



Western Australia

## **Legal Practice Act 2003**

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Western Australia

## **Legal Practice Act 2003**

**An Act to regulate legal practice, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Legal Practice Act 2003*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

**“articled clerk”** means a person who is subject to articles of clerkship under Part 3;

**“Australia”** includes the external Territories within the meaning of the *Acts Interpretation Act 1901* of the Commonwealth;

**“bank”** means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by a law of a State or the Commonwealth;

**“Board”** means the Legal Practice Board established under section 6;

**“certificated practitioner”** means —

- (a) a legal practitioner who holds a current practice certificate; or
- (b) an interstate practitioner who practises in this State;

**“complaint”** means a complaint to the Complaints Committee made under section 175;

**“Complaints Committee”** means the committee established under section 162;

**“corporation”** means —

- (a) a company within the meaning of the Corporations Act;
- (b) an industrial organisation incorporated under a law of the Commonwealth or a State; or
- (c) any other body corporate, or body corporate of a kind, prescribed by the regulations;

**“Corporations Act”** means the *Corporations Act 2001* of the Commonwealth;

**“costs agreement”** means an agreement made under section 221(1);

**“director”** means a director within the meaning of the Corporations Act;

**“disqualified person”** means a person who —

- (a) has been struck off the Roll of Practitioners or a roll kept outside this State that corresponds to the Roll of Practitioners (unless the person has been re-admitted); or
- (b) is suspended, disqualified or otherwise prohibited from engaging in legal practice in this State or in any other place (whether in or outside Australia);

**“engage in legal practice”** has the meaning given by section 4;

**“examiner”** means a person appointed under section 142;

**“foreign law”** means law of a place outside Australia;

**“foreign lawyer”** means a natural person, other than a legal practitioner, who is registered to practise law in a place outside Australia by a foreign registration authority;

**“foreign registration authority”** means a person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place;

**“Guarantee Fund”** means the Solicitor’s Guarantee Fund established under section 16 of the *Legal Contribution Trust Act 1967*;

**“home registration authority”** of a foreign lawyer means the foreign registration authority stated in the foreign lawyer’s registration notice under section 103;

**“incorporated legal practice”** means a corporation that provides legal services as provided by section 47;

**“interstate practice certificate”** means a certificate issued by a regulatory authority of another State that confers authority to engage in legal practice, whether —

- (a) generally or of a particular type; or
- (b) unconditionally or subject to conditions, restrictions or limitations;

**“interstate practitioner”** means a person —

- (a) who has been admitted to legal practice in another State;
- (b) who is not a local practitioner;
- (c) who holds a current interstate practice certificate; and
- (d) whose principal place of practice is in that State;

**“Law Complaints Officer”** means the person holding the office of that name under section 167;

**“Law Society”** means the Law Society of Western Australia (Inc.);

**“Legal Contribution Trust”** means the body established by section 5 of the *Legal Contribution Trust Act 1967*;

**“Legal Costs Committee”** means the Legal Costs Committee established under section 207;

**“legal costs determination”** means a determination made by the Legal Costs Committee under section 210;

**“legal practitioner”** means a person —

- (a) who is admitted as a legal practitioner, whose name is on the Roll of Practitioners and who is not a disqualified person; or
- (b) who is an interstate practitioner who practises in this State;

**“legal practitioner director”** means a director of an incorporated legal practice who is a legal practitioner permitted under the laws of this State or any other State to practise on his or her own account as a legal practitioner;

**“legal practitioner partner”** means a partner of a multi-disciplinary partnership who is a legal practitioner permitted under the laws of this State or any other State to practise on his or her own account as a legal practitioner and who engages in legal practice as part of the partnership business;

**“local practitioner”** means a person —

- (a) who holds a current practice certificate; and
- (b) whose principal place of practice is in this State;

**“mental disability”** includes intellectual disability, a psychiatric condition, acquired brain injury and dementia;

**“multi-disciplinary partnership”** has the meaning given by section 74;

**“officer”** of a corporation means a director or other officer (within the meaning of the Corporations Act) of the corporation;

**“practice certificate”** means a practice certificate issued by the Board under Part 5;

**“practise foreign law”** means to do any work or transact any business in this State concerning foreign law, being work or business of a kind that, if it concerned the law of this State, would be required to be done or transacted by a certificated practitioner;

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**“practising on his or her own account”** in relation to a legal practitioner means carrying on business consisting of the provision of legal services as a legal practitioner, and not as an employee, whether —

- (a) alone; or
- (b) together with one or more other persons;

**“practitioner”** has the same meaning as “legal practitioner”;

**“professional obligations”** of a legal practitioner include —

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

**“prohibited person”** means a person who —

- (a) is a disqualified person;
- (b) is or was an employee of a legal practitioner and who has been convicted of any fraudulent conduct in respect of any money or property belonging to or held or controlled by the legal practitioner by whom that person is or was employed or a client of that legal practitioner; or
- (c) is the subject of an order in force under section 132;

**“public officer”** has the same meaning as in *The Criminal Code*;

**“record”** means any thing or process —

- (a) upon or by which information is recorded or stored;  
or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey the information or meaning;



**“registered”**, when used in connection with a place outside Australia, means having all the necessary licences, approvals, admissions, certifications or other forms of authorisation (including practice certificates) required under the law of that place for practising law in that place;

**“registered foreign lawyer”** means a person who is registered as a foreign lawyer under Part 8 Division 2;

**“regulatory authority”** —

- (a) of this State, means the Supreme Court, the State Administrative Tribunal, the Board, or the Complaints Committee;
- (b) of another State, means a person or body in that State having a function conferred by legislation relating to regulation of legal practice that corresponds to such a function exercised by a regulatory authority of this State;

**“related body corporate”**, in relation to a body corporate, has the same meaning as in the Corporations Act;

**“Roll of Practitioners”** or **“Roll”** means the Roll of Practitioners kept under section 31;

**“rules”** means rules made by the Board under section 252;

**“State”** means a State or Territory of the Commonwealth;

**“Supreme Court (full bench)”** means the Supreme Court constituted by at least 3 judges;

**“trust account”** means a bank account maintained in this State, for the purpose of setting apart, and dealing with, trust moneys under Part 10;

**“trust moneys”** means —

- (a) moneys that are received by —
  - (i) a legal practitioner;
  - (ii) an interstate practitioner;
  - (iii) an incorporated legal practice;

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- (iv) a firm of legal practitioners;
- (v) a multi-disciplinary partnership; or
- (vi) an employee, officer or agent of a legal practitioner, incorporated legal practice, firm of legal practitioners or multi-disciplinary partnership,

in the course of legal practice in this State for the use or benefit of a person or persons other than the recipient but so as to be under the exclusive control of the legal practitioner, interstate practitioner, practice, firm or partnership;

- (b) moneys that are received by —
  - (i) a registered foreign lawyer; or
  - (ii) an employee or agent of a registered foreign lawyer,

in the course of practising foreign law for, or on behalf of, a person or persons other than the recipient but so as to be under the exclusive control of the registered foreign lawyer;

**“unqualified practice”** means practising as a legal practitioner —

- (a) unlawfully contrary to section 123; or
- (b) in a manner that but for the exception created by subsection 123(3) would be so unlawful;

**“unsatisfactory conduct”** includes —

- (a) unprofessional conduct on the part of a legal practitioner, whether occurring before or after admission as a legal practitioner;
- (b) illegal conduct on the part of a legal practitioner, whether occurring before or after admission as a legal practitioner;
- (c) neglect, or undue delay, in the course of legal practice;

- (d) a contravention of this Act, the regulations or the rules; and
- (e) conduct occurring in connection with legal practice that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

*[Section 3 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 604.]*

**4. Meaning of “engage in legal practice”**

A person engages in legal practice if the person directly or indirectly —

- (a) whether in the name of that person or that of any other person —
  - (i) sues out any writ or process;
  - (ii) commences, carries on, solicits, defends, or appears, in any action, suit, or other proceedings in any court of civil or criminal jurisdiction in this State; or
  - (iii) acts as a barrister or solicitor of the Supreme Court in any cause, matter or suit, information or complaint, civil or criminal, or under any commission for the examination in this State of witnesses, or others, issued by any court in or out of this State;
- (b) performs or carries out or is engaged in any work in connection with the administration of law; or
- (c) draws or prepares any deed, instrument, or writing relating to or in any manner dealing with or affecting —
  - (i) real or personal estate or any interest in real or personal estate; or
  - (ii) any proceedings at law, civil or criminal, or in equity.

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**5. Notes**

Notes do not form part of this Act.

## **Part 2 — The Legal Practice Board**

### **6. Legal Practice Board established**

- (1) A body called the Legal Practice Board is established.
- (2) The Board is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Board in its corporate name.

### **7. Members of the Board**

- (1) The Board consists of —
  - (a) the Attorney General;
  - (b) the Solicitor General, or, if there is no Solicitor General, the State Solicitor;
  - (c) each Queen’s Counsel, and each Senior Counsel, whose principal place of practice is in this State and who is not a full-time judicial officer; and
  - (d) 12 legal practitioners of at least 3 years’ standing and practice in this State who are elected as members.
- (2) Subject to the rules, an elected member of the Board holds office for a term of 2 years from the date of becoming a member and is eligible for re-election.
- (3) Schedule 1 has effect with respect to the constitution and procedure of the Board.

### **8. Who may vote in election**

Any legal practitioner who is on the Roll of Practitioners and whose principal place of practice is in this State is eligible to vote in an election for a member under section 7(1)(d).

**9.            Functions of the Board**

The Board's functions are as set out in this Act and in any other written law.

**10.          Committees**

- (1) The Board may —
  - (a) appoint committees of members of the Board; and
  - (b) discharge, alter or reconstitute any committee.
- (2) A committee is to comply with any direction or requirement of the Board.
- (3) A committee may, with the approval of the Board, invite any person, including a member of staff, to participate in a meeting of the committee but such a person cannot vote on any resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.

**11.          Delegation**

- (1) The Board may delegate to a committee established under section 10 any power or duty of the Board under this Act other than this power of delegation.
- (2) The delegation must be in writing executed by the Board.
- (3) A committee to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A committee exercising or performing a power or duty that has been delegated to that committee under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through an officer or agent in the normal course of business.

- (6) This section does not apply to the execution of documents but authority to execute documents on behalf of the Board can be given under section 16.

**12. Powers of the Board**

- (1) The Board has all the powers it needs to perform its functions.
- (2) Without limiting subsection (1), the Board may for the purpose of performing its functions —
- (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
  - (b) enter into leases, contracts and arrangements;
  - (c) provide, take and arrange security;
  - (d) employ and engage staff; and
  - (e) do anything incidental to any of its powers.

**13. Application of funds**

The money received by the Board under this Act must be applied by the Board for the purposes of this Act, which include —

- (a) the administration and enforcement of regulations made under section 247 and the rules; and
- (b) the provision and maintenance of the Law Library at the Supreme Court.

**14. Accounts and records**

- (1) The Board must —
- (a) cause to be kept proper accounts of the financial transactions of the Board;
  - (b) cause to be kept proper records of the business of the Board; and
  - (c) prepare financial statements in accordance with Australian Accounting Standards.

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- (2) Unless the Board determines otherwise, the financial statements must be prepared on an accrual basis.

**15. Audit**

The accounts and financial statements of the Board must be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Attorney General.

**16. Execution of documents by the Board**

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board if —
- (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Board by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise a member or members or a staff member or staff members to sign documents on behalf of the Board, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this section without the common seal of the Board is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.



- (8) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

**17. Annual and other reports**

- (1) On or before 31 December in each year the Board must make and submit to the Attorney General an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.
- (1a) The annual report is to include details of —
- (a) the number, nature, and outcome of —
    - (i) inquiries undertaken by the Board; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.
- (1b) The executive officer of the State Administrative Tribunal and the Law Complaints Officer are to provide the Board with information it may request for the purpose of making its annual report.
- (2) The Attorney General must within 14 days after the day on which a copy of an annual report, financial statement or auditor's report is received by the Attorney General cause a copy of the report or statement to be laid before each House of Parliament or dealt with under section 251.
- (3) The Board may from time to time report to the Attorney General its views as to the jurisdiction conferred and the carrying out of

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the functions required by Part 12, or any matter connected with that jurisdiction or that Part.

*[Section 17 amended by No. 55 of 2004 s. 605.]*

**18. Protection from liability**

- (1) An action in tort does not lie against —
- (a) the Board;
  - (b) a member of the Board; or
  - (c) an employee of the Board,

for anything that the Board or person has done, in good faith, in the performance or purported performance of a function under this Act.

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) In this section a reference to the doing of anything includes a reference to the omission to do anything.
- (4) A person who —
- (a) performs any function in relation to an inquiry before the Board under this Act; or
  - (b) is otherwise concerned in an inquiry before the Board under this Act,

has, in respect of any such function or concern, the same protection and immunity as a member or an officer of the Supreme Court, or a witness or a party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

### **Part 3 — Articled clerks**

**19. Who may be an articled clerk**

- (1) A person must not be articled to a legal practitioner until the person has —
  - (a) provided to the Board such evidence as the Board may require showing to the satisfaction of the Board that the person —
    - (i) is of good fame and character; and
    - (ii) has reached the age of 16 years;
  - (b) passed to the satisfaction of the Board any examination required by the rules; and
  - (c) paid to the Board the fee prescribed by the rules.
- (2) The Board may, but is not required to, hold an inquiry as to whether a person seeking to be articled to a legal practitioner is of good fame and character.
- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.
- (4) If the Board decides, upon inquiry under this section, that a person is not of good fame and character, that person must not be articled to a legal practitioner.

**20. Who may have an articled clerk**

- (1) Subject to subsections (5) and (6), a legal practitioner must not take, have or retain an articled clerk unless that legal practitioner is —
  - (a) of not less than 2 years' standing as a legal practitioner;
  - (b) an individual practising on his or her own account in this State or a legal practitioner director; and
  - (c) approved to take, have and retain an articled clerk by the Board.

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- (2) The Board may, but is not required to, hold an inquiry as to whether a legal practitioner should be approved under subsection (1)(c).
- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.
- (4) The Board may revoke an approval under subsection (1)(c) at any time.
- (5) The Board may, by notice in writing and subject to such conditions as are specified in the notice, permit a person to be articled to a legal practitioner even though the legal practitioner is of less than 2 years' standing as a legal practitioner or practises otherwise than on his or her own account or as a legal practitioner director.
- (6) A legal practitioner who —
  - (a) is the State Solicitor of this State;
  - (b) is the Director of Legal Aid appointed under section 18 of the *Legal Aid Commission Act 1976*;
  - (c) is the Director of Public Prosecutions appointed under section 5 of the *Director of Public Prosecutions Act 1991*;
  - (d) is the person acting in this State as a Director of the Australian Government Solicitor within the meaning of the *Judiciary Act 1903* of the Commonwealth; or
  - (e) is the Regional General Counsel of the Australian Securities and Investments Commission in Western Australia,

may take, have and retain one or more articled clerks.

- (7) No person, other than an individual referred to in subsection (6), may take, have or retain more than 2 articled clerks at any one time unless that person has the approval of the Board.

- (8) If —
- (a) a legal practitioner ceases to be a person practising on his or her own account or to be a legal practitioner director; or
  - (b) a person is a disqualified person,
- that person must not take, have or retain an articled clerk.
- (9) A person aggrieved by a decision of the Board to refuse to approve a legal practitioner under subsection (1)(c), or to revoke an approval under subsection (4), may apply to the State Administrative Tribunal for a review of the decision.

*[Section 20 amended by No. 55 of 2004 s. 641.]*

**21. Articles of clerkship**

- (1) All articles of clerkship and every assignment of articles must be made by deed and registered under the rules.
- (2) Registration of articles of clerkship or the assignment of articles takes effect on a day determined under the rules.
- (3) Service under articles of clerkship or the assignment of articles does not commence until the articles are, or the assignment is, registered under the rules.

**22. Continuation of articles**

If, before the expiration of an articled clerk's term of service —

- (a) the legal practitioner to whom the articled clerk is articled —
  - (i) dies;
  - (ii) is incapacitated by reason of mental disability;
  - (iii) becomes a disqualified person; or
  - (iv) ceases to practise in this State on his or her own account or to be a legal practitioner director;

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- (b) the Board revokes its approval of the legal practitioner to whom the articled clerk is articled; or
- (c) for any other reason the Board gives consent,

the clerk's service may, subject to section 21, be continued under assignment of the articles to, or fresh articles with, another legal practitioner.

**23.     Articled clerk not to undertake other employment without consent**

- (1) An articled clerk must not, except with the written consent of the legal practitioner with whom the articles are served, hold any office or undertake any employment other than —
  - (a) as an articled clerk to the legal practitioner with whom the articles are served for the time being; or
  - (b) in the capacity of an articled clerk to —
    - (i) a legal practitioner who is a partner of the legal practitioner with whom the articles are served for the time being; or
    - (ii) a legal practitioner director who is a legal practitioner director of the same incorporated legal practice as the legal practitioner director with whom the articles are served for the time being.
- (2) An articled clerk must file any consent given to that articled clerk under subsection (1) with the Board within 14 days of the consent being given.
- (3) Subject to subsection (5) the written consent of a legal practitioner must not be given to an articled clerk unless the hours of such other office or employment are outside working hours.
- (4) In subsection (3) —

**“working hours”** means the hours between 9 a.m. and 5 p.m. on those week days (excluding Saturdays, Sundays and public holidays) when the offices of legal practitioners are normally open to the public.

- (5) If, in the opinion of the Board, there are special circumstances the Board may determine that subsection (3) does not apply in relation to an articled clerk.
- (6) The Board must not make a determination under subsection (5) without the consent of the legal practitioner to whom the articled clerk is articled.
- (7) A determination under subsection (5) may be made conditional upon such requirements as the Board thinks fit and may include a requirement that the period of service under articles of clerkship be extended.
- (8) If a legal practitioner refuses to give consent under subsection (1) or (6) the articled clerk may appeal to the Board.

**24. Service under articles to accord with Act**

Service under articles is not valid unless the service is performed in accordance with this Act.

**25. Reports to Board**

If an articled clerk ceases to perform valid service under the articles for a period of one month, the legal practitioner to whom the clerk is articled must give a written report to the Board on that cessation.

**26. Cancellation of articles**

- (1) Upon the application of an articled clerk, or of the legal practitioner to whom the clerk is articled, the Board may cancel the articles of the clerk upon such terms as the Board thinks fit.

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- (2) A person aggrieved by a decision of the Board under this section may apply to the State Administrative Tribunal for a review of the decision.

