business structures

The Board may approve:

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

### 3.2.10 National Rules

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

## **Part 3.3      Australian legal practitioners**

### **Division 1      Introduction**

#### **3.3.1 Objectives**

The objectives of this Part are:

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

### **Division 2      Australian practising certificates**

#### **3.3.2 Entitlement to practise**

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

#### **3.3.3 Grant or renewal of Australian practising certificates**

- (1) The Board may, on application, grant or renew an Australian practising certificate in respect of a financial year.
- (2) An Australian practising certificate is subject to conditions imposed by or under this Law or the National Rules.
- (3) An Australian practising certificate ceases to be in force if the holder ceases to be an Australian lawyer.

#### **3.3.4 Prerequisites for grant or renewal of Australian practising certificates**

The Board may grant or renew an Australian practising certificate only if it is satisfied that the applicant:

- (a) is an Australian lawyer; and
- (b) is a fit and proper person to hold an Australian practising certificate; and
- (c) if required by this Law to have professional indemnity insurance—has, or will have on or before the grant or renewal, professional indemnity insurance in accordance with this Law and the National Rules; and
- (d) has satisfactorily complied with the conditions of any previous Australian practising certificate.



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**3.3.5      Notification of principal place of legal practice**

- (1) An Australian lawyer must notify the Board of the jurisdiction that he or she reasonably expects will be his or her principal place of legal practice:
  - (a) on application for the grant or renewal of an Australian practising certificate; and
  - (b) within 14 days after his or her principal place of legal practice changes, if that change coincides with the move from one jurisdiction (the *old jurisdiction*) to another jurisdiction (the *new jurisdiction*) of the permanent office in or through which the lawyer engages in legal practice.
- (2) The notification must be given to the local representative of the Board for:
  - (a) in the case of subsection (1) (a)—the jurisdiction that the Australian lawyer reasonably expects will be his or her principal place of legal practice; and
  - (b) in the case of subsection (1) (b)—both the old jurisdiction and the new jurisdiction.
- (3) Subsection (4) applies where a barrister proposes to move his or her permanent office in or through which he or she engages in legal practice from a fused jurisdiction to a non-fused jurisdiction where the barrister proposes to engage in legal practice as or in the manner of a barrister only.
- (4) The notification by a barrister referred to in subsection (3) is not effective until the Board is satisfied that the barrister satisfies the relevant requirements of the professional association for barristers in the non-fused jurisdiction for engaging in legal practice as or in the manner of a barrister only.

**Note.** The home jurisdiction of an Australian legal practitioner is the jurisdiction last notified by the practitioner to the Board under this section.

**Division 3              Conditions of Australian practising certificates**

**3.3.6      Conditions—trust money and categories of practice**

- (1) An Australian practising certificate is subject to the following conditions, as determined by the Board:
  - (a) a condition that the holder is authorised or not authorised to receive trust money;
  - (b) a condition that the holder is authorised to engage in legal practice:
    - (i) as a principal of a law practice; or
    - (ii) as or in the manner of a barrister only; or
    - (iii) as an employee of a law practice only; or
    - (iv) as a corporate lawyer or government lawyer only; or

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(vi) as a volunteer at a community legal service.

- (2) An Australian practising certificate authorising the holder to engage in legal practice as a principal also authorises the holder to engage in legal practice as an employee of a legal practice or as a corporate lawyer or government lawyer.
- (3) An Australian practising certificate authorises the holder to provide legal services as a volunteer at community legal services, subject to any discretionary condition that may be imposed by the Board that specifically prohibits, restricts or regulates the provision of legal services at community legal services.

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

- (1) It is a statutory condition of an Australian practising certificate that the holder must not contravene a condition that was imposed on the admission of the person to the Australian legal profession and that is still in force.
- (2) It is a statutory condition of an Australian practising certificate that the holder must not apply for or hold another Australian practising certificate that would be in force concurrently with the first certificate.

**3.3.8      Statutory condition—to engage in supervised legal practice**

It is a statutory condition of an Australian practising certificate that the holder must engage in supervised legal practice only, until:

- (a) if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission to the Australian legal profession—a period or periods equivalent to 18 months' supervised legal practice after the day the holder's first practising certificate was granted; or
- (b) if the holder completed other practical legal training to qualify for admission to the Australian legal profession—a period or periods equivalent to 2 years' supervised legal practice after the day the holder's first practising certificate was granted.

**3.3.9      Statutory condition—to notify certain events**

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

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**3.3.10      Statutory condition—continuing professional development**

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

**3.3.11      Discretionary conditions**

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

**3.3.12      Compliance with conditions**

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

**Division 4            Miscellaneous**

**3.3.13      National Rules for Australian practising certificates and associated matters**

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

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

**Part 3.4            Foreign lawyers**

**Division 1            Introduction**

**3.4.1            Objective**

The objective of this Part is to encourage and facilitate the internationalisation of

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legal services by providing a framework for the regulation of the practice of foreign law in Australia by foreign lawyers as a recognised aspect of legal practice in Australia.

#### **3.4.2 This Part does not apply to Australian legal practitioners**

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

### **Division 2 Limited practice without registration**

#### **3.4.3 Practice of foreign law without registration but for limited periods**

- (1) A foreign lawyer may, subject to this Law, practise foreign law in this jurisdiction without having to hold a current Australian registration certificate:
  - (a) during one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or
  - (b) during any period during which any restriction under the *Migration Act 1958* of the Commonwealth has the effect of limiting the period during which work may be done, or business transacted, by the foreign lawyer in Australia.
- (2) Subsection (1) does not apply to a foreign lawyer:
  - (a) who maintains an office in this jurisdiction for the purpose of practising foreign law in Australia; or
  - (b) is a partner, director or other principal of a law practice in this jurisdiction; or
  - (c) whose Australian registration certificate has been cancelled and he or she has not subsequently been granted an Australian registration certificate; or
  - (c) while his or her Australian registration certificate is suspended.
- (3) A foreign lawyer who does not hold a current Australian registration certificate must not:
  - (a) maintain an office in this jurisdiction for the purpose of practising foreign law in this jurisdiction; or
  - (b) be a partner, director or other principal of a law practice in this jurisdiction.

Civil maximum penalty: 100 penalty units.

### **Division 3 Registration**

#### **3.4.4 Entitlement to practise**

- (1) An Australian-registered foreign lawyer is entitled to practise foreign law in this

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jurisdiction.

- (2) That entitlement is subject to any requirements of this Law and the National Rules and the conditions of the lawyer's Australian registration certificate.

**3.4.5 Grant or renewal of Australian registration certificates**

- (1) The Board may, on application, grant or renew an Australian registration certificate in respect of a financial year.
- (2) An Australian registration certificate is subject to conditions imposed by or under this Law or the National Rules.
- (3) The Board must grant an Australian registration certificate to a person applying for it if the Board is satisfied that:
- (a) the person is a natural person aged 18 years or over; and
  - (b) the person is registered or authorised to engage in legal practice in one or more foreign countries with an effective system of legal practice regulation and is not an Australian legal practitioner; and
  - (c) the person demonstrates an intention to engage in legal practice in Australia within a reasonable period after registration; and
  - (d) the person is not subject to any special conditions or undertakings concerning his or her engagement in legal practice as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country that would make registration inappropriate; and
  - (e) the person is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as:
    - (i) a foreign lawyer; or
    - (ii) an Australian-registered foreign lawyer; or
    - (iii) an Australian lawyer; and
  - (f) the person's registration or authorisation is not cancelled or currently suspended in any place as a result of disciplinary action; and
  - (g) the person is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place as a result of criminal, civil or disciplinary proceedings in any place; and
  - (h) the person satisfies any other requirements of the National Rules.
- (4) The Board may refuse to grant or renew an Australian registration certificate on any ground specified in the National Rules for the purposes of this section.

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- (5) Residence or domicile in Australia is not a prerequisite for or a factor in entitlement to the grant or renewal of an Australian registration certificate.
- (6) The Board:
  - (a) may make such enquiries as it thinks fit of any overseas registration authority for the purposes of determining whether to be satisfied as to the matters referred to in subsection (3); and
  - (b) may consider any other matters, not inconsistent with this Law, that the Board considers relevant.
- (7) A foreign lawyer is registered as a foreign lawyer on being granted an Australian registration certificate, and ceases to be registered when the foreign lawyer no longer holds an Australian registration certificate.

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

#### **3.4.6 Notification of principal place of legal practice**

An applicant for or holder of an Australian registration certificate must notify the Board of the jurisdiction that he or she reasonably expects will be his or her principal place of legal practice:

- (a) on application for the grant or renewal of an Australian registration certificate; and
- (b) within 14 days after his or her principal place of legal practice changes, if that change coincides with the move from one jurisdiction to another of the permanent office in or through which the practitioner engages in legal practice.

### **Division 4                      Conditions of Australian registration certificates**

#### **3.4.7                      Conditions—trust money**

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

#### **3.4.8                      Statutory condition—to hold only one Australian registration certificate**

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

#### **3.4.9                      Statutory condition—to notify certain events**

- (1) It is a statutory condition of an Australian registration certificate that the holder must notify the Board in writing within 7 days that:
  - (a) the holder has been charged or of a serious offence, a tax offence or an offence specified in the National Rules for the purposes of this section; or

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- (b) a bankruptcy-related event has occurred in relation to the holder; or
  - (c) the holder is the subject of disciplinary proceedings, or other disciplinary action, as a lawyer in a foreign country.
- (2) The National Rules may specify circumstances in which notification is not required.

**3.4.10 Discretionary conditions**

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

**3.4.11 Compliance with conditions**

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

**Division 5      Scope of practice**

**3.4.12 Scope of practice**

- (1) This section applies to:
- (a) a foreign lawyer who is practising foreign law under Division 2; or
  - (b) an Australian-registered foreign lawyer.
- (2) The foreign lawyer may provide only the following legal services in Australia:
- (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered or authorised by the foreign registration authority for the country;
  - (b) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is essential;
  - (c) legal services in relation to arbitration proceedings or conciliation, mediation and other forms of consensual dispute resolution;

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- (d) legal services of a kind specified in the National Rules for the purposes of this section.
- (3) Nothing in this Law authorises the foreign lawyer:
  - (a) to practise Australian law in Australia; or
  - (b) to appear in any court, except on the lawyer's own behalf or as permitted by the National Rules.
- (4) Despite subsection (3), the foreign lawyer may advise on the effect of an Australian law if:
  - (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
  - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

## **Division 6      Miscellaneous**

### **3.4.13      National Rules for foreign lawyers**

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

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

## **Part 3.5      Variation, suspension and cancellation of certificates**

### **Division 1      Introduction**

#### **3.5.1      Objective**

The objective of this Part is to provide procedures for the variation, suspension or



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cancellation of Australian practising certificates and Australian registration certificates.

**3.5.2      References to certificate**

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

**Division 2            Variation, suspension or cancellation**

**3.5.3      Variation, suspension or cancellation**

- (1) The Board may vary a certificate for a formal or clerical reason or in another way that does not adversely affect the holder's interests.
- (2) The Board may vary a certificate, or issue a substitute certificate, to reflect a variation of the certificate.
- (3) The Board may vary, suspend or cancel a certificate:
  - (a) at the request of or with the concurrence of the holder; or
  - (b) in accordance with Division 3; or
  - (c) if the holder has contravened a condition of the certificate; or
  - (d) if the holder has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the holder in connection with this Chapter or has committed an offence under Chapter 7 in connection with any such investigation; or
  - (e) on the recommendation of the Ombudsman; or
  - (f) at the direction of the designated tribunal; or
  - (g) if the holder dies.
- (4) The Board may lift the suspension of a certificate imposed under this Part at any time, but must not do so inconsistently with an order of the designated tribunal in a case where the suspension was imposed at the direction of the designated tribunal.
- (5) The Board must give written notice of any variation, suspension or cancellation of a certificate to the holder or former holder, except where he or she has died.

**3.5.4      Suspension—pending further action**

- (1) This section applies if:
  - (a) the Board is considering whether to instigate, continue or complete action under this Part in relation to a certificate; or
  - (b) the Ombudsman has recommended that the Board temporarily suspend a certificate for a specified period while the Ombudsman is considering or is

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in the process of taking action in relation to the holder of the certificate.

- (2) The Board may:
  - (a) suspend the certificate if satisfied there are reasonable grounds for doing so and (where the Ombudsman has recommended the suspension as referred to in subsection (1) (b)) for a period not exceeding that specified by the Ombudsman; and
  - (b) at its discretion, renew the certificate (while it is suspended) if the end of the period of its currency is imminent.
- (3) The Board may, at its discretion, for the purpose of enabling the proper arrangement of the affairs of the holder, defer taking action under this Part, or renew the certificate, for such period as the Board considers necessary to achieve that purpose.

**3.5.5 Variation or suspension—pending criminal proceedings**

- (1) If the holder of a certificate has been charged with a serious offence, a tax offence or an offence specified in the National Rules for the purposes of this section but the charge has not been determined, the Board may, if it considers it appropriate to do so having regard to the seriousness of the offence and to the public interest, vary or suspend the certificate.
- (2) The variation or suspension has effect until the earliest of the following occurs:
  - (a) the Board revokes it; or
  - (b) the end of the period specified by the Board; or
  - (c) if the holder is convicted of the offence—28 days after the day of the conviction; or
  - (d) if the charge is dismissed—the day of the dismissal.

**3.5.6 Matters involving convictions**

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

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

- (2) If a certificate is varied, suspended or cancelled under this Part because the holder has been convicted of an offence and the conviction is quashed:
  - (a) the variation or suspension ceases to have effect when the conviction is

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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.

## **Division 3            Show cause procedure**

### **Subdivision 1    Preliminary**

#### **3.5.7            Show cause events**

Show cause events are of two kinds, as follows:

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

### **Subdivision 2    Automatic show cause events**

#### **3.5.8            Nature of automatic show cause events**

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

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

#### **3.5.9            Automatic show cause events—applicants**

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

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- (a) the applicant (as a previous applicant for a compliance certificate) has previously provided to the Board adequate details of the show cause event; or
- (b) the applicant (as a previous applicant for the grant or renewal of a certificate) has previously provided to the Board a statement under this Part explaining why, despite the show cause event, he or she considers himself or herself to be a fit and proper person to hold a certificate.

**3.5.10 Automatic show cause events—holders**

- (1) This section applies to an automatic show cause event that occurs in relation to the holder of a certificate.
- (2) The holder must, in accordance with the National Rules, provide to the Board:
  - (a) a notice stating that the show cause event occurred; and
  - (b) a statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.

**3.5.11 Automatic show cause events—action by Board**

The Board may refuse to grant or renew, or may vary, suspend or cancel, a certificate if the applicant or holder:

- (a) fails to provide a statement as required by this Subdivision; or
- (b) has provided a statement in accordance with this Subdivision but the Board considers that the applicant or holder has not shown in the statement that, despite the show cause event, he or she considers himself or herself to be a fit and proper person to hold a certificate; or
- (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.

**Subdivision 3 Designated show cause events**

**3.5.12 Nature of designated show cause events**

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

- (a) alleging:
  - (i) in the case of a holder of an Australian practising certificate—that the holder has engaged in legal practice outside the terms of a restriction on his or her practising entitlements; or
  - (ii) in the case of a holder of an Australian registration certificate—that the holder has provided legal services not permitted by or under this Law; or

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- (iii) in the case of a holder of an Australian practising certificate who is required to have professional indemnity insurance—that the holder does not have, or no longer has, professional indemnity insurance that complies with this Law in relation to the certificate; or
  - (iv) a matter of a kind specified in the National Rules for the purposes of this section; and
- (b) requiring the holder to provide a statement showing cause why the Board should not take action, specified in the notice, to vary, suspend or cancel the certificate.

**3.5.13 Designated show cause events—holders**

- (1) This section applies to a designated show cause event that occurs in relation to a holder of a certificate.
- (2) The holder must, in accordance with the National Rules, provide to the Board a statement explaining why, despite the show cause event, the holder considers himself or herself to be a fit and proper person to hold a certificate.

Criminal maximum penalty: 50 penalty units.

**3.5.14 Designated show cause events—action by Board**

- (1) If the holder provides a statement required by this Subdivision, the Board must investigate and determine whether the person concerned is a fit and proper person to hold a certificate.
- (2) The Board may refuse to grant or renew, or may vary, suspend or cancel, a certificate if the holder:
  - (a) fails to provide a statement as required by this Subdivision; or
  - (b) has provided a statement in accordance with this Subdivision but the Board considers that the holder has not shown in the statement that, despite the show cause event, he or she considers himself or herself to be a fit and proper person to hold a certificate; or
  - (c) has failed without reasonable excuse to comply with a requirement under Chapter 7 made in connection with an investigation of the show cause event concerned or has committed an offence under that Chapter in connection with any such investigation.
- (3) If the person is the holder of a certificate and:
  - (a) the Board determines that the person is such a fit and proper person—it must take no further action in relation to the show cause event; or
  - (b) the Board determines that the person is not such a fit and proper person—it may take the action specified in the notice referred to in section 3.5.12 or take less onerous action that the Board considers appropriate.
- (4) In investigating and determining a matter under this section, the Board:

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- (a) is not limited to investigating and making its determination on the basis of just the show cause event concerned; and
  - (b) may have regard to the facts and circumstances that surround, arise in connection with, relate to or give rise to the show cause event concerned.
- (5) The Board is not to deal with a matter under this section if the matter has previously been the subject of investigation and determination under this Law unless the Board is satisfied there are exceptional circumstances for doing so.

## **Subdivision 4    Other provisions about show cause events**

### **3.5.15      Immediate variation or suspension for show cause event**

- (1) This section applies if an automatic show cause event or a designated show cause event has occurred in relation to the holder of a certificate and the Board considers it necessary in the public interest to vary or suspend the certificate immediately.
- (2) The Board may, by written notice given to the holder, immediately vary or suspend the certificate until the earlier of the following:
  - (a) the time at which the Board informs the holder of the Board's decision under this Division;
  - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The holder may make written representations to the Board about the suspension, and the Board must consider the representations.
- (4) The Board may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

### **3.5.16      Events or matters occurring before admission or registration**

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

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

## **Division 4            Miscellaneous**

### **3.5.17      Investigations**

- (1) The Board may conduct an investigation of any matter for the purposes of this Part.

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- (2) The provisions of:
  - (a) Division 4 of Part 5.2; and
  - (b) Chapter 7 so far as relevant to that Division;

apply, with any necessary adaptations, in relation to a matter referred to in subsection (1) as if the matter were the subject of a complaint under Chapter 5.

#### **3.5.18      Restriction on making further applications**

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

#### **3.5.19      Relationship of this Part with Chapter 5**

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

#### **3.5.20      National Rules**

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

## **Part 3.6              Appeal or review about certificates**

### **3.6.1      Objective**

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

### **3.6.2      Right of appeal or review about Australian practising certificates**

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

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

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



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**3.6.3      Right of appeal or review about Australian registration certificates**

- (1) An applicant for or the holder of an Australian registration certificate whose home jurisdiction is this jurisdiction may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal of this home jurisdiction against, or seek a review by that tribunal of, any of the following decisions of the Board under this Chapter:
  - (a) a decision to refuse to grant or renew the Australian registration certificate;  
or
  - (b) a decision to vary, suspend or cancel the Australian registration certificate.
- (2) The designated tribunal may make any order it considers appropriate on the appeal or review.
- (3) Except to the extent (if any) that may be ordered by the designated tribunal, the lodging of an appeal or application for review does not stay the effect of the refusal, variation, suspension or cancellation concerned.
- (4) The designated tribunal may not order the imposition of conditions on an Australian registration certificate without first taking submissions from the Board.
- (5) The Board is to give effect to any order of the designated tribunal under this section.

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

**Part 3.7      Incorporated and unincorporated legal practices**

**Division 1      General**

**3.7.1      Application of this Division**

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

**3.7.2      Services that may be provided**

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

**3.7.3      Notice of intention to engage in or terminate legal practice**

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

Civil maximum penalty: for a body corporate—50 penalty units; for a natural person—10 penalty units.

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

Civil maximum penalty: for a body corporate—50 penalty units; for a natural person—10 penalty units.

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

Civil maximum penalty: for a body corporate—50 penalty units; for a natural person—10 penalty units.

- (4) The National Rules may make provision for determining whether and when an entity ceases to engage in legal practice in Australia.
- (5) To be effective, a notice under this section must comply with and be given in accordance with the National Rules. In particular, the National Rules may:

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

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

**3.7.4 Supervising legal practitioner**

- (1) A law practice to which this Division applies is required to have at least one supervising legal practitioner who:

- (a) is:
- (i) in the case of a company within the meaning of the Corporations Act—a validly appointed director of the company; or
- (ii) in the case of a partnership—a partner in the partnership; or
- (iii) in any other case—has a relationship with the law practice that is of a kind approved by the Board or specified in the National Rules for the purposes of this section; and
- (b) is an Australian legal practitioner who holds an Australian practising certificate authorising the holder to engage in legal practice as a principal of a law practice and that is not subject to any condition under this Law requiring the holder to engage in supervised legal practice.

- (2) A law practice to which this Division applies must, as soon as practicable and in accordance with the National Rules, notify the Board of the names and other particulars of each person who is or ceases to be a supervising legal practitioner of the law practice.

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Civil maximum penalty: for a body corporate—50 penalty units; for a natural person—10 penalty units.

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

**3.7.5      Law practice without principal**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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

Civil maximum penalty: for a body corporate—50 penalty units; for a natural person—10 penalty units.

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

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

- (6) An Australian legal practitioner is not eligible to be appointed under this section unless the practitioner holds an Australian practicing certificate as a principal of a law practice.

- (7) The appointment under this section of a person to exercise functions of a principal does not, for any other purpose, confer or impose on the person any of the other functions of a principal of the law practice.

- (8) A law practice does not contravene subsection (1) during any period during which a person holds an appointment under this section in relation to the law practice.

**3.7.6      Disclosure obligations**

- (1) This section applies if a person engages a law practice to which this Division applies to provide services that the person might reasonably assume to be legal services and the law practice provides both legal services and other services.

- (2) Each partner, director, officer or employee of the law practice who is an

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Australian legal practitioner must ensure that a disclosure is made informing the person:

- (a) whether the services are legal services; and
  - (b) of any other matters specified in the National Rules for the purposes of this section.
- (3) If a proper disclosure has not been made under this section to the person about the provision of a service that the person might reasonably assume to be a legal service, the standard of care owed by the law practice in respect of the service is the standard that would be applicable if the service were a legal service that had been provided by an Australian legal practitioner.

**3.7.7 Disqualification of entities from providing legal services**

- (1) The Supreme Court of this jurisdiction may, on the application of the Board or the Ombudsman, make an order disqualifying an entity from providing legal services in this jurisdiction as a law practice to which this Division applies for the period the Court considers appropriate if satisfied that disqualification is justified.
- (2) An order under this section may, if the Supreme Court thinks it appropriate, be made:
  - (a) subject to conditions as to the conduct of the law practice; or
  - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
  - (c) together with orders to safeguard the interests of clients or employees of the law practice.
- (3) An entity that is disqualified under this section ceases to be an incorporated legal practice or unincorporated legal practice.
- (4) Conduct of an Australian legal practitioner who provides legal services on behalf of a disqualified entity in the capacity of a partner, director, officer or employee of the entity is capable of constituting unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the entity is disqualified under this section.
- (5) An order made by the Supreme Court of another jurisdiction applies in relation to this jurisdiction in the same way as it applies in relation to that other jurisdiction and as if it had been made by the Supreme Court of this jurisdiction.

**3.7.8 Disqualification of persons from management involvement**

- (1) The Supreme Court of this jurisdiction may, on the application of the Ombudsman, make an order disqualifying a person who is not an Australian legal practitioner from being involved in the management in this jurisdiction of a law practice to which this Division applies if satisfied that disqualification is justified.
- (2) Without limitation, an order under this section operates to disqualify a person from being a partner or officer of an unincorporated legal practice.

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- (3) The Supreme Court may revoke an order under this section on application by the Ombudsman or by the person against whom the order was made.
- (4) An incorporated legal practice contravenes this subsection if a disqualified person:
- (a) is a director, officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is a partner, director, officer or employee of a related entity; or
  - (b) is a director, officer or employee of the incorporated legal practice in a business that includes the provision of legal services; 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.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (5) A principal of an unincorporated legal practice who is an Australian legal practitioner must not knowingly:
- (a) be a partner of a disqualified person in the business; or
  - (b) share with a disqualified person the receipts, revenue or other income arising from the provision of legal services by the business; or
  - (c) employ or pay a disqualified person in connection with the provision of legal services by the business.

Criminal maximum penalty: 100 penalty units.

- (6) The failure of a principal of an incorporated legal practice who is an Australian legal practitioner to ensure that the law practice complies with subsection (4) is capable of constituting unsatisfactory professional conduct or professional misconduct.

**3.7.9      Actions of non-practitioner**

A partner, director, officer or employee of a law practice to which this Division applies who is not an Australian legal practitioner does not contravene a provision of this Law or the National Rules merely because of any of the following:

- (a) he or she is a member or associate of the law practice where its business includes the provision of legal services;
- (b) he or she receives any fee, gain or reward for business of the law practice that is the business of an Australian legal practitioner;

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

unless the provision expressly applies to partners, directors, officers or employees of law practices to which this Division applies who are not Australian legal practitioners.

## **Division 2            Provisions applying to incorporated legal practices only**

### **3.7.10      External administration proceedings under Corporations Act or other legislation**

- (1) This section applies to:
  - (a) proceedings in any court under Chapter 5 of the Corporations Act relating to a corporation that is or was an incorporated legal practice and that is or was in the process of becoming an externally-administered body corporate under that Act; or
  - (b) proceedings in any court under other legislation for the external administration (however expressed) of an incorporated legal practice.
- (2) The Board or the Ombudsman or both are entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the law practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of:
  - (a) in relation to proceedings referred to in subsection (1) (a)—the Corporations Act; or
  - (b) in relation to proceedings referred to in subsection (1) (b)—any legislation applicable to the incorporated legal practice.
- (5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

**Note.** Section 5G of the Corporations Act provides that, if a State or Territory law declares a provision of a State or Territory law to be a Corporations

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legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

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

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

*Corporations Act administrator* means:

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

*National Law receiver* means a receiver appointed under Part 6.5.

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

- (1) This section applies if an incorporated legal practice is the subject of both:

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

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

*National Law receiver* means a receiver appointed under Part 6.5.

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

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):
  - (a) civil proceedings relating to a failure to account for, pay or deliver money or property received by, or entrusted to, the practice (or to any director, officer or employee of the practice) in the course of the provision of legal services by the practice, being money or property under the direct or indirect control of the practice;
  - (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by an Australian legal practitioner who is a director, officer or employee of the practice in connection with the provision of legal services to the client.
- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in those proceedings, but would be liable for those acts or omissions if the practice and those officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.



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**3.7.14      Relationship of Law to Corporations legislation**

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

*matter* includes act, omission, body, person or thing.

**Division 3            Miscellaneous**

**3.7.15      National Rules for incorporated and unincorporated legal practices**

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

**Part 3.8              Community legal services**

**3.8.1          Status of community legal services**

- (1) The status of a community legal service as a body established on a not-for-profit basis is not affected by any profit made by it so long as the income cannot or will not be distributed to any member or employee of the body otherwise than by way of reasonable remuneration under a contract of service or for services.
- (2) A community legal service may, subject to Part 4.3, recover legal costs incurred by it in respect of legal services that it provides.

**3.8.2          Supervising legal practitioner**

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

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Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

**Note.** A supervising solicitor is a principal of the law practice.

**3.8.3      National Rules for community legal services**

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

## Chapter 4 Business practice and professional conduct

### Part 4.1 Introduction

#### 4.1.1 Objectives

The objectives of this Chapter are:

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

### Part 4.2 Trust money and trust accounts

#### Division 1 Preliminary

##### 4.2.1 Objective

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

##### 4.2.2 Definitions

In this Law:

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

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

**trust money** means money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes:

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

but does not include:

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- (e) money received and held by a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the legal services (and see section 4.2.7 (2)); or
- (f) money entrusted to or held by a law practice for or in connection with:
  - (i) a managed investment scheme; or
  - (ii) mortgage financing;  
undertaken by the law practice; or
- (g) money excluded from this definition by the National Rules.

**4.2.3 Application of Part to law practices and trust money**

- (1) This Part applies:
  - (a) in respect of trust money received in this jurisdiction, to:
    - (i) a law practice that has an office in this jurisdiction; or
    - (ii) a law practice that does not have an office in any jurisdiction at all;  
or
  - (b) in respect of trust money received in another jurisdiction, to:
    - (i) a law practice that has an office in this jurisdiction and no other jurisdiction; or
    - (ii) a law practice that has an office in this jurisdiction and in one or more other jurisdictions but not the jurisdiction in which the trust money was received, unless the law practice elects to deal with the money in accordance with this Part as applied by the Legal Profession National Law Act of the other or another of those jurisdictions.
- (2) This Part applies to a law practice only in connection with legal services provided by the law practice.
- (3) The National Rules may provide that the following are exempt from all or specified provisions of this Part:
  - (a) specified law practices or classes of law practices; or
  - (b) specified law practices or classes of law practices in specified circumstances; or
  - (c) specified kinds of trust money; or
  - (d) specified kinds of trust money in specified circumstances.
- (4) The National Rules may provide that specified provisions of this Part do not

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apply to specified law practices or classes of law practice or apply to them with specified modifications.

- (5) The Ombudsman may exempt a particular law practice from complying with any of the provisions of this Part, subject to any conditions that the Ombudsman may impose.
- (6) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

#### **4.2.4 Australian registered foreign lawyers**

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

#### **4.2.5 Former practices, principals and associates**

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

#### **4.2.6 Barristers not to receive trust money**

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

Civil maximum penalty: 50 penalty units.

#### **4.2.7 Provisions relating to certain non-trust money**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (2) A barrister must ensure that money received and held by a barrister, on account of legal costs for legal services, in advance of the provision by the barrister of the legal services is dealt with in accordance with the applicable requirements of the National Rules.

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Civil maximum penalty: 20 penalty units.

## **Division 2 Trust money and trust accounts**

### **4.2.8 Dealing with trust money**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

### **4.2.9 General trust account for one jurisdiction**

Subject to section 4.2.10, a law practice that receives trust money to which this Part applies (other than controlled money or transit money received in a form other than cash) must maintain a general trust account in this jurisdiction.

### **4.2.10 General trust account for more than one jurisdiction**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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**4.2.11 Provisions applying when general trust account for more than one jurisdiction**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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

**4.2.12 Certain trust money to be deposited in general trust account**

- (1) A law practice must deposit trust money (other than cash) into the law practice's general trust account as soon as practicable after receiving it unless:
  - (a) the law practice has a written direction by a person legally entitled to provide it to deal with the money otherwise than by depositing it in the account; or
  - (b) the money is controlled money or transit money; or
  - (c) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (3) The law practice must keep the written direction for 7 years after the matter has

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been finalised.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

**4.2.13 Holding, disbursing and accounting for trust money in general trust account**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (2) Subsection (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 National Rules.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

**4.2.14 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.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (3) Subject to a court order or as authorised by law, the law practice that holds money deposited in a controlled money account must not disburse the money except in accordance with:
- (a) the written direction relating to the money; or
  - (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural



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person—50 penalty units.

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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

#### **4.2.15 Transit money**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

#### **4.2.16 Trust money subject to specific powers**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

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Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

**4.2.17 Trust money received in the form of cash**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

**4.2.18 Withdrawal of trust money**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) A law practice may do any of the following, in relation to trust money held in the practice's general trust account or controlled money account:
  - (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the law practice;
  - (b) withdraw money for payment to the law practice's account for legal costs owing to the practice if the relevant procedures or requirements specified in the National Rules for the purposes of this Division are complied with;
  - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money.

**4.2.19 Protection of trust money**

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

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**4.2.20 Intermixing money**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

**4.2.21 Keeping trust records**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) The law practice must keep the trust records:

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

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

Criminal maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (4) If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the law practice must ensure that the law practice's trust records record all names by which the person is known.

Criminal maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

**4.2.22 Deficiency in trust account**

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

- (a) a deficiency in any trust account or trust ledger account; or

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- (b) a failure to pay or deliver any trust money.

Criminal maximum penalty: 250 penalty units or imprisonment for 5 years, or both.

**4.2.23 Statutory deposits**

- (1) Out of the money that is paid to its general trust account, a law practice must deposit with a nominated authority an amount specified in applicable jurisdictional legislation for this purpose, and must do so within the time period specified in applicable jurisdictional legislation for this purpose.

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) Money paid into an ADI account maintained by a nominated authority is held by the nominated authority in trust for the law practice depositing the money, and is repayable on demand.
- (3) Money paid into an ADI account maintained by a nominated authority may be invested by the nominated authority in accordance with applicable jurisdictional legislation, and the interest on any such investment is to be paid to the nominated authority on account of the nominated fund of the relevant jurisdiction.
- (4) The nominated authority of this jurisdiction must keep accounts of money deposited with it under this section, must have the accounts audited annually, and must provide the Ombudsman with a copy of the auditor's report.
- (5) In this section:

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

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

**4.2.24 Authorised deposit-taking institutions**

- (1) An ADI is authorised to maintain trust accounts to hold trust money if it is regulated by APRA.
- (2) An ADI at which a trust account is maintained by a law practice:
- (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and
- (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right against money in the account.
- (3) An ADI must give the Ombudsman any reports about trust accounts required under the National Rules and must do so in accordance with the National Rules.

Civil maximum penalty: 100 penalty units.

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

Civil maximum penalty: 100 penalty units.

- (5) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of the ADI's obligations under this section.

#### **4.2.25 Authority to receive trust money**

A law practice must not receive trust money unless:

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

#### **4.2.26 Disclosure of accounts used to hold money**

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) Subsection (1) applies whether or not the money is trust money.

#### **4.2.27 Determinations about status of money**

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

#### **4.2.28 When, how and where money is received**

- (1) For the purposes of this Law, a law practice receives money when:
- (a) the law practice obtains possession or control of it directly; or

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- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
  - (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.
- (2) For the purposes of this Law, a law practice or associate is taken to have received money if the money is available to the law practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.
- (3) The National Rules or (to the extent that the National Rules do not do so) the Ombudsman may provide guidelines for determining the jurisdiction in which a law practice receives trust money. For the purposes of this Law as applying in this jurisdiction, to the extent that the guidelines are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the guidelines.

**4.2.29 Reporting irregularities and suspected irregularities**

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

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Civil maximum penalty: 50 penalty units.

- (3) The validity of a requirement imposed on an Australian legal practitioner under subsection (1) or (2) is not affected, and the practitioner is not excused from complying with subsection (1) or (2), on the ground of legal professional privilege or any other duty of confidence or on the ground that giving the notice may tend to incriminate the practitioner.
- (4) An Australian legal practitioner is not liable for any loss or damage suffered by

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another person as a result of the practitioner's compliance with subsection (1) or (2).

### **Division 3 External examinations of trust money**

#### **4.2.30 Trust records to be externally examined**

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

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (2) If the only trust money received or held by a law practice during a financial year is transit money, its trust records in respect of that year are not required to be externally examined.

#### **4.2.31 Appointment of external examiners**

- (1) The Ombudsman may, in writing, appoint an external examiner to examine a law practice's trust records if the Ombudsman is not satisfied:
  - (a) that the law practice has had its trust records externally examined as required by this section; or
  - (b) that an external examination of the law practice's trust records has been carried out in accordance with the National Rules.
- (2) Only persons designated or within a class designated under the National Rules for the purposes of this section may be appointed as external examiners.
- (3) An associate of a law practice cannot be appointed as an external examiner to examine the law practice's trust records.

#### **4.2.32 External examinations**

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

#### **4.2.33 Carrying out external examination**

- (1) Chapter 7 applies to an external examination of trust records.
- (2) Subject to Chapter 7, an external examination of trust records is to be carried out in accordance with the National Rules.

#### **4.2.34 External examiner's report**

- (1) As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the Ombudsman.
- (2) The examiner must not disclose information in the report or acquired in carrying out the external examination, unless permitted to do so under subsection (3) or

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under section 9.7.1.

Criminal maximum penalty: 50 penalty units.

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

#### **4.2.35 Costs of external examination**

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

## **Division 4 External investigations**

### **4.2.36 Principal purposes of external investigation**

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

### **4.2.37 Appointment of external investigators**

- (1) The Ombudsman 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.

### **4.2.38 External investigations**

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



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**4.2.39 Carrying out external investigation**

- (1) Chapter 7 applies to an external investigation.
- (2) Subject to Chapter 7, an external investigation is to be carried out in accordance with the National Rules.

**4.2.40 Investigator's report**

- (1) As soon as practicable after completing an external investigation, the investigator must give a written report of the investigation to the Ombudsman.
- (2) The investigator must not disclose information contained in the report or acquired in carrying out the external investigation except:
  - (a) to the law practice 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 9.7.1.

Criminal maximum penalty: 50 penalty units.

**4.2.41 Costs of external investigation**

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

**Division 5 Miscellaneous**

**4.2.42 National Rules for trust money and trust accounts**

- (1) The National Rules may provide for any aspect of trust money received by law practices and trust accounts.
- (2) Without limitation, the National Rules may provide for the following:

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- (a) the receipt, handling and disbursement of trust money;
- (b) the establishment and maintenance of trust accounts;
- (c) record keeping and accounting requirements;
- (d) reports to clients and the Ombudsman by law practices relating to trust money and trust accounts;
- (e) the external examination of trust records;
- (f) external investigation of the affairs of a law practice.

## Part 4.3 Legal costs

### Division 1 Introduction

#### 4.3.1 Objectives

The objectives of this Part are:

- (a) to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; and
- (b) to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- (c) to provide a framework for assessment of legal costs.

#### 4.3.2 Commercial or government clients

- (1) Commercial or government clients may contract out of this Part, except in relation to:
  - (a) section 4.3.13; and
  - (b) provisions relating to costs assessment.
- (2) For the purposes of this Law, a *commercial or government client* is a client of a law practice where the client is:
  - (a) a law practice, other than a law practice that employs fewer than 15 employees (other than casual employees who are not employed on a regular and systematic basis); or
  - (b) the following entities defined or referred to in the Corporations Act:
    - (i) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body;

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- (ii) a liquidator, administrator or receiver;
  - (iii) a financial services licensee;
  - (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required; or
- (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
- (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
- (e) a body or person incorporated in a place outside Australia; or
- (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
- (g) a government authority in Australia or a foreign country.

#### 4.3.3 Third party payers

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

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- (4) A reference in any provisions of this Part specified in the National Rules for the purposes of this section to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer and to which a client of the law practice is not a party, a reference to the associated third party payer.

## **Division 2 Legal costs generally**

### **4.3.4 Legal costs must be fair and reasonable**

- (1) A law practice must, in charging legal costs, charge no more than fair and reasonable costs.
- (2) Legal costs are fair and reasonable if they:
- (a) are reasonably incurred and are reasonable in amount; and
  - (b) are proportionate in amount to the importance and complexity of the issues involved in a matter, the amount or value involved in a matter, and whether the matter involved a matter of public interest; and
  - (c) reasonably reflect the level of skill, experience, specialisation and seniority of the lawyers concerned; and
  - (d) conform to any applicable requirements of this Part, the National Rules and fixed costs legislative provisions.
- (3) A costs agreement is prima facie evidence that costs disclosed in the agreement are fair and reasonable if the provisions of this Division relating to costs disclosure have been complied with.

### **4.3.5 Avoidance of increased legal costs**

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

### **4.3.6 Basis on which legal costs are recoverable**

- (1) Subject to this Part, legal costs are recoverable:
- (a) under a costs agreement made in accordance with this Part and the National Rules; or
  - (b) if paragraph (a) does not apply, in accordance with an applicable costs determination or fixed costs legislative provision; or
  - (c) if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.
- (2) Despite subsection (1), legal costs are not recoverable by a law practice if it has not complied with the disclosure obligations of this Part, and the law practice must not commence or maintain proceedings for the recovery of any or all of those costs until the costs have been assessed.

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- (3) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section:
- (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
  - (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

**4.3.7 Disclosure obligations of law practice regarding clients**

- (1) A law practice must, when or as soon as practicable after instructions are initially given in a matter provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs.
- (2) A law practice must, when or as soon as practicable there is any significant change to anything previously disclosed under this section, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client.
- (3) Information provided under this section must contain:
- (a) a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter; and
  - (b) information about the client's rights:
    - (i) to negotiate a costs agreement with the law practice; and
    - (ii) to negotiate the billing method (for example, by reference to timing or task); and
    - (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
    - (iv) to seek the assistance of the Ombudsman in the event of a dispute about legal costs.
- (4) The law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs after being given that information.
- (5) If a law practice contravenes this section:
- (a) the costs agreement concerned is void; and
  - (b) the client or an associated third party payer is not required to pay legal costs until they have been assessed or any costs dispute has been determined by the Ombudsman; and

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- (c) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

#### 4.3.8 Disclosure obligations of law practice regarding associated third party payers

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

#### 4.3.9 Client's right to costs agreement

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

### Division 3 Costs agreements

#### 4.3.10 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 cannot provide that the legal costs to which it relates are not subject to costs assessment.

#### 4.3.11 Conditional costs agreements

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

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- (2) A conditional costs agreement may relate to any matter, except a matter that involves:
  - (a) criminal proceedings; or
  - (b) proceedings under the *Family Law Act 1975* of the Commonwealth; or
  - (c) proceedings under legislation specified in the National Rules for the purposes of this section.
- (3) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only or is made with a commercial or government client.
- (4) If a client terminates a conditional costs agreement within the cooling-off period, the law practice:
  - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
  - (b) in particular, may not recover any uplift fee.
- (5) A contravention of provisions of this Law or the National Rules relating to conditional costs agreements by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

#### **4.3.12 Conditional costs agreements involving uplift fees**

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) An uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A law practice must not enter into a costs agreement in contravention of this section or of the National Rules relating to uplift fees.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

#### **4.3.13 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.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

#### **4.3.14 Effect of costs agreement**

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

#### **4.3.15 Certain costs agreements are void**

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.
- (2) Subject to this section and Division 6, legal costs under a void costs agreement are recoverable as set out in section 4.3.6 (1) (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 section 4.3.12 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 section 4.3.13 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 subsection (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.