*[Section 26 amended by No. 55 of 2004 s. 641.]*



## **Part 4 — Admission of legal practitioners**

### **27. Qualifications for admission of legal practitioners**

- (1) A person cannot be admitted as a legal practitioner unless the person has reached the age of 21 years.
- (2) Subject to subsection (1), a person is qualified to be admitted as a legal practitioner if that person —
  - (a) has —
    - (i) fulfilled the requirements as to the taking of a degree in law at a university specified in the rules together with such other academic requirements, if any, as may be specified in the rules either generally or in respect of a degree in law of a university specified in the rules; or
    - (ii) such other qualification as in the opinion of the Board is substantially equivalent to that degree, and has served for the term prescribed by the rules under articles of clerkship to a legal practitioner and at any time during that term has satisfied the requirements for practical legal training prescribed by the rules; or
  - (b) is a person who —
    - (i) has a qualification that in the opinion of the Board is substantially equivalent to that referred to in paragraph (a)(i); or
    - (ii) is experienced in legal practice in a place where the system of jurisprudence is substantially equivalent to the system of jurisprudence administered in this State, and has met the requirements of the Board, if any, imposed in respect of that person under subsection (3).

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- (3) The Board may require a person to do all or any of the following —
- (a) to obtain qualifications, pass examinations, or fulfil other requirements specified by the Board, in addition to the qualifications referred to in subsection (2)(b);
  - (b) to serve a term of articles specified by the Board in addition to the qualifications referred to in subsection (2)(b),

before that person can be qualified to be admitted as a legal practitioner under subsection (2)(b).

**28. Admission of legal practitioner**

- (1) A person may be admitted by the Supreme Court (full bench) as a legal practitioner if that person —
- (a) is qualified under section 27 to be admitted;
  - (b) has provided to the Board such evidence as the Board may require showing to the satisfaction of the Board that the person is of good fame and character and fit and proper to be so admitted;
  - (c) has obtained from the Board a certificate that the person has —
    - (i) provided the evidence required under paragraph (b); and
    - (ii) observed and complied with the provisions of this Act and the rules;
  - (d) has advertised in the manner and for the period required by the rules a notice of intention to apply for admission; and
  - (e) has paid to the Board the fee, if any, prescribed by the rules.
- (2) The Board may, but is not required to, hold an inquiry as to whether a person seeking a certificate under subsection (1)(c) is of good fame and character and fit and proper to be admitted.

- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.
- (4) If —
  - (a) a person fails to produce evidence required by the Board under subsection (1)(b) showing to the satisfaction of the Board that the person is of good fame and character and fit and proper to be admitted; or
  - (b) the Board decides, upon inquiry under subsection (2), that a person is not of good fame and character and fit and proper to be admitted,

the Board may refuse to grant a certificate under subsection (1)(c).

- (5) A person to whom the Board has refused to grant a certificate under subsection (1)(c) may apply to the State Administrative Tribunal for a review of the decision.

*[Section 28 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 641.]*

**29. Objection to admission**

- (1) Any person may, on reasonable grounds, object to the admission of a person as a legal practitioner.
- (2) A notice, stating the grounds of the objection, must be lodged in the Supreme Court at least 7 days before the day on which the application for admission is made.
- (3) A person objecting under this section is entitled to be heard to oppose the admission personally or by counsel, with or without witnesses.

**30. Admission by Supreme Court (full bench)**

- (1) No person is to be admitted as a legal practitioner except by the Supreme Court (full bench).

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- (2) Where an applicant for admission as a legal practitioner is admitted to practise as a barrister or solicitor, or as a barrister and solicitor, of —
- (a) a superior court of another State; or
  - (b) the High Court of Australia,

the application for admission may be made by counsel on behalf of the applicant without personal attendance by the applicant at the hearing of the application.

*[Section 30 amended by No. 45 of 2004 s. 37.]*

**31. Roll of Practitioners**

- (1) Subject to any rule referred to in subsection (2), a person must, immediately after being admitted as a legal practitioner, sign the Roll of Practitioners.
- (2) The Supreme Court may make rules providing for the manner in which a person admitted under section 30(2) as a legal practitioner without personal attendance as an applicant may —
  - (a) make oath or affirmation; and
  - (b) provide a signature to the Roll of Practitioners.
- (3) The Roll of Practitioners is to be kept in the custody of the Principal Registrar of the Supreme Court.
- (4) The Roll of Practitioners must, during office hours, be open to inspection by any person without fee.
- (5) A certificate of a registrar of the Supreme Court as to any matter in the Roll of Practitioners is conclusive evidence of that matter.

**32. Certificate of admission**

- (1) Every person who is admitted as a legal practitioner is entitled to obtain from a registrar of the Supreme Court a certificate of that admission.
- (2) The certificate is to be in a form prescribed by the rules.

**33. Restrictions on entitlement to practise**

- (1) A legal practitioner qualified to be admitted under section 27(2)(a) —
  - (a) is not entitled to practise; and
  - (b) must not practise,on his or her own account until he or she has completed, after being admitted, a term of 12 months as an employed legal practitioner in the office of a legal practitioner authorised under this Act to take, have and retain an articled clerk.
- (2) If a person is qualified to be admitted as a legal practitioner under section 27(2)(b) the Board may, in writing, require the person to complete, after being admitted, a term of a specified period as an employed legal practitioner in the office of a legal practitioner authorised under this Act to take, have and retain an articled clerk.
- (3) The specified term the Board may require a person to complete under subsection (2) must not exceed 12 months.
- (4) A person required to complete a term as an employed legal practitioner under subsection (2) —
  - (a) is not entitled to practise; and
  - (b) must not practise,on his or her own account until that requirement has been complied with to the satisfaction of the Board.

**34. Re-admission as a legal practitioner**

- (1) A person who has been struck off the Roll of Practitioners may apply to the Supreme Court (full bench) for re-admission as a legal practitioner.

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- (2) A person applying for re-admission must produce to the Supreme Court (full bench) a certificate from the Board certifying that —
  - (a) the applicant for re-admission has satisfied the Board upon inquiry that he or she is, in the opinion of the Board, a fit and proper person to be re-admitted; and
  - (b) the rules relating to re-admission have been complied with.
- (3) The provisions of section 41(2) apply to an inquiry under subsection (2)(a) as if the inquiry were made under Part 5.
- (4) A person to whom the Board has refused to grant a certificate under subsection (2) may apply to the State Administrative Tribunal for a review of the decision.

*[Section 34 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 641.]*

## **Part 5 — Practice certificates**

### **35. Requirement to hold practice certificate**

- (1) Subject to subsection (2), a practice certificate is required to be held by every legal practitioner —
  - (a) who is engaged in legal practice in this State, whether or not as an employee; or
  - (b) who is prepared, or purports to be prepared, to be retained for fee, gain or reward in legal practice in this State.
- (2) Subsection (1) does not apply to —
  - (a) a legal practitioner who is merely seeking a position as an employee;
  - (b) a legal practitioner taken to be a certificated practitioner under section 36; or
  - (c) an interstate practitioner.

### **36. Legal practitioner employed by this State**

A legal practitioner employed by this State in a salaried capacity, while acting in an official capacity as a legal practitioner so employed, is taken to be a certificated practitioner.

### **37. Application for practice certificate**

- (1) An application for a practice certificate may only be made by a legal practitioner.
- (2) An application for a practice certificate must —
  - (a) be made to the Board in a form approved by the Board;
  - (b) contain, or be accompanied by, such information as is prescribed by the rules;
  - (c) be accompanied by the application fee prescribed by the rules; and

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- (d) be signed by the applicant.
- (3) An application for a practice certificate may be made at any time unless subsection (4) applies.
- (4) Subject to subsections (5) and (6), a legal practitioner who holds a practice certificate must apply for the issue of a further practice certificate —
  - (a) by such date (if any) as is prescribed by the rules for applications; or
  - (b) prior to the date of expiry of the current certificate,whichever is the earlier date.
- (5) If a legal practitioner satisfies the Board that he or she is no longer engaged in legal practice in this State and is not prepared, and does not purport to be prepared, to be retained for fee, gain or reward in legal practice in this State, the legal practitioner is not required to apply for the issue of a further practice certificate.
- (6) Despite subsection (4) the Board may, in its discretion, accept an application for a practice certificate by a legal practitioner whose practice certificate has expired and who has paid the late fee (if any) prescribed by the rules.

**38. Refusal of application**

- (1) The Board must refuse to issue a practice certificate if —
  - (a) the application is not made in accordance with section 37; or
  - (b) the applicant is a disqualified person.
- (2) The Board may refuse to issue a practice certificate if an order in respect of the legal practitioner has been made under section 177 or 185 and —
  - (a) a fine imposed by the order has not been paid;



- (b) costs awarded against the legal practitioner by the order have not been paid; or
  - (c) expenses payable by the legal practitioner pursuant to an order made under section 177(2)(e) or section 87 or 88 of the *State Administrative Tribunal Act 2004* in relation to proceedings commenced under this Act have not been paid.
- (3) The Board may refuse to issue a practice certificate under regulations made under section 247 as to professional indemnity insurance.
- (4) The Board may refuse to issue a practice certificate if —
- (a) the applicant for the practice certificate has not been a certificated practitioner during the 5 years preceding the application; and
  - (b) the Board is not satisfied that the applicant is a fit and proper person and competent to practice in this State.

*[Section 38 amended by No. 55 of 2004 s. 606.]*

**39. Unfit, incapable or insolvent practitioners**

- (1) In this section —

**“impairment”** means —

- (a) mental disability;
- (b) injury;
- (c) physical illness;
- (d) dependence on alcohol;
- (e) addiction to a deleterious drug or substance;

**“incapable practitioner”** means a legal practitioner whose impairment is such that the ability of the person to practise as a legal practitioner is, or is likely to be, adversely affected;

**“insolvent practitioner”** means —

- (a) a legal practitioner who is an insolvent under administration within the meaning of the Corporations Act;
- (b) a legal practitioner director of an incorporated legal practice that is insolvent within the meaning of the Corporations Act;

**“unfit practitioner”** means a legal practitioner who —

- (a) is not a fit and proper person to hold a practice certificate;
  - (b) has failed to comply with a condition to which the issue of the practitioner’s practice certificate was subject;
  - (c) has contravened an order made in respect of the practitioner under, or in a proceeding commenced under, this Act by a regulatory authority;
  - (d) has contravened a provision of this Act;
  - (e) is in prison; or
  - (f) is otherwise unfit to engage in legal practice.
- (2) If an applicant for, or holder of, a practice certificate is an insolvent practitioner, the Board may apply to the State Administrative Tribunal for a hearing and determination under section 188.
- (3) If the Board suspects or believes that —
- (a) an applicant for, or holder of, a practice certificate is an incapable practitioner or an unfit practitioner; and
  - (b) it would —
    - (i) be in the public interest or in the interest of the legal practitioner’s clients or potential clients; or
    - (ii) protect the integrity of the legal profession or the administration of justice,if the application were refused, or the practice certificate suspended or cancelled,

the Board may, without further inquiry, apply to the State Administrative Tribunal for a hearing and determination under section 188.

*[Section 39 amended by No. 55 of 2004 s. 607 and 642.]*

**40. Conditions may be imposed upon practice certificate**

- (1) The Board may issue a practice certificate unconditionally or subject to conditions.
- (2) The Board may, by notice in writing given to the holder of a practice certificate, add to, vary or revoke a condition of a practice certificate, whether or not the certificate was originally issued unconditionally.
- (3) Without limiting subsection (1), the conditions that may be imposed include —
  - (a) restricting the entitlement of the holder of the certificate to practise to certain specified classes of legal practice;
  - (b) prohibiting the holder of the certificate from engaging in certain specified classes of legal practice;
  - (c) requiring the holder of the certificate to undertake all legal practice or certain specified classes of legal practice subject to supervision of a specified type;
  - (d) requiring the holder of the certificate to engage in legal practice only in a type or types of legal practice or in the employment of a specified person;
  - (e) requiring the holder of the certificate to undertake and complete to the satisfaction of the Board continuing legal education or training of a type or types specified by the Board;
  - (f) requiring the holder of the certificate to cease employing a specified person or persons.

*[(4) repealed]*

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- (5) A legal practitioner who is the holder of a practice certificate must not contravene a condition imposed on the certificate.

*[Section 40 amended by No. 55 of 2004 s. 608.]*

**41. Board's powers of inquiry**

- (1) The Board may, but is not required to, hold an inquiry as to —
- (a) whether an application should be made to the State Administrative Tribunal under section 39; or
  - (b) whether, and what, conditions should be imposed on a practice certificate under section 40.
- (2) For the purposes of enabling the Board to make the inquiry, the Board may —
- (a) by summons require any person to attend before the Board as a witness and give evidence or to produce any record in the possession or control of that person that relates to a matter in question at the inquiry;
  - (b) examine the witness on oath or affirmation.
- (3) Before determining whether to make an application under section 39 in respect of an applicant for, or holder of, a practice certificate whom the Board suspects or believes may be an incapable practitioner, the Board may require the applicant or holder to be medically examined by a medical practitioner nominated by the Board.
- (4) A refusal or failure by a person to comply with a requirement for a medical examination may be accepted by the Board as evidence that the person is an incapable practitioner.
- (5) For the purposes of subsection (2)(b) a member of the Board may administer oaths or affirmations.
- (6) The provisions of section 195 apply to a summons issued by the Board under this section.

*[Section 41 amended by No. 55 of 2004 s. 642.]*

**42. Duration of practice certificate**

A practice certificate —

- (a) if issued on application by a certificated practitioner —
  - (i) takes effect on the day next succeeding the expiry of the current certificate held by that practitioner; and
  - (ii) subject to this Act, remains in force for 12 months or such shorter period as is specified in the practice certificate;
- (b) if issued on application by a legal practitioner other than a certificated practitioner —
  - (i) takes effect on the day on which it is issued, or on such earlier day as is determined by the Board; and
  - (ii) subject to this Act, remains in force until 30 June next succeeding.

**43. Suspension or cancellation of practice certificate after disciplinary proceedings**

- (1) If the name of a person is removed from the Roll of Practitioners the practice certificate held by the person is automatically cancelled.
- (2) If the right of a person to practise in this State as a legal practitioner is suspended, the legal practitioner is to be taken, during the period of suspension, not to hold a current practice certificate.

**44. Reviews**

A legal practitioner may apply to the State Administrative Tribunal for a review of a decision of the Board —

- (a) to refuse to issue a practice certificate to the legal practitioner;

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- (b) to issue a practice certificate to the legal practitioner subject to conditions; or
- (c) to vary the conditions subject to which a practice certificate is issued to the legal practitioner.

*[Section 44 amended by No. 55 of 2004 s. 609.]*

## **Part 6 — Business structures**

### **Division 1 — General**

#### **45. Practitioner may practise under any business structure**

- (1) Subject to this Act, a certificated practitioner may engage in legal practice under any form of business structure recognised by law including, but not limited to —
  - (a) a practice on his or her own account;
  - (b) a partnership; or
  - (c) a corporation.
- (2) Nothing in this section authorises a person to do any thing the person is prohibited from doing under this Act or any other law under which the person is incorporated or the person's affairs are regulated.

#### **46. Obligations of individual legal practitioners not affected**

Except as provided by this Part, nothing in this Part affects any obligation imposed on a legal practitioner under this Act or any other written law.

### **Division 2 — Incorporated legal practices**

#### **47. Nature of incorporated legal practice**

- (1) Subject to subsection (2) and sections 48(3), 69(6) and 70(3), if a corporation provides legal services in this State (whether or not it provides other services) it is an incorporated legal practice.
- (2) Subsection (1) does not apply in respect of a corporation if —
  - (a) the corporation does not receive any form of, or have an expectation of, a fee, gain or reward for the legal services it provides;

- (b) the only legal services that the corporation provides are legal services concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party (in-house legal services);
  - (c) the only legal services that the corporation provides are services that —
    - (i) are not legally required to be provided by a legal practitioner; and
    - (ii) are provided by an officer or an employee who is not a legal practitioner;
- or
- (d) the regulations so provide.

Note: Under section 123, the prohibition on engaging in legal practice except as a certificated practitioner extends to legal services provided by an incorporated legal practice.

**48. Services and businesses of incorporated legal practices**

- (1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.
- (2) The regulations may prohibit an incorporated legal practice or a related body corporate from providing a service or conducting a business of a kind specified by the regulations.
- (3) A corporation ceases to be an incorporated legal practice if the corporation or a related body corporate contravenes this section or a regulation made under this section.

**49. Corporations eligible to be incorporated legal practices**

- (1) Any corporation is eligible to be an incorporated legal practice.
- (2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by any Act or law (whether of this State, the Commonwealth or any



other State) under which it is incorporated or its affairs are regulated.

**50. Notice by corporation**

- (1) A corporation must, before commencing to provide legal services in this State, notify the Board in writing of its intention to do so.

Penalty: \$50 000.

- (2) The notice must include the particulars prescribed by the regulations.

**51. Responsibilities of legal practitioner director**

- (1) Subject to section 53, an incorporated legal practice is required to have at least one legal practitioner director.
- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes only of this Act, responsible for the management of the legal services provided in this State by the incorporated legal practice.
- (3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice —
- (a) in accordance with the professional obligations of legal practitioners and other obligations imposed under this Act; and
  - (b) so that the obligations of legal practitioners who are officers or employees of the incorporated legal practice are not adversely affected by other officers or employees of the practice.
- (4) A legal practitioner director of an incorporated legal practice must not remain as a director of the practice if it becomes apparent that the provision of legal services by the incorporated legal practice will result in breaches of the professional

obligations of legal practitioners or other obligations imposed under this Act.

- (5) Nothing in this Part derogates from the obligations or liability of a director of an incorporated legal practice under any other law.

**52. Obligations of legal practitioner director relating to unsatisfactory conduct**

- (1) Each of the following is capable of constituting unsatisfactory conduct by a legal practitioner director of an incorporated legal practice —
- (a) unsatisfactory conduct by a legal practitioner employed or engaged by the incorporated legal practice;
  - (b) conduct of any other director (not being a legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the incorporated legal practice;
  - (c) the unsuitability of any other director (not being a legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.
- (2) A legal practitioner director of an incorporated legal practice must ensure that all reasonable action available to the legal practitioner director is taken to deal with any unsatisfactory conduct of a legal practitioner employed or engaged by the practice.

**53. Absence of legal practitioner director**

- (1) An incorporated legal practice commits an offence if the incorporated legal practice does not have a legal practitioner director for a period exceeding 7 days.  
Penalty: \$25 000.
- (2) If an incorporated legal practice ceases to have a legal practitioner director, the incorporated legal practice must notify the Board.  
Penalty: \$10 000.

- (3) The Board may, if it thinks it appropriate, appoint a certificated practitioner who is an officer or employee of the incorporated legal practice or another person nominated by the Board, in the absence of a legal practitioner director, to exercise the functions conferred on a legal practitioner director under this Division.
- (4) The appointment under this section of a person to exercise the functions of a legal practitioner director of an incorporated legal practice does not, for any other purpose, confer on the person any of the other functions of a director of the incorporated legal practice.