### **Division 4 Billing**

#### **4.3.16 Form of bills**

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

#### **4.3.17 Request for itemised bills**

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.



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- (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.

#### **4.3.18 Responsible principal for bill**

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

#### **4.3.19 Giving bills**

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

#### **4.3.20 Progress reports**

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

#### **4.3.21 Charging for bills prohibited**

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

#### **4.3.22 Notification of client's rights**

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

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

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## **Division 5 Unpaid legal costs**

### **4.3.23 Restriction on commencing proceedings to recover legal costs**

- (1) A law practice must not commence legal proceedings to recover legal costs from a person unless a bill has been given for the legal costs and the bill complies with the requirements of this Law and the National Rules.
- (2) A law practice must not commence legal proceedings to recover legal costs from a person who has been given a bill until at least 30 days after the later of:
  - (a) the date on which the person is given the bill; or
  - (b) the date on which the person receives an itemised bill following a request made in accordance with section 4.3.17.

### **4.3.24 Interest on unpaid legal costs**

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the law practice has given a bill for the costs in accordance with this Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under this section on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice must not charge interest under this section or under a costs agreement at a rate that exceeds the rate specified in or determined under the National Rules for the purposes of this section.
- (5) A law practice must not charge interest under this section or under a costs agreement on a bill given more than 6 months after the completion of the matter.

## **Division 6 Costs assessment**

### **4.3.25 Application of this Division**

- (1) This Division applies to legal costs payable on a solicitor-client basis.
- (2) Despite anything to the contrary in this Part, legal costs that are or have been the subject of a consumer dispute under Chapter 5 may not be the subject of a costs assessment under this Division unless the Ombudsman is unable to resolve costs dispute and has notified parties of their entitlement to seek costs assessment.

### **4.3.26 Costs assessment**

- (1) Assessments of legal costs are conducted by costs assessors, and are to be conducted in accordance with the National Rules and any applicable jurisdictional legislation.
- (2) On a costs assessment, the costs assessor may do any one or more of the

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following:

- (a) determine whether legal costs are fair and reasonable and, to the extent they are not fair and reasonable, determine the amount of legal costs (if any) that are to be payable;
- (b) determine whether or not a valid costs agreement exists;
- (c) set aside, wholly or partly, a costs agreement if legal costs payable under it are not fair and reasonable.

**4.3.27 Applications for costs assessment**

- (1) Applications for an assessment of the whole or any part of legal costs payable to a law practice may be made by any of the following:
  - (a) a client who has paid or is liable to pay them to the law practice;
  - (b) a third party payer who has paid or is liable to pay them to the law practice or the client;
  - (c) the law practice;
  - (d) another law practice, where the other law practice retained the law practice to act on behalf of a client and the law practice has given the other law practice a bill for doing so.
- (2) An application under this section is to be made in accordance with applicable jurisdictional legislation.
- (3) An application under this section must be made within 12 months after:
  - (a) the bill was given to, or the request for payment was made to, the client, third party payer or other law practice; or
  - (b) the legal costs were paid if neither a bill nor a request was made.
- (4) However, an application that is made out of time, otherwise than by:
  - (a) a commercial or government client; or
  - (b) a third party payer who would be a commercial or government client if the third party payer were a client of the law practice concerned;

may be dealt with by the costs assessor if the designated tribunal, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.

- (5) If the third party payer is a non-associated third party payer, the law practice concerned must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider

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making, and if thought fit to make, an application for a costs assessment under this section.

- (6) If an application for a costs assessment is made in accordance with this Division:
  - (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
  - (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.
- (7) A costs assessor is to cause a copy of an application for costs assessment to be given to any law practice or client concerned or any other person whom the costs assessor thinks it appropriate to notify.
- (8) A person who is notified by the costs assessor under subsection (7):
  - (a) is entitled to participate in the costs assessment process; and
  - (b) is taken to be a party to the assessment; and
  - (c) if the costs assessor so determines, is bound by the assessment.

**4.3.28 Factors in a costs assessment**

- (1) In considering whether legal costs for legal work are fair and reasonable, the costs assessor must have regard to section 4.3.4 (2).
- (2) In considering whether legal costs for legal work are fair and reasonable, the costs assessor may have regard to the following matters:
  - (a) whether the law practice and any legal practitioner associate or foreign lawyer associate involved in the work complied with this Law and the National Rules;
  - (b) any disclosures made, including whether it would have been reasonably practicable for the law practice to disclose the total costs of the work at the outset (rather than simply disclosing charging rates);
  - (c) any relevant advertisement as to the law practice's costs or the skills of the law practice or any legal practitioner associate or foreign lawyer associate involved in the work;
  - (d) the skill, labour and responsibility displayed on the part of the legal practitioner associates or foreign lawyer associates 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 work actually done and the quality of the work done;

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- (h) the circumstances in which the work was done;
  - (i) the time within which the work was required to be done;
  - (j) any other relevant matter.
- (3) The incidence of GST may be considered in a costs assessment.
- (4) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

**4.3.29 Reasons to be given**

Costs assessors are to provide reasons for their costs assessments.

**4.3.30 Referral for disciplinary action**

If, on a costs assessment, the costs assessor considers that the legal costs charged by a law practice are not fair and reasonable, or that the assessment raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct, the assessor must refer the matter to the Ombudsman to consider whether disciplinary action should be taken.

**4.3.31 Admissibility determinations in disciplinary proceedings**

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

**4.3.32 Right of appeal or review**

- (1) An applicant for assessment or the law practice concerned may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal of the jurisdiction in which the law practice engages in legal practice and which has a substantial connection with the person against, or seek a review by that tribunal of, a decision of a costs assessor.
- (2) The appeal lies to the designated tribunal of the jurisdiction for which the costs assessor exercised his or her functions in relation to the decision.
- (3) The designated tribunal may make any order it considers appropriate on the appeal or review.
- (4) This section has effect subject to the provisions of Part 5.3 requiring a costs dispute to be dealt with by the Ombudsman where the amount of legal costs that are the subject of the costs dispute is less than \$100,000.

**Division 7 Miscellaneous**

**4.3.33 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.

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**4.3.34 Unreasonable legal costs—disciplinary action**

- (1) A contravention of a requirement of this Part that a law practice must not charge more than fair and reasonable legal costs is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of:
  - (a) the responsible principal or principals for a bill given by the law practice (see section 4.3.18); and
  - (b) each legal practitioner associate or foreign lawyer associate who was involved in giving the bill or authorising it to be given.
- (2) Subsection (1) applies to a responsible principal unless he or she establishes that it was not reasonable for him or her to suspect or believe that the bill was excessive in the circumstances (otherwise than by the mere assertion of someone else involved in the law practice), and so applies:
  - (a) whether or not he or she had actual knowledge of the bill or its contents; and
  - (b) whether or not he or she had actual knowledge that the legal costs were unreasonable.

**4.3.35 National Rules for legal costs**

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

**Part 4.4 Professional indemnity insurance**

**4.4.1 Objectives**

The objectives of this Part are:

- (a) to ensure that clients of law practices have adequate protection, by way of appropriate compensation, against the consequences of professional negligence; and
- (b) to ensure that all practitioners have an adequate minimum level of professional indemnity insurance cover regardless of the jurisdiction in which a practitioner engages in legal practice.

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**4.4.2 Requirement to have professional indemnity insurance cover**

- (1) An Australian legal practitioner must not engage in legal practice in this jurisdiction unless the practitioner holds or is covered by a complying policy of professional indemnity insurance.

Civil maximum penalty: 50 penalty units.

- (2) An incorporated legal practice or a community legal service that is a body corporate must not engage in legal practice in this jurisdiction unless the practice holds or is covered by a complying policy of professional indemnity insurance.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

- (3) A law practice, other than an incorporated legal practice or a community legal service that is a body corporate, must not engage in legal practice in this jurisdiction unless:

- (a) the law practice holds or is covered by a complying policy of professional indemnity insurance that covers all its legal practitioner associates; or
- (b) all its legal practitioner associates hold or are covered by a complying policy of professional indemnity insurance.

Civil maximum penalty: 250 penalty units.

- (4) An Australian legal practitioner or law practice that becomes aware that the practitioner or practice is or will be in breach of subsection (1), (2) or (3) must notify the Board of that fact within 3 business days of becoming aware of it.

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

**4.4.3 Complying insurance policies**

- (1) For the purposes of section 4.4.2 and subject to section 4.4.4, a policy is a complying policy of professional indemnity insurance in relation to this jurisdiction if:

- (a) it is issued or provided by:
- (i) an insurer authorised by APRA under the *Insurance Act 1973* of the Commonwealth to carry on insurance business in Australia; or
- (ii) an insurer or other provider approved under applicable legislation of this jurisdiction; or
- (iii) an insurer or other provider approved by the Board; and
- (b) it:
- (i) complies with the minimum standards specified in the National Rules for the purposes of this section; or

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- (ii) is approved by the Board; and
  - (c) where applicable legislation of this jurisdiction contains a declaration to the effect that this paragraph applies in relation to this jurisdiction—it is issued or provided in accordance with applicable legislation of this jurisdiction.
- (2) The Board may give an approval for the purposes of this section unconditionally or subject to conditions specified in the approval, and may vary or revoke an approval.

#### **4.4.4 Where and how professional indemnity insurance is to be obtained**

- (1) Despite section 4.4.3, a policy is not a complying policy of professional indemnity insurance, unless:
- (a) it is obtained separately in each jurisdiction in which the Australian legal practitioner or law practice engages in legal practice; or
  - (b) subsection (2) applies in the case of an Australian legal practitioner; or
  - (c) subsection (3) applies in the case of a law practice.
- (2) An Australian legal practitioner who engages in legal practice in two or more jurisdictions need only obtain professional indemnity insurance in his or her home jurisdiction if it provides national coverage for the whole of his or her legal practice.
- (3) A law practice that engages in legal practice in two or more jurisdictions need only obtain professional indemnity insurance in one of those jurisdictions if it provides national coverage for the whole of the legal practice of the law practice, and may choose a jurisdiction for that purpose.
- (4) The jurisdiction chosen under subsection (3) must be a jurisdiction:
- (a) in which the law practice maintains a permanent office; and
  - (b) which is the home jurisdiction of a principal of the law practice who holds an Australian practising certificate; and
  - (c) in which that principal engages solely or principally in legal practice at that office.

#### **4.4.5 Exemptions**

- (1) An Australian legal practitioner or law practice falling within a category specified in the National Rules for the purposes of this section is exempt under the National Rules from the requirement to have professional indemnity insurance cover.
- (2) If an Australian legal practitioner is exempt under this section, the Board may impose a discretionary condition on the practitioner's Australian practising certificate limiting the scope of legal services that may be provided by the practitioner.



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**4.4.6 Australian-registered foreign lawyers**

An Australian-registered foreign lawyer must provide a disclosure statement to each client before, or as soon as practicable after, being retained stating whether or not the lawyer is covered by professional indemnity insurance and, if covered, the extent to which it is accordance with this Law and the National Rules as they apply to Australian legal practitioners.

**4.4.7 National Rules for professional indemnity insurance**

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

**Part 4.5 Fidelity cover**

**Division 1 Introduction**

**4.5.1 Objective**

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

**4.5.2 Definitions**

In this Part:

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

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

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

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

*default* means:

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

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omission of an associate that involves fraud or other dishonesty.

*fidelity fund*—see sections 4.5.4 and 4.5.6.

*lawyer* means:

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

*nominated authority*—see sections 4.5.5 and 4.5.6.

*pecuniary loss*, in relation to a default, means:

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

#### 4.5.3 Defaults to which this Part applies

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

## Division 2 Fidelity funds and nominated authorities

### 4.5.4 Fidelity fund for each jurisdiction

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

### 4.5.5 Nominated authority for each jurisdiction

The entity nominated in the Legal Professional National Law Act of a jurisdiction as the authority responsible for the general administration of the fidelity fund of that jurisdiction is the *nominated authority* for that fidelity fund for the purposes

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of this Part.

#### **4.5.6 How this Part applies to each jurisdiction**

This Part applies in relation to each jurisdiction, so that:

- (a) the term “the fidelity fund” refers to the fidelity fund of that jurisdiction; and
- (b) the term “the nominated authority” refers to the nominated authority for the fidelity fund of that jurisdiction.

### **Division 3 Fidelity fund of a jurisdiction**

#### **4.5.7 Funding**

The fidelity fund consists of:

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

#### **4.5.8 Annual contributions**

- (1) A person who applies to the Board for the grant or renewal of:
  - (a) an Australian practising certificate; or
  - (b) an Australian registration certificate (except where the person is not and reasonably expects not to be an associate of a law practice during its currency);

in relation to a financial year must pay an annual contribution for the financial year to the fidelity fund of the person’s home jurisdiction.

- (2) The amount of a contribution is to be set by the nominated authority and is in addition to all other fees payable in relation to the application.
- (3) The nominated authority may provide for different contributions to be payable by different classes of lawyers.
- (4) This section does not apply to:
  - (a) a barrister; or
  - (b) a government lawyer; or
  - (c) a corporate lawyer; or

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- (d) other Australian legal practitioners of a class specified in the National Rules for the purposes of this section and to the extent so specified.

#### 4.5.9 Levies

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

#### 4.5.10 Failure to pay annual contribution or levy

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

#### 4.5.11 Insurance

- (1) The nominated authority may arrange with an insurer for the insurance of the fidelity fund, whether against particular claims or particular classes of claims or otherwise.
- (2) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the fidelity fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.

#### 4.5.12 Borrowing

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

#### 4.5.13 Caps on payments for claims

- (1) The nominated authority may fix either or both of the following:
  - (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the fidelity fund in respect of individual claims or classes of individual claims;
  - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the fidelity fund in respect of all claims made in relation to individual law practices or classes

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of law practices.

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

**4.5.14 Sufficiency**

- (1) If the nominated authority is of the opinion that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the authority may do any or all of the following:
  - (a) postpone all payments relating to all or any class of claims out of the fund;
  - (b) impose a levy;
  - (c) make partial payments of the amounts of one or more allowed claims out of the fund with payment of the balance being a charge on the fund;
  - (d) make partial payments of the amounts of two or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.
- (2) In deciding whether to do any or all of the things mentioned in subsection (1), the nominated authority:
  - (a) must have regard to hardship where relevant information is known to the authority; and
  - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the nominated authority declares that a decision is made under subsection (1) (d):
  - (a) the balance specified in the declaration ceases to be a liability of the fidelity fund; and
  - (b) the authority may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the fund.

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- (4) A decision of the nominated authority made under this section is final and not subject to appeal or review.

**4.5.15 Audit**

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

**Division 4 Claims about defaults**

**4.5.16 Entitlement to make a claim**

A person who suffers pecuniary loss as a result of a default by a law practice is entitled to make a claim about the default against the fidelity fund of the home jurisdiction of each associate of the law practice whose act or omission (whether alone or with one or more other associates of the law practice) gives rise to or constitutes the default.

**4.5.17 Making a claim**

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

**4.5.18 Advertisements**

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

**4.5.19 Time limit for making claims**

- (1) Subject to subsection (2), a claim does not lie against a fidelity fund unless the prospective claimant notifies the nominated authority of the default concerned within:
- (a) the period of 6 months after the prospective claimant becomes aware of the default; or
  - (b) a further period allowed by the nominated authority; or
  - (c) a further period allowed by the Supreme Court of the jurisdiction to which the nominated authority belongs where the authority refuses to allow a further period under paragraph (b).
- (2) If the nominated authority publishes a notice under section 4.5.18 fixing a final

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date for making claims about a default, a claim may be made:

- (a) up to and including the final date fixed under the notice; or
- (b) within a further period allowed by the nominated authority; or
- (c) within a further period allowed by the Supreme Court of the jurisdiction to which the nominated authority belongs where the authority refuses to allow a further period under paragraph (b);

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

- (3) The Supreme Court may allow a further period referred to in subsection (1) (c) or (2) (c) if it is satisfied that it would be:
  - (a) reasonable to do so after taking into account all ascertained and contingent liabilities of the fidelity fund; and
  - (b) appropriate to do so in a particular case having regard to matters the Supreme Court considers relevant.

#### **4.5.20 Processing and investigation of claims**

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

#### **4.5.21 Advance payments**

- (1) The nominated authority may, at its absolute discretion, make payments from the fidelity fund to a claimant in advance of the determination of a claim if satisfied that:
  - (a) the claim is likely to be allowed; and
  - (b) payment is warranted to alleviate hardship.
- (2) Any payments made in advance are to be taken into account when the claim is determined.
- (3) If the claim is disallowed, the amounts paid under this section are recoverable by the nominated authority as a debt due to the fidelity fund.
- (4) If the claim is allowed but the amount payable is less than the amounts paid under this section, the excess paid under this section is recoverable by the nominated authority as a debt due to the fidelity fund.

### **Division 5 Determination of claims**

#### **4.5.22 Determination of claims**

- (1) The nominated authority must ensure that claims against the fidelity fund must be determined independently, at arm's length from the profession.

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- (2) The nominated authority must provide written notice to a claimant against the fidelity fund of its decision in relation to a claim as soon as practicable after making that decision.
- (2) The nominated authority may determine a claim by wholly or partly allowing or disallowing it.
- (3) The nominated authority may wholly or partly disallow a claim, or reduce the amount of a claim, to the extent that:
  - (a) the claim does not relate to a default for which the fidelity fund is liable; or
  - (b) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (c) the negligence of the claimant contributed to the loss; or
  - (d) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or
  - (e) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
  - (f) the claimant has unreasonably refused to disclose information or documents to or co-operate with the nominated authority, or any other authority (including, for example, an investigative or prosecuting authority), in the investigation of the claim.
- (4) The nominated authority may reduce the amount otherwise payable on a claim to the extent the authority considers appropriate:
  - (a) if satisfied that the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (b) if satisfied that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
  - (c) if satisfied that the claimant has unreasonably hindered the investigation of the claim.
- (5) In wholly or partly allowing a claim, the nominated authority must specify the amount payable from the fidelity fund to the claimant or to another person at the claimant's direction.
- (6) Subsection (3) does not limit a nominated authority's power to disallow a claim, and subsection (4) does not limit a nominated authority's power to disallow or reduce a claim.



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**4.5.23 Maximum amount allowable**

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

**4.5.24 Costs**

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

**4.5.25 Interest**

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

**4.5.26 Reduction of claim because of other benefits**

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

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

- (2) The nominated authority may, at its absolute discretion, pay to a person the

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whole or part of an amount referred to in subsection (1) (c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 4.5.27.

- (3) Without limiting subsection (1), a person is not entitled to recover from the fidelity fund of this jurisdiction if the person has already recovered from the fidelity fund of another jurisdiction in connection with the default concerned.

**4.5.27 Repayment of certain amounts**

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

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

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

**4.5.28 Subrogation**

- (1) On payment of a claim from the fidelity fund, the nominated authority is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against:
- (a) an associate in respect of whom the claim is made; or
  - (b) the person authorised to administer the estate of an associate in respect of whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 4.5.22.
- (4) The nominated authority may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the nominated authority brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
- (6) The nominated authority may exercise its rights and remedies under this section

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even though any limitation periods under this Part have expired.

- (7) The nominated authority must pay into the fidelity fund any money recovered in exercising its rights and remedies under this section.

**4.5.29 Right of appeal against decision on claim**

- (1) A claimant against the fidelity fund of this jurisdiction may appeal to the Supreme Court of this jurisdiction against a decision of the nominated authority:

- (a) to wholly or partly disallow a claim; or  
(b) to reduce the amount allowed in respect of a claim;

but an appeal does not lie against a decision of the nominated authority to limit the amount payable, or to decline to pay an amount, under section 4.5.13 or 4.5.14.

- (2) An appeal against a decision must be lodged within 30 days of receiving written notice about the decision.

- (3) On an appeal under this section:

- (a) the appellant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the nominated authority waives that requirement; and  
(b) the Supreme Court may, on application by the nominated authority, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.

- (3) The Supreme Court may review the merits of the nominated authority's decision to the extent considered relevant by the Court.

- (4) The Supreme Court may:

- (a) affirm the decision; or  
(b) if satisfied that the reasons for varying or setting aside the nominated authority's decision are sufficiently cogent to warrant doing so:  
(i) vary the decision; or  
(ii) set aside the decision and make a decision in substitution for the decision set aside; or  
(iii) set aside the decision and remit the matter for reconsideration by the nominated authority in accordance with any directions or recommendations of the Court.

- (5) The Supreme Court may make other orders as it thinks fit.

- (6) No order for costs is to be made on an appeal under this section unless the

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Supreme Court is satisfied that an order for costs should be made in the interests of justice.

#### **4.5.30 Right of appeal against failure to determine claim**

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

#### **4.5.31 Court proceedings**

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

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

### **Division 6 Defaults involving interstate elements**

#### **4.5.32 Concerted interstate defaults**

- (1) A nominated authority for a jurisdiction may treat a concerted interstate default as if the default consisted of two or more separate defaults by reference to the different home jurisdictions of two or more associates involved in the default.
- (2) A nominated authority may treat a claim about a concerted interstate default as if the claim consisted of two or more separate claims by reference to the different home jurisdictions of two or more associates involved in the default.
- (3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute:
  - (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding sections

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4.5.13 and 4.5.14; or

(b) in other shares as agreed by the nominated authorities involved.

(4) Subsection (3) does not affect the application of sections 4.5.13 and 4.5.14 in respect of the amount payable from a fidelity fund after the claim has been assessed.

**4.5.33 Interstate agency**

(1) A nominated authority may request another nominated authority to act as its agent for the purpose of processing or investigating a claim about a default if the default appears to have:

(a) occurred partly or solely in the other authority's jurisdiction; or

(b) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.

(2) If a nominated authority agrees to act as agent of another nominated authority, it may:

(a) act as agent of the other authority for the purpose of processing or investigating the claim; and

(b) exercise any of its powers or other functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made against its fidelity fund.

**Division 7 Miscellaneous**

**4.5.34 Co-operation**

(1) When dealing with a claim, a nominated authority may exercise any of its functions in co-operation with or with the assistance of other nominated authorities, the Board or the Ombudsman.

(2) Nominated authorities, the Board and the Ombudsman may exchange information concerning a claim.

**4.5.35 Protection from liability**

(1) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of a fidelity fund by:

(a) a nominated authority or a member of a nominated authority; or

(b) a person acting at the direction of any one referred to in paragraph (a).

(2) No liability (including liability in defamation) is incurred in respect of anything done or omitted to be done in good faith for the purpose of publishing a notice or providing information under section 4.5.18 by:

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- (a) a nominated authority or a member of a nominated authority; or
- (b) the proprietor, editor or publisher of a newspaper in respect of a notice under that section published in the newspaper; or
- (c) an internet service provider or internet content host in respect of a notice under that section published on the internet; or
- (d) a person acting at the direction of any one referred to in paragraph (a), (b) or (c).

**4.5.36 National Rules for fidelity cover**

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

**Part 4.6 Business management and control**

**4.6.1 Compliance audits**

- (1) If the Ombudsman considers it necessary to do so, the Ombudsman may conduct an audit of the compliance of a law practice with this Law, the National Rules and the applicable professional obligations, including the management of the provision of legal services by the law practice.
- (2) The Ombudsman may appoint a suitably qualified person to conduct a compliance audit.
- (3) The appointment may be made generally, or in relation to a particular law practice, or in relation to a particular compliance audit.
- (4) A compliance audit may be conducted whether or not a complaint has been made with respect to the provision of legal services by the law practice or an associate of the law practice.
- (5) A report of a compliance audit:
  - (a) is to be provided to the law practice concerned; and
  - (b) may be provided to the Board and the Ombudsman; and
  - (c) may be taken into account in connection with any disciplinary action taken

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against the law practice or any of its associates.

- (6) Chapter 7 applies to a compliance audit.

**4.6.2 Management system directions**

- (1) If the Ombudsman considers it necessary to do so, the Ombudsman may give a direction (a *management system direction*) to a law practice.
- (2) A management system direction is a direction to a law practice or class of law practices:
- (a) to ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the law practice, or by a law practice of that class, in accordance with this Law, the National Rules and the applicable professional obligations; and
  - (b) to provide periodic reports to the Ombudsman on the systems and on compliance with the systems.
- (3) A law practice must comply with a management system direction given to it.

**4.6.3 Prohibited services and business**

- (1) A law practice (or a related entity) must not:
- (a) conduct a managed investment scheme; or
  - (b) provide legal services in relation to a managed investment scheme if any legal practitioner within the practice (or his or her associate) has an interest in the scheme or the responsible entity for the scheme; or
  - (c) provide a service or conduct a business of a kind specified in the National Rules for the purposes of this section.

Criminal maximum penalty: for a body corporate—500 penalty units; for a natural person—100 penalty units.

- (2) A law practice (or a related entity) must not, in its capacity as the legal representative of a lender or contributor, negotiate the making of or act in respect of a mortgage, other than:
- (a) a mortgage under which the lender is a financial institution; or
  - (b) a mortgage under which the lender or contributors nominate the borrower, but only if the borrower is not a person introduced to the lender or contributors by the law practice who acts for the lender or contributors or by an associate or agent of the law practice, or a person engaged by the law practice for the purpose of introducing the borrower to the lender or contributors; or
  - (c) a mortgage, or a mortgage of a class, that the National Rules specify as exempt from this prohibition.

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Criminal maximum penalty: for a body corporate—500 penalty units; for a natural person—100 penalty units.

(3) In this section:

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

*contributor* means contributor means a person who lends, or proposes to lend, money that is secured by a contributory mortgage arranged by a law practice.

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

*financial institution* means:

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

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

#### 4.6.4 National Rules for legal services

The National Rules may make provision with respect to:

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

## Part 4.7 Professional rules

### 4.7.1 Objective

The objective of this Part is to promote the maintenance of high standards of professional conduct by Australian legal practitioners, Australian-registered foreign lawyers and law practices by providing for the making and enforcement of rules for professional legal practice, professional conduct and continuing professional development.

### 4.7.2 Legal Practice Rules

- (1) The National Rules may contain provisions designated as Legal Practice Rules.
- (2) The Legal Practice Rules may provide for any aspect of legal practice by law practices, Australian legal practitioners and Australian-registered foreign lawyers.



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**4.7.3 Legal Profession Conduct Rules**

- (1) The National Rules may contain provisions designated as Legal Profession Conduct Rules.
- (2) The Legal Profession Conduct Rules may provide for any aspect of:
  - (a) the professional conduct of Australian legal practitioners, Australian-registered foreign lawyers and law practices; and
  - (b) the conduct of Australian legal practitioners and Australian-registered foreign lawyers as it affects or may affect their suitability as Australian legal practitioners and Australian-registered foreign lawyers.
- (3) Without limitation, the Legal Profession Conduct Rules may include provisions with respect to what Australian legal practitioners, Australian-registered foreign lawyers and law practices must do, or refrain from doing, in order to:
  - (a) uphold their duty to the courts and the administration of justice, including rules relating to:
    - (i) advocacy; and
    - (ii) obeying and upholding the law; and
    - (iii) maintaining professional independence; and
    - (iv) maintaining the integrity of the legal profession; and
  - (b) promote and protect the interests of clients, including:
    - (i) rules relating to client confidentiality and conflicts of interest; and
    - (ii) rules for informing clients about reasonably available alternatives to fully contested adjudication of cases;
  - (c) avoid conflicts of interest.

**4.7.4 Continuing Professional Development Rules**

- (1) The National Rules may contain provisions designated as Continuing Professional Development Rules.
- (2) The Continuing Professional Development Rules may require Australian legal practitioners to comply with provisions for continuing professional development and may provide for any aspect of continuing professional development, including but not limited to the approval by the Board of courses of or providers of continuing professional development.

**4.7.5 Development of rules**

The National Rules under this Part, including any amendments and substituted rules, are to be developed in accordance with section 9.1.3.

## **Chapter 5 Dispute resolution and professional discipline**

### **Part 5.1 Preliminary**

#### **Division 1 Introduction**

##### **5.1.1 Objective**

The objective of this Chapter is:

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

##### **5.1.2 References to lawyers**

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

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

#### **Division 2 Application of this Chapter**

##### **5.1.3 Application of this Chapter to conduct**

- (1) This Chapter applies to conduct of a lawyer or law practice wherever occurring, whether:
  - (a) wholly within or outside Australia; or
  - (b) partly within and partly outside Australia.
- (2) This Chapter applies to conduct of a lawyer or law practice whether consisting of acts or omissions or a combination of both.
- (3) This Chapter extends to conduct of a lawyer as a public notary.

**Note.** See sections 5.4.2 and 5.4.3 for unsatisfactory professional conduct and professional misconduct.

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**5.1.4 Application of this Chapter to lawyers and law practices**

- (1) This Chapter applies to:
  - (a) an Australian legal practitioner in respect of conduct to which this Chapter applies; and
  - (b) an Australian-registered foreign lawyer in respect of conduct to which this Chapter applies; and
  - (c) a former Australian legal practitioner or former Australian-registered foreign lawyer in respect of conduct while an Australian legal practitioner or Australian-registered foreign lawyer in the same way as it applies to an Australian legal practitioner or Australian-registered foreign lawyer, with any necessary modifications; and
  - (d) an Australian lawyer, or a former Australian lawyer in respect of conduct occurring while an Australian lawyer but not an Australian legal practitioner, in the same way as it applies to an Australian legal practitioner, with any necessary modifications.
- (2) This Chapter applies to a law practice in respect of conduct to which this Chapter applies, to the extent that the conduct gives rise to a civil matter.
- (3) A provision of this Law or any other applicable law that protects a person from any action, liability, claim or demand in connection with any conduct of the person does not affect the application of this Chapter to the person in respect of the conduct.
- (4) However, this Chapter does not apply to a person while the person holds:
  - (a) office as a Justice of the High Court; or
  - (b) office as a judge or magistrate of a court created by the Parliament of the Commonwealth; or
  - (c) office as a judge or magistrate of a court, or a judicial member of a tribunal, of a jurisdiction; or
  - (d) an office specified in the National Rules for the purposes of this section;regardless of whether the conduct the subject of a complaint allegedly occurred before or after the person's appointment to the office concerned.
- (5) For the purposes of this Chapter, conduct of an Australian legal practitioner in the exercise of official functions as an arbitrator or costs assessor constitutes conduct occurring in connection with the practice of law, except to the extent that the conduct was concerned with the justiciable aspects of decision making by the arbitrator or costs assessor.
- (6) For the purposes of this Chapter, conduct of an Australian legal practitioner does not constitute conduct occurring in connection with the practice of law to the extent that it is conduct engaged in in the exercise of executive or administrative

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functions under legislation as:

- (a) a government lawyer who is not required to hold an Australian practising certificate; or
- (b) a person appointed to an office by the Governor-General, the Governor of a State or the Administrator of a Territory; or
- (c) any member, officer or employee of a local representative or professional association.

## **Division 3 General duties of Ombudsman**

### **5.1.5 Duty to deal with complaints**

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

### **5.1.6 Duty to exercise discretions fairly**

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

### **5.1.7 Duty to deal with complaints efficiently and expeditiously**

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

### **5.1.8 Notice of decisions and determinations**

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

### **5.1.9 Rules of procedural fairness**

The rules of procedural fairness, to the extent that they are not inconsistent with

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the provisions of this Law or the National Rules, apply in relation to the investigation and determination of complaints by and the procedures of the Ombudsman.

## **Part 5.2            Complaints**

### **Division 1            Making complaints and other matters about complaints**

#### **5.2.1            Who may make a complaint?**

Any person may make a complaint to the Ombudsman.

#### **5.2.2            What can a complaint be about?**

A complaint can be about any conduct to which this Chapter applies.

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

#### **5.2.3            What must be in a complaint?**

A complaint must:

- (a) identify the complainant; and
- (b) identify the lawyer or law practice about whom the complaint is made (or, if it is not possible to identify the lawyer, identify the law practice concerned); and
- (c) describe the alleged conduct, issue or dispute the subject of the complaint.

#### **5.2.4            Matters in or arising from a complaint**

A complaint may contain or give rise to either or both of the following:

- (a) a consumer matter;
- (b) a disciplinary matter.

#### **5.2.5            Consumer matters**

- (1) A **consumer matter** is any dispute or issue between a person and a lawyer or law practice arising out of, or in relation to, the provision of legal services to the person by the lawyer or law practice, including:
  - (a) an issue that also is or is capable of constituting a disciplinary matter; and
  - (b) a costs dispute.
- (2) A **costs dispute** is a dispute about legal costs not exceeding \$100,000, payable on a solicitor-client basis, in respect of any one matter:

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- (a) between a law practice or a lawyer and a person who is charged with those costs or is liable to pay those costs (other than under a court or tribunal order for costs); or
- (b) between a law practice or a lawyer and a beneficiary under a will or trust in relation to which the law practice or lawyer has provided legal services in respect of which those costs are charged.

**5.2.6 Disciplinary matters**

- (1) A disciplinary matter is a dispute or issue about conduct to which this Chapter applies on the part of a lawyer, to the extent that the conduct, if established, would amount to unsatisfactory professional conduct or professional misconduct.
- (2) The Ombudsman may initiate a disciplinary matter on his or her own initiative, and the matter so initiated may be dealt with as complaint.

**5.2.7 Mixed complaints**

If it appears to the Ombudsman that a complaint involves or may involve both a consumer matter and a disciplinary matter, he or she may endeavour to give priority to resolving the consumer matter as soon as possible and, if necessary and appropriate, separately from the disciplinary matter.

**5.2.8 Time limits on making complaints**

- (1) A complaint must be about conduct alleged to have occurred within the period of 5 years immediately before the complaint is made, but the Ombudsman may waive the 5-year requirement if satisfied that:
  - (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
  - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (2) To the extent that a complaint involves a costs dispute, it must be made within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with.
- (3) The Ombudsman's decision to waive or refuse to waive the 5-year requirement is final and cannot be challenged in any proceedings by the complainant or the respondent.

**5.2.9 Withdrawing complaints**

- (1) A complaint may be wholly or partly withdrawn by the complainant.
- (2) No further action is to be taken under this Chapter with respect to a consumer matter arising from a complaint to the extent it is withdrawn, but:
  - (a) the Ombudsman may initiate or continue to investigate disciplinary matters, or proceed with disciplinary matters despite the whole or partial withdrawal of a complaint; and

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- (b) the whole or partial withdrawal of a complaint does not prevent:
  - (i) a further complaint being made under this Chapter, by the same or any other person, with respect to the same subject-matter; or
  - (ii) action being taken on any other complaint made with respect to the same subject-matter.
- (3) The whole or partial withdrawal of a complaint does not of itself affect any proceedings initiated in the designated tribunal.

**5.2.10 Other rights not affected**

This Division does not affect any other right of a person to complain about the conduct of a lawyer or a law practice.

**Division 2 Preliminary assessment of complaints**

**5.2.11 Preliminary assessment of complaint**

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

**5.2.12 Closure of complaint after preliminary assessment**

- (1) Following preliminary assessment of a complaint, the Ombudsman may close the complaint without further consideration of its merits for any of the following reasons:
  - (a) the complaint is vexatious, misconceived, frivolous or lacking in substance; or
  - (b) the complaint was made out of time; or
  - (c) the complainant has not responded, or has responded inadequately, to a request for further information; or
  - (d) in the case of a consumer matter—the complainant is a commercial or government client; or
  - (e) the subject-matter of the complaint has been or is already being

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investigated; or

- (f) the subject-matter of the complaint would be better investigated or dealt with by police or another investigatory or law enforcement body; or
  - (g) the Ombudsman is satisfied that it is otherwise in the public interest to close the complaint.
- (2) A complaint may be closed under this section without any investigation or without completing an investigation.
- (3) If the Ombudsman closes a complaint under this section, he or she must give the complainant a written notice of the closure including the reasons for the closure.
- (4) The Ombudsman is not required to give a complainant, a lawyer or law practice an opportunity to be heard or make a submission to the Ombudsman before determining whether or not to close a complaint under this section.

#### **5.2.13 Immediate suspension of practising or registration certificate**

If a complaint has been made about the conduct of an Australian legal practitioner, Australian-registered foreign lawyer or law practice and the Ombudsman considers the immediate suspension of:

- (a) the Australian practising certificate of the practitioner or the Australian registration certificate of the foreign lawyer; or
- (b) the Australian practising certificate of a legal practitioner associate of the law practice;

(as the case requires) is warranted in the public interest on the ground of the seriousness of the alleged conduct, the Ombudsman may make a recommendation to the Board to that effect. The Ombudsman may do so whether or not an investigation of the complaint has begun or been completed.

## **Division 3 Notification of and submissions by respondents**

### **5.2.14 Notification of respondent about complaint**

- (1) The Ombudsman may, after receiving a complaint, notify the respondent of the complaint or give the respondent a summary or details of the complaint.
- (2) Subject to section 5.2.16, the Ombudsman must, as soon as practicable after deciding to investigate a complaint and if the Ombudsman has not already done so, give the respondent:
- (a) a summary or details of the complaint; and
  - (b) a notice informing the respondent of the respondent's right to make written submissions to the Ombudsman within:
    - (i) a specified period of 21 days or a longer period determined by the Ombudsman; or



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- (ii) a shorter period if the Ombudsman reasonably believes the matter is urgent.
- (3) Nothing in this section requires the Ombudsman to give the notice until the Ombudsman has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint, and properly prepare the notice.
- (4) Despite anything in this section, the Ombudsman may seek or accept written submissions at any time.

**5.2.15 Submissions by respondent**

- (1) The respondent to a complaint may, within the period specified under section 5.2.14, make submissions to the Ombudsman about the complaint or its subject-matter or both, unless the complaint has been closed.
- (2) The Ombudsman may at his or her discretion extend the period in which submissions may be made.
- (3) The Ombudsman must consider any submissions made by the respondent within the specified period before deciding what action is to be taken on the complaint, and may but need not consider submissions received afterwards.
- (4) The rules of procedural fairness are not breached merely because no submissions are received within the specified period and the Ombudsman makes a determination in relation to the complaint, even if submissions are received afterwards.

**5.2.16 Exceptions to requirement for notification of complaint**

- (1) Section 5.2.14 does not require the Ombudsman to give the respondent a summary or details of a complaint or a notice about making submissions if the Ombudsman reasonably believes that to do so will or is likely to:
  - (a) prejudice the investigation of the complaint; or
  - (b) prejudice an investigation by the police or another investigatory or law enforcement body of any matter with which the complaint is concerned; or
  - (c) place the complainant or another person at risk of intimidation or harassment; or
  - (d) prejudice pending court proceedings.
- (2) In that case, the Ombudsman:
  - (a) may postpone giving the respondent the summary or details and the notice until of the opinion that it is appropriate to do so; or
  - (b) may at his or her discretion give the respondent the notice and a statement of the general nature of the complaint.

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## **Division 4 Investigation of complaints**

### **5.2.17 Power to investigate complaints**

The Ombudsman may investigate a complaint.

### **5.2.18 Extending scope of investigation**

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

### **5.2.19 Referral of matters for cost assessment**

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

### **5.2.20 Powers of investigation**

Chapter 7 applies to an investigation under this Division.

## **Part 5.3 Consumer matters**

### **5.3.1 Prerequisite to resolution action by Ombudsman**

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

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

### **5.3.2 Informal resolution of consumer matters**

The Ombudsman must attempt to resolve a consumer matter by informal agreement between the parties as soon as practicable.

### **5.3.3 Mediation**

- (1) This section applies to a complaint to the extent that it involves consumer

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matters.

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

#### **5.3.4 Settlement agreements**

- (1) If the parties to a complaint involving a consumer matter reach agreement with respect to the consumer matter, whether through mediation under this Part or otherwise:
  - (a) the Ombudsman must prepare a written record of the agreement; and
  - (b) the record must be signed by or on behalf of each party and certified by the Ombudsman; and
  - (c) the Ombudsman must give each party a copy of the signed and certified record.
- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified record free of charge in a court.
- (3) On filing, the record must be taken to be an order of the court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under subsection (2).

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**5.3.5 Determination of consumer matters by Ombudsman**

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

**5.3.6 Resolution of costs dispute by Ombudsman**

- (1) If the amount of the legal costs that are the subject of a costs dispute equals or is more than \$100,000, the Ombudsman is not to deal with the costs dispute but is to inform the parties of the right to apply for costs assessment.
- (2) If the amount of legal costs that are the subject of a costs dispute is less than \$100,000, the Ombudsman is to deal with the costs dispute in the same manner as other consumer matters, but:
  - (a) if an attempted resolution is wholly or partly unsuccessful and the amount of legal costs still in dispute is less than \$10,000 (indexed in accordance with section 9.6.6)—the Ombudsman may make a binding determination in relation to the amount in dispute; or
  - (b) if an attempted resolution is wholly or partly unsuccessful, the Ombudsman does not make a binding determination in relation to the amount in dispute and the amount of legal costs still in dispute is equal to or more than \$10,000 (indexed in accordance with section 9.6.6)—the

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Ombudsman is not to continue to deal with the costs dispute but is to inform the parties of the right to apply for costs assessment.

- (3) A binding determination made by the Ombudsman under this section is to be based on the Ombudsman's assessment of what is fair and reasonable in all the circumstances and to determine the amount of costs payable, which must not be more than \$10,000 (indexed in accordance with section 9.6.6).
- (4) A binding determination made by the Ombudsman under this section is not subject to costs assessment, but may be the subject of an internal review.