**54. Obligations of legal practitioners who are officers or employees**

- (1) A legal practitioner who engages in legal practice as an officer or employee of an incorporated legal practice is not excused from compliance with the professional obligations of a legal practitioner or any other obligations of a legal practitioner under any law.
- (2) For the purpose only of the application of those obligations, a person provided with legal services by an incorporated legal practice is taken to be a client of the legal practitioner engaged in providing those services.

**55. Professional privileges**

- (1) A legal practitioner who engages in legal practice as an officer or employee of an incorporated legal practice, does not lose the professional privileges of a legal practitioner.
- (2) For the purpose only of the application of those privileges, a person provided with legal services by an incorporated legal practice is taken to be a client of the legal practitioner engaged in providing those services.
- (3) To avoid doubt, the law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected by the fact that a legal practitioner engages in legal

practice as an officer or employee of an incorporated legal practice.

**56. Pro bono services**

The directors of incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by the incorporated legal practice.

**57. Conflicts of interest**

- (1) For the purposes of the application of any law or rule relating to conflicts of interest to the conduct of —
- (a) a legal practitioner director of an incorporated legal practice; or
  - (b) a legal practitioner who is an officer or employee of an incorporated legal practice,

the interests of the incorporated legal practice, or any other officer or employee of the incorporated legal practice (whether or not a legal practitioner), are taken to be the same as those of the legal practitioner concerned.

- (2) Rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

Note: Under section 54, a legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other legal practitioners in connection with conflicts of interest.

**58. Disclosure obligations**

- (1) If a person engages an incorporated legal practice to provide legal services, each legal practitioner director of the practice, and any legal practitioner who provides legal services as an officer or employee of the incorporated legal practice, must ensure that a disclosure is made to the person in connection with the provision of legal services.

Penalty: \$25 000.

- (2) The disclosure must be made by giving the person a notice in writing setting out the following:
- (a) the legal services to be provided;
  - (b) the non-legal services (if any) to be provided in connection with the provision of legal services;
  - (c) that this Act applies to the provision of legal services but not to the provision of the non-legal services;
  - (d) whether any financial benefit or commission (other than fees for the provision of the legal services or the non-legal services) has been or is to be received by the incorporated legal practice, any employee or officer of the incorporated legal practice or any related body corporate, as a result of the provision of the legal services or non-legal services or any referral by any such employee, officer or related body corporate related to that provision;
  - (e) the amount or value of any such financial benefit or commission, if known, or, if not known, the method by which it is to be calculated.
- (3) The regulations may make provision for or with respect to the following matters:
- (a) the manner in which disclosure is to be made;
  - (b) additional matters required to be disclosed by an incorporated legal practice in connection with the provision of legal services or non-legal services by an incorporated legal practice.
- (4) Without limiting subsection (2), the additional matters may include the kind of services provided by the incorporated legal practice and whether those services are or are not covered by the insurance or other provisions of this Act.

**59. Application of rules to incorporated legal practice**

- (1) Any rules that apply to legal practitioners apply to legal practitioners who are officers or employees of an incorporated legal practice.
- (2) The rules cannot —
  - (a) regulate any services that an incorporated legal practice may provide (other than the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise); or
  - (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise).

**60. Requirements relating to professional indemnity insurance**

- (1) An incorporated legal practice is required to comply with the regulations made under section 247 as to professional indemnity insurance that apply to an incorporated legal practice.
- (2) Nothing in this section affects any obligation of a legal practitioner who is an officer or employee of an incorporated legal practice to obtain professional indemnity insurance in accordance with regulations made under section 247.
- (3) If an incorporated legal practice fails to comply with the requirement under subsection (1), the Board may apply to the State Administrative Tribunal for a hearing and determination under section 189.

*[Section 60 amended by No. 55 of 2004 s. 642.]*

**61. Requirements relating to advertising**

- (1) Any restriction imposed under this Act or any other written law in connection with advertising by legal practitioners applies to

advertising by an incorporated legal practice with respect to the provision of legal services.

- (2) Any such advertisement is, for the purposes of disciplinary proceedings taken against a legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.

**62. Requirements relating to legal fees and costs**

- (1) Unless the regulations otherwise provide, the provisions of this Act, and any other written law, relating to legal costs and remuneration of legal practitioners apply to an incorporated legal practice, and to an external administrator of an incorporated legal practice, in the same way that they apply to a legal practitioner.
- (2) The regulations may make provision with respect to the application or modification of the provisions of this Act relating to legal costs and remuneration of legal practitioners.

**63. Requirements relating to trust accounts**

- (1) Unless the regulations otherwise provide —
  - (a) Part 10 and any rules relating to requirements for trust accounts apply to an incorporated legal practice in the same way as they apply to a legal practitioner, but only in connection with legal services provided by the practice; and
  - (b) money received by a legal practitioner on behalf of another person in the course of legal practice includes money received by any officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (2) An examination under section 142 that relates to trust accounts may extend to all of the affairs of an incorporated legal practice and to all of its documents.

- (3) Without limiting any other powers of any regulatory authority, a regulatory authority may exercise its disciplinary powers with respect to breaches of trust account requirements with respect to a legal practitioner director of an incorporated legal practice for any relevant failure of the practice or any officer or employee of the practice.
- (4) The regulations may make provision with respect to the application or modification of the provisions of this Act relating to trust accounts for the purposes of this section.

*[Section 63 amended by No. 55 of 2004 s. 610.]*

**64. Part 11 (except section 150) does not apply to incorporated legal practice**

- (1) Part 11 (other than section 150) does not apply to a corporation that is or was an incorporated legal practice.
- (2) Section 150 applies to a corporation that is or was an incorporated legal practice in the same way as it applies to a person who is or was a legal practitioner.
- (3) An application may be made, and directions may be given, under section 153(b) in relation to an order made under section 150 in respect of the trust account of an incorporated legal practice.

**65. Extension of vicarious liability of incorporated legal practice**

- (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 other valuable property received by or entrusted to, the practice (or to any legal practitioner or other officer or employee of the practice) in the course of the provision of legal services by the practice,



- being money or other valuable property under the direct or indirect control of the practice;
- (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by a legal practitioner who is an 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 any such 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.

**66. Prohibition on association with prohibited persons**

An incorporated legal practice is guilty of an offence if a prohibited person or a person who is the subject of an order under section 70 or 87 —

- (a) is an officer or employee of the incorporated legal practice (whether or not the person engages in legal practice) or is an officer or employee of a related body corporate;
- (b) is a partner of the incorporated legal practice in a business that includes the provision of legal services;
- (c) shares the receipts of 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.

Penalty: \$25 000.

**67. Investigative powers relating to incorporated legal practices**

- (1) The regulations may make provision for or with respect to —
- (a) audits conducted under section 68;

- (b) investigations, and examinations under Part 10, relating to the trust accounts of an incorporated legal practice; and
  - (c) inquiries relating to a complaint made under this Act in relation to an incorporated legal practice.
- (2) Without limiting subsection (1), regulations under that subsection may be made to extend powers conferred under this Act by reference to and modification of any of the provisions of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth relating to —
  - (a) examination of persons;
  - (b) inspection of books; and
  - (c) holding of hearings.

**68. Audit of incorporated legal practice**

- (1) The Board may audit —
  - (a) an incorporated legal practice (and its officers and employees) to check its compliance with the requirements of this Act in connection with the provision of legal services by the practice; and
  - (b) the management of the provision of legal services by the incorporated legal practice, including the supervision of officers and employees in relation to the services.
- (2) An audit may be conducted whether or not a complaint has been made with respect to the provision of legal services by the incorporated legal practice.
- (3) A report of an audit —
  - (a) is to be provided to the incorporated legal practice concerned by the Board;
  - (b) may be provided to the Complaints Committee by the Board; and

- (c) may be taken into account in connection with any disciplinary proceedings taken against a legal practitioner director or other legal practitioner or in connection with the issue, suspension or cancellation of practice certificates.

**69. Banning of incorporated legal practice**

- (1) The State Administrative Tribunal may, on the application of the Board, make an order disqualifying a corporation from providing legal services in this State for the period the Tribunal considers appropriate if the Tribunal is satisfied that —
  - (a) a ground for disqualifying the corporation under this section has been established; and
  - (b) the disqualification is justified.
- (2) An order under this section may, if the Tribunal thinks it appropriate, be made —
  - (a) subject to conditions as to the conduct of an incorporated legal practice;
  - (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, employees and officers of the incorporated legal practice.
- (3) The grounds for disqualifying an incorporated legal practice are —
  - (a) that a legal practitioner director or a legal practitioner who is an officer or employee of the corporation has been found guilty of unsatisfactory conduct;
  - (b) that the Board is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;

- (c) that an incorporated legal practice has contravened section 66;
  - (d) that a person who is the subject of an order under section 70 or 87 is acting in the management of the incorporated legal practice.
- (4) A corporation that is disqualified from providing legal services in another State is taken to be disqualified from providing legal services in this State.
- (5) A corporation that provides legal services in contravention of an order made under this section is guilty of an offence.  
Penalty: \$50 000.
- (6) A corporation that is disqualified under this section ceases to be an incorporated legal practice.
- (7) The regulations may make provision for or with respect to the publication and notification of orders made under this section, including notification of regulatory authorities in other States.

*[Section 69 amended by No. 55 of 2004 s. 643 and 644.]*

**70. Disqualification from managing incorporated legal practice**

- (1) The State Administrative Tribunal may, on the application of the Board, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Tribunal considers appropriate if the Tribunal is satisfied that —
- (a) the person is a person who could be disqualified under section 206E of the Corporations Act from managing corporations; and
  - (b) the disqualification is justified.
- (2) The State Administrative Tribunal may, on the application of the person subject to an order under subsection (1), revoke the order.

- (3) A corporation ceases to be an incorporated legal practice for the purposes of this Act if a person who is subject to a disqualification order under subsection (1) is an officer of the corporation.
- (4) A disqualification order made under this section has effect for the purposes only of this Act and does not affect the Corporations Act.
- (5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.  
*[Section 70 amended by No. 55 of 2004 s. 643 and 644.]*

**71. Disclosure of information to ASIC**

- (1) The Board, the Complaints Committee, or the Law Complaints Officer exercising the power of that committee, the President of the State Administrative Tribunal or a member of its staff, or an examiner appointed under section 142 may disclose to the Australian Securities and Investment Commission information concerning an incorporated legal practice or a former incorporated legal practice that has been acquired in connection with the exercise of functions under this Act.
- (2) The information may be provided despite any law relating to secrecy or confidentiality (including any provisions of this Act).  
*[Section 71 amended by No. 55 of 2004 s. 611.]*

**72. Relationship to Corporations legislation and certain other instruments**

- (1) The provisions of this Act that apply to or in respect of an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the incorporated legal practice.
- (2) The regulations may declare any provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

- (3) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted under this Act 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;
  - (b) a specified provision of the Corporations legislation;
  - (c) the Corporations legislation other than a specified provision; or
  - (d) the Corporations legislation other than to a specified extent.
- (4) In this section —  
“**matter**” includes act, omission, body, person or thing.

**73. Undue influence**

An officer or employee of an incorporated legal practice must not cause or induce a legal practitioner director of the incorporated legal practice, or a legal practitioner employed or engaged by the incorporated legal practice, to contravene this Act or to breach his or her professional obligations as a legal practitioner.

Penalty: \$25 000.

**Division 3 — Multi-disciplinary partnerships**

**74. Nature of multi-disciplinary partnerships**

A multi-disciplinary partnership is a partnership between one or more legal practitioners and one or more other persons who are not legal practitioners, where the partnership business includes the provision of legal services as well as other services.

Note: Under section 123, the prohibition on engaging in legal practice except as a certificated practitioner extends to legal services provided by a multi-disciplinary partnership.

**75. Conduct of multi-disciplinary partnerships**

- (1) A legal practitioner may be in partnership with a person who is not a legal practitioner.
- (2) The regulations may prohibit a legal practitioner from being in partnership with a person providing a service or conducting a business of a kind specified by the regulations.
- (3) This section applies only if the business of the partnership concerned includes the provision of legal services.

**76. Responsibilities of legal practitioner partner**

- (1) Each legal practitioner partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in this State by the partnership.
- (2) Each legal practitioner partner of a multi-disciplinary partnership must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the partnership —
  - (a) in accordance with the professional obligations of legal practitioners and the other obligations imposed under this Act; and
  - (b) so that the professional obligations of legal practitioner partners and employees who are legal practitioners are not adversely affected by other partners and employees of the practice.

**77. Obligations of legal practitioner partner related to unsatisfactory conduct**

- (1) Each of the following is capable of constituting unsatisfactory conduct by a legal practitioner partner of a multi-disciplinary partnership —
  - (a) unsatisfactory conduct by a legal practitioner employed by the multi-disciplinary partnership;

- (b) conduct of any other partner (not being a legal practitioner) of the multi-disciplinary partnership that adversely affects the provision of legal services by the partnership;
  - (c) the unsuitability of any other partner (not being a legal practitioner) of the multi-disciplinary partnership to be a member of a partnership that provides legal services.
- (2) A legal practitioner partner of a multi-disciplinary partnership must ensure that all reasonable action available to the legal practitioner partner is taken to deal with any unsatisfactory conduct of a legal practitioner employed by the practice.

**78. Actions that may be taken by non-legal partner**

A partner of a multi-disciplinary partnership who is not a legal practitioner does not contravene a provision of this Act merely because —

- (a) the partner is a member of a partnership where the partnership business includes the provision of legal services;
- (b) the partner receives any fee, gain or reward for business of the partnership that is the business of a legal practitioner;
- (c) the partner holds out, advertises or represents himself or herself as a member of the partnership where the partnership business includes the provision of legal services; or
- (d) the partner shares with any other partner of the multi-disciplinary partnership the receipts of business of the partnership that is the business of a legal practitioner.

**79. Professional obligations and privileges of legal practitioners who are partners or employees**

- (1) A legal practitioner who engages in legal practice as a partner or an employee of a multi-disciplinary partnership is not excused



from compliance with the professional obligations of a legal practitioner, or any other obligations of a legal practitioner under any law, and does not lose the professional privileges of a legal practitioner.

- (2) To avoid doubt, the law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because the legal practitioner is engaging in legal practice as a partner or employee of a multi-disciplinary partnership.

**80. Conflicts of interest**

- (1) For the purposes of the application of any law or rule relating to conflicts of interest to the conduct of —
- (a) a legal practitioner partner of a multi-disciplinary partnership; or
  - (b) a legal practitioner who is an employee of a multi-disciplinary partnership,

the interests of any partner of the multi-disciplinary partnership, or any other employee of the partnership (whether or not a legal practitioner), are taken to be the same as those of the legal practitioner concerned.

- (2) Rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of a multi-disciplinary partnership.

Note: Under section 79, a legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other legal practitioners in connection with conflicts of interest.

**81. Disclosure obligations**

- (1) If a person engages a multi-disciplinary partnership to provide legal services, each legal practitioner partner of the partnership, and any legal practitioner employee of the partnership who

provides legal services, must ensure that a disclosure is made to the person in connection with the provision of legal services.

Penalty: \$25 000.

- (2) The disclosure must be made by giving the person a notice in writing setting out the following:
  - (a) legal services to be provided;
  - (b) the non-legal services (if any) to be provided in connection with the provision of legal services;
  - (c) that this Act applies to the provision of legal services but not to the provision of the non-legal services;
  - (d) whether any financial benefit or commission (other than fees for the provision of the legal services or the non-legal services) has been or is to be received by any partner or employee of the multi-disciplinary partnership or any related body corporate of any partner of the partnership as a result of the provision of the legal services or non-legal services or any referral by any such partner, employee or related body corporate related to that provision;
  - (e) the amount or value of any such benefit or commission, if known, or, if not known, the method by which it is to be calculated.
- (3) The regulations may make provision for or with respect to the following matters:
  - (a) the manner in which disclosure is to be made;
  - (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by a multi-disciplinary partnership.
- (4) Without limiting subsection (2), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether those services are or are not covered by the insurance or other provisions of this Act.

**82. Application of rules to legal practitioner partners and employees**

- (1) To avoid doubt, the rules that apply to legal practitioners apply to legal practitioner partners and legal practitioners who are employees of a multi-disciplinary partnership.
- (2) The rules cannot —
  - (a) regulate any services that partners or employees of a multi-disciplinary partnership may provide (other than the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise); or
  - (b) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise).

**83. Requirements relating to advertising**

- (1) Any restriction imposed under this Act or any other written law in connection with advertising by legal practitioners applies to advertising by a multi-disciplinary partnership with respect to the provision of legal services.
- (2) Any such advertisement is, for the purposes of disciplinary proceedings taken against a legal practitioner, taken to have been authorised by each legal practitioner partner of the partnership.

**84. Requirements relating to legal fees and costs**

- (1) Unless the regulations provide otherwise, the provisions of this Act and any other written law relating to legal costs and remuneration of legal practitioners apply to legal practitioner partners, and legal practitioner employees of a multi-disciplinary partnership, in the same way as they apply to any legal practitioner.

- (2) The regulations may make provision with respect to the application or modification of the provisions of this Act relating to legal costs and remuneration of legal practitioners for the purposes of this section.

**85. Requirements relating to trust accounts**

- (1) Unless the regulations otherwise provide —
- (a) Parts 10 and 11 and any rules relating to requirements for trust accounts apply to legal practitioner partners and legal practitioner employees of a multi-disciplinary partnership in the same way as they apply to any legal practitioner, but only in connection with legal services provided by the partnership;
  - (b) money received by a legal practitioner on behalf of another person in the course of legal practice includes money received by any employee of the multi-disciplinary partnership on behalf of another person in the course of providing legal services.
- (2) An examination under section 142 that relates to trust accounts may extend to all of the affairs of a multi-disciplinary partnership and to all of its documents.
- (3) Without limiting any other powers of any regulatory authority, a regulatory authority may exercise its disciplinary powers with respect to breaches of trust account requirements with respect to a legal practitioner partner of a multi-disciplinary partnership for any relevant failure of the partnership or any partner or employee of the partnership.
- (4) The regulations may make provision with respect to the application or modification of the provisions of this Act relating to trust accounts for the purposes of this section.

*[Section 85 amended by No. 55 of 2004 s. 612.]*

**86. Prohibited person must not act as employee or partner**

A legal practitioner who is a partner in a multi-disciplinary partnership must not, knowing a person to be a prohibited person or a person who is the subject of an order under section 70 or 87 —

- (a) be a partner of that person in the multi-disciplinary partnership;
- (b) share with that person the receipts of the provision of legal services by the multi-disciplinary partnership; or
- (c) employ or pay that person in connection with the provision of legal services by the multi-disciplinary partnership.

**87. Prohibition on partnerships with certain non-legal partners**

- (1) This section applies to a person who —
  - (a) is not a legal practitioner and is or was a partner of a legal practitioner; or
  - (b) has engaged in unqualified practice.
- (2) On application by the Board, the State Administrative Tribunal may make an order prohibiting any legal practitioner from being a partner, in a business that includes a legal practitioner's practice, of a specified person to whom this section applies if —
  - (a) the Tribunal is satisfied that the person is not a fit and proper person to be such a partner;
  - (b) the Tribunal is satisfied that the person has been guilty of conduct that, if the person were a legal practitioner, would have constituted unsatisfactory conduct; or
  - (c) in the case of a corporation, if the Tribunal is satisfied that the corporation is disqualified from providing legal services in this State or there are grounds for disqualifying the corporation from providing legal services in this State.

- (3) An order made under this section may be revoked by the State Administrative Tribunal on application by the Board or by the person against whom the order was made.
- (4) The death of a legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of a legal practitioner.
- (5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

*[Section 87 amended by No. 55 of 2004 s. 643 and 644.]*

**88. Undue influence**

A partner, or an employee, of a multi-disciplinary partnership must not cause or induce a legal practitioner partner, or any legal practitioner employee of a multi-disciplinary partnership, to contravene this Act or to breach his or her professional obligations as a legal practitioner.

Penalty: \$25 000.

## **Part 7 — Interstate practitioners**

### **Division 1 — Preliminary**

**89. When an interstate practitioner establishes an office**

For the purposes of this Part, an interstate practitioner establishes an office in this State when the interstate practitioner offers and provides legal services to the public in this State from an office maintained by the interstate practitioner, or by the employer or a partner in legal practice of the interstate practitioner, for that purpose in this State.

### **Division 2 — Legal practice by interstate practitioners**

**90. Interstate practitioner may practise in this State**

- (1) An interstate practitioner is entitled to engage in legal practice in this State —
  - (a) as if the interstate practice certificate held by the interstate practitioner were a practice certificate within the meaning of this Act; and
  - (b) as if the terms of the interstate practitioner's entitlement to practise in the State in which the interstate practitioner has his or her principal place of practice were the terms of his or her entitlement to practise in this State.
- (2) Without limiting anything in this Part, in so doing, the interstate practitioner —
  - (a) must comply with this Act and any other written law that relates to legal practice as if the interstate practitioner were a local practitioner; and
  - (b) is subject to any condition, limitation, restriction or prohibition imposed on the interstate practitioner in respect of his or her practice by a regulatory authority of

this or any other State (whether as a result of disciplinary action or otherwise).

- (3) A regulatory authority of this State must not impose a condition, restriction, limitation or prohibition on an interstate practitioner in respect of his or her practice that is more onerous than it would impose on a local practitioner in the same or similar circumstances.

**91. Notification of establishment of office required**

- (1) An interstate practitioner who establishes an office in this State, must give written notice to the Board within 28 days after establishing the office.

Penalty: \$2 500.

- (2) A notice under this section must specify —
- (a) the residential address of the interstate practitioner;
  - (b) the address at which the interstate practitioner practises, or proposes to practise, in this State;
  - (c) each place at which the interstate practitioner practises outside this State;
  - (d) if the interstate practitioner practises in partnership with other persons — the names of those other persons and the name under which the partnership is carried on; and
  - (e) such other particulars as are prescribed by the rules.

**92. Requirements relating to professional indemnity insurance**

- (1) This section applies to an interstate practitioner —
- (a) who establishes an office in this State; and
  - (b) who, if he or she —
    - (i) were a local practitioner; and
    - (ii) did not hold a valid current certificate of insurance as required under section 247,would be refused a practice certificate.



- (2) An interstate practitioner to whom this section applies must not engage in legal practice unless he or she has appropriate indemnity insurance in respect of his or her practice in this State.

Penalty: \$2 500.

- (3) An interstate practitioner to whom this section applies has appropriate indemnity insurance in respect of his or her practice in this State during a period if, in respect of that period, there is in force in respect of the interstate practitioner a certificate of insurance that provides the same or a higher level of indemnity as, and the terms of which are broadly equivalent to, a certificate of insurance that would satisfy the Board if it were issuing a practice certificate to the interstate practitioner.

**93. Requirements relating to Guarantee Fund**

- (1) A notice under section 91 must be accompanied by an amount for application to the Guarantee Fund that is the same as the amount that would have to be paid under section 146 if the person giving the notice were a legal practitioner required to pay the amount under that section.
- (2) An interstate practitioner practising in this State must pay for each of the 4 years following the year in which payment is made under subsection (1) an amount for application to the Guarantee Fund that is the same as the amount that would have to be paid under section 146 if the interstate practitioner were a legal practitioner required to pay the amount under that section.

**Division 3 — Complaints and discipline**

**94. Local practitioners**

- (1) A dispute between a person and a local practitioner in connection with the local practitioner's legal practice in another State may be resolved by conciliation under Part 12 as if the dispute were a complaint.

- (2) A complaint about the conduct of a local practitioner in respect of his or her legal practice in another State may be made and dealt with under Part 12.
- (3) An inquiry in relation to the conduct of a local practitioner in respect of his or her legal practice in another State may be undertaken under Part 12.
- (4) A referral in relation to the conduct of a local practitioner in respect of his or her legal practice in another State may be made to the State Administrative Tribunal and dealt with under Part 12.

*[Section 94 amended by No. 55 of 2004 s. 642.]*

**95. Referral of complaints and disciplinary matters to regulatory authorities in other States**

- (1) If it considers it appropriate to do so, the Complaints Committee may refer a complaint lodged with it in relation to a local practitioner or an interstate practitioner to a regulatory authority of another State, to be dealt with according to the law of that State.
- (2) If it considers it appropriate to do so, the Complaints Committee may request a regulatory authority of another State to investigate the conduct of a local practitioner or an interstate practitioner in accordance with the law of that State.
- (3) After a referral under subsection (1) or a request under subsection (2) has been made, no further action may be taken by the Complaints Committee in relation to the subject matter of the referral or request, other than action required to comply with section 98, unless the regulatory authority of the other State declines to deal with the matter.

**96. Dealing with matters referred by regulatory authorities in other States**

- (1) The Complaints Committee may resolve a dispute between a person and a local practitioner or an interstate practitioner

referred to it by a regulatory authority of another State whether or not the subject matter of the dispute arose in or outside this State as if the dispute were a complaint.

- (2) The Complaints Committee may investigate a complaint against a local practitioner or an interstate practitioner referred to it by a regulatory authority of another State whether or not the subject matter of the complaint allegedly occurred in or outside this State.
- (3) If a regulatory authority of another State requests the Complaints Committee to investigate the conduct of a local practitioner or an interstate practitioner, the Complaints Committee may investigate that conduct whether or not the conduct allegedly occurred in or outside this State.

**97. Furnishing information**

- (1) A regulatory authority of this State must furnish without delay any information about a local practitioner or an interstate practitioner reasonably required by a regulatory authority of another State in connection with actual or possible disciplinary action against the practitioner.
- (2) A regulatory authority may provide the information despite any law of this State relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.
- (4) A regulatory authority of this State must notify the appropriate regulatory authority of each other State of any condition, restriction, limitation or prohibition imposed by it on a local practitioner or an interstate practitioner in respect of his or her legal practice as a result of disciplinary action against the practitioner.

**Division 4 — Miscellaneous**

**98. Local practitioners are subject to interstate regulatory authorities**

- (1) A local practitioner, in engaging in legal practice in this State, must comply with any condition, restriction, limitation or prohibition in respect of his or her practice imposed by a regulatory authority of another State as a result of disciplinary action against the local practitioner.
- (2) A regulatory authority of another State —
  - (a) that has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on, an interstate practice certificate; and
  - (b) to which a local practitioner is subject,  
may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or the imposition of further conditions on, the local practitioner's practice certificate.
- (3) The Board must comply with an order of a regulatory authority of another State under subsection (2).
- (4) A regulatory authority of another State that has jurisdiction to order the removal of the name of a person from the roll in that State that corresponds to the Roll of Practitioners in this State may order that the name of a local practitioner be removed from the Roll of Practitioners.
- (5) If an order is made under subsection (4), the practitioner's name must be removed from the Roll of Practitioners.

**99. Local practitioner receiving trust moneys interstate**

A local practitioner must deal with trust moneys received in the course of engaging in legal practice outside this State (other than trust moneys received in the course of engaging in legal practice in another State in which the local practitioner has established an office) in accordance with Part 10 as if the trust moneys had been received in the course of engaging in legal practice in this State.

**100. Regulatory authority may exercise powers conferred by law of another State**

A regulatory authority of this State may exercise in respect of an interstate practitioner any power conferred on it by a law of another State relating to the regulation of legal practice.

## **Part 8 — Foreign lawyers**

### **Division 1 — Preliminary**

#### **101. Practice of foreign law defined**

- (1) For the purposes of this Act a person engages in the practice of foreign law in this State if the person does any work or transacts any business in this State concerning foreign law of a kind that, if it concerned the law of this State, would constitute engaging in legal practice.
- (2) Engaging in the practice of foreign law may consist of a single act.

#### **102. Who may practise foreign law**

- (1) In this section —  
“**migration restriction**” means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business may be transacted, in Australia by the person.
- (2) A person must not practise foreign law in this State unless —
  - (a) the person is a certificated practitioner;
  - (b) the person is a registered foreign lawyer; or
  - (c) the person is a foreign lawyer who practises foreign law in this State on a temporary basis or who is subject to a migration restriction and who —
    - (i) does not maintain an office for the purpose of practising as a legal practitioner in this State; or
    - (ii) does not have a commercial legal presence in this State.

Penalty: \$10 000.

- (3) A person who contravenes subsection (2) is not entitled to recover any amount in respect of anything done during the course of that contravention and must repay any amount so received to the person from whom it was received.
- (4) If a person does not repay an amount required by subsection (3) to be repaid, the person entitled to be repaid may recover the amount from the person as a debt in a court of competent jurisdiction.

### **Division 2 — Registration of foreign lawyers**

#### **103. Applying for registration**

- (1) A foreign lawyer may apply for registration under this Division by lodging a written notice with the Board.
- (2) The notice must —
  - (a) state the applicant's educational and professional qualifications;
  - (b) state that the applicant is registered to practise law in a place outside Australia by a specified foreign registration authority in that place;
  - (c) state whether the applicant is the subject of any disciplinary proceedings in that place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration and, if so, give details of those proceedings or investigations or that action;
  - (d) state whether the applicant is a party in any pending criminal or civil proceeding that might result in disciplinary action being taken against the applicant and, if so, give details of that proceeding;
  - (e) state that the applicant's registration in that place is not cancelled or currently suspended as a result of disciplinary action;

- (f) state whether or not the applicant is otherwise prohibited from practising law in that place or bound by any undertaking not to practise law in that place, or is subject to any conditions in practising law in that place as a result of criminal, civil or disciplinary proceedings in that place;
  - (g) specify any conditions imposed as a restriction on legal practice by the applicant or any undertaking given by the applicant restricting the applicant's legal practice;
  - (h) contain an address in this State for service of notices and other documents on the applicant;
  - (i) give consent to the making of inquiries of, and the exchange of information with, the applicant's home registration authority regarding the applicant's activities in practising law in that place or otherwise regarding matters relevant to the notice; and
  - (j) contain any other information required by the Board.
- (3) The notice must be accompanied by an original instrument, or a copy of an original instrument, from the applicant's home registration authority —
- (a) verifying the applicant's educational and professional qualifications or, if it is not in a position to do so, stating that fact;
  - (b) verifying the applicant's registration by the authority to practise law in the place concerned and the date of that registration; and
  - (c) stating whether there is any matter known to the authority that, in its opinion, may render the applicant unfit to practise law in the place concerned or to practise foreign law and, if so, giving details of that matter.
- (4) The applicant must certify in the notice that the accompanying instrument is the original or a complete and accurate copy of the original.



- (5) The Board may require the applicant to verify the statements in the notice by statutory declaration or another manner specified by the Board.
- (6) If the accompanying instrument is not in English it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Board.

**104. Registration fee**

- (1) A notice under section 103 is to be accompanied by —
  - (a) any application fee that is payable under the rules; and
  - (b) any registration fee that is payable under the rules.
- (2) The combined amount of the application fee and the registration fee is not to be greater than the maximum fee for a practice certificate.
- (3) If an application for registration is refused, the Board must refund the fees paid under subsection (1)(b).

**105. Registration**

- (1) As soon as practicable after receiving a notice under section 103, the Board must register the applicant as a foreign lawyer if —
  - (a) the Board is satisfied that the applicant is registered to practise law in a place outside Australia;
  - (b) the Board considers that an effective system exists in that place for the regulation of legal practice in that place;
  - (c) the Board considers that the applicant is not, or is not likely to become, subject to any conditions in practising law in that place or any undertakings concerning his or her legal practice in that place that would make it inappropriate to register the applicant; and

- (d) the applicant demonstrates to the satisfaction of the Board an intention to practise foreign law in this State and to establish an office or a commercial legal presence in this State within a reasonable period after the grant of registration.
- (2) Residence or domicile in this State is not a pre-requisite for, or a factor in determining entitlement to, registration as a foreign lawyer.
- (3) The Board must refuse to register a foreign lawyer if the application is made within a period specified by the State Administrative Tribunal under section 186(4).
- (4) In considering whether or not to register an applicant, the Board may rely on —
  - (a) any material provided by or on behalf of the applicant;
  - (b) any further investigations it considers necessary to undertake; and
  - (c) any investigations undertaken by it in relation to other applicants for registration or registered foreign lawyers.

*[Section 105 amended by No. 55 of 2004 s. 642.]*

**106. Conditions may be imposed on registration**

- (1) The Board, by notice in writing, may at any time impose a condition on the registration of a foreign lawyer and may at any time revoke or vary such a condition.
- (2) The Board must not impose a condition on a foreign lawyer in respect of his or her practice of foreign law that is more onerous than it would impose on a certificated practitioner in the same or similar circumstances.

**107. Applicant to be notified of decision**

- (1) The Board must give an applicant written notice of its decision to register the applicant as a foreign lawyer, to refuse registration or to impose conditions on registration.
- (2) If notice is not given to an applicant within 90 days after the applicant lodges a notice in accordance with section 103, the Board is taken to have refused to register the applicant.

**108. Fees to be paid by registered foreign lawyers**

- (1) A registered foreign lawyer must pay an annual registration fee.
- (2) The annual registration fee is not to be greater than the maximum fee for a practice certificate.
- (3) Payment of the annual registration fee must be made on or before a date notified in writing to the registered foreign lawyer by the Board.

**109. Register**

- (1) The Board must keep, in such form as it thinks fit, a register of persons registered as foreign lawyers under this Part.
- (2) The register must be made available for public inspection during office hours.

**110. Suspending registration**

- (1) The Board may suspend a registered foreign lawyer from practising foreign law by giving written notice to the lawyer, if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for suspension, a registered foreign lawyer may be suspended from practising foreign law if —
  - (a) the registered foreign lawyer's registration by the lawyer's home registration authority lapses;

- (b) the registered foreign lawyer's home registration authority suspends or cancels registration of the lawyer as a result of criminal, civil or disciplinary proceedings;
  - (c) the registered foreign lawyer has not established an office to practise foreign law, or a commercial legal presence, in this State within a reasonable period after being registered;
  - (d) the registered foreign lawyer fails to comply with any condition imposed on the registered foreign lawyer's registration under this Act;
  - (e) the registered foreign lawyer fails to comply with any requirement of this Act; or
  - (f) the registered foreign lawyer becomes an insolvent under administration within the meaning of the Corporations Act.
- (3) A registered foreign lawyer is not to be suspended on the ground referred to in subsection (2)(a) if the lawyer demonstrates to the satisfaction of the Board that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer, but from circumstances beyond the lawyer's control.
- (4) Subject to subsection (5), a suspension under this section takes effect 28 days after the day notice is given under subsection (1).
- (5) The Board may determine that a suspension take effect immediately notice is given under subsection (1) if satisfied that immediate suspension is necessary —
- (a) for the protection of the foreign registered lawyer's clients or members of the public generally; or
  - (b) to protect the integrity of the legal profession or the administration of justice.

**111. Effect of suspension**

- (1) A registered foreign lawyer who is suspended under section 110 is deemed not to be registered under this Division during the period of suspension.
- (2) If the Board is satisfied that the grounds for the suspension do not or no longer exist, the Board must lift the suspension immediately by giving written notice to the lawyer.

**112. Cancelling registration**

- (1) The Board, by written notice to a registered foreign lawyer, may cancel the lawyer's registration if it is of the opinion that there is sufficient reason for doing so.
- (2) Without limiting the grounds for cancellation, registration may be cancelled if —
  - (a) the registered foreign lawyer's registration by the lawyer's home registration authority lapses;
  - (b) the registered foreign lawyer's home registration authority cancels registration of the lawyer as a result of criminal, civil or disciplinary proceedings;
  - (c) the registered foreign lawyer has not established an office to practise foreign law, or a commercial presence, in this State within a reasonable period after being registered;
  - (d) the registered foreign lawyer fails to comply with any condition imposed on the lawyer's registration under this Act;
  - (e) the registered foreign lawyer fails to comply with any requirement of this Act; or
  - (f) the registered foreign lawyer becomes an insolvent under administration within the meaning of the Corporations Act.

- (3) Registration is not to be cancelled on the ground referred to in subsection (2)(a) if the registered foreign lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer, but from circumstances beyond the lawyer's control.
- (4) Registration as a foreign lawyer is automatically cancelled if the lawyer —
  - (a) becomes a certificated practitioner; or
  - (b) in writing requests cancellation.
- (5) Cancellation of registration at the request of a registered foreign lawyer —
  - (a) takes effect when the request is received by the Board; and
  - (b) does not prevent any disciplinary proceedings being instituted against the lawyer or affect the continuity of any proceedings already instituted.
- (6) Subject to subsection (7), cancellation of registration under subsection (1) takes effect 28 days after the day notice is given to the registered foreign lawyer.
- (7) The Board may determine that cancellation take effect immediately notice is given under subsection (1) if satisfied that immediate cancellation is necessary —
  - (a) for the protection of the lawyer's clients or members of the public generally; or
  - (b) to protect the integrity of the legal profession or the administration of justice.
- (8) If a lawyer's registration is cancelled, the Board may refund the whole or part of the last annual registration fee paid by the lawyer, as determined by the Board.

### **113. Reviews**

If under this Part the Board —

- (a) refuses to register a foreign lawyer;
- (b) imposes or varies a condition on the registration of a foreign lawyer; or
- (c) suspends or cancels the registration of a foreign lawyer,

the foreign lawyer may apply to the State Administrative Tribunal for a review of the decision.

*[Section 113 amended by No. 55 of 2004 s. 641.]*

### **Division 3 — Practising foreign law**

#### **114. Scope of practice allowed**

- (1) A registered foreign lawyer may only provide any or all of the following legal services —
  - (a) legal services consisting of doing any work, or transacting any business, in this State concerning the law of the place in which the lawyer is registered by his or her home registration authority;
  - (b) legal services (including appearances) in relation to arbitration proceedings in this State of a kind prescribed by the regulations;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
  - (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in this State of a kind prescribed by the regulations;
  - (e) legal services consisting of advice on the effect of the law of this State or another Australian jurisdiction, if —
    - (i) the giving of the advice is necessarily incidental to the practice of foreign law; and

- (ii) the advice is expressly based on advice given to the lawyer by a certificated practitioner who is not his or her employee.
- (2) Nothing in this Act authorises a registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to engage in legal practice.