### **5.3.7 Lodgment of disputed legal costs with Ombudsman**

- (1) Subject to subsection (2), a complainant who makes a complaint that involves a costs dispute must lodge the unpaid amount of the legal costs with the Ombudsman within 28 days after making the complaint.
- (2) The Ombudsman may determine in any case that a complainant need not lodge a disputed amount, or may lodge a lesser amount, if the Ombudsman is satisfied that lodgment would cause the complainant undue hardship.
- (3) A law practice or lawyer against which or whom a complaint that involves a cost dispute has been made must lodge the amount of the disputed legal costs for which the complainant is seeking re-imbursment with the Ombudsman within 28 days after being notified of the making of the complaint.
- (4) The Ombudsman must close a complaint to the extent that it involves a costs dispute if the complainant fails to comply with this section.

### **5.3.8 Dealing with lodged costs**

- (1) The Ombudsman must cause money lodged under section 5.3.7 to be placed on deposit in an interest-bearing account with an ADI in the name of the Ombudsman or an authority nominated in applicable jurisdictional legislation.
- (2) Money in the account, including interest earned on money deposited in the account, is to be paid (after the deduction of any relevant government duties and ADI charges and fees):
  - (a) if the costs dispute is successfully resolved by the Ombudsman—as agreed by the parties; or
  - (b) if the complainant withdraws the complaint or does not apply to the designated tribunal or the complaint is closed—to the law practice or lawyer concerned; or
  - (c) if the Ombudsman considers it appropriate to do so in the circumstances—to the complainant.

## **Part 5.4 Disciplinary matters**

### **Division 1 Preliminary**

#### **5.4.1 Application of this Part**

This Part applies to so much of a complaint as involves a disciplinary matter.

#### **5.4.2 Unsatisfactory professional conduct**

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

#### **5.4.3 Professional misconduct**

- (1) For the purposes of this Law, *professional misconduct* includes:
  - (a) unsatisfactory professional conduct of a lawyer or law practice, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
  - (b) conduct of a lawyer or law practice whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer or a legal practitioner associate of the law practice is not a fit and proper person to engage in legal practice.
- (2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as mentioned in subsection (1) (b), regard may be had to the matters that would be considered if the practitioner were an applicant for admission to the national legal profession or for the grant or renewal of a national practising certificate and any other relevant matters.

#### **5.4.4 Conduct capable of being unsatisfactory professional conduct or professional misconduct**

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

- (a) conduct consisting of a contravention of this Law, whether or not:
  - (i) the person has been convicted of an offence in relation to the contravention; or
  - (ii) a pecuniary penalty order has been made against the person under Part 9.6 in relation to the contravention;
- (b) conduct consisting of a contravention of the National Rules (but subject to any declaration under section 5.4.4 (b));
- (c) charging more than a fair and reasonable amount for legal costs in connection with the practice of law;

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- (d) 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;
- (e) conduct as or in becoming an insolvent under administration;
- (f) conduct in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (g) conduct consisting of a failure to comply with the requirements of a notice under this Law or the National Rules;
- (h) conduct in failing to comply with an order of a designated tribunal made under this Law (including but not limited to a failure to pay wholly or partly a fine imposed under this Law);
- (i) conduct in failing to comply with a compensation order made under this Chapter.

## Division 2 Role of Ombudsman

### 5.4.5 Determination by Ombudsman—unsatisfactory professional conduct

- (1) The Ombudsman may, in relation to a disciplinary complaint, find that the respondent lawyer or a legal practitioner associate of the respondent law practice has engaged in unsatisfactory professional conduct and may determine the complaint by making any of the following orders:
  - (a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;
  - (b) an order reprimanding the respondent or a legal practitioner associate of the respondent law practice;
  - (c) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;
  - (d) an order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;
  - (e) an order requiring:
    - (i) the respondent lawyer; or
    - (ii) the respondent law practice to arrange for a legal practitioner associate of the law practice;to undertake training, education or counselling or be supervised;

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- (f) an order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount (not exceeding \$25,000) to the Board;
  - (g) an order recommending that the Board impose a specified condition on the Australian practising certificate or foreign lawyer registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.
- (2) If the Ombudsman proposes to determine a complaint under this section:
- (a) the Ombudsman must provide the respondent or associate and the complainant with details of the proposed determination and invite them to make written submissions to the Ombudsman within a specified period; and
  - (b) the Ombudsman must take into consideration any written submissions made to the Ombudsman within the specified period, and may but need not consider submissions received afterwards; and
  - (c) the Ombudsman is not required to repeat the process if the Ombudsman decides to make a determination in different terms after taking into account any written submissions received during the specified period; and
  - (d) the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the Ombudsman makes a determination in relation to the complaint, even if submissions are received afterwards.
- (3) If the Ombudsman determines a complaint under this section, no further action is to be taken under this Chapter with respect to the complaint.
- (4) If a complaint involves both a consumer matter and a disciplinary matter and the Ombudsman has already made a determination of the consumer matter under section 5.3.5, an order cannot be made under this section to the extent to which the complaint has already been dealt with under that section.

#### **5.4.6 Power to initiate proceedings in designated tribunal**

- (1) The Ombudsman may initiate proceedings in relation to alleged unsatisfactory professional conduct or professional misconduct in accordance with section 5.4.7.
- (2) If the conduct also involved a consumer matter, the Ombudsman must notify the complainant concerned of the initiation of the proceedings and inform the complainant of the right to apply for compensation.

### **Division 3 Role of designated tribunal**

#### **5.4.7 Initiation of proceedings in designated tribunal**

The Ombudsman may initiate proceedings, in the designated tribunal of the jurisdiction with which the Ombudsman considers the conduct concerned has the closest connection, against a respondent if the Ombudsman is of the opinion that:



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- (a) the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the designated tribunal; or
- (b) the alleged conduct may amount to professional misconduct.

**5.4.8 Procedure of designated tribunal**

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

**5.4.9 Determination by designated tribunal—disciplinary matters**

- (1) If, after it has completed a hearing under this Part into the conduct of a lawyer, the designated tribunal finds that the lawyer is guilty of unsatisfactory professional conduct or professional misconduct, the designated tribunal may make such orders as it thinks fit, including any of the orders that the Ombudsman can make under section 5.4.5 in relation to a lawyer and any one or more of the following:
  - (a) an order that the lawyer do or refrain from doing something in connection with the practice of law;
  - (b) an order that the lawyer cease to accept instructions as a public notary in relation to notarial services;
  - (c) an order that the lawyer's practice be managed for a specified period in a specified way or subject to specified conditions;
  - (d) an order that the lawyer's practice be subject to periodic inspection by a specified person for a specified period;
  - (e) an order that the lawyer seek advice in relation to the management of the lawyer's practice from a specified person;
  - (f) an order recommending that the name of the lawyer be removed from a roll kept by a Supreme Court and the Australian Legal Profession Register;
  - (g) an order requiring the Board to impose a specified condition on the Australian practising certificate or Australian registration certificate of the lawyer;
  - (h) an order that the lawyer's Australian practising certificate or national certificate be suspended for a specified period or cancelled;
  - (i) an order that an Australian practising certificate or Australian registration certificate not be granted to the lawyer before the end of a specified period;

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- (j) an order that the lawyer not apply for an Australian practising certificate or Australian registration certificate before the end of a specified period;
  - (k) a compensation order against the lawyer under Part 5.5.
- (2) Subject to section 5.4.10, the designated tribunal may make ancillary or other orders, including:
- (a) an order for payment by the lawyer of expenses associated with orders under this section, as assessed or reviewed in or in accordance with the order or as agreed.
  - (b) an interlocutory or interim order, including an order of the kind referred to in subsection (1).
- (3) The designated tribunal may find a person guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.
- (4) To avoid doubt, the power of the designated tribunal under subsection (1) to make any of the orders that the Ombudsman can make under section 5.4.5 extends to making orders of that kind in relation to a lawyer whom the tribunal finds is guilty of professional misconduct.

**5.4.10      Costs**

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

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

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- (4) The designated tribunal may make orders requiring:
- (a) a lawyer in respect of whom proceedings are pending before the designated tribunal; or
  - (b) a person, body or fund nominated in relevant jurisdictional legislation for the purposes of this section;
- to pay costs on an interlocutory or interim basis.
- (5) An order for costs:
- (a) may be for a specified amount; or
  - (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.
- (6) An order for costs may specify the terms on which costs must be paid.

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

**5.4.11 Compliance with determinations and orders**

- (1) Persons and bodies (other than a Supreme Court) having relevant functions under this Law must give effect to the orders of a tribunal under this Law.
- (2) A Supreme Court may remove the name of a lawyer from a roll on the recommendation of a tribunal under this Law.

**Part 5.5 Compensation orders**

**5.5.1 Request by complainant for compensation order**

- (1) A complainant may request:
- (a) the Ombudsman; or
  - (b) the designated tribunal in proceedings under Division 3 of Part 5.4;
- to make a compensation order.
- (2) A compensation order may be requested in respect of loss suffered by:
- (a) the complainant; or
  - (b) another person who is a client of the respondent;
- (or both) because of the conduct the subject of the complaint. The complainant, or other person, suffering the loss is referred to in this Part as an ***aggrieved person***.
- (3) A complainant who makes such a request must describe the loss suffered by the

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aggrieved person and the relevant circumstances.

- (4) A request may be made in the complaint or to the Ombudsman at any time after the complaint is made and before it is disposed of.
- (5) However, a request may not be made after proceedings have been initiated in the designated tribunal with respect to the complaint unless the designated tribunal grants the complainant leave to make the request.
- (6) A request may only be made within 5 years after the conduct that caused the loss is alleged to have occurred.

#### **5.5.2 Nature of compensation orders**

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

#### **5.5.3 Prerequisites for making of compensation orders**

- (1) Unless the complainant and the law practice or associate of the law practice concerned agree, a compensation order is not to be made unless the Ombudsman or designated tribunal (as the case requires) is satisfied that:
  - (a) the aggrieved person has suffered loss because of the conduct concerned; and

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- (b) it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of any loss for which the aggrieved person has received or is entitled to receive:
  - (a) compensation under an order that has been made by a court; or
  - (b) compensation paid or payable from a fidelity fund of any jurisdiction, where a relevant claim for payment from that fund has been made or determined.

#### 5.5.4 Making of compensation orders

- (1) The designated tribunal may make a compensation order against a lawyer if the designated tribunal finds that the lawyer has engaged in unsatisfactory professional conduct or professional misconduct in relation to a complaint.
- (2) The Ombudsman may make a compensation order against a lawyer or a law practice if proceedings are not proposed to be initiated in the designated tribunal with respect to the complaint concerned.
- (3) A compensation order may specify the person to whom monetary compensation is payable, whether to the aggrieved person or to another person on behalf of the aggrieved person.

#### 5.5.5 Enforcement of compensation orders

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

#### 5.5.6 Other remedies not affected

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

### Part 5.6 Appeal or review

#### 5.6.1 Finality of determinations of Ombudsman

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

#### 5.6.2 Internal review of determinations of Ombudsman

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

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- (3) On the review, the Ombudsman may confirm the original decision, make a new decision, or refer the matter back to the original decision-maker.

**5.6.3 Right of appeal or review of determinations of Ombudsman**

- (1) A respondent lawyer or a legal practitioner associate of a respondent law practice may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by the designated tribunal of, a decision of the Ombudsman under:
- (a) section 5.3.5, in relation to a compensation order for more than \$10,000; or
  - (b) section 5.4.5.
- (2) The designated tribunal may make any order it considers appropriate on the appeal or review.

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

## **Chapter 6 External intervention**

### **Part 6.1 Introduction**

#### **6.1.1 Objectives**

The objectives of this Chapter are:

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

#### **6.1.2 Application of this Chapter**

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

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**6.1.3 Operation of appointment of external intervener**

- (1) The appointment by the Ombudsman of a supervisor of trust money of or a manager for a law practice is effective to operate in and in respect of this jurisdiction.
- (2) An order or direction of the Supreme Court of another jurisdiction made under this Chapter in relation to a law practice has effect in and in respect of this jurisdiction as if it were an order or direction of the Supreme Court of this jurisdiction made in relation to that law practice, and this Chapter applies accordingly.

**Part 6.2 Initiation of external intervention**

**6.2.1 Circumstances warranting external intervention**

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

- (a) where a legal practitioner associate involved in the law practice has died, ceases to hold a current Australian practising certificate or a current Australian registration certificate, has become an insolvent under administration or is in prison;
- (b) in the case of a law firm or an unincorporated legal practice—where the firm or group has been wound up or dissolved;
- (c) in the case of an incorporated legal practice—where the corporation concerned ceases to be an incorporated legal practice, is being or has been wound up or has been deregistered or dissolved;
- (d) in any case—where the Ombudsman forms a belief on reasonable grounds that the law practice or an associate of the law practice:
  - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the law practice; or
  - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the law practice; or
  - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the law practice for or on behalf of that person; or
  - (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
  - (v) is in breach of the National Rules with the result that the record-keeping for the law practice's trust accounts is inadequate; or



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- (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
  - (vii) is the subject of an adverse finding in relation to a complaint relating to trust money or trust property received by the law practice; or
  - (viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Law; or
  - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the law practice or for properly winding up the affairs of the law practice;
- (e) where any other proper cause exists in relation to the law practice.

**6.2.2 Determination to initiate external intervention**

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

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- (ii) that it may be appropriate that the provision of legal services by the law practice be wound up and terminated.
- (3) The Ombudsman may, from time to time, make further determinations in relation to the law practice and for that purpose may, at the Ombudsman's absolute discretion, revoke a previous determination with effect from a date or event specified by the Ombudsman.

**6.2.3 Appointment of external intervener may be general or limited**

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

**Part 6.3 Supervisors of trust money**

**6.3.1 Appointment of supervisor of trust money**

- (1) This section applies if the Ombudsman determines to appoint a supervisor of trust money of a law practice.
- (2) The Ombudsman may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either:
  - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be a member of the staff of the Ombudsman.

**6.3.2 Effect of service of notice of appointment**

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

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Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

Criminal maximum penalty: 100 penalty units.

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

### **6.3.3 Role of supervisor of trust money**

- (1) A supervisor of trust money of a law practice has the powers and other functions of the law practice in relation to the trust money, including powers:
  - (a) to receive trust money entrusted to the practice; and
  - (b) to open and close trust accounts.
- (2) For the purpose of exercising his or her functions under subsection (1), the supervisor may exercise any or all of the following powers:
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the law practice or an associate or former associate of the law practice or any other person who has or had control of documents relating to trust money received by the law practice to give the supervisor either or both of the following:
    - (i) access to the files and documents the supervisor reasonably requires;
    - (ii) information relating to the trust money the supervisor reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person

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- on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
- (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the Ombudsman and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) This section applies to trust money held by the law practice before the supervisor is appointed, as well as to trust money received afterwards.
- (5) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the law practice.
- (6) The supervisor may enter and remain on premises under subsection (2) (a) only:
- (a) during normal business hours; or
  - (b) during other hours with the consent of the occupier of the premises.
- (7) The supervisor must not enter premises under subsection (2) (a) unless, before the entry, he or she has produced for inspection by the occupier:
- (a) the supervisor's notice of appointment; and
  - (b) a form of identification that includes the supervisor's photograph and signature.
- (8) However, if the supervisor is refused access to the premises or the premises are unoccupied and the supervisor considers that entry is necessary to prevent destruction of documents or for another urgent reason, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (9) The supervisor must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the supervisor's functions.
- (10) If the supervisor takes possession of:

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- (a) a document, disk or tape or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied;

under this section the supervisor on request by the occupier, a principal of a law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

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

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

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

**6.3.5 Termination of supervisor's appointment**

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

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## **Part 6.4 Managers**

### **6.4.1 Appointment of manager**

- (1) This section applies if the Ombudsman determines to appoint a manager for a law practice.
- (2) The Ombudsman may, by instrument in writing, appoint a person as manager.
- (3) The appointee must be an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money, and may (but need not) be a member of the staff of the Ombudsman.

### **6.4.2 Effect of service of notice of appointment**

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

Criminal maximum penalty: 100 penalty units.

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

Criminal maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

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law practice;

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

Civil maximum penalty: 100 penalty units.

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

**6.4.3 Role of managers**

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

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connection with its engaging in legal practice;

- (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the manager either or both of the following:
    - (i) access to the files and documents the manager reasonably requires;
    - (ii) information relating to client matters the manager reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the Ombudsman and:
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.

Civil maximum penalty: 20 penalty units.

- (4) The manager may enter and remain on premises under subsection (2) (a) only:
- (a) during normal business hours; or
  - (b) during other hours with the consent of the occupier of the premises.
- (5) However, if the manager is refused access to the premises or the premises are unoccupied and the manager considers that entry is necessary to prevent destruction of documents or for another urgent reason, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.
- (6) The manager must not enter premises under subsection (2) (a) unless, before the entry, he or she has produced for inspection by the occupier:
- (a) the manager's notice of appointment; and



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- (b) a form of identification that includes the manager's photograph and signature.

Civil maximum penalty: 10 penalty units.

- (7) The manager must take all reasonable steps to return any material to the person entitled to it as soon as it is no longer required for the purpose of the manager's functions.
- (8) If the manager takes possession of:
  - (a) a document, disk or tape or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied;

under this section the manager on request by the occupier, a principal of a law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

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

- (1) The manager for a law practice must maintain the records and accounts of the law practice that he or she manages:
  - (a) separately from the management of the affairs of the law practice before his or her appointment as manager; and
  - (b) separately from the affairs of any other law practice for which he or she is an external intervener; and
  - (c) in the manner specified in the National Rules for the purposes of this section.

Civil maximum penalty: for a body corporate—100 penalty units; for a natural person—20 penalty units.

- (2) Subject to subsection (1), the manager for a law practice must deal with trust money of the law practice in the same way as a law practice must deal with trust money.

#### **6.4.5 Deceased estates**

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

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if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and other functions are not affected by the death.

#### 6.4.6 Termination of manager's appointment

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

## Part 6.5 Receivers

### 6.5.1 Appointment of receiver

- (1) This section applies if the Ombudsman determines to initiate action for the appointment of a receiver for a law practice.
- (2) The Supreme Court of this jurisdiction may, on the application of the Ombudsman, appoint a person as receiver for a law practice that engages in legal practice.

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- (3) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
- (4) Before commencing to hear an application for appointment of a receiver, the Supreme Court must order from the precincts of the Court any person who is not:
  - (a) an officer of the Court; or
  - (b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or
  - (c) a principal of the law practice concerned; or
  - (d) a person who is about to or is in the course of giving evidence; or
  - (e) a person permitted by the Court to be present in the interests of justice.
- (5) The appointee must be:
  - (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts;

and may (but need not) be a member of the staff of the Ombudsman.

#### **6.5.2 Effect of service of notice of appointment**

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

Criminal maximum penalty: 100 penalty units.

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

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manager.

Civil maximum penalty: for a body corporate—250 penalty units; for a natural person—50 penalty units.

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

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

Criminal maximum penalty: 100 penalty units.

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

**6.5.3 Role of receivers**

- (1) The role of a receiver for a law practice is:
- (a) to be the receiver of regulated property of the law practice; and
  - (b) to wind up and terminate the affairs of the law practice.
- (2) For the purpose of winding up the affairs of the law practice and in the interests of the law practice's clients, the Supreme Court may, by order, authorise:
- (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
  - (b) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money, or a law practice whose principals are or include one or more Australian legal practitioners who hold Australian practising certificates authorising the receipt of trust money, specified in the instrument to carry on the legal practice on behalf of the receiver.

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- (3) Subject to any directions given by the Supreme Court, the receiver, if authorised under subsection (2) to carry on the legal practice engaged in by a law practice, has all the powers and other functions of a manager under this Chapter and is taken have been appointed as manager for the law practice.
- (4) The Supreme Court may, by order, terminate an authorisation to carry on a legal practice granted under subsection (2).
- (5) For the purpose of exercising his or her powers and other functions under this section, the receiver may exercise any or all of the following powers:
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the receiver:
    - (i) access to the files and documents the receiver reasonably requires; and
    - (ii) information relating to client matters the receiver reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.

Civil maximum penalty: 20 penalty units.

- (6) If the receiver takes anything from the premises, the receiver must issue a receipt in a form approved by the Ombudsman and:
  - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

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**6.5.4 Records and accounts of law practice under receivership and dealings with trust money**

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages:
  - (a) separately from the management of the affairs of the law practice before his or her appointment as receiver; and
  - (b) separately from the affairs of any other law practice that the receiver is managing or for which the receiver is appointed as external intervener; and
  - (c) in the manner specified in the National Rules for the purposes of this section.

Civil maximum penalty: 20 penalty units.

- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**6.5.5 Power of receiver to take possession of regulated property**

- (1) A receiver for a law practice may take possession of regulated property of the law practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.
- (4) If, on application made by the receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the Court may order the seizure of any regulated property of the law practice that is located on the premises specified in the order and make any further orders it thinks fit.
- (5) An order under subsection (4) operates to authorise:
  - (a) any member of the police force; or
  - (b) the receiver or a person authorised by the receiver, together with any member of the police force;

to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

- (6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

**6.5.6 Power of receiver to take delivery of regulated property**

- (1) If a receiver for a law practice believes on reasonable grounds that another person

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is under an obligation, or will later be under an obligation, to deliver regulated property to the law practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.