**115. Form of practice**

A registered foreign lawyer may (subject to any condition imposed under section 106) practise foreign law —

- (a) as a foreign lawyer on the lawyer's own account;
- (b) in partnership with other registered foreign lawyers or with certificated practitioners (or both);
- (c) as a director of an incorporated legal practice or a partner in a multi-disciplinary partnership; or
- (d) as an employee of a certificated practitioner, a firm of legal practitioners or a multi-disciplinary partnership or as an employee or officer of an incorporated legal practice.

**116. Letterhead and other identifying documents**

- (1) In this section —  
“**public document**” includes any business letter, statement of account, invoice, business card and promotional and advertising material.
- (2) A registered foreign lawyer may describe himself or herself and any partnership or body corporate with which the foreign lawyer is associated only in one or more of the ways designated in section 117.
- (3) A registered foreign lawyer must indicate in any public document issued by the lawyer, the fact that the lawyer is a registered foreign lawyer and is restricted to the practice of foreign law.



- (4) Subsection (3) is satisfied if the lawyer includes in the document the words —
- (a) “registered foreign practitioner” or “registered foreign lawyer”; and
  - (b) “entitled to practise foreign law only”.

**117. Designation**

- (1) A registered foreign lawyer may use the following designations —
- (a) the registered foreign lawyer’s own name;
  - (b) the title or any business name that the registered foreign lawyer is authorised or permitted by law to use in the place outside Australia in which the lawyer is registered by his or her home registration authority;
  - (c) subject to subsection (2), the name of any partnership or body corporate outside Australia with which the lawyer is affiliated or associated;
  - (d) if the lawyer is a member of a partnership or body corporate in Australia that includes legal practitioners and registered foreign lawyers, a description of the partnership or body that includes the title used by legal practitioners and registered foreign lawyers (for example, “Solicitors and registered foreign lawyers” or “Australian Solicitors and US Attorneys”).
- (2) A registered foreign lawyer who is a member of a partnership or body corporate outside Australia may use the name of the partnership or body corporate in practising foreign law in this State, or use the name in connection with the practice, only if —
- (a) the registered foreign lawyer has provided the Board with a copy of the partnership agreement or other acceptable evidence that the lawyer is a member of the partnership or body; and

- (b) use of that name complies with any requirements of this State's law concerning the use of business names and will not lead to any confusion with the name of any partnership or incorporated legal practice.
- (3) A registered foreign lawyer who is a member of a partnership or body corporate may use the name of the partnership or body as referred to in this section whether or not other members are registered foreign lawyers.

**118. Employment of certificated practitioners by registered foreign lawyers**

- (1) A registered foreign lawyer may employ one or more certificated practitioners.
- (2) Employment of a certificated practitioner does not entitle a registered foreign lawyer to engage in legal practice in this State.
- (3) Subject to subsection (4), a certificated practitioner employed by a registered foreign lawyer must not provide advice on the law of this State or another Australian jurisdiction to, or for use by, the foreign lawyer or otherwise engage in legal practice in this State in the course of that employment.
- (4) Subsection (3) does not apply to a certificated practitioner employed by a firm, a partner of which is a registered foreign lawyer, if at least one other partner is a certificated practitioner.
- (5) A period of employment by a registered foreign lawyer may not be used by a legal practitioner to satisfy any requirements concerning a period of supervised practice imposed on the legal practitioner under this Act.

**119. Employment of registered foreign lawyers by certificated practitioners etc.**

- (1) A certificated practitioner, firm of legal practitioners, incorporated legal practice or multi-disciplinary practice may employ one or more registered foreign lawyers.
- (2) Employment by a certificated practitioner, firm of legal practitioners, incorporated legal practice or multi-disciplinary practice does not entitle a registered foreign lawyer to engage in legal practice in this State.

**120. Professional indemnity insurance**

A registered foreign lawyer who practises foreign law in this State must maintain professional indemnity insurance on terms and conditions approved by the Board.

**121. Trust accounts**

Parts 10 and 11 apply to a registered foreign lawyer who receives trust moneys as if a reference in those Parts to a legal practitioner were a reference to the registered foreign lawyer.

**122. Exemption may be granted by Board**

The Board may exempt a registered foreign lawyer or class of registered foreign lawyers from compliance with a specified provision, or part of a provision, of this Act that would otherwise apply to the lawyer.

## **Part 9 — Unqualified and prohibited practice**

### **123. Prohibition on unqualified legal practice**

- (1) A person must not engage in legal practice unless the person is a certificated practitioner.  
Penalty: \$10 000.
- (2) Subsection (1) extends to legal services provided by an incorporated legal practice or a multi-disciplinary partnership.
- (3) Nothing in subsection (1) is to be construed as preventing a person from —
  - (a) appearing or defending in person in a court; or
  - [(b) deleted]*
  - (c) appearing for a person before a court, or providing advice or other services, if that appearance or the provision of that advice or service, is expressly authorised by a written law.

*[Section 123 amended by No. 59 of 2004 s. 141.]*

### **124. No liability in certain cases**

- (1) In this section —  
“**work**” means —
  - (a) any work in connection with the administration of law;
  - (b) drawing or preparing any deed, instrument or writing relating to or in any manner dealing with or affecting —
    - (i) real or personal estate or any interest in real or personal estate; or
    - (ii) any proceedings at law, civil or criminal, or in equity.

- (2) Nothing in section 123 is to be construed as affecting —
- (a) a public officer doing work in the discharge of his or her official duty;
  - (b) a person doing work —
    - (i) under the supervision of a certificated practitioner, as a paid employee of a certificated practitioner, a firm of legal practitioners, an incorporated legal practice or a multi-disciplinary partnership; or
    - (ii) as an articled clerk of a certificated practitioner;
  - or
  - (c) a person drawing or preparing a transfer under the *Transfer of Land Act 1893*.
- (3) It is a defence to a charge under section 123(1) in respect of the doing of work to show that the person who did the work has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration for the work so done (the **“unpaid work”**).
- (4) Subsection (3) does not apply if the person directly or indirectly receives, expects, or is promised, pay or remuneration for or in respect of other work or services relating to, connected with or arising out of the same transaction or subject matter as that to which the unpaid work relates.

**125. Offence by corporation**

- (1) Subject to subsections (2), (4) and (5), a corporation must not provide legal services, or hold itself out, advertise or represent itself as providing, legal services.  
Penalty: \$25 000.
- (2) Subsection (1) does not apply to or in respect of —
- (a) an incorporated legal practice that has at least one legal practice director; or

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- (b) a corporation that does not receive any form of, or have an expectation or promise of, pay or remuneration for the legal services it provides.
- (3) An incorporated legal practice does not contravene subsection (1) because it ceases to have any legal practitioner directors if —
  - (a) a new legal practitioner director is appointed within the time prescribed by section 53(1); or
  - (b) an employee or other person is appointed under section 53(3) to exercise the functions of a legal practitioner director.
- (4) A corporation may be exempted by the regulations from all or part of subsection (1).
- (5) A corporation may provide legal services if the only legal services that the corporation provides are legal services concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party (“**in-house legal services**”) but that corporation must not hold itself out, advertise or represent itself as providing legal services.  
Penalty: \$25 000.

**126. Certificated practitioner acting as agent for unqualified person**

- (1) A certificated practitioner must not act as an agent for a person other than a certificated practitioner or an incorporated legal practice in or concerning any matter which under this Act may only be done for profit by a certificated practitioner.  
Penalty: \$2 500.
- (2) A certificated practitioner must not allow —
  - (a) the name of that practitioner;
  - (b) the name of an incorporated legal practice in which that practitioner is an officer or employee; or

- (c) the name of a firm in which that practitioner is a partner or employee,

to be made use of, in any manner whatever, in or concerning any matter to which subsection (1) applies upon the account of any person other than a certificated practitioner.

Penalty: \$2 500.

- (3) An incorporated legal practice must not allow the name of that practice to be made use of, in any manner whatever, in or concerning any matter to which subsection (1) applies upon the account of any person other than a certificated practitioner.

Penalty: \$10 000.

**127. Allowing unqualified person to act as practitioner**

A certificated practitioner must not do or allow to be done any act which enables or tends to enable a person other than a certificated practitioner to appear, act, or practise in any respect as a certificated practitioner in any matter or proceeding, civil or criminal.

Penalty: \$10 000.

**128. Unqualified person making false representation to be practitioner**

A natural person who is not a legal practitioner must not —

- (a) purport or pretend to be a legal practitioner; or  
(b) advertise or use any name, title, addition, or description implying or tending to the belief that the person is a legal practitioner or is recognised at law as a legal practitioner.

Penalty: \$2 500.

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**129. Practitioner making false representation to be certificated**

A legal practitioner who is not a certificated practitioner must not —

- (a) purport or pretend to be a certificated practitioner; or
- (b) advertise or use any name, title, addition, or description implying or tending to the belief that the person is a certificated practitioner or is recognised at law as a certificated practitioner.

Penalty: \$2 500.

**130. Sharing receipts**

- (1) A legal practitioner may share with any other person the receipts of a business ordinarily conducted by a legal practitioner, except to the extent (if any) that the regulations or rules otherwise provide.
- (2) Nothing in this Act prevents —
  - (a) a legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services; or
  - (b) a legal practitioner partner, or a legal practitioner who is an employee, of a multi-disciplinary partnership from sharing receipts arising from the provision of legal services with a person or persons who are not legal practitioners.
- (3) Subsections (1) and (2) do not extend to the sharing of receipts in contravention of section 66, 86 or 133.

**131. Employment or engagement of practitioner without practice certificate**

Except as provided by the rules, a certificated practitioner or incorporated legal practice must not employ or engage a legal practitioner who is not a certificated practitioner to engage in legal practice.



Penalty: \$10 000.

**132. Prohibition on employment or engagement of certain non-legal persons**

- (1) This section applies to a person who —
  - (a) is not a legal practitioner and is or was an employee of a legal practitioner; or
  - (b) has engaged in unqualified practice.
- (2) The State Administrative Tribunal may, on the application of the Board, make an order prohibiting (without approval of the Board under section 133) any legal practitioner from employing or paying in connection with his or her practice, a specified person to whom this section applies if —
  - (a) the Tribunal is satisfied that the person is not a fit and proper person to be employed or paid in connection with a legal practitioner's practice; or
  - (b) the Tribunal is satisfied that the person has been guilty of conduct which, if the person were a legal practitioner, would have constituted unsatisfactory conduct.
- (3) An order under this section may be revoked by the State Administrative Tribunal on application by the person against whom the order was made.
- (4) The death of a legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was an employee of the legal practitioner.

*[Section 132 amended by No. 55 of 2004 s. 613 and 643.]*

**133. Associates who are prohibited persons**

- (1) In this section —  
“**associate**”, in relation to a legal practitioner, means a person who —

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- (a) is employed or engaged by the legal practitioner;
  - (b) is a partner of the legal practitioner;
  - (c) shares the receipts of the legal practitioner's business;  
or
  - (d) is otherwise paid,  
in connection with the legal practitioner's practice.
- (2) Subject to subsection (3), a legal practitioner must not have as an associate a person who is a prohibited person.  
Penalty: \$25 000.
- (3) Subsections (2) and (5) do not apply to a person approved to be an associate by the Board.
- (4) An approval under subsection (3) may be subject to specified limitations or conditions.
- (5) A prohibited person must not seek to become an associate of a legal practitioner unless the person first informs the legal practitioner that the person is a prohibited person.  
Penalty: \$10 000.

**134. Part does not affect operation of *Fair Trading Act 1987***

Nothing in this Part affects the operation of the *Fair Trading Act 1987*.

**135. Review**

A person aggrieved by —

- (a) the refusal of the Board to approve a person to be an associate under section 133; or
- (b) the limitations or conditions imposed by the Board on an approval under section 133,

may apply to the State Administrative Tribunal for a review of the decision.

*[Section 135 amended by No. 55 of 2004 s. 641.]*

## **Part 10 — Trust accounts**

### **136. Term used in this Part**

- (1) In this Part —
- “legal practitioner”** includes —
- (a) a former legal practitioner;
  - (b) a firm of legal practitioners;
  - (c) except in relation to anything done or omitted to be done by the legal practitioner, the personal representative of a deceased legal practitioner.
- (2) Sections 63, 85, 90 and 121 apply the provisions of this Part to incorporated legal practices, multi-disciplinary partnerships, interstate practitioners and registered foreign lawyers respectively.
- (3) A reference in this Part to trust moneys received by a legal practitioner includes moneys received in the course of legal practice —
- (a) by a partner, officer, employee or agent of the legal practitioner; or
  - (b) by a person with whom the legal practitioner shares receipts, other than as principal and agent.

### **137. Trust moneys to be paid to trust account**

- (1) Every legal practitioner practising in this State who receives trust moneys must —
- (a) deposit the moneys to the credit of a trust account, whether a general account or an account maintained for one or other of the persons from whom, or for whose use or benefit the moneys are received, specifically; and
  - (b) retain the moneys in the account until —

- (i) they are dealt with as directed by the person from whom or for whose use or benefit they are received; or
  - (ii) they are otherwise dealt with according to law.
- (2) Subsection (1) does not apply when a legal practitioner deals with the trust moneys as directed by the person from whom, or for whose use or benefit, the trust moneys are received.
- (3) Trust moneys —
  - (a) are not available for the satisfaction of any debt due to, or any claim or demand made by, a person other than the person for whose use or benefit they are received; and
  - (b) must not be attached or taken in execution at the instance of any other person.
- (4) Nothing in subsection (3) affects a lien or valid claim that a legal practitioner may have over or against trust moneys under the control of that legal practitioner.

**138. Application of trust moneys to payment of costs**

A legal practitioner under whose control trust moneys are held may apply the trust moneys towards the payment of the costs and disbursements charged against the person for whose use or benefit the moneys are held if —

- (a) that application is authorised by the client under the terms on which the moneys are so held; and
- (b) the legal practitioner within 14 days after so applying the moneys causes to be served upon that person a bill of costs in respect of those costs and disbursements showing that trust moneys have been applied by the legal practitioner towards the payment of those costs and disbursements.

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**139. Banks not to be concerned as to the application of, or to have recourse against, trust moneys**

- (1) A bank with which a legal practitioner maintains a trust account is not obliged to inquire into the application of moneys deposited to the credit of that account and is in no way liable in respect of any misapplication of those moneys.
- (2) Except as regards the operation of the account, a bank has no right of recourse against moneys standing to the credit of an account that is designated as, or is evident as being, a trust account.

**140. Legal practitioners to maintain books of account**

A legal practitioner must maintain books of account of all trust moneys received, deposited and disbursed or otherwise dealt with by that legal practitioner, in such a manner as to disclose the true position as regards those moneys and to enable the books to be readily and conveniently audited.

**141. Receipt of cheques**

- (1) In this section —  
**“direction in writing”**, in relation to a cheque received by a legal practitioner, means a letter, authority or other writing from the person from whom the cheque is received, or from the person for whose use or benefit the cheque is received, clearly indicating the manner in which the cheque is to be dealt with.
- (2) Where a legal practitioner receives a cheque from a person for the use or benefit of a person other than the legal practitioner —
  - (a) the legal practitioner must cause an adequate record of the receipt and disposition of the cheque to be made;
  - (b) if the cheque is made payable to the legal practitioner, the legal practitioner must not deal with the cheque

- unless the legal practitioner has a direction in writing;  
and
- (c) the legal practitioner must retain that record and, where applicable, that direction for at least 7 years.
- (3) Subsection (2) does not apply in relation to a cheque that is paid into a trust account.
  - (4) Despite subsection (2)(b), if the legal practitioner does not have a direction in writing and it is necessary to deal with the cheque without delay, the legal practitioner may deal with the cheque but before doing so must send notice in writing of the intention to deal with the cheque to the person from whom the cheque is received or to the person for whose use or benefit the cheque is received.
  - (5) A reference in subsection (2) to the receipt of a cheque by a legal practitioner includes the receipt of a cheque in the course of legal practice —
    - (a) by a partner, officer, employee or agent of the legal practitioner; or
    - (b) by a person with whom the legal practitioner shares receipts other than as principal and agent.

**142. Board may appoint accountant to examine books of account**

- (1) The Board may, on its own initiative or at the request of the Legal Contribution Trust, appoint and authorise an accountant within the meaning of section 147(1) to examine the books of account and records of a legal practitioner relating to any trust accounts and to furnish the Board with a confidential report on the matters and things disclosed by the examination.
- (2) If an examination is authorised under this section at the request of the Legal Contribution Trust, the Board may require that body to pay part or all of the costs of the examination and the Legal Contribution Trust must comply with that requirement.

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- (3) If the report of the examiner discloses that the legal practitioner to whom it relates —
- (a) has failed to keep books of account in accordance with section 140; or
  - (b) has contravened a provision of this or any other Act relating to trust accounts or trust moneys,

the Board may order the legal practitioner to pay the costs, or any part of the costs, of the examination and the legal practitioner must comply with that order.

**143. Examiner may require production of books and documents**

- (1) The examiner may require —
- (a) the legal practitioner to whom the appointment relates or, in the event of the absence of that legal practitioner, any of the practitioner's employees, officers or agents to produce to the examiner any records relating to trust moneys or trust accounts that, in the opinion of the examiner, may be reasonably necessary for the purposes of the examination; and
  - (b) the manager or principal officer of a bank in which the legal practitioner to whom the appointment relates has deposited money, despite any law or rule of law to the contrary, to —
    - (i) disclose every account of the legal practitioner that, in the opinion of the examiner, may be relevant to the examination; and
    - (ii) permit the making of a copy or extracts of any such account.
- (2) The examiner must, if requested, produce his or her instrument of appointment to a person required to do anything under subsection (1).
- (3) If a person required to do anything under subsection (1), without lawful excuse, proof of which lies on that person —



- (a) refuses or fails to do the thing required;
- (b) hinders or obstructs the examiner in the exercise of a power under this Act; or
- (c) hinders or obstructs the examiner or any person employed by the examiner in the performance of a duty under this Act,

the person commits an offence.

Penalty: \$5 000.

**144. Limitation on disclosure of matters revealed in the course of examinations**

A person who is, or is employed by, an examiner must not, except in the course of the examiner's report to the Board, or any inquiry into the report, disclose or communicate to any person any matter of which the person is informed or that comes to the knowledge of that person in the course of an examination made under this Part.

**145. Action on examiner's report**

- (1) Upon receipt of the examiner's report, the Board must consider it and may, where the circumstances so require, proceed to inquire into the matters revealed by the report.
- (2) The provisions of section 41(2) apply to an inquiry under subsection (1) as if the inquiry were made under Part 5.
- (3) The Board may, whether or not it has inquired into the matters revealed by the report, request the Complaints Committee to inquire into the matter under Part 12.
- (4) Where it appears to the Board from the report of the examiner that an accountant or auditor has been guilty of neglect, breach of duty or any improper conduct, the Board may communicate that fact to the professional association of which the accountant or auditor is a member.

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- (5) The Board or a member or employee of the Board must not communicate to any person any matter appearing in the examiner's report, except —
  - (a) in the course of any action taken by the Board as the result of an inquiry conducted under subsection (1);
  - (b) to the Attorney General or a public officer;
  - (c) to the Legal Contribution Trust; or
  - (d) as otherwise provided by this section.
- (6) A person to whom any matter appearing in the examiner's report is communicated under this section must not, except in the course of legal proceedings, communicate the matter to any other person without the authority of the Board.

**146. Legal practitioners to make payments towards Guarantee Fund**

- (1) Subject to subsection (4), every legal practitioner who, on 30 June in any year has held a practice certificate for 2 years or longer must, if and when paying the fee for any succeeding practice certificate, pay to the Board, for application to the Guarantee Fund, such amount not exceeding \$20 as may be prescribed by the rules.
- (2) The Board must not issue a practice certificate to a legal practitioner obliged to make a payment under subsection (1) until the payment is made.
- (3) The Board must pay to the Legal Contribution Trust all moneys received by it under subsection (1).
- (4) A legal practitioner who has made 5 payments, or has paid an amount equal to 5 payments as then prescribed, under subsection (1), is exempt from the requirement of making any further payment under that subsection.

**147. Accountant's certificate**

- (1) In this section —  
“**accountant**” means —
  - (a) a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Act; or
  - (b) a person approved for the purposes of section 72(2) of the *Real Estate and Business Agents Act 1978*.
- (2) Every legal practitioner who is required to maintain a trust account must, when applying for a practice certificate, give to the Board a certificate from an accountant to the effect that the legal practitioner's books of account relating to that trust account have been kept in accordance with the rules, if any, relating to the keeping of trust accounts.
- (3) Every legal practitioner director of an incorporated legal practice that is required to maintain a trust account must, when applying for a practice certificate, deliver to the Board from an accountant a certificate to the effect that the incorporated legal practice's books of account relating to its trust account have been kept in accordance with the rules, if any, relating to the keeping of trust accounts.
- (4) If a satisfactory certificate is not delivered to the Board under this section, the Board in its discretion may withhold the issue of the practice certificate.
- (5) Every legal practitioner who claims not to be required to maintain a trust account must prove that fact to the satisfaction of the Board, and pending such satisfaction the Board in its discretion may withhold the issue of the practice certificate.
- (6) A person who ceases to hold a practice certificate, and a person administering the estate of a deceased legal practitioner, must —
  - (a) deliver to the Board a certificate from an accountant which fulfils the requirements of subsection (2) in

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respect of any period during which the legal practitioner held a practice certificate and in respect of which no accountant's certificate has been received by the Board;  
or

- (b) satisfy the Board that the legal practitioner was not required to maintain a trust account during the relevant period.

Penalty: \$2 500.

## **Part 11 — Supervisors and managers**

### **148. Terms used in this Part**

In this Part, unless the contrary intention appears —

**“Board’s appointee”** means a certificated practitioner appointed by the Board under section 154;

**“legal practitioner”** includes a registered foreign lawyer;

**“practice”** means, as the case requires, the practice of —

- (a) a legal practitioner in respect of whose bank account or accounts an order, other than an order for revocation, has been made under section 149 or 150;
- (b) a deceased legal practitioner or former incorporated legal practice in respect of whose trust account an order has been made under section 150;
- (c) a legal practitioner in respect of whom an inquiry is authorised under section 154;
- (d) a legal practitioner in respect of whom, or in respect of whose trust account, an order has been made under section 156;

**“supervising solicitor”** means, as the case requires, a certificated practitioner appointed by the Board —

- (a) under section 151; or
- (b) under powers conferred on the Board by section 157(a),  
to conduct a practice.

### **149. Restraint on bank accounts**

- (1) If the State Administrative Tribunal, on the application of the Board, is satisfied —
  - (a) that there are reasonable grounds for believing —
    - (i) that there is, or may be, a deficiency in a trust account of a legal practitioner; or

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- (ii) that there has been undue delay on the part of a legal practitioner in properly paying or applying trust moneys to or on behalf of a person or persons for whose use or benefit they have been received;

or

- (b) that a legal practitioner is suspended from practising, the Tribunal may make an order directed to that legal practitioner and to the bankers of that legal practitioner and their respective employees, officers and agents restraining dealings in all of the bank accounts, or any specified bank accounts, of the legal practitioner.
- (2) An order under subsection (1) may be made subject to such terms and conditions as the Tribunal thinks fit.
  - (3) The State Administrative Tribunal may, on the application of the Board, the legal practitioner, or any person interested, by further order revoke or vary an order made under subsection (1).
  - (4) The legal practitioner and the bankers of that practitioner and their respective employees, officers and agents must give effect to an order made under this section according to its tenor.

*[Section 149 amended by No. 55 of 2004 s. 614 and 645.]*

**150. Control of trust moneys by Legal Contribution Trust**

- (1) If the State Administrative Tribunal is satisfied, on the application of the Board, that —
  - (a) there is a deficiency in a trust account of a legal practitioner;
  - (b) a sole legal practitioner has died; or
  - (c) an incorporated legal practice has been deregistered or dissolved,the Tribunal may order that the Legal Contribution Trust —

- (d) take possession of the moneys constituting the balance of the account, or constituting the trust account of the deceased legal practitioner or former incorporated legal practice;
  - (e) deposit the moneys in a separate account in the name of the Legal Contribution Trust; and
  - (f) deal with those moneys according to law.
- (2) If an order is made under subsection (1) the legal practitioner and the bankers of that legal practitioner and their respective employees, officers and agents, or the former employees, officers and agents of the deceased legal practitioner or former incorporated legal practice, and the employees, officers and agents of those former bankers, must permit the Legal Contribution Trust to give effect to the order according to its tenor.

*[Section 150 amended by No. 55 of 2004 s. 645.]*

#### **151. Special powers of the Board**

- (1) If an order other than an order for revocation is made under section 149, 150 or 182, the Board, while the order is in force —
- (a) may appoint a certificated practitioner or registered foreign lawyer (if the order is made in respect of the practice of a registered foreign lawyer) to be supervising solicitor of the practice;
  - (b) may authorise the Legal Contribution Trust to advance money, out of the Guarantee Fund, to the supervising solicitor.
- (2) An appointment under subsection (1)(a) may be made on such terms and conditions as to remuneration and indemnity as the Board thinks fit.
- (3) While an order referred to in subsection (1) is in force —
- (a) the supervising solicitor may enforce the recovery of profit costs earned by the legal practitioner;

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- (b) the legal practitioner remains liable, and the supervising solicitor is not liable, for debts, liabilities and professional obligations incurred, or arising out of circumstances occurring, prior to the date of the order; and
  - (c) despite paragraph (b), the supervising solicitor may, with the consent of the Legal Contribution Trust, pay the debts or liabilities or meet the professional obligations referred to in paragraph (b) where that is necessary or convenient for the carrying on of the practice and those sums are to be taken to form part of the proper expenses of the supervising solicitor.
- (4) The Board may determine —
- (a) what, if any, proportion of any profit costs recovered on account of the legal practitioner, or on account of the personal representative of the deceased practitioner, are payable to that person; and
  - (b) what proportion is to be paid to the Legal Contribution Trust as a sum properly incurred by the Legal Contribution Trust towards —
    - (i) expenses of the Legal Contribution Trust arising under section 150;
    - (ii) the expenses and remuneration of the supervising solicitor; and
    - (iii) the reimbursement of advances made out of the Guarantee Fund and not otherwise recovered.
- (5) A sum determined by the Board to be payable under subsection (4)(b) in so far as not paid to the Legal Contribution Trust by the supervising solicitor may be recovered by the Legal Contribution Trust from the legal practitioner or the estate of the deceased legal practitioner (as the case may require) —
- (a) from any profit costs; or
  - (b) otherwise,



as a debt determined to have been properly incurred and to be due to the Legal Contribution Trust.

- (6) Persons acting judicially are to take judicial notice of a determination under subsection (5).

**152. Functions of supervising solicitor**

- (1) A supervising solicitor of a practice must —
- (a) conduct the practice for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the practice and, where necessary, for the purpose of disposing of, or dealing with, documents relevant to those matters; and
  - (b) in the case of the practice of a deceased legal practitioner, carry on the practice until it can otherwise be dealt with according to law.
- (2) A supervising solicitor of a practice may require —
- (a) the legal practitioner to whom the appointment in respect of the practice relates;
  - (b) any employees, officers or agents of the legal practitioner; and
  - (c) in the case of the practice of a deceased legal practitioner, the personal representative or any of the former employees or agents of the deceased legal practitioner,

to produce to the supervising solicitor any records relating to the practice that, in the opinion of the supervising solicitor, may be reasonably necessary for the purposes of conducting the practice.

- (3) Despite any rule of law to the contrary, the supervising solicitor of a practice may require a bank in which the legal practitioner or deceased legal practitioner to whom the appointment in respect of the practice relates has or had an account, to —

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- (a) disclose every account of that legal practitioner that, in the opinion of the supervising solicitor, may be relevant to the conduct of the practice; and
  - (b) permit the making of a copy or extracts of any such account.
- (4) The supervising solicitor of a practice may —
- (a) enter any premises of the legal practitioner to whom the appointment in respect of the practice relates, or, in the case of the practice of a deceased legal practitioner, former premises; and
  - (b) take possession of all records or other things relating to the practice that, in the opinion of the supervising solicitor, may be relevant to or necessary for the conduct of the practice.
- (5) A power under subsection (2), (3) or (4) must not be exercised before the supervising solicitor has, if so required, produced the instrument by which the appointment in respect of the practice was made.

**153. Payment of moneys out of separate account**

If an order is made under section 150 —

- (a) the Legal Contribution Trust may, on the certificate of the supervising solicitor, pay to the supervising solicitor or as may be directed in the certificate, out of the moneys deposited in the separate account under the order, such amount or amounts as are specified in the certificate, without enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and
- (b) the State Administrative Tribunal may, on the application of the Board, the Legal Contribution Trust, or any person interested, give such directions as the Tribunal thinks fit for the payment by the Legal

Contribution Trust of any part of the moneys deposited  
in the separate account under the order.

*[Section 153 amended by No. 55 of 2004 s. 645.]*

**154. Power of Board to appoint legal practitioner to inquire into  
and report on practice**

- (1) The Board may at any time appoint in writing —
  - (a) a certificated practitioner; or
  - (b) in the case of an inquiry into a registered foreign lawyer,  
a certificated practitioner or a registered foreign lawyer,to inquire whether or not a legal practitioner is, for any reason,  
incapable of properly conducting the practice carried on by that  
legal practitioner, and to report on that inquiry to the Board.
- (2) The Board's appointee may require —
  - (a) the legal practitioner to whom the inquiry relates; and
  - (b) any employee, officer or agent of the legal practitioner,to produce to the Board's appointee any records relating to the  
practice that, in the opinion of the Board's appointee, may be  
reasonably necessary for the purposes of the inquiry.
- (3) Despite any rule of law to the contrary, the Board's appointee  
may require a bank in which the legal practitioner to whom the  
inquiry relates has an account to —
  - (a) disclose every account of that legal practitioner that, in  
the opinion of the Board's appointee, may be relevant to  
the inquiry; and
  - (b) permit the making of a copy or extracts of any such  
account.
- (4) A power under subsection (2) or (3) must not be exercised  
before the Board's appointee has, if so required, produced the  
instrument by which the appointment in respect of the  
practitioner was made.

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- (5) A person who, being required to do anything under subsection (2) or (3), without lawful excuse, proof of which lies on that person —
- (a) refuses or fails to do the thing required; or
  - (b) hinders or obstructs the Board's appointee in the exercise of a power under this section,

commits an offence.

Penalty: \$5 000.

**155. Board may apply to State Administrative Tribunal for an order**

The Board must consider a report received from the Board's appointee and may where the circumstances so require apply to the State Administrative Tribunal for an order under section 156.

*[Section 155 amended by No. 55 of 2004 s. 645(1).]*

**156. Power of State Administrative Tribunal**

- (1) If the State Administrative Tribunal, on the application of the Board, is satisfied that there are reasonable grounds for believing that a legal practitioner is, for any reason, incapable of properly conducting the practice carried on by that legal practitioner, the Tribunal may —
- (a) suspend the legal practitioner from practising for the period specified in the order or, in the case of a registered foreign lawyer, suspend the registration of the registered foreign lawyer for a period specified in the order;
  - (b) restrain the legal practitioner and the bankers of that practitioner and their respective employees, officers and agents from dealing in all or any of the bank accounts of the legal practitioner, subject to such terms and conditions as the Tribunal thinks fit;

- (c) authorise the Board to appoint a supervising solicitor;
  - (d) authorise the Board to suspend the legal practitioner from practising until further notice or, in the case of a registered foreign lawyer, to suspend the registration of the registered foreign lawyer until further notice;
  - (e) make an order containing any other provision of a kind referred to in section 187 and such further or other orders as the Tribunal thinks fit.
- (2) Section 153 applies to an order made under subsection (1)(b) as if the order were made under section 150.
- (3) If the State Administrative Tribunal authorises the Board to appoint a supervising solicitor under subsection (1) the Tribunal may —
- (a) order that the supervising solicitor is empowered to withdraw moneys from any bank account of the legal practitioner; and
  - (b) make an order like that which may be made under section 150.
- (4) The State Administrative Tribunal may, on the application of the Board, the legal practitioner, or any person interested, by further order revoke or vary an order made under subsection (1) or (3).
- (5) The Board must give a legal practitioner notice of any application made by the Board under subsection (1) or (4) in respect of the legal practitioner.
- (6) A legal practitioner who makes an application under subsection (4) must give the Board notice of the application.
- (7) An interested person who makes an application under subsection (4) in respect of a legal practitioner must give the Board and the legal practitioner notice of the application.

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- (8) The legal practitioner, the bankers of that legal practitioner, and their employees, officers and agents must give effect to an order made under this section according to its tenor.

*[Section 156 amended by No. 55 of 2004 s. 615 and 645.]*

**157. Effect of certain orders**

If an order is made under section 156(1) —

- (a) the Board has, with such modifications as are necessary, like powers to those conferred by section 151; and
- (b) a supervising solicitor appointed pursuant to the order has like powers and duties to those conferred and imposed on a supervising solicitor by section 152, including carrying on the practice until it can be otherwise dealt with according to law.

**158. Offence**

If a person, without lawful excuse, proof of which lies on that person —

- (a) refuses or fails to do a thing required of that person by a supervising solicitor under powers conferred on the supervising solicitor under this Act;
- (b) hinders or obstructs the supervising solicitor in the exercise of a power under this Act; or
- (c) hinders or obstructs the supervising solicitor, or any person employed by the supervising solicitor, in the performance of a duty under this Act,

the person commits an offence.

Penalty: \$5 000.

## **Part 12 — Complaints and discipline**

### **Division 1 — General**

**159. Term used in this Part**

In this Part, unless the contrary intention appears —

**“legal practitioner”** includes any person to whom this Part applies.

**160. Application**

(1) This Part applies to —

- (a) any person who is a legal practitioner, including a legal practitioner who does not hold a practice certificate;
- (b) a person who was a legal practitioner when the unsatisfactory conduct the subject of a complaint allegedly occurred but who is no longer a legal practitioner;
- (c) a deceased legal practitioner;
- (d) a person who is entitled under a law of the Commonwealth to perform in the State the functions of a barrister or solicitor;
- (e) a person who is an interstate practitioner if the person engages in legal practice in this State; and
- (f) a person who was an interstate practitioner engaged in legal practice in this State when the unsatisfactory conduct the subject of a complaint occurred but who is no longer an interstate practitioner.

(2) For the purposes of the application of this Part to an interstate practitioner, a reference in this Part to a practice certificate includes a reference to an interstate practice certificate.

(3) This Part also applies —

- (a) to a registered foreign lawyer; and

- (b) to a person who was a registered foreign lawyer engaged in the practice of foreign law when the alleged unsatisfactory conduct occurred but who is no longer a registered foreign lawyer,

as if a reference in this Part to a legal practitioner were a reference to a registered foreign lawyer and a reference to engaging in legal practice or practising law were a reference to engaging in the practice of foreign law or practising foreign law.

**161. Jurisdiction of Supreme Court not affected**

Nothing in this Part affects the jurisdiction of the Supreme Court with respect to legal practitioners.

**Division 2 — Disciplinary bodies**

**Subdivision 1 — Complaints Committee**

**162. Complaints Committee established**

A committee called the Legal Practitioners Complaints Committee is established.

**163. Members of the Complaints Committee**

- (1) The Complaints Committee consists of the following members —
  - (a) a chairperson, and not less than 6 other legal practitioners, appointed by the Board from amongst its members from time to time;
  - (b) not less than 2 representatives of the community, none of whom is to be a person who is or has been a legal practitioner.
- (2) The Attorney General is to appoint the members as representatives of the community after consultation with the Minister responsible for consumer affairs.



- (3) The number of persons to be appointed to the Complaints Committee as representatives of the community must not exceed one quarter of the total membership of the Complaints Committee for the time being.

**164. Functions of the Complaints Committee**

- (1) The functions of the Complaints Committee are —
- (a) to supervise the conduct of legal practitioners and the practice of the law;
  - (b) to receive complaints under section 175;
  - (c) to inquire into such complaints and, where the committee so determines whether for cause or not and whether the Complaints Committee has received a complaint or not, any —
    - (i) conduct on the part of a legal practitioner; or
    - (ii) matters relating to legal practice,for the purpose of determining whether it may constitute unsatisfactory conduct;
  - (d) if the Complaints Committee considers it appropriate to do so —
    - (i) to conciliate between a legal practitioner and a complainant or other person affected by the conduct of the legal practitioner; or
    - (ii) to refer a matter for conciliation by the Law Society or another appropriate person or body;
  - (e) to exercise summary professional disciplinary jurisdiction in accordance with section 177;
  - (f) if the Complaints Committee considers it appropriate to do so, and whether or not it has conducted an inquiry, to institute professional disciplinary proceedings against a legal practitioner before the State Administrative Tribunal;

- (g) to supervise and direct the Law Complaints Officer in the performance of the functions of that officer; and
  - (h) to comment upon, and make recommendations in respect of, this Act and the rules insofar as they may affect the functions of the Complaints Committee.
- (2) In addition to the functions set out in subsection (1) a member appointed under section 163(2) may report independently, as an individual to the Attorney General on any aspect of—
- (a) an alleged complaint;
  - (b) an inquiry as to disciplinary matters under this Part;
  - (c) the rules as they relate to disciplinary matters or the conduct of practice under this Act; or
  - (d) the activities of the Law Complaints Officer or the Complaints Committee.