- (2) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property to the law practice, the person must deliver the property to the receiver.

Civil maximum penalty: 100 penalty units.

- (3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

### **6.5.7 Power of receiver to deal with regulated property**

- (1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the law practice.
- (2) The receiver may deal with the regulated property in any manner in which the law practice might lawfully have dealt with the property.

### **6.5.8 Power of receiver to require documents or information**

- (1) A receiver for a law practice may require:
  - (a) a person who is an associate or former associate of the law practice; or
  - (b) a person who has or has had control of documents relating to the affairs of the law practice; or
  - (c) a person who has information relating to regulated property of the law practice or property that the receiver believes on reasonable grounds to be regulated property of the law practice;

to give the receiver, within a period and in a manner specified by the receiver, either or both of the following:

- (d) access to the documents relating to the affairs of the law practice the receiver reasonably requires;
  - (e) information relating to the affairs of the law practice the receiver reasonably requires (verified by statutory declaration if the requirement so states) and within a period and in a manner specified by the receiver.
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Criminal maximum penalty: 50 penalty units.

### **6.5.9 Examinations about regulated property**

- (1) The Supreme Court may, on the application of a receiver for a law practice, make an order directing that an associate or former associate of the law practice or any

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other person appear before the Court for examination on oath or affirmation in relation to the regulated property of the law practice.

- (2) On an examination of a person under this section, the person must answer all questions that the Supreme Court allows to be put to the person.

Criminal maximum penalty: 50 penalty units.

#### **6.5.10 Lien for costs on regulated property**

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

#### **6.5.11 Regulated property not to be attached**

Regulated property of a law practice (including regulated property held by a receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

#### **6.5.12 Recovery of regulated property where there has been a breach of trust etc**

- (1) This subsection applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been taken by, paid to, or transferred to, a person (the transferee) in breach of trust, improperly or unlawfully and the transferee:
- (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
  - (b) did not provide to the law practice or any other person any or any adequate consideration for the taking, payment or transfer; or



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- (c) because of the taking, payment or transfer, became indebted or otherwise liable to the law practice or to a client of the law practice in the amount of the payment or in another amount.
- (2) The receiver is entitled to recover from the transferee:
- (a) if subsection (1) (a) applies—the amount of the payment or the value of the regulated property taken or transferred; or
  - (b) if subsection (1) (b) applies—the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or
  - (c) if subsection (1) (c) applies—the amount of the debt or liability;
- and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.
- (3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been paid in breach of trust, improperly or unlawfully to a person (the prospective plaintiff) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party:
- (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
  - (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.
- (4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the law practice, been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person (the debtor), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.
- (5) A person authorised by the Ombudsman to do so may give a certificate with respect to all or any of the following facts:
- (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt, and the identity of the person from whom it was received;
  - (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;
  - (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the law practice and the truth or falsity of those entries;

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- (d) the money and securities held by the law practice at the specified time.
- (6) If the receiver brings proceedings under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

**6.5.13 Improperly destroying property etc**

A person must not, with intent to defeat the operation of this Part or of the National Rules relating to receivers, and whether before or after the appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Criminal maximum penalty: 150 penalty units or imprisonment for 3 years, or both.

**6.5.14 Deceased estates**

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

**6.5.15 Termination of receiver's appointment**

- (1) The appointment of a receiver for a law practice terminates in the following circumstances:
  - (a) the term (if any) of the appointment comes to an end;
  - (b) the appointment is set aside under section 6.6.3;
  - (c) a determination of a Supreme Court the relevant that the appointment be terminated has taken effect.
- (2) The Supreme Court may, on application by the Ombudsman or receiver made at any time, determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver for a law practice must apply to the Supreme Court for termination of the appointment when the affairs of the law practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an

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end.

- (4) The Supreme Court may make any order it considers appropriate in relation to an application under this section.
- (5) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the Supreme Court's decision on the application except to the extent (if any) that the Court otherwise directs.
- (6) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to:
  - (a) another external intervener appointed for the law practice within the period of 14 days beginning with the day after the date of the termination; or
  - (b) the law practice, if another external intervener is not appointed for the law practice within that period and if paragraph (c) does not apply; or
  - (c) another person in accordance with arrangements approved by the Ombudsman, if it is not practicable to transfer and deliver the regulated property to the law practice.
- (7) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (6) unless the expenses of receivership have been paid.
- (8) The Ombudsman must serve a written notice of the termination on all persons originally served with notice of the appointment.

## Part 6.6 General

### 6.6.1 Conditions on appointment of external intervener

- (1) An appointment of an external intervener is subject to:
  - (a) any conditions imposed by the appropriate authority; and
  - (b) any conditions imposed by or under the National Rules for the purposes of this section.
- (2) The appropriate authority may impose conditions:
  - (a) when the appointment is made; or
  - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection (2).
- (4) The *appropriate authority* is:

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- (a) the Ombudsman in the case of a supervisor of trust accounts or a manager;  
or
- (b) the Supreme Court in the case of a receiver.

**6.6.2 Status of acts of external intervener**

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of:
  - (a) any proceedings; or
  - (b) any transaction that relies on that act or omission;taken to have been done or omitted to be done by the law practice.
- (2) Nothing in this section subjects an associate of the law practice to any personal liability.

**6.6.3 Appeal against appointment of external intervener**

- (1) An aggrieved person referred to in subsection (3) may, in accordance with applicable jurisdictional legislation, appeal to the Supreme Court of a jurisdiction in which a law practice engages in legal practice against the appointment of a supervisor of trust money of, or a manager for, the law practice.
- (2) An aggrieved person referred to in subsection (3) may, in accordance with applicable jurisdictional legislation of the jurisdiction of the Supreme Court, appeal against the appointment by the Supreme Court of a receiver for a law practice.
- (3) An *aggrieved person* is:
  - (a) the law practice;
  - (b) an associate of the law practice;
  - (c) any person authorised to operate a trust account of the law practice;
  - (d) a client of the law practice whose interests may be adversely affected by the appointment;
  - (e) any other person whose interests may be adversely affected by the appointment.
- (4) The court hearing the appeal may by order do any one or more of the following:
  - (a) confirm the appointment;
  - (b) set aside the appointment;
  - (c) impose or vary any conditions of the appointment;
  - (d) make any other orders it thinks fit.

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- (5) The appointment of an external intervener is not stayed by the making of an appeal, and the external intervener may accordingly continue to exercise his or her powers and other functions as external intervener during the currency of the appeal except to the extent (if any) that the court hearing the appeal otherwise directs.

#### 6.6.4 Directions of Supreme Court

Where the Supreme Court of this jurisdiction has appointed an external intervener for a law practice, the Court may, on application by:

- (a) the external intervener; or
- (b) a principal of the law practice; or
- (c) any other person affected by the external intervention;

give directions in relation to any matter affecting the intervention or the intervener's powers or other functions under this Law.

#### 6.6.5 Manager and receiver appointed for law practice

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

#### 6.6.6 ADI disclosure requirements

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener, without charge:
- (a) whether or not the law practice, or an associate of the law practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
  - (b) details identifying every account so maintained.

Civil maximum penalty: 100 penalty units.

- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge:
- (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
  - (b) provide the intervener with full details of any transactions relating to any such account or money.

Civil maximum penalty: 100 penalty units.

- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law

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practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener, without charge:

- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
- (b) the details of any such account.

Civil maximum penalty: 100 penalty units.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

#### **6.6.7 Confidentiality**

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except:
  - (a) so far as is necessary for exercising his or her powers or other functions; or
  - (b) as provided in subsection (2).

Criminal maximum penalty: 50 penalty units.

- (2) An external intervener may disclose information to any of the following:
  - (a) any court, tribunal or other person acting judicially;
  - (b) the Board or the Ombudsman or both;
  - (c) any officer of or Australian legal practitioner instructed by or on behalf of:
    - (i) a local representative of the Board or the Ombudsman; or
    - (ii) the Commonwealth, a State or a Territory; or
    - (iii) an authority of the Commonwealth or of a State or Territory;

in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;

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- (d) a member of the police force of any jurisdiction if the Ombudsman or external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
- (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
- (f) a client or former client of the law practice concerned if the information relates to the client or former client;
- (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
- (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned.

### 6.6.8 Provisions relating to requirements under this Chapter

- (1) This section applies to a requirement imposed on a person under this Chapter or the National Rules made for the purposes of this Chapter to give an external intervener access to documents or information.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
- (3) The external intervener imposing the requirement may:
  - (a) inspect any document provided pursuant to the requirement; and
  - (b) make copies of the document or any part of the document; and
  - (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.
- (4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (5) A failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) The Ombudsman may recommend to the Board that an Australian legal practitioner's Australian practising certificate or an Australian-registered foreign lawyer's Australian registration certificate be suspended while a failure by the practitioner or lawyer to comply with the requirement continues.

### 6.6.9 Obstruction of external intervener

A person must not, without reasonable excuse, obstruct an external intervener exercising a power or other function under this Law.

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Criminal maximum penalty: 50 penalty units.

**6.6.10 Protection from liability**

- (1) No liability attaches to a protected person in respect of any act or omission by an external intervener done in good faith and in the exercise or purported exercise of the intervener's functions under this Chapter.
- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the National Rules.
- (3) A *protected person* is the Ombudsman, an external intervener or a person acting at the direction of the Ombudsman or an external intervener.

**6.6.11 National Rules for external intervention**

- (1) The National Rules may make provision with respect to any aspect of external intervention.
- (2) Without limitation, the National Rules may provide for the following:
  - (a) the content of and service of notices of appointment and termination of external interveners;
  - (b) reports by external interveners;
  - (c) the entitlement of external interveners to remuneration and the recovery by them of remuneration to which they are entitled;
  - (d) the assessment and recovery of legal costs and expenses incurred in relation to external interventions.



## **Chapter 7 Investigatory powers**

### **Part 7.1 Introduction**

#### **7.1.1 Objective**

- (1) The objective of this Chapter is to set out powers that are exercisable in connection with:
  - (a) trust records examinations; and
  - (b) trust records investigations; and
  - (c) compliance audits; and
  - (d) complaint investigations.
- (2) A person who may exercise any of those powers is referred to in this Chapter as an *investigator*.

### **Part 7.2 Requirements relating to documents, information and other assistance**

#### **7.2.1 Requirements—trust records examinations, trust records investigations and compliance audits**

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

Criminal maximum penalty: 50 penalty units.

#### **7.2.2 Requirements—complaint investigations**

- (1) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer or an Australian-registered foreign lawyer, an investigator may, by notice served on the lawyer, require the lawyer to do any one or more of

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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 produce, at a specified time and specified place, any specified document (or a copy of the document);
  - (c) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);
  - (d) to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer or an Australian-registered foreign lawyer, the investigator may, on production of evidence of his or her appointment, require any person (other than the lawyer) who has or has had control of documents relating to the affairs of the lawyer to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;
  - (b) information relating to the affairs of the lawyer the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.

Criminal maximum penalty: 50 penalty units.

- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.
- (5) If a notice under subsection (1) is served on the lawyer by the investigator personally, the investigator must produce evidence of his or her appointment for inspection.

### **7.2.3 Provisions relating to requirements under this Part**

- (1) This section 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 the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
- (3) 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

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- (c) retain the document for a period the investigator thinks necessary for the purposes of the investigation in relation to which it was produced.
- (4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (5) A failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) The Ombudsman may recommend to the Board that an Australian legal practitioner's Australian practising certificate or an Australian-registered foreign lawyer's Australian registration certificate be suspended while a failure by the practitioner or lawyer to comply with the requirement continues.

## **Part 7.3            Entry and search of premises**

### **7.3.1      Investigator's power to enter premises—trust records investigations and complaint investigations**

- (1) For the purpose of carrying out a trust records investigation or complaint investigation, an investigator may enter and remain on premises to exercise the powers in section 7.3.2.
- (2) The investigator may enter premises:
  - (a) with the consent of the occupier; or
  - (b) under the authority of a search warrant issued under this Part; or
  - (c) in the case of non-residential premises—without the consent of the occupier and without a warrant, but only if:
    - (i) the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material; and
    - (ii) the Ombudsman in the particular case has authorised the investigator (orally or in writing) to do so.

### **7.3.2      Powers of investigator while on premises**

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers:
  - (a) search the premises and examine anything on the premises;
  - (b) search for any information, document or other material relating to the matter to which the investigation relates;
  - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;

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- (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) 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.

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**7.3.3 Provisions relating to entry with consent**

- (1) An investigator must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the investigator has:
- (a) produced evidence of his or her appointment for inspection; and
  - (b) informed the occupier:
    - (i) of the purpose of the search; and
    - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
    - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and
    - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in any disciplinary or other proceedings.

Criminal maximum penalty: 10 penalty units.

- (2) If an occupier consents to an entry and search, the investigator who requested consent must before entering the premises ask the occupier to sign an acknowledgment stating:
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in disciplinary or other proceedings; and
  - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any copy or extract; and
  - (c) that the occupier has consented to such an entry and search; and
  - (d) the date and time that the occupier consented.
- (3) If an occupier consents to the seizure or taking of any thing during a search, the investigator must before seizing or taking the thing ask the occupier to sign an acknowledgment stating:
- (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (4) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the investigator leaves the premises.
- (5) If, in any proceedings, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did

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not consent to the entry and search or to the seizure or the taking of the thing.

#### **7.3.4 Search warrants**

- (1) For the purpose of carrying out a trust records investigation or complaint investigation, an investigator may apply for a search warrant under the legislation of this jurisdiction if a search is proposed to be undertaken in this jurisdiction and the investigator believes there are reasonable grounds for the issue of a search warrant.
- (2) A search warrant may, in response to an application made under this section, be issued if:
  - (a) an investigator satisfies the issuing authority that there are reasonable grounds to suspect that relevant material is located at the premises; and
  - (b) the issuing authority is satisfied that there are reasonable grounds for issuing the warrant; and
  - (c) any other requirements of the applicable jurisdictional legislation are satisfied.
- (3) A search warrant authorises an investigator named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment:
  - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
  - (b) to exercise the powers in section 7.3.2.
- (4) A search warrant may restrict the powers that may be exercised under section 7.3.2.

#### **7.3.5 Search warrants—announcement before entry**

- (1) On executing a search warrant, the investigator executing the warrant:
  - (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) if the investigator has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

Criminal maximum penalty: for a body corporate—10 penalty units.

- (2) An investigator need not comply with subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure:
  - (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

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**7.3.6      Search warrants—details of warrant to be given to occupier**

- (1) If the occupier is present at premises where a search warrant is being executed, the investigator must:
  - (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.

Criminal maximum penalty: 10 penalty units.

- (2) If the occupier is not present at premises where a search warrant is being executed, the investigator must:
  - (a) identify himself or herself to a person at the premises; and
  - (b) give to the person a copy of the warrant.

Criminal maximum penalty: 10 penalty units.

- (3) An investigator executing a search warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.

Criminal maximum penalty: 10 penalty units.

**7.3.7      Retention and return of things seized during search**

- (1) Subject to this section, an investigator may retain a document or other thing seized during a search if, and for so long as, the investigator considers that retention of the document or thing is reasonably necessary:
  - (a) for the purposes of the trust records investigation or complaint investigation concerned; or
  - (b) to enable evidence to be obtained for the purposes of any disciplinary or other proceedings in relation to it.
- (2) If an investigator retains a document or thing under this section, he or she must take reasonable steps to return it to the person from whom it was seized when the reason for its retention no longer exists.
- (3) Nothing in this section prevents an investigator from retaining a copy of a document or other thing seized, or making a copy and retaining it.

**7.3.8      Copies of seized documents**

- (1) If an investigator retains possession of a document seized from a person under this Part, the investigator must give the person, within 21 days of the seizure, a copy of the document certified as correct by the investigator.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

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## **Part 7.4      Additional powers in relation to incorporated legal practices**

### **7.4.1      Application and operation of Part**

- (1) This Part applies to:
  - (a) trust records investigations; and
  - (b) compliance audits; and
  - (c) complaint investigations;conducted in relation to incorporated legal practices.
- (2) An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.
- (3) The provisions of this Part are additional to the other provisions of this Chapter.

### **7.4.2      Examination of persons**

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

### **7.4.3      Inspection of books**

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on ASIC by sections 30 (1), 34 and 37–39 of the ASIC Act.
- (2) Those provisions apply to the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the



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Ombudsman or 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 Ombudsman or a person authorised by the Ombudsman who is a member of the staff of the Ombudsman;
- (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies.

#### **7.4.4      Power to hold hearings**

- (1) The Ombudsman or investigator may hold hearings for the purposes of an investigation, examination or audit to which this Part applies.
- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to a hearing, with the following modifications (and any other necessary modifications):
  - (a) a reference to ASIC (however expressed) is taken to be a reference to the Ombudsman or the investigator;
  - (b) a reference to a member or staff member is taken to be a reference to the Ombudsman or a person authorised by the Ombudsman who is an officer or employee of the Ombudsman;
  - (c) a reference to a prescribed form is taken to be a reference to a form approved by the Ombudsman.

## **Part 7.5            Miscellaneous**

### **7.5.1      Obstruction of investigator**

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a function under this Law.

Criminal maximum penalty: 50 penalty units.

- (2) A person requested to do anything under section 7.3.2 (1) (j) must not, without reasonable excuse, fail to comply with the request.

Criminal maximum penalty: 50 penalty units.

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### **7.5.2      Obligation of lawyers**

- (1) The duties imposed on an Australian lawyer or Australian-registered foreign lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) An Australian lawyer or Australian-registered foreign lawyer must not mislead an investigator or the Ombudsman in the exercise of any power or other function under this Chapter.

Criminal maximum penalty: 100 penalty units.

- (3) An Australian lawyer or Australian-registered foreign lawyer who is subject to a requirement under section 7.2.2 must not, without reasonable excuse, fail to comply with the requirement.

Criminal maximum penalty: 100 penalty units.

### **7.5.3      Failure to comply**

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

- (a) a failure by an Australian legal practitioner or Australian-registered foreign lawyer to comply with any requirement made by the Ombudsman or the investigator, or a person authorised by the Ombudsman or the investigator, in the exercise of functions under this Chapter;
- (b) a contravention by an Australian legal practitioner or Australian-registered foreign lawyer of any condition imposed by the Ombudsman or the investigator in the exercise of functions under this Chapter;
- (c) a failure by a principal 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 Ombudsman or the investigator, or a person authorised by the Ombudsman or the investigator, in the exercise of functions under this Chapter;
  - (ii) any condition imposed by the Ombudsman or the investigator in the exercise of functions under this Chapter.

### **7.5.4      Protection from liability**

- (1) No liability attaches to a protected person in respect of any act or omission by an investigator done in good faith and in the exercise or purported exercise of the investigator's functions under this Chapter.
- (2) Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the National Rules.

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- (3) For the purposes of this section, a *protected person* is the Ombudsman, an investigator or a person acting at the direction of the Ombudsman or an investigator.

**7.5.5      National Rules**

- (1) The National Rules may provide for any aspect of trust records investigations, trust records examinations, compliance audits and complaint investigations.
- (2) Without limitation, the National Rules may provide for the following:
- (a) the manner in which powers under this Chapter are to be exercised;
  - (b) reports by investigators.

## **Chapter 8 National regulatory authorities**

### **Part 8.1 Standing Committee of Attorneys-General**

#### **8.1.1 Decisions of Standing Committee**

- (1) Decisions of the Standing Committee for the purposes of this Law are to be determined by a majority of the votes of the Standing Committee.
- (2) A certificate signed by the Secretary of the Standing Committee of Attorneys-General stating that a decision of the Standing Committee for the purposes of this Law was as set out in the certificate is conclusive evidence of the decision.

#### **8.1.2 Role of Standing Committee**

- (1) The Standing Committee has a general supervisory role in relation to the Board and the Ombudsman to ensure they are fulfilling their duties under this Law consistently with the objectives of this Law.
- (2) Subject to this section, the Standing Committee may request reports from the Board and the Ombudsman regarding specified aspects of their operations.
- (3) Subject to this section, the Standing Committee may give directions on policy matters that are relevant to the operations of the Board and the Ombudsman and that are consistent with objectives of this Law.
- (4) Neither a request for a report nor a policy direction can be about a particular person or a particular matter.
- (5) The Board and the Ombudsman must provide the Standing Committee with any requested reports and must comply with any applicable policy directions.
- (6) The Standing Committee may receive and consider annual and other reports from the Board and the Ombudsman.

### **Part 8.2 National Legal Services Board**

#### **8.2.1 Application of this Part and Schedule 1**

This Part and Schedule 1 have effect by force of the Legal Profession National Law Act of the host jurisdiction.

#### **8.2.2 Establishment of Board**

- (1) The National Legal Services Board is established.
- (2) The Board has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by the Legal Profession National Law Acts of the other jurisdictions.
- (3) The Board may exercise its functions in relation to:

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- (a) one jurisdiction; or
  - (b) two or more or all jurisdictions collectively.
- (4) Schedule 1 contains provisions relating to the Board.