*[Section 164 amended by No. 55 of 2004 s. 616.]*

**165. Constitution and procedure of Complaints Committee**

- (1) Schedule 2 Division 1 has effect with respect to the constitution of the Complaints Committee.
- (2) Schedule 2 Division 2 has effect with respect to the procedure of the Complaints Committee.

**166. Reports**

- (1) The chairperson of the Complaints Committee must on or before 31 December in each year cause an annual report in relation to the activities of the Complaints Committee in the year ending on the preceding 30 June to be made and submitted to the Attorney General.
- (2) The Attorney General must within 14 days after the day on which a copy of a report is received by the Attorney General cause a copy of the report to be laid before each House of Parliament or dealt with under section 251.

- (3) In addition to the annual report under subsection (1), the Complaints Committee must report —
- (a) at such other times and in such manner as may be requested, to the Attorney General; and
  - (b) at such times and in such manner as may be requested, to the Board,

on matters relating to its functions and the operation of the provisions of this Act regulating the conduct and disciplining of legal practitioners.

- (4) The Complaints Committee may make a report under subsection (3) of its own volition.
- (5) Where a report is to be made under subsection (3) any member of the Complaints Committee may request that the report include such matters as that member considers appropriate, and effect must be given to the request.

**167. The Law Complaints Officer**

- (1) An office of Law Complaints Officer is established.
- (2) The Board must appoint to the office of Law Complaints Officer a legal practitioner with experience in the conduct of a legal practice.
- (3) Subject to the directions of the Complaints Committee, the Law Complaints Officer may —
- (a) exercise the functions of the Complaints Committee, other than the exercise of summary professional disciplinary jurisdiction; and
  - (b) from time to time on behalf of the Complaints Committee and in its stead, carry out its duties and exercise its powers in relation to those functions.
- (4) The Law Complaints Officer may appear at any investigation, inquiry or hearing under this Part either in person or by counsel.

*[Subdivision 2 (s. 168-174) repealed by No. 55 of 2004 s. 617.]*

**Division 3 — Complaints about legal practitioners**

**175. Making of complaints**

- (1) A complaint to the Complaints Committee as to the conduct of a legal practitioner, whether occurring before or after his or her admission as a legal practitioner, may be made under this section.
- (2) A complaint may be made by —
  - (a) the Attorney General;
  - (b) the Board;
  - (c) the Executive Director of the Law Society in respect of matters where the making of the complaint has been authorised by a resolution of the Council of that Society;
  - (d) any legal practitioner; or
  - (e) any other person who has or had a direct personal interest in the matters alleged in the complaint.
- (3) A complaint —
  - (a) should normally be in writing, but the Complaints Committee or the Law Complaints Officer may formulate in writing any oral complaint received;
  - (b) must set out briefly the allegations upon which the complaint is grounded;
  - (c) may be made direct to the Complaints Committee or through the Law Complaints Officer;
  - (d) may be made —
    - (i) by the complainant personally;
    - (ii) by a legal practitioner with the authority of the complainant; or
    - (iii) where a person who might have been a complainant has died or is otherwise unable to act, by or on behalf of that person by a personal

representative or any relative or other  
representative of that person;

and

- (e) may be made even though the complainant may bring proceedings in any court with respect to the same matter.

#### **Division 4 — Conciliation and disciplinary proceedings — Complaints Committee**

##### **176. Conciliation**

- (1) If the Complaints Committee believes that a complaint might be resolved by conciliation, the Committee may —
  - (a) cause conferences of the persons concerned, or their representatives, to be arranged and to be presided over by a person acceptable to the Committee;
  - (b) give such advice and make such recommendations to the persons concerned as may establish or maintain adequate communication between them and encourage them to exchange or divulge information likely to assist in the reaching of an agreement; and
  - (c) cause the persons concerned, or any of them, either separately or together, to appear before the Law Complaints Officer or the Complaints Committee.
- (2) If the Complaints Committee, with the consent of each of the parties to the settlement, by order gives effect to a settlement negotiated under this section —
  - (a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties;
  - (b) the order may include any provision that might have been ordered by the State Administrative Tribunal; and
  - (c) the order of the Committee may be enforced as if it had been an order of the State Administrative Tribunal.

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- (3) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of any conciliation proceedings under this section —
- (a) must not be used in any subsequent consideration of the complaint by the Committee or the State Administrative Tribunal; and
  - (b) unless that person waives the right to object, is not admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

*[Section 176 amended by No. 55 of 2004 s. 618 and 642.]*

**177. Summary professional disciplinary jurisdiction**

- (1) The Complaints Committee has, and subject to the consent of the legal practitioner concerned may exercise, jurisdiction summarily to find, after an inquiry under this Part, that a legal practitioner is guilty of unsatisfactory conduct.
- (2) If the Complaints Committee makes a finding under subsection (1) the Complaints Committee may —
  - (a) order the legal practitioner to pay to the Board a fine not exceeding \$2 500;
  - (b) reprimand the legal practitioner;
  - (c) order that the legal practitioner seek and implement, within a period specified in the order, advice from the Board, or from a person specified in the order, in relation to the management and conduct of the practice, or the specific part or aspect of the practice, specified in the order;
  - (d) order that the legal practitioner, within such limits (if any) as may be fixed by the rules, reduce or refund any fees, charges or disbursements in respect of business to which the inquiry relates; or

- (e) order that the legal practitioner pay all or any specific part of the costs of either or both the complainant or the Complaints Committee in relation to the inquiry.
- (3) The Complaints Committee may take action under one or more of the paragraphs of subsection (2).
- (4) An order may be made under subsection (2)(e) even where no finding is made under subsection (1) against the legal practitioner, if the Complaints Committee is of the opinion that the conduct of the legal practitioner gave reasonable cause for the inquiry.
- (5) An order made by the Complaints Committee may be enforced in the same manner as an order of the State Administrative Tribunal made under this Act.

*[Section 177 amended by No. 55 of 2004 s. 643.]*

**178. Finding where legal practitioner convicted of an offence**

- (1) Without limiting its jurisdiction under section 177, the Complaints Committee may make a finding that a legal practitioner is guilty of unsatisfactory conduct on it being shown that —
  - (a) the legal practitioner has been convicted of an offence by or before a court exercising jurisdiction in any place, whether in Australia or elsewhere; and
  - (b) the conviction occurred within the period of 10 years before the commencement of the proceedings under this Act in which that finding may be made.
- (2) In any matter to which subsection (1) relates the Complaints Committee —
  - (a) is not required to inquire as to the propriety of the conviction; and

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- (b) may inform itself as to the circumstances giving rise to the conviction from the transcripts or other records of —
  - (i) the court which convicted the legal practitioner; or
  - (ii) any court which dealt with the conviction on appeal,and may make such inquiries or requests as are necessary to obtain those transcripts or records.
- (3) Where an appeal against the conviction of the legal practitioner is pending the Complaints Committee may defer further consideration of the consequences of the finding that the legal practitioner is guilty of unsatisfactory conduct until the determination of the appeal.
- (4) Where in any proceedings to which subsection (1) relates a finding (the “**adverse finding**”) is made founded upon a conviction that is subsequently quashed, set aside or changed the Complaints Committee must reconsider the adverse finding and —
  - (a) if the conviction was changed, may change the nature of the adverse finding; and
  - (b) if the conviction was quashed or set aside, must quash or set aside the adverse finding and any order made consequential on that finding.
- (5) Despite subsection (4), the Complaints Committee may continue the original inquiry relating to the matter.

**179. Disciplinary action against foreign lawyer**

- (1) In determining whether disciplinary action should be taken against a registered foreign lawyer, the Complaints Committee may take into account whether the conduct of the registered foreign lawyer was consistent with the standards of professional conduct of the legal profession in the lawyer’s foreign place of registration.



- (2) If the Complaints Committee finds that a registered foreign lawyer is guilty of unsatisfactory conduct it has, in addition to its powers under section 177, the power to make an order imposing any conditions of a kind referred to in section 106 on the registered foreign lawyer.

**180. Referral by Committee to State Administrative Tribunal**

- (1) If the Complaints Committee determines that a matter should be heard by the State Administrative Tribunal, the Committee must refer the matter to the Tribunal.
- (2) The Committee is not limited under subsection (1) by the terms of any complaint it has received or by the subject matter of any inquiry it has conducted.

*[Section 180 amended by No. 55 of 2004 s. 619, 642 and 646.]*

**181. Complainant may refer complaint to State Administrative Tribunal**

- (1) If the Complaints Committee, after inquiry, determines that a complaint should neither be dealt with summarily under section 177 nor referred to the State Administrative Tribunal, the Committee must cause the Law Complaints Officer to give, in writing to the complainant and to the legal practitioner concerned, notice of that determination together with short particulars of the reasons for the determination.

*[(2) repealed]*

*[Section 181 amended by No. 55 of 2004 s. 620 and 642.]*

**182. Interim restrictions on practice**

- (1) The Complaints Committee may apply to the State Administrative Tribunal for an order suspending a legal practitioner from practice, or restricting the entitlement of a legal practitioner to practise, pending —

- (a) inquiry, and determination or referral of a matter, by the Complaints Committee;
  - (b) the hearing of a matter by the Tribunal; or
  - (c) an appeal against a decision of the Tribunal.
- (2) On an application under subsection (1), the State Administrative Tribunal may, in addition to or instead of any other order it may make, make an order under section 149 as though the application were an application by the Board.

*[Section 182 amended by No. 55 of 2004 s. 643 and 646.]*

**Division 5 — Disciplinary proceedings before State Administrative Tribunal**

*[Heading amended by No. 55 of 2004 s. 621.]*

*[183, 184. Repealed by No. 55 of 2004 s. 622.]*

**185. Powers of the State Administrative Tribunal in relation to individual legal practitioner**

- (1) The State Administrative Tribunal has jurisdiction to make a finding that a legal practitioner is guilty of unsatisfactory conduct.
- (2) On making a finding in respect of a legal practitioner under subsection (1) the State Administrative Tribunal may —
  - (a) make and transmit a report on the finding to the Supreme Court (full bench); or
  - (b) deal with the legal practitioner as specified in section 187.
- (3) If the State Administrative Tribunal transmits a report in respect of a legal practitioner to the Supreme Court (full bench) under subsection (2)(a), the Tribunal may, pending the determination of the Supreme Court (full bench) —
  - (a) suspend the legal practitioner from practice; or

- (b) restrict the entitlement of the legal practitioner to practise.
- (4) Where appropriate, a report forwarded under subsection (2)(a) may include a record of the evidence taken at the hearing.

*[Section 185 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 642 and 646.]*

**186. Disciplinary action against foreign lawyer**

- (1) In determining whether a registered foreign lawyer is guilty of unsatisfactory conduct, the State Administrative Tribunal may take into account whether the conduct of the registered foreign lawyer was consistent with the standards of professional conduct of the legal profession in the lawyer's foreign place of registration.
- (2) If the State Administrative Tribunal finds that a registered foreign lawyer is guilty of unsatisfactory conduct it has, in addition to its powers under section 185, the power to make an order —
  - (a) imposing any conditions of a kind referred to in section 106 on the registered foreign lawyer;
  - (b) suspending the registered foreign lawyer from engaging in the practice of foreign law for the period specified in the order; or
  - (c) cancelling the registered foreign lawyer's registration.
- (3) A registered foreign lawyer who is suspended by the State Administrative Tribunal is taken not to be registered under Part 8 during the period of suspension.
- (4) An order made under subsection (2)(c) may specify a period during which the registered foreign lawyer may not apply to be registered again.

*[Section 186 amended by No. 55 of 2004 s. 642.]*

**187. Orders of the Tribunal**

- (1) The State Administrative Tribunal may, under section 185(2)(b), order any one or more of the following —
- (a) the suspension of the legal practitioner from practice —
    - (i) for a period, not exceeding 2 years, specified in the order; or
    - (ii) until the Board is satisfied that any injury or mental or physical illness, or any problem caused or affected by drugs or alcohol, which the Tribunal has determined to have substantially and adversely affected the professional competence or reliability of the legal practitioner, has been overcome;
  - (b) the imposition of conditions or restrictions on the right of the legal practitioner to practise for a period, not exceeding 2 years, specified in the order;
  - (c) that the legal practitioner take advice in relation to the management and conduct of the practice, whether from the Board or a person named and approved by the Board or the Law Society;
  - (d) the payment by the legal practitioner to the Board of a fine not exceeding \$25 000;
  - (e) the reprimand of the legal practitioner;
  - (f) the legal practitioner, or the firm or incorporated legal practice of which the legal practitioner is a partner, employee or officer —
    - (i) if the client agrees, to undertake further work for the client at no cost or at an amount for costs and charges to be determined by the Board;
    - (ii) to pay, wholly or in part, for further work to be done for the client by another legal practitioner, firm or incorporated legal practice;

- (iii) to reduce or refund the amount of any fees, charges or disbursements payable or paid in respect of work done for the client, to such an extent as is ordered by the Tribunal or as is to be determined by the Board;
  - (g) where it appears to the Tribunal that a sum certain in money is owing or payable by the legal practitioner, the payment by the legal practitioner of that sum to the Board for the benefit of the complainant or that person;
  - (h) if the conduct of the legal practitioner has directly caused a person to suffer pecuniary loss, the payment by the legal practitioner to the Board for the benefit of that person of compensation in accordance with subsection (2);
  - (i) on application to the Tribunal being made for that purpose by the legal practitioner, the Complaints Committee or the complainant, a variation of any order, or of the conditions applicable to any order, previously imposed.
- (2) Compensation for the purposes of subsection (1)(h) is to be —
  - (a) an amount assessed by the Tribunal, being not more than \$25 000 or the amount prescribed by the regulations, whichever is the greater; or
  - (b) if the parties to the proceedings before the Tribunal agree, such greater amount as is agreed.
- (3) The Tribunal must not make an order under subsection (1)(h) in respect of compensation referred to in subsection (2) unless the person who suffered the pecuniary loss executes and lodges with the Tribunal a document in a form satisfactory to the Tribunal renouncing irrevocably any right to recover from the legal practitioner damages by way of civil proceedings for the pecuniary loss in respect of which the order is to be made.

- (4) If the Board is directed or authorised under subsection (1)(f) to make a determination, for the purposes of that determination the Board may —
- (a) exercise its powers of inquiry under section 41(2); and
  - (b) in default may refer the matter back to the Tribunal.

*[Section 187 amended by No. 55 of 2004 s. 642 and 646.]*

**188. Other powers of Tribunal in relation to insolvent, incapable and unfit practitioners**

- (1) In this section a reference to clients of a legal practitioner includes a reference to —
- (a) potential clients of a legal practitioner; and
  - (b) in the case of a legal practitioner director of an incorporated legal practice, clients and potential clients of the incorporated legal practice.
- (2) If an application for a hearing and determination is made by the Board to the State Administrative Tribunal under section 39(2) in respect of a legal practitioner who is an applicant for, or holder of, a practice certificate, the Tribunal has jurisdiction to make a finding that it would —
- (a) be in the public interest or in the interest of the clients of the legal practitioner; or
  - (b) protect the integrity of the legal profession or the administration of justice,
- if the application for the practice certificate were refused, the practice certificate were suspended or cancelled, or conditions were imposed on the practice certificate.
- (3) If an application for a hearing and determination is made by the Board to the State Administrative Tribunal under section 39(3) in respect of an applicant for, or holder of, a practice certificate, the Tribunal has jurisdiction to make a finding that —

- (a) the applicant or holder is an unfit or incapable practitioner within the meaning of section 39; and
  - (b) it would —
    - (i) be in the public interest or in the interest of the legal practitioner's clients; or
    - (ii) protect the integrity of the legal profession or the administration of justice,if the application for the practice certificate were refused, the practice certificate were suspended or cancelled, or conditions were imposed on the practice certificate.
- (4) If an application has been made under section 39(2) or 39(3) in respect of a legal practitioner, the State Administrative Tribunal may make an interim order suspending the practice certificate of the legal practitioner pending the hearing and determination of the application by the Tribunal.
- (5) Before acting under subsection (3) the State Administrative Tribunal may require the applicant or holder to be medically examined by a medical practitioner nominated by the Tribunal.
- (6) A refusal or failure by a person to comply with a requirement for medical examination under subsection (5) may be accepted by the State Administrative Tribunal as adverse evidence of the person's ability to practise.
- (7) In making a finding under subsection (3) in respect of a person's ability to practise the State Administrative Tribunal is to take account of —
- (a) the person's past training, qualifications and experience relevant to such practice;
  - (b) if the person is already practising, the person's performance in such practice; and
  - (c) all other relevant factors that it is reasonable to take into account.

- (8) The State Administrative Tribunal may deal with an application under this section notwithstanding that the Complaints Committee or the Tribunal is already dealing with a complaint or referral including elements of the first-mentioned referral.
- (9) On making a finding under subsection (2) or (3) the State Administrative Tribunal may, by order —
  - (a) refuse the application for the practice certificate;
  - (b) suspend the practice certificate;
  - (c) cancel the practice certificate; or
  - (d) order the Board to issue the practice certificate subject to conditions specified by the Tribunal.

*[Section 188 amended by No. 55 of 2004 s. 642 and 646.]*

**189. Powers of Tribunal in relation to legal practitioner director where practice has not complied with insurance obligations**

- (1) If an application for a hearing and determination is made by the Board to the State Administrative Tribunal under section 60(3), the Tribunal has jurisdiction to make a finding that an incorporated legal practice has not complied with its obligation under section 60(1).
- (2) On making a finding under subsection (1) the State Administrative Tribunal may order the suspension of a legal practitioner director of the incorporated legal practice from practice.

*[Section 189 amended by No. 55 of 2004 s. 642 and 646.]*

**190. Finding where legal practitioner convicted of an offence**

- (1) Without limiting its jurisdiction under section 185, the State Administrative Tribunal may make a finding that a legal practitioner is guilty of unsatisfactory conduct on it being shown that —



- (a) the legal practitioner has been convicted of an offence by or before a court exercising jurisdiction in any place, whether in Australia or elsewhere; and
  - (b) the conviction occurred within the period of 10 years before the commencement of the proceedings under this Act in which that finding may be made.
- (2) In any matter to which subsection (1) relates the State Administrative Tribunal —
- (a) is not required to inquire as to the propriety of the conviction; and
  - (b) may inform itself as to the circumstances giving rise to the conviction from the transcripts or other records of —
    - (i) the court which convicted the legal practitioner; or
    - (ii) any court which dealt with the conviction on appeal,and may make such inquiries or requests as are necessary to obtain those transcripts or records.
- (3) Where an appeal against the conviction of the legal practitioner is pending the State Administrative Tribunal may —
- (a) defer further consideration of the consequences of the finding that the legal practitioner has been guilty of unsatisfactory conduct; and
  - (b) suspend the legal practitioner from practice, or restrict the entitlement of the legal practitioner to practise,
- until the determination of the appeal.
- (4) Where in any proceedings to which subsection (1) relates a finding (the “**adverse finding**”) is made founded upon a conviction that is subsequently quashed, set aside or changed —
- (a) the State Administrative Tribunal must reconsider the adverse finding and —

- (i) if the conviction was changed, may change the nature of the adverse finding; and
    - (ii) if the conviction was quashed or set aside, must quash or set aside the adverse finding and any order made consequential on that finding;
  - and
  - (b) where the adverse finding was reported to the Supreme Court (full bench) under section 185(2)(a), the State Administrative Tribunal must make and transmit a further report to the Supreme Court (full bench).
- (5) On receiving a report under subsection (4)(b) the Supreme Court (full bench) —
- (a) must reconsider the matter to which those reports relate;
  - (b) may vary, quash or set aside any order previously made; and
  - (c) may substitute another order.
- (6) Despite subsection (5), the State Administrative Tribunal may resume the hearing of any reference relating to the matter.