#### **8.2.3 Objectives of Board**

The objectives of the Board are:

- (a) to ensure the efficient, targeted and effective regulation of the legal profession and the maintenance of professional standards; and
- (b) to address the concerns of clients of law practices through the regulatory system and provide for the protection of clients of law practices; and
- (c) to ensure the Australian system is at the forefront of regulation of legal professionals.

#### **8.2.4 Functions of Board**

- (1) The Board has the functions conferred or imposed on it by or under this Law.
- (2) Without affecting the responsibilities of the Standing Committee and the Ombudsman, the Board has the general administration of this Law and may do all such things as are necessary or convenient to give effect to this Law.
- (3) The Board has all the powers necessary to perform its functions and achieve its objectives.
- (4) Without limitation, the functions of the Board include the following:
  - (a) to have oversight of the implementation and application of:
    - (i) this Law and the National Rules; and
    - (ii) the policies and practices determined or adopted by the Board in connection with this Law and the National Rules;by its delegates for the purpose of promoting consistency in implementation and application throughout the jurisdictions and to place conditions on delegations for that purpose;
  - (b) to prepare and publish statements, guidelines and reports in connection with its functions;
  - (c) to approve forms for use in connection with the Board's functions;
  - (d) to set fees, contributions and levies in accordance with this Law and the National Rules;
  - (d) to make National Rules in accordance with this Law.

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**8.2.5 Delegation of Board's functions**

- (1) This section applies to any of the Board's functions, other than in relation to the following:
  - (a) its special functions referred to in Part 1.3;
  - (b) its functions under sections 1.3.6 and 1.3.7;
  - (c) the making of National Rules;
  - (d) the power of delegation (other than the Board's power to authorise sub-delegation);
  - (e) any matter specified by the Standing Committee.
- (2) The Board may, by instrument in writing, delegate any of its functions to which this section applies to:
  - (a) a committee of the Board; or
  - (b) a member of the staff of the Board; or
  - (c) an entity specified, or of a kind specified, in the National Rules for the purposes of this section.
- (3) A delegate may sub-delegate any function delegated by the Board but only if, and to the extent that, the delegate is authorised by instrument in writing by the Board to do so.

**8.2.6 Register of delegations**

- (1) The Board is to maintain a register of delegations in a form determined by the Board.
- (2) The register is to contain a copy of:
  - (a) all instruments of delegation; and
  - (b) all instruments authorising sub-delegation;issued by the Board and its local representatives and currently in force.
- (3) The Board must arrange for a review of the register of delegations to be carried out at least on an annual basis and for a report of the review to be submitted to the Board for its consideration.
- (4) The Board must ensure that a current version of the register of delegations is publicly available at all reasonable times on its website or another publicly accessible website.

**8.2.7 Co-operation with Commonwealth, States and Territories**

- (1) The Board may exercise any of its functions in co-operation with or with the

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assistance of the Commonwealth, a State or a Territory, including in co-operation with or with the assistance of any of the following entities:

- (a) a government agency of the Commonwealth, a State or a Territory;
  - (b) a professional association;
  - (c) an educational body or other body established by or under a law of the Commonwealth, a State or a Territory.
- (2) In particular, the Board may:
- (a) ask an entity referred to in subsection (1) for information that the Board requires to exercise its functions under this Law; and
  - (b) use the information to exercise its functions under this Law.
- (3) An entity referred to in subsection (1) that receives a request for information from the Board is authorised to give the information to the Board.
- (4) A reference in this section to the Board includes a reference to its local representatives.

## **Part 8.3 National Legal Services Ombudsman**

### **8.3.1 Application of this Part and Schedule 2**

This Part and Schedule 2 have effect by force of the Legal Profession National Law Act of the host jurisdiction.

### **8.3.2 National Legal Services Ombudsman**

- (1) The office of National Legal Services Ombudsman is established.
- (2) It is the intention of the Legislature of this jurisdiction that this Law as applied by the Legal Profession National Law Act of this jurisdiction, together with this Law as applied by the Legal Profession National Law Acts of the other jurisdictions, has the effect that one single office of National Legal Services Ombudsman is established with functions conferred by this Law as so applied.
- (2) The Ombudsman has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on the Ombudsman by this Law as applied by the Legal Profession National Law Acts of the other jurisdictions.
- (3) The Ombudsman may exercise his or her functions in relation to:
  - (a) one jurisdiction; or
  - (b) two or more or all jurisdictions collectively.
- (4) Schedule 2 contains provisions relating to the Ombudsman.

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**8.3.3 Objectives of office of Ombudsman**

The objectives of the office of Ombudsman established by this Part are:

- (a) to ensure that complaints against Australian legal practitioners, Australian-registered foreign lawyers or law practices and disputes and other issues involving law practices are dealt with in a timely and effective manner; and
- (b) to ensure compliance with requirements of this Law and the National Rules that are to be observed by Australian legal practitioners, Australian-registered foreign lawyers and law practices; and
- (c) to educate the legal profession about issues of concern to the profession and to clients of law practices; and
- (d) to educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship.

**8.3.4 Functions of Ombudsman**

- (1) The Ombudsman has the functions conferred or imposed on the Ombudsman by or under this Law.
- (2) The Ombudsman has all the powers necessary to perform his or her functions and achieve the objectives of the office of Ombudsman, including the powers conferred on it by or under this Law or any law of a jurisdiction.
- (3) Without limitation, the functions of the Ombudsman include the power to approve forms for use in connection with the Ombudsman's functions.

**8.3.5 Independence of Ombudsman**

- (1) Subject to this section and except as provided elsewhere in this Law, the Ombudsman is not subject to the control and direction of the Standing Committee, the host Attorney-General or the Board in relation to dealing with any particular Australian legal practitioner, Australian-registered foreign lawyer, law practice, complainant or any person.
- (2) The Ombudsman is to exercise his or her functions in accordance with any applicable guidelines or other provisions contained in the National Rules.

**8.3.6 Relationship of Ombudsman with Board**

- (1) The Ombudsman and the Board are to ensure, as far as practicable, that:
  - (a) relevant information in connection with the exercise of their respective functions is:
    - (i) shared between them in accordance with agreed arrangements; and
    - (ii) provided expeditiously, at the request of one of them to the other; and
  - (b) their respective functions are, where relevant, exercised in a co-operative



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manner.

- (2) The Board has the following functions in relation to the Ombudsman:
  - (a) to monitor and review the exercise of the functions of the Ombudsman;
  - (b) to report to the Standing Committee, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of his or her functions to which, in the opinion of the Board, the attention of the Standing Committee should be directed;
  - (c) to examine each annual and other report of the Ombudsman and report to the Standing Committee on any matter appearing in, or arising out of, any such report;
  - (d) to recommend to the Standing Committee any changes to the role or functions of the Ombudsman that the Board thinks desirable;
  - (e) to inquire into any question in connection with the Ombudsman's functions that is referred to it by the Standing Committee and report to the Standing Committee on that question.
- (3) Nothing in this section authorises the Board or the Standing Committee:
  - (a) to investigate a matter relating to any particular conduct; or
  - (b) to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter; or
  - (c) to reconsider the findings, recommendations or other decisions of the Ombudsman in relation to any particular matter.

**8.3.7 Delegation of Ombudsman's functions**

- (1) This section applies to any of the Ombudsman's functions, other than in relation to the following:
  - (a) his or her special functions referred to in Part 1.3;
  - (b) his or her functions under sections 1.3.6 and 1.3.7;
  - (c) the power of delegation (other than the Ombudsman's power to authorise sub-delegation);
  - (d) any matter specified by the Standing Committee.
- (2) The Ombudsman may, by instrument in writing, delegate any of his or her functions to which this section applies to:
  - (a) a committee; or
  - (b) a member of the staff of the Ombudsman; or

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- (c) an entity specified, or of a kind specified, in the National Rules for the purposes of this section.
- (3) A delegate may sub-delegate any function delegated by the Ombudsman but only if, and to the extent that, the delegate is authorised by instrument in writing by the Ombudsman to do so.

**8.3.8 Register of delegations**

- (1) The Ombudsman is to maintain a register of delegations in a form determined by the Ombudsman.
- (2) The register is to contain a copy of:
  - (a) all instruments of delegation; and
  - (b) all instruments authorising sub-delegation;issued by the Ombudsman and his or her local representatives and currently in force.
- (3) The Ombudsman must arrange for a review of the register of delegations to be carried out at least on an annual basis and for a report of the review to be submitted to the Ombudsman for his or her consideration.
- (4) The Ombudsman must ensure that a current version of the register of delegations is publicly available at all reasonable times on his or her website, the Board's website or another publicly accessible website.
- (5) The register may be merged with that referred to in section 8.2.6.

**8.3.9 Co-operation with Commonwealth, States and Territories**

- (1) The Ombudsman may perform any of his or her functions in co-operation with or with the assistance of the Commonwealth, a State or a Territory, including in co-operation with or with the assistance of any of the following entities:
  - (a) a government agency of the Commonwealth, a State or a Territory;
  - (b) a professional association;
  - (c) an educational body or other body established by or under a law of the Commonwealth, a State or a Territory.
- (2) In particular, the Ombudsman may:
  - (a) ask an entity referred to in subsection (1) for information that the Ombudsman requires to exercise his or her functions under this Law; and
  - (b) use the information to exercise his or her functions under this Law.
- (3) An entity referred to in subsection (1) that receives a request for information from the Ombudsman is authorised to give the information to the Ombudsman.

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- (4) A reference in this section to the Ombudsman includes a reference to his or her local representatives.

## **Chapter 9      Miscellaneous**

### **Part 9.1      Legal Profession National Rules**

#### **9.1.1      Power to make National Rules**

- (1) The Board may make Legal Profession National Rules for or with respect to any matter that by this Law is required or permitted to be prescribed or specified or that is necessary or convenient to be prescribed or specified for carrying out or giving effect to this Law.
- (2) Without limitation, the National Rules may provide for the application to and modification of provisions of this Law for the various categories of law practices.

#### **9.1.2      Development of National Rules—general requirements**

- (1) This section applies to all proposed National Rules other than those referred to in section 9.1.3.
- (2) The Board may develop proposed National Rules to which this section applies.
- (3) In developing proposed National Rules, the Board:
  - (a) must consult with such of its advisory committees as it considers appropriate, and may consult more broadly if it so chooses, for a minimum period of 30 days; and
  - (b) must release a draft of the proposed National Rules for public consultation and invite written submissions about the draft to be made to the Board during a specified period before finalising the draft; and
  - (c) must consider all reasonable submissions duly made and received.
- (4) The Board may, after considering the submissions and making any amendments to the draft, submit the proposed National Rules to the Standing Committee.
- (5) The Board may submit a proposed National Rule to the Standing Committee.

#### **9.1.3      Development of National Rules for legal practice, conduct and continuing professional development**

- (1) This section applies to the development of proposed National Rules as Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules.
- (2) The Law Council of Australia and Australian Bar Association may develop proposed National Rules to which this section applies.
- (3) In developing proposed National Rules, the Law Council of Australia and Australian Bar Association:
  - (a) must consult with the Board, and such of the Board's advisory committees

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as the Board considers appropriate, for a minimum period of 30 days; and

- (b) must, with the approval of the Board, release a draft of the proposed National Rules for public consultation and invite written submissions about the draft to be made to the Law Council and Australian Bar Association during a specified period; and
  - (c) must consider all reasonable submissions duly made and received and provide the Board with a copy of all submissions received; and
  - (d) after considering the submissions and making any amendments to the draft, submit a final draft to the Board, together with a report demonstrating compliance with the requirements of this subsection.
- (4) If the Board approves the final draft as submitted to the Board, or with amendments agreed to with the Law Council of Australia and the Australian Bar Association, the Board may submit the proposed National Rules to the Standing Committee.

#### **9.1.4 Making of National Rules**

- (1) The Board may make a National Rule as submitted to the Standing Committee under section 9.1.2 or 9.1.3 if:
- (a) the Standing Committee approves the National Rule within 30 days of its submission to the Standing Committee; or
  - (b) the 30-day period expires without the National Rule being vetoed under subsection (2) during that period.
- (2) The Standing Committee may veto the National Rule within the 30-day period. If it does so, the Board must not make the National Rule as submitted to the Standing Committee, but the National Rule may be resubmitted to the Standing Committee with amendments.
- (3) Without limiting the powers of the Standing Committee with respect to a National Rule submitted to it, the Standing Committee may require a draft of a proposed National Rule to be released for further consideration or further public consultation or both.

#### **9.1.5 Cases where public consultation not required**

The requirements of sections 9.1.2 and 9.1.3 for public consultation do not apply to a proposed National Rule if the Board considers the National Rule:

- (a) corrects a minor error in the National Rules; or
- (b) involves a non-material change to the National Rules; or
- (c) relates to a matter of a kind that the Standing Committee approves as not requiring public consultation.

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**9.1.6      Urgent matters**

- (1) The Board may make a proposed National Rule without compliance with sections 9.1.2 and 9.1.3 if the Board considers it needs to be made urgently.
- (2) In the case of an amendment to the Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules, the Board must first consult with the Law Council of Australia and the Australian Bar Association.
- (3) As soon as practicable after taking action under this section, the Board must provide the Standing Committee with a report of its action and a statement of its reasons for taking the action.

**9.1.7      Gazettal of National Rules**

- (1) When the Board makes a National Rule, it takes effect on gazettal in the host jurisdiction or a later date specified in the gazetted rule.
- (2) The Board must ensure that a current version of the National Rules is publicly available at all reasonable times on its website or another publicly accessible website.

**9.1.8      Duty to comply with National Rules**

- (1) It is the duty of Australian legal practitioners, Australian-registered foreign lawyers and law practices to comply with the applicable requirements of the National Rules.
- (2) A National Rule may declare that a breach of the National Rules is capable of constituting either unsatisfactory professional conduct or professional misconduct, or both.
- (3) Without limitation, a National Rule may provide that a breach of the National Rules by a law practice or an officer or employee of a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of:
  - (a) a principal of the law practice; or
  - (b) an Australian legal practitioner or Australian-registered foreign lawyer involved in the breach.

**Part 9.2      Australian Legal Profession Register**

**9.2.1      Australian Legal Profession Register**

- (1) The Board is to maintain an Australian Legal Profession Register in a form determined by the Board.
- (2) The Australian Legal Profession Register is to contain details of and relating to:
  - (a) Australian lawyers; and

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- (b) Australian legal practitioners; and
  - (c) Australian-registered foreign lawyers.
- (3) The Australian Legal Profession Register must contain details of the kind specified in the National Rules for the purposes of this section, and may contain other details the Board considers appropriate.
- (4) The National Rules may require entities to furnish details for inclusion in the Australian Legal Profession Register.

### **9.2.2 Public availability of Australian Legal Profession Register**

- (1) The Board must ensure that a current version of the Australian Legal Profession Register is publicly available at all reasonable times on its website or another publicly accessible website.
- (2) The National Rules may provide for certain kinds of details to be excluded from the publicly available version of the Australian Legal Profession Register in order:
- (a) to protect the personal safety of any person; or
  - (b) to avoid prejudicing any investigation, inquiry or legal or other proceedings; or
  - (c) to balance the privacy of any person to whom the details relate with consumer and public interests in making the details publicly available.

## **Part 9.3 Co-operative and other arrangements**

### **9.3.1 Arrangements with authorities for information**

- (1) The Board may negotiate and enter into arrangements with Australian and foreign regulatory authorities and courts for exchanging, obtaining or disclosing information relevant to the functions of the Board or of any such authority or court, including but not limited to information relevant to the consideration of an application for a compliance certificate.
- (2) The Board may negotiate and enter into arrangements with foreign regulatory authorities for the mutual recognition for admission purposes of academic courses and practical legal training programs.

### **9.3.2 Ad hoc communication with other authorities**

- (1) Without limiting any other functions that it has to seek or obtain information, the Board may communicate with and obtain relevant information from Australian or foreign authorities in connection with its consideration of an application for a compliance certificate.
- (2) Without limiting any other power that it has to disclose information, the Board may disclose information to an Australian or foreign authority in response to a request for relevant information, but may do so only if satisfied that it is not

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likely that the information provided will be inappropriately disclosed by such an authority.

**9.3.3 Disclosure of information to ASIC**

- (1) The Ombudsman may disclose to ASIC information concerning a corporation that is or was an incorporated legal practice that the Ombudsman acquired in the course of exercising functions under this Law and that is relevant to the ASIC's functions.
- (2) Information may be provided under this section despite any law relating to secrecy or confidentiality, including any provisions of this Law.

**Part 9.4 Notices and evidentiary matters**

**9.4.1 Service of notices on lawyers and law practices**

- (1) For the purposes of this Law, a notice or other document may be served on, or given to, an Australian legal practitioner or Australian-registered foreign lawyer by:
  - (a) delivering it personally to the practitioner or lawyer; or
  - (b) sending it by post to the practitioner or lawyer at his or her address for service appearing on the Australian Legal Profession Register.
- (2) For the purposes of this Law, a notice or other document may be served on, or given to, a law practice by:
  - (a) delivering it personally to a principal of the law practice; or
  - (b) sending it by post to the law practice at its usual or last known business address; or
  - (c) leaving it at the practice's usual or last known business address with a person on the premises who is apparently at least 16 years of age and apparently employed there.
- (3) A notice or other document may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a body corporate.

**9.4.2 Service on Board and Ombudsman**

- (1) For the purposes of this Law, a notice or other document may be served on, lodged with or given to the Board:
  - (a) by delivering it personally to the office of the Board; or
  - (b) by sending it by post to the office of the Board.
- (2) For the purposes of this Law, a notice or other document may be served on, lodged with or given to, the Ombudsman:



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- (a) by delivering it personally to the office of the Ombudsman; or
- (b) by sending it by post to the office of the Ombudsman.

#### **9.4.3 Service of notices on other persons**

For the purposes of this Law, a notice or other document may be served on, or given to, a person (other than a person referred to in section 9.4.1 or 9.4.2):

- (a) if the person is a natural person, by:
  - (i) delivering it personally to the person; or
  - (ii) sending it by post to the person at his or her usual or last known residential or business address; or
  - (iii) leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act:
  - (i) by delivering it personally to the registered office of the company; or
  - (ii) by sending it by post to the registered office of the company; or
  - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) in any other case—in any way permitted by law.

#### **9.4.4 Time of service**

For the purposes of this Law, a notice or other document is taken to have been served on, or given to, a person or law practice:

- (a) in the case of delivery in person, at the time the document is delivered; or
- (b) in the case of posting, 2 business days after the day on which the document was posted.

#### **9.4.5 Evidentiary matters**

- (1) A certificate sealed by, or signed on behalf of, the Board or a local representative, specifying that, on a date or during a period specified in the certificate:
    - (a) a person held or did not hold an Australian practising certificate or an Australian registration certificate; or
    - (b) the Australian practising certificate or Australian registration certificate of a person was subject to a specified condition or restriction;
- is, in the absence of proof to the contrary, proof of the matters stated in it.

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- (2) A certificate sealed by, or signed on behalf of, the Board, specifying that a matter specified in the certificate is, or was at any time specified in the certificate, on the Australian Legal Profession Register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.

## **Part 9.5                      Injunctions**

### **9.5.1                      Injunctions to restrain offences against Law**

- (1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Law.
- (2) The Board, the Ombudsman or any other interested person may apply to the Supreme Court of this jurisdiction for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction restraining the person from contravening this Law (including by requiring the person to do something).
- (4) The Supreme Court may grant the injunction:
- (a) whether or not it appears to the Court that the person intends to contravene this Law, contravene this Law again or continue to contravene this Law; and
  - (b) whether or not the person has previously contravened this Law; and
  - (c) whether or not there is a likelihood of substantial damage to anyone else if the person contravenes this Law; and
  - (d) whether or not proceedings for a contravention of this Law have begun or are about to begin.
- (5) The Supreme Court may grant an interim injunction restraining the person from contravening this Law (including requiring the person to do something) before deciding an application for an injunction under this section.

### **9.5.2                      Amendment or discharge of injunctions**

The Supreme Court of this jurisdiction may amend or discharge an injunction (including an interim injunction) made under this Part on the application of the Board, the Ombudsman or any other interested person.

### **9.5.3                      Interim injunctions—undertakings about damages**

- (1) If the Board or the Ombudsman or a local representative (in its capacity as a local representative) applies for an injunction under this Part, the Supreme Court must not require the applicant to give an undertaking about costs or damages as a condition of granting an interim injunction.
- (2) The Supreme Court must accept an undertaking from the Board or the Ombudsman or a local representative (in that capacity) about costs or damages, and not require a further undertaking from anyone else, if:

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- (a) the applicant for an injunction under this Part is someone else; and
- (b) the Court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and
- (c) the Board, the Ombudsman or the local representative gives the undertaking.

**9.5.4 Supreme Court's other powers not limited**

- (1) The powers given to the Supreme Court under this Part are in addition to any other powers of the Court.
- (2) In particular, an application to the Supreme Court for an injunction under this Part may be made without notice to the person against whom the injunction is sought.

**Part 9.6 Criminal and civil penalties**

**Division 1 Criminal penalties**

**9.6.1 References to maximum criminal penalty**

- (1) A subsection of this Law (or a section of this Law that is not divided into subsections) creates a criminal offence if the words “criminal penalty” are set out at the foot of the subsection (or section).
- (2) An offence referred to in subsection (1) is punishable by the maximum penalty set out in the subsection (or section).
- (3) Proceedings for an offence referred to in subsection (1) against this Law as applied by the Legal Profession National Law Act of this jurisdiction are to be dealt with in accordance with that Act.

**Division 2 Civil penalties**

**9.6.2 References to maximum civil penalty**

- (1) A subsection of this Law (or a section of this Law that is not divided into subsections) is a civil penalty provision if the words “civil penalty” are set out at the foot of the subsection (or section).
- (2) Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.

**9.6.3 Designated tribunal may order payment of pecuniary penalty**

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the Ombudsman may apply to a designated tribunal for an order that the wrongdoer pay a pecuniary penalty.
- (2) If the designated tribunal is satisfied that the wrongdoer has contravened a civil

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penalty provision, the tribunal may order the wrongdoer to pay for each contravention the pecuniary penalty that the tribunal determines is appropriate (but not more than the relevant amount specified for the provision).

- (3) In determining the pecuniary penalty, the designated tribunal must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.
- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Law against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.
- (5) Proceedings for a civil penalty order are civil proceedings, and the rules of evidence and procedure apply accordingly.

#### **9.6.4      Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

#### **9.6.5      Persons involved in contravening civil penalty provision**

- (1) A person must not:
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

#### **9.6.6      Recovery of a pecuniary penalty**

If a designated tribunal of this jurisdiction orders a person to pay a pecuniary penalty:

- (a) the penalty is to be paid to a fund specified in the Legal Profession National Law Act of this jurisdiction or is to be dealt with in another

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manner so specified; and

- (b) the order is enforceable as a judgment or order of a court.

**9.6.7 Civil proceedings after criminal proceedings**

A designated tribunal must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**9.6.8 Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**9.6.9 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

**9.6.10 Evidence given in proceedings for penalty order not admissible in criminal proceedings**

- (1) Evidence of information given or evidence of production of documents by a natural person is not admissible in criminal proceedings against the person if:
- (a) the person previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the pecuniary penalty order.

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**Part 9.7      General**

**9.7.1      Prohibition on disclosure of information**

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any information obtained in the execution or administration of this Law or the National Rules unless permitted to do so under subsection (2).

Criminal maximum penalty: 50 penalty units.

- (2) A relevant person is permitted, for the purposes of this Law, to disclose information obtained in the execution or administration of this Law or the National Rules:
- (a) to the extent the disclosure is reasonably required to exercise functions under this Law, the National Rules or any other legislation; or
  - (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Law, the National Rules or any other legislation; or
  - (c) with the prior consent in writing of the person to whom the information relates; or
  - (d) to a court or tribunal in the course of legal proceedings; or
  - (e) pursuant to an order of a court or tribunal under any law; or
  - (f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter; or
  - (g) to the Attorney-General of any jurisdiction.
- (3) In this section:

***relevant person*** means:

- (a) the Board or a member or former member of the Board; or
- (b) the Ombudsman or a former Ombudsman; or
- (c) any of their local representatives or delegates; or
- (d) any person who is or was a member of the staff of, or acting at the direction of, any of the entities referred to in paragraph (a), (b) or (c); or
- (e) an external examiner or external investigator under Part 4.2; or
- (f) an external intervener under Chapter 6; or
- (g) an investigator under Chapter 7.

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**9.7.2 Disclosure of information between agencies**

(1) A relevant person may disclose information obtained in the administration of this Law or the National Rules to another relevant person.

(2) In this section:

*relevant person* means:

- (a) the Board or a member of the Board; or
- (b) the Ombudsman; or
- (c) any of their local representatives or delegates; or
- (d) any person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraph (a), (b) or (c).

**9.7.3 General provisions about appeal or review**

(1) If a decision under this Law relating to a person can be the subject of an appeal or review under this Law, the decision-maker must (except in circumstances referred to in the National Rules) ensure the person is given a notice as soon as practicable stating:

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

(2) The National Rules may specify circumstances in which a notice need not or must not be given under subsection (1).

(3) A failure to comply with subsection (1) does not affect the validity of the decision concerned.

(4) For the purposes of provisions of this Law relating to a right of appeal or review against a decision, a failure of the decision-maker to make a decision on a person's application within a period specified in the National Rules for the purposes of this section is taken to be a decision to refuse the application.

**9.7.4 Duty to report suspected offences**

(1) This section applies if a relevant person suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any law.

(2) The relevant person must:

- (a) report the suspected offence to the police or other appropriate prosecuting authority; and

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- (b) make available to the police or authority the information and documents relevant to the suspected offence in the possession of, or under the control of, the person.
- (3) The obligation under subsection (2) (b) to make available the information and documents continues while the relevant person holds the relevant suspicion.
- (4) In this section:

*relevant person* means:

- (a) the Board; or
- (b) the Ombudsman; or
- (c) any of their local representatives or delegates; or
- (d) any person who is a member of the staff of, or acting at the direction of, any of the entities referred to in paragraph (a), (b) or (c).

#### **9.7.5 Protection from liability**

No liability attaches to the Board, the Ombudsman, their local representatives or delegates or persons acting at their direction for any act or omission done or omitted in good faith and in the exercise or purported exercise of functions under this Law.

#### **9.7.6 Indexation of amounts**

If a provision of this Law provides for an amount to be indexed in accordance with this section, the amount is, in accordance with the National Rules, to be indexed:

- (a) on a basis that reflects movements in the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician; or
- (b) on another basis specified in the National Rules for the purposes of this section.

#### **9.7.7 Supreme Court may order delivery up of documents etc**

- (1) On the application of a client of a law practice, the Supreme Court of this jurisdiction may order the law practice:
  - (a) to give to the client a bill of costs in respect of any legal services provided by the law practice; and
  - (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the law practice in relation to those services.
- (2) Subsection (1) does not affect the provisions of Division 6 of Part 4.3 with respect to the assessment of costs.



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- (3) This section does not apply to the client of a law practice retained on the client's behalf by another law practice.
- (4) In this section, a reference to a law practice includes a reference to:
  - (a) in the case of a person who was a sole practitioner when the legal services concerned were provided:
    - (i) the former sole practitioner; or
    - (ii) the executor of the will of the former sole practitioner; or
    - (iii) the trustee or administrator of the estate of the former sole practitioner; and
  - (b) subject to any other applicable arrangements:
    - (i) the persons who were the partners of a former law firm or unincorporated legal practice when the legal services concerned were provided; and
    - (ii) in the case of a law firm or unincorporated legal practice where there has been a change of partners since the legal services concerned were provided—subject to any other applicable arrangements, the firm or practice as currently constituted; and
    - (iii) the assignee of a law practice or former law practice; and
    - (iv) the receiver of a law practice or former law practice appointed under this Law; and
  - (c) any person of a class prescribed by the National Rules for the purposes of this section.

#### **9.7.8 Destruction of documents**

A law practice or Australian legal practitioner may destroy or dispose of any documents held by the law practice or practitioner relating to a matter after a period of 7 years has elapsed since the completion of the matter if the law practice or practitioner has been unable, despite making reasonable efforts, to obtain instructions from the client to whom the documents relate as to the destruction or disposal of the documents.

#### **9.7.9 Local representatives and professional associations**

- (1) The host Attorney-General may, with the approval of the Standing Committee, amend Schedule 3 to insert, amend, substitute or omit the name or description of an entity so that the name or description specified in that Schedule opposite the name of this jurisdiction corresponds with the entity specified in the Legal Profession National Law of this jurisdiction as the local representative of the Board for this jurisdiction.
- (2) The host Attorney-General may, with the approval of the Standing Committee, amend Schedule 4 to insert, amend, substitute or omit the name or description of

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an entity so that the name or description specified in that Schedule opposite the name of this jurisdiction corresponds with the entity specified in the Legal Profession National Law of this jurisdiction as the local representative of the Ombudsman for this jurisdiction.

- (3) The host Attorney-General may, with the approval of the Standing Committee, amend Schedule 5 to insert, amend, substitute or omit the name or description of an entity.
- (4) An order made for the purposes of this section is to be published in the same way as a regulation of the host jurisdiction must or may be published and takes effect on the date of its publication or a later date specified or referred to in the order.

**9.7.10      Savings and transitional provisions**

Schedule 6 contains savings and transitional provisions.

## Schedule 1 Provisions relating to Board

Section 8.2.2

### Part 1 Introduction

#### 1 Definitions

In this Schedule:

*Chairperson* means the Chairperson of the Board.

*member* means a member of the Board.

### Part 2 Constitution of Board

#### 2 Membership of Board

- (1) The Board is to consist of:
  - (a) 1 member appointed by the host Attorney-General on the recommendation of the Standing Committee from a panel of 3 persons nominated by the Council of Chief Justices; and
  - (b) 1 member appointed by the host Attorney-General on the recommendation of the Standing Committee from a panel of 3 persons nominated by the Law Council of Australia; and
  - (c) no more than 5 members appointed by the host Attorney-General on the recommendation of the Standing Committee on the basis of their expertise in one or more of the following areas:
    - (i) the practice of law;
    - (ii) the protection of consumers;
    - (iii) the regulation of the legal profession.
- (2) The members are to be appointed so that, as far as practicable, they collectively have experience in large and small jurisdictions and a balance of expertise.
- (3) A member does not have a representational role in relation to any particular area of expertise or in relation to any particular jurisdiction or jurisdictions.
- (4) One of the members is to be appointed as Chairperson of the Board by the host Attorney-General on the recommendation of the Standing Committee (whether at the time of the person's appointment as a member or afterwards).
- (5) A member's instrument of appointment may set out conditions on which the member is appointed.

**3 Status of Board**

- (1) The Board:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) has all the powers of an individual and, in particular, may do anything necessary or convenient to be done in the performance of its functions.
- (2) The Board has the status, privileges and immunities of the host jurisdiction.

**4 Terms of office of members**

- (1) Subject to this Schedule, a member holds office for the term (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A member cannot be appointed for terms, whether consecutive or non-consecutive, that total more than 6 years.

**5 Remuneration of members**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Standing Committee may from time to time determine with respect to the member.

**6 Vacancy in office of member**

- (1) The office of a member becomes vacant if he or she:
  - (a) completes a term of office and is not re-appointed; or
  - (b) resigns the office by written instrument addressed to the host Attorney-General; or
  - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
  - (d) dies.
- (2) The host Attorney-General may, at any time, terminate the appointment of a member:
  - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or
  - (b) for contravening a condition of the member's appointment contained in his or her instrument of appointment; or
  - (c) without limitation, if:
    - (i) the member has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-

General, renders the member unfit to continue to hold the office of member; or

- (ii) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

- (3) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

## **7 Extension of term of office during vacancy in membership**

- (1) If:

- (a) the office of a member becomes vacant because the member has completed the member's term of office; and
- (b) the member has not yet served a total of 6 years as a member;

the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by re-appointment of the member or appointment of a successor to the member).

- (2) However, this clause ceases to apply to the member if:

- (a) the member resigns the member's office by instrument in writing addressed to the host Attorney-General; or
- (b) the host Attorney-General determines that the services of the member are no longer required.

- (3) The maximum period for which a member is taken to continue to be a member under this clause after completion of the member's term of office is 6 months or the unexpired portion of the maximum 6-year term, whichever is the shorter.

- (4) The functions of the host Attorney-General under this clause are to be exercised after consultation with the Standing Committee.

## **8 Disclosure of conflict of interest**

- (1) If:

- (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose.

- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Standing Committee or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter; or
  - (b) take part in any decision of the Board with respect to the matter.
- (4) For the purposes of the making of a determination by the Board under subclause (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination; or
  - (b) take part in the making by the Board of the determination.
- (5) A contravention of this clause does not invalidate any decision of the Board.

## **9 Immunity**

- (1) A member or an acting member of the Board is not personally liable for anything done or omitted to be done in good faith:
  - (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Law.
- (2) A person to whom the Board has delegated a function under this Law is not personally liable for anything done or omitted to be done in good faith:
  - (a) in the exercise of the function; or
  - (b) in the reasonable belief that the act or omission was in the exercise of the function.
- (3) Any liability resulting from an act or omission that, but for subclause (1) or (2), would attach to a person attaches instead to the Board.

## **Part 3 Procedure of Board**

### **10 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Law, to be as determined by the Board.

### **11 Quorum**

The quorum for a meeting of the Board is a majority of its members.

### **12 Chief executive officer may attend meetings**

The chief executive officer may attend meetings of the Board and may participate in discussions of the Board, but is not entitled to vote at a meeting.

**13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**15 Transaction of business outside meetings or by telecommunication**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1); or
  - (b) a meeting held in accordance with subclause (2);

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

- (4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile, email or other transmission of the information in the papers concerned.

**16 Defects in appointment of members**

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

**17 First meeting**

The Chairperson may call the first meeting of the Board in any manner the Chairperson thinks fit.

**Part 4 Chief executive officer of Board**

**18 Chief executive officer**

- (1) There is to be a chief executive officer of the Board.
- (2) The chief executive officer is responsible for the day-to-day management of the affairs of the Board in accordance with the policies and directions of the Board.

- (3) The Board may delegate any of the functions of the Board to the chief executive officer, other than this power of delegation.
- (4) The chief executive officer may sub-delegate any function delegated under subclause (3) to any member of the staff of the Board if the chief executive officer is authorised to do so by the Board.

**19 Appointment of chief executive officer**

- (1) The Board is to appoint a person as chief executive officer of the Board with the approval of the Standing Committee.
- (2) The chief executive officer is taken, while holding that office, to be a member of the staff of the Board.

**20 Term of office of chief executive officer**

The chief executive officer is to be appointed for a period, not more than 3 years, specified in the officer's instrument of appointment, but is eligible for re-appointment.

**21 Vacancy in office of chief executive officer**

- (1) The office of chief executive officer becomes vacant if the officer:
  - (a) completes a term of office and is not re-appointed; or
  - (b) resigns the office by written instrument addressed to the Chairperson of the Board; or
  - (c) has his or her appointment terminated by the Board under this clause; or
  - (d) dies.
- (2) The Board may, at any time and for any reason but with reasonable notice, terminate the appointment of the chief executive officer by written notice.

**Part 5 Staff, consultants and contractors of Board**

**22 Staff of Board**

- (1) The Board may employ staff for the purpose of assisting the Board to exercise its functions.
- (2) The staff of the Board are to be employed on the terms and conditions decided by the Board from time to time.
- (3) Subclause (2) is subject to any relevant industrial award or agreement that applies to the staff.

**23 Staff seconded to Board**

The Board may make arrangements for the services of any of the following persons to be made available to the Board in connection with the exercise of its functions:



- (a) the staff of a government agency of the Commonwealth, a State or a Territory;
- (b) the staff of any of its local representatives.

**24 Consultants and contractors of Board**

- (1) The Board may engage persons with suitable qualifications and experience as consultants or contractors.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Board from time to time.

**Part 6 Committees of Board**

**25 Advisory committees**

- (1) The Board must establish one or more advisory committees to provide advice, recommendations or assistance to the Board in the exercise of the Board's functions.
- (2) Membership of an advisory committee is to include persons with relevant expertise and experience, including relevant expertise and experience from or in any or all of the following:
  - (a) courts or court administration;
  - (b) consumer interest groups;
  - (c) legal education institutions;
  - (d) insurance providers;
  - (e) the Australian legal profession;
  - (f) government.
- (3) Membership of an advisory committee may, but need not, include one or more members of the Board.
- (4) The terms on which members of an advisory committee are appointed and hold their positions on the committee are to be as determined from time to time by the Board.

**26 Other committees**

- (1) The Board may establish other committees of the Board, which may include persons who are not members of the Board.
- (2) The appointment and tenure of members of a committee and its charter are to be as determined from time to time by the Board.

## **Part 7 Annual reports of Board**

### **27 Annual reports**

- (1) The Board must, within 3 months after the end of each financial year, submit an annual report for the financial year to the Standing Committee.
- (2) The annual report must include a financial statement for the Board for the period to which the report relates.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Rules.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Standing Committee is to make arrangements for the tabling of the annual report of the Board, and the report of the auditor with respect to the financial statement in the report, in the Parliament of the Commonwealth and the Legislature of each jurisdiction.
- (6) The Standing Committee may extend, or further extend, the period for submission of an annual report to the Committee by a total period of up to 3 months.

## **Schedule 2 Provisions relating to Ombudsman**

Section 8.3.2

### **Part 1 Appointment and tenure of office**

#### **1 Appointment of Ombudsman**

The host Attorney-General is to appoint a person as National Legal Services Ombudsman on the recommendation of the Standing Committee made after consultation with the Board.

#### **2 Term of office of Ombudsman**

- (1) The Ombudsman is to be appointed for a term, not exceeding 3 years, specified in his or her instrument of appointment, but is eligible for re-appointment.
- (2) The Ombudsman cannot be appointed for terms, whether consecutive or non-consecutive, that total more than 6 years.

#### **3 Vacancy in office of Ombudsman**

- (1) The office of Ombudsman becomes vacant if he or she:
  - (a) completes a term of office and is not re-appointed; or
  - (b) resigns the office by written instrument addressed to the host Attorney-General; or
  - (c) has his or her appointment terminated by the host Attorney-General under this clause; or
  - (d) dies.
- (2) The host Attorney-General may terminate the Ombudsman's appointment after consultation with the Standing Committee:
  - (a) for incapacity, incompetence, misbehaviour or unsatisfactory performance; or
  - (b) for contravening a condition of the Ombudsman's appointment contained in his or her instrument of appointment; or
  - (c) without limitation, if:
    - (i) the Ombudsman has been found guilty of an offence (whether in Australia or elsewhere) that, in the opinion of the host Attorney-General, renders the Ombudsman unfit to continue to hold the office of Ombudsman; or
    - (ii) the Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

#### **4 Immunity**

- (1) A person appointed or acting as Ombudsman is not personally liable for anything done or omitted to be done in good faith:
  - (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Law.
- (2) A person to whom the Ombudsman has delegated a function under this Law is not personally liable for anything done or omitted to be done in good faith:
  - (a) in the exercise of the function; or
  - (b) in the reasonable belief that the act or omission was in the exercise of the function.
- (3) Any liability resulting from an act or omission that, but for subclause (1) or (2), would attach to a person attaches instead to the Board.

## **Part 2 Staff, consultants and contractors of Ombudsman**

#### **5 Staff of Ombudsman**

- (1) The Ombudsman may employ staff for the purpose of assisting the Ombudsman to exercise his or her functions.
- (2) The staff of the Ombudsman are to be employed on the terms and conditions decided by the Ombudsman from time to time.
- (3) Subclause (2) is subject to any relevant industrial award or agreement that applies to the staff.

#### **6 Staff seconded to Ombudsman**

The Ombudsman may make arrangements for the services of any of the following persons to be made available to the Ombudsman in connection with the exercise of his or her functions:

- (a) the staff of a government agency of the Commonwealth, a State or a Territory;
- (b) the staff of any of its local representatives.

#### **7 Consultants and contractors of Ombudsman**

- (1) The Ombudsman may engage persons with suitable qualifications and experience as consultants or contractors.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the Ombudsman from time to time.

## **Part 3 Annual reports of Ombudsman**

### **8 Annual reports**

- (1) The Ombudsman must, within 3 months after the end of each financial year, submit an annual report for the financial year to the Board.
- (2) The annual report must include:
  - (a) a financial statement for the Ombudsman for the period to which the report relates; and
  - (b) statistical information about complaints received, resolved and determined; and
  - (c) a report containing information regarding compliance functions; and
  - (d) audit information submitted by nominated authorities for fidelity funds.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Rules.
- (4) The financial statement is to be audited and a report is to be provided by the auditor.
- (5) The Board may extend, or further extend, the period for submission of an annual report to the Board by a total period of up to 3 months.
- (6) The Board is to provide the Standing Committee with a copy of the Ombudsman's annual report as soon as practicable after it is received by the Board.
- (7) The Standing Committee is to make arrangements for the tabling of the annual report of the Ombudsman and the report of the auditor with respect to the financial statement in the report, in the Parliament of the Commonwealth and the Legislature of each State and Territory.

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### **Schedule 3 Local representatives of Board**

<i><b>Jurisdiction</b></i>	<i><b>Local representatives</b></i>
State of New South Wales	
State of Victoria	
State of Queensland	
State of Western Australia	
State of South Australia	
State of Tasmania	
Australian Capital Territory	
Northern Territory	

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### **Schedule 4 Local representatives of Ombudsman**

<i><b>Jurisdiction</b></i>	<i><b>Local representatives</b></i>
State of New South Wales	
State of Victoria	
State of Queensland	
State of Western Australia	
State of South Australia	
State of Tasmania	
Australian Capital Territory	
Northern Territory	

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### **Schedule 5 Professional associations**

### **Schedule 6 Savings and transitional provisions**

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