*[Section 190 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 642.]*

*[191-193. Repealed by No. 55 of 2004 s. 623.]*

**194. Court to punish**

- (1) If the State Administrative Tribunal under section 185(2)(a) or 190(4)(b) makes and transmits a report in respect of a legal practitioner to the Supreme Court (full bench), the report is to be taken to be conclusive as to all facts and findings mentioned or contained in the report.
- (2) The Supreme Court (full bench) may, upon motion and upon reading the report, and without any further evidence, fine, suspend from practice, or strike off the Roll of Practitioners the

legal practitioner or make any order which the State Administrative Tribunal might make under section 185(2)(b).

- (3) The Supreme Court (full bench) may make such order as to the payment of costs by the legal practitioner as the Court thinks fit.

*[Section 194 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 624 and 642.]*

### **Division 6 — Practice and procedure**

*[Heading amended by No. 55 of 2004 s. 625.]*

#### **195. Summons**

- (1) Every summons issued under this Part has the same effect as a *subpoena ad test* or *duces tecum*, as the case may be, issued by the Supreme Court for the attendance of a witness for examination or production of documents in a civil action.
- (2) Obedience to, or non-observance of, a summons issued under this Part may be enforced and punished by a judge in chambers in the same manner as in the case of obedience to, or non-observance of, a subpoena issued by the Supreme Court.

#### **196. Representation**

- (1) Before the Complaints Committee —
- (a) a complainant;
  - (b) a person making a complaint on the authority of or on behalf of the complainant; or
  - (c) any legal practitioner,

may be represented by a legal practitioner or, subject to the approval of the chairperson, a representative who is not a legal practitioner.

- (2) A representative who is not a legal practitioner is not entitled to charge for that service but may be reimbursed for out of pocket expenses.

*[Section 196 amended by No. 55 of 2004 s. 626.]*

**197. Hearings generally not to be public**

- (1) Subject to this section, an inquiry or hearing before the Complaints Committee must not be held in public.
- (2) The Complaints Committee in a particular case may determine —
  - (a) that the whole or part of proceedings before it under this Part are to be conducted in public; or
  - (b) who, other than persons or their representative authorised under this Act, may be present before it at any stage of the proceedings.
- (3) If the Complaints Committee is satisfied that it is appropriate to do so, it may order that —
  - (a) any evidence given before it;
  - (b) any information, or any record or the contents of any record, produced or referred to before it; or
  - (c) any information that might enable a person who has appeared before it to be identified,

must not be published by any means, or must not be published in such manner and to such persons as the order specifies, or otherwise disclosed or made available to any person or any specified person or class of persons.

- (4) A person who contravenes an order made under this section may be dealt with as though for a contempt of the Supreme Court.

*[Section 197 amended by No. 55 of 2004 s. 627.]*

**198. Powers of disciplinary bodies**

- (1) For the purposes of this Part, the Complaints Committee or the Law Complaints Officer exercising the power of that Committee may —

- (a) take evidence on oath or affirmation;
- (b) summon any person to appear, or to give evidence, or to produce records or any other thing;
- (c) by notice require any legal practitioner, firm of legal practitioners, multi-disciplinary partnership or incorporated legal practice to provide written information, by a date specified in the notice, and to verify the information by statutory declaration;
- (d) by notice require any legal practitioner, firm of legal practitioners, multi-disciplinary partnership or incorporated legal practice to produce a record referred to in the notice, by a date specified in the notice;
- (e) by notice require any legal practitioner, firm of legal practitioners, multi-disciplinary partnership or incorporated legal practice to allow any member of the Complaints Committee, the Law Complaints Officer or a person nominated in the notice —
  - (i) to examine the conduct of any legal practice, or to inspect any record or other thing, specified, either particularly or by appropriate general description, in that notice; and
  - (ii) for that purpose, to enter any premises where there is reasonable cause to believe that the practice is conducted or the record or other thing may be kept;
- (f) examine the records, including any files, accounts (including the personal accounts of any legal practitioner or other person concerned in or sharing in the receipts of that practice), and audit records and reports, relating to the legal practice;
- (g) confer with, and make inquiry of, any existing or former client, accountant or auditor of a legal practice;

- (h) in the case of a record kept otherwise than in a readily legible form, require a person to produce the record in a legible form or to provide an explanation of the record;
  - (i) make copies of, or take extracts from, any record;
  - (j) take possession of and retain any record or other thing for such reasonable period as may be necessary for the purposes of this Act; and
  - (k) if any record or other thing required to be inspected under this section is not produced or delivered, require the person to whom that requirement was made known to state, to the best of the knowledge and belief of that person, where it is.
- (2) For the purposes of subsection (1)(a) a member of the Complaints Committee or the Law Complaints Officer may administer an oath or affirmation.
- (3) A person or body must endeavour to ensure that, so far as is practicable, the confidentiality of any record, and of any other thing, is not prejudiced by the exercise by it of a power under subsection (1).
- (4) A legal practitioner, firm of practitioners, multi-disciplinary partnership or incorporated legal practice is not excused from complying with a notice under subsection (1)(c) or (d) on the ground that providing the information or producing the document may tend to incriminate the practitioner, firm or practice or render the person, firm or practice liable to a penalty.
- (5) Information or a document provided or produced in compliance with a notice under subsection (1)(c) or (d) is not admissible in evidence in any proceedings against the person for an offence except —
- (a) an offence against this Act;
  - (b) any other offence in relation to keeping of trust accounts or the receipt of trust money; or
  - (c) perjury.

- (6) If a person, without lawful excuse, proof of which lies on that person —
- (a) refuses or fails to do a thing required of the person under subsection (1); or
  - (b) hinders or obstructs a person exercising a power under subsection (1),

that person commits an offence.

Penalty: \$5 000.

*[Section 198 amended by No. 55 of 2004 s. 628.]*

**199. Possession of records and other things**

- (1) The Law Complaints Officer may on behalf of the Complaints Committee take possession of, and retain or secure the retention of, any record or other thing required to be produced or delivered to the Complaints Committee under this Part.
- (2) On possession of any record or other thing being taken under this Part, the Law Complaints Officer must cause notice of the taking to be given to the person from whom it was received.
- (3) Where any person from whom production of any record or other thing is required under this Part claims a lien upon it, the production of it is without prejudice to the lien.

*[Section 199 amended by No. 55 of 2004 s. 629.]*

**200. Evidentiary material**

In the course of any proceedings under this Part any evidence given by affidavit or statutory declaration may be received and admitted.

**201. Claims of privilege**

- (1) If, in any inquiry or proceedings under this Part, a person properly claims privilege in respect of any information to be disclosed to the Complaints Committee —

- (a) the Complaints Committee may require that person to disclose the information; and
  - (b) if the information is then disclosed, no question or answer relating to that information may be used in any other proceedings or be reported.
- (2) A legal practitioner, firm of practitioners, multi-disciplinary partnership or incorporated legal practice is not excused from complying with a notice under section 198(1)(c) or (d) on the ground of legal professional privilege or any other duty of confidence.
- (3) Compliance with a notice under section 198(1)(c) or (d) does not operate as a waiver of legal professional privilege.

*[Section 201 amended by No. 55 of 2004 s. 630.]*

#### **Division 7 — Miscellaneous**

**202. Application for review**

Any person aggrieved by a finding or order made by the Complaints Committee under section 177 may apply to the State Administrative Tribunal for a review of the finding or order.

*[Section 202 inserted by No. 55 of 2004 s. 631.]*

**203. Effect of striking off or suspension**

- (1) A legal practitioner struck off the Roll of Practitioners or suspended from practice is not entitled —
- (a) to engage in legal practice until the legal practitioner has been re-admitted, or the period of suspension has elapsed, as the case requires;
  - (b) without limiting paragraph (a) to represent any person in a statutory tribunal or a court.



- (2) A legal practitioner struck off the Roll of Practitioners or suspended from practice must not hold or obtain the office of executor or trustee of any will or trust without the leave of the Supreme Court.
- (3) Nothing in subsection (2) —
  - (a) operates in respect of a person holding the office of executor pursuant to probate granted by the Court before the coming into operation of section 203 of the *Legal Practice Act 2003*; or
  - (b) affects or invalidates any act by a person purporting to act as the holder of an office of executor or trustee when prohibited from so acting under subsection (2).

**204. Legal practitioners struck off or suspended in other jurisdictions**

- (1) In this section —
  - “**outside this State**” includes outside Australia;
  - “**regulatory authority**” means a body, in a jurisdiction outside this State, which regulates in that jurisdiction the professional conduct of persons in respect of functions similar in kind to the functions of a legal practitioner.
- (2) A reference in subsection (3) to “striking off the roll” or “suspension from practice”, in relation to a jurisdiction outside this State, includes a reference to any consequence of —
  - (a) judicial proceedings; or
  - (b) proceedings before a regulatory authority outside this State,

which, however it may be described in that jurisdiction, is substantially similar in effect to striking off or suspension.

- (3) A legal practitioner admitted to practice in this State who was, in any other jurisdiction, struck off the roll or suspended from practice —
- (a) is not while so struck off or suspended entitled to engage in legal practice in this State, whether or not as an employee, unless the Board has consented to his or her doing so; and
  - (b) is liable upon the report of the State Administrative Tribunal to the Supreme Court (full bench) to be struck off the Roll of Practitioners, or suspended from practice, as the case may require.
- (4) The Board may exercise its powers of inquiry under section 41(2) for the purposes of determining whether to give its consent under subsection (3)(a) and may give that consent subject to conditions.
- (5) The Complaints Committee may inquire of a court or regulatory authority outside the State as to —
- (a) whether any determination, conviction or finding was made; and
  - (b) the circumstances giving rise to, and the consequences of, any determination, conviction, or finding that was made,
- in respect of a person referred to in subsection (3).
- (6) The Complaints Committee may refer any matter to which this section relates to the State Administrative Tribunal, which has jurisdiction to make a finding, and power to make and transmit to the Supreme Court (full bench) a report, with respect to the matter.
- (7) For the purposes of subsection (6) the provisions of this Part apply as though being struck off the roll or suspended from practice in another jurisdiction constituted unsatisfactory conduct.

- (8) Nothing in this section affects the operation of section 98.

*[Section 204 amended by No. 45 of 2004 s. 37; No. 55 of 2004 s. 642.]*

**205. Protection of persons**

A person who, in relation to any investigation, inquiry or hearing under this Part before the Complaints Committee —

- (a) performs any function under this Part; or
- (b) is otherwise concerned in proceedings under this Part,

has, in respect of any such function or concern, the same protection and immunity as a member or an officer of the Supreme Court, or a witness or a party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

*[Section 205 amended by No. 55 of 2004 s. 632.]*

## **Part 13 — Costs**

### **Division 1 — The Legal Costs Committee and determination of remuneration**

#### **206. Terms used in this Division**

In this Division —

**“chairperson”** means the chairperson of the Legal Costs Committee;

**“contentious business”** means business carried out as a legal practitioner in or for the purposes of any action, suit or proceedings before a court, but does not include the administration of estates and trusts;

**“costs”** includes fees, charges and disbursements;

**“court”** includes an arbitrator, tribunal or person having power to require the production of documents or the answering of questions;

**“member”** means a member of the Legal Costs Committee and includes the chairperson and a deputy member;

**“non-contentious business”** means any business carried out in the capacity of a legal practitioner which is not contentious business.

#### **207. Legal Costs Committee established**

- (1) A committee called the Legal Costs Committee is established.
- (2) The Legal Costs Committee is to consist of the following members —
  - (a) a chairperson who is to be —
    - (i) a judge of the Supreme Court or the District Court; or
    - (ii) a legal practitioner of not less than 8 years' standing;

- (b) 2 legal practitioners in private practice nominated under section 208; and
  - (c) 3 persons who are not legal practitioners, at least one of whom is to be an accountant in private practice who is an associate or fellow of the Institute of Chartered Accountants or the Australian Society of Accountants.
- (3) The members are to be appointed by the Governor.

**208. Nominations**

- (1) If a nomination for appointment under section 207(2)(b) or Schedule 4 Division 1 clause 3 is required to be made, the Attorney General must, by written notice —
- (a) request the Law Society to submit to the Attorney General a list containing the names of not fewer than twice the number of practitioners in private practice to be appointed; and
  - (b) specify a time (being not less than 28 days after receipt of the notice) within which the list must be submitted.
- (2) If the Law Society has been requested by notice under subsection (1) to submit a list, the Attorney General —
- (a) must, if the list is submitted within the time specified in the notice, nominate for appointment one or more, as the case requires, of the practitioners whose names appear on the list; and
  - (b) may, if the panel is not submitted within the time specified in the notice, nominate for appointment a practitioner or practitioners as the Attorney General thinks fit.

**209. Constitution and procedure**

- (1) Schedule 4 Division 1 has effect with respect to the constitution of the Legal Costs Committee.

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- (2) Schedule 4 Division 2 has effect with respect to the procedure of the Legal Costs Committee.

**210. Legal costs determinations**

- (1) In this section —

**“remuneration”** includes the reimbursement of expenses properly incurred in the course of, or in connection with, business carried out by a legal practitioner for a client, whether incurred —

- (a) by the practitioner on behalf of the client; or  
(b) by the client.

- (2) The Legal Costs Committee may make legal costs determinations regulating the remuneration of legal practitioners in respect of —

- (a) non-contentious business carried out by practitioners;  
(b) contentious business carried out by practitioners in or for the purposes of proceedings before —  
(i) the Supreme Court;  
(ii) the District Court;  
(iii) the Magistrates Court;  
(iv) a court of summary jurisdiction;  
[v] *deleted*  
(vi) any other court declared by the Attorney General under subsection (5) to be a court to which this section applies.

- (2a) A declaration is not to be made under subsection (5) in respect of a dispute resolution authority within the meaning of the *Workers' Compensation and Injury Management Act 1981*.

- (3) If —

- (a) another written law refers to a determination under this section or a legal costs determination within the meaning of this Act; and
- (b) the determination is for purposes of the written law that are, or include, purposes other than the purposes of subsection (2) (the “**other purposes**”),

the Legal Costs Committee may make a determination for the other purposes.

- (4) A legal costs determination may be amended or revoked by a subsequent determination.
- (5) For the purposes of subsection (2)(b)(vi), the Attorney General may, by order published in the *Gazette*, declare any court to be a court in respect of which the Legal Costs Committee may make a legal costs determination under this section and may, by subsequent order so published, vary or revoke that order.
- (6) A provision of a legal costs determination may authorise any matter or thing to be determined, applied or regulated by a specified person or body.

*[Section 210 amended by No. 42 of 2004 s. 163; No. 59 of 2004 s. 141.]*

## **211. Review of determinations**

- (1) The Legal Costs Committee must review each legal costs determination in force at least once in the period of 2 years after it was made and in each period of 2 years after that period.
- (2) The Attorney General may at any time direct the Legal Costs Committee to review a legal costs determination in force and the Legal Costs Committee must carry out that review as soon as practicable after being so directed.

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**212. Inquiries by the Legal Costs Committee**

- (1) Before making or reviewing a legal costs determination the Legal Costs Committee must —
  - (a) give public notice under section 213 of its intention to make or review the determination;
  - (b) if the determination is to be made or reviewed in respect of proceedings before a court, consult with that court; and
  - (c) make such other inquiries as it considers necessary to facilitate the making or review of the determination.
- (2) Subject to subsection (1) the Legal Costs Committee —
  - (a) may inform itself as it thinks fit;
  - (b) must take into consideration submissions received by it in relation to the remuneration of legal practitioners, whether or not those submissions were received in response to a notice under section 213;
  - (c) is not required to conduct any proceedings in a formal manner; and
  - (d) is not bound by the rules of evidence.

**213. Notice and submissions in respect of determination**

- (1) The Legal Costs Committee must —
  - (a) give written notice of its intention to make or review a legal costs determination to the Law Society; and
  - (b) publish notice of its intention in 2 issues of a daily newspaper circulating throughout this State.
- (2) A notice under subsection (1) must —
  - (a) state that submissions on the intended legal costs determination or review may be made to the Legal Costs Committee;



- (b) specify the manner in which the submissions may be made; and
- (c) specify the period within which the submission may be made (being a period of not less than 30 days after the day on which the notice is last published under subsection (1)(b)).

**214. Report and publication of legal costs determinations**

- (1) As soon as practicable after making a legal costs determination the Legal Costs Committee must report to the Attorney General —
  - (a) the determination; and
  - (b) the reasons for its decisions in respect of the determination.
- (2) The report is to be published in the *Gazette* as soon as practicable after it is received by the Attorney General.
- (3) A legal costs determination takes effect on and from —
  - (a) the day on which the report of the determination is published under subsection (2); or
  - (b) if a later day is specified in the report, the later day.
- (4) Judicial notice is to be taken of —
  - (a) a legal costs determination made under section 210 and published in a report in the *Gazette*; and
  - (b) the day of publication of the report.

**215. Effect of determination**

- (1) Subject to sections 221 and 241 of this Act and section 14 of the *Legal Aid Commission Act 1976* —
  - (a) the taxation of bills of costs of legal practitioners, as between legal practitioner and client or party and party; and

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- (b) any other aspect of the remuneration of legal practitioners the subject of a determination,

is regulated by a legal costs determination in force under section 210.

- (2) Despite subsection (1), if a court or judicial officer is of the opinion that the amount of costs allowable in respect of a matter under a legal costs determination is inadequate because of the unusual difficulty, complexity or importance of the matter, the court or officer may do all or any of the following —
  - (a) order the payment of costs above those fixed by the determination;
  - (b) fix higher limits of costs than those fixed in the determination;
  - (c) remove limits on costs fixed in the determination;
  - (d) make any order or give any direction for the purposes of enabling costs above those in the determination to be ordered or taxed.
- (3) Nothing in subsection (1) is to be construed as limiting the power of a court, a judicial officer or a taxing officer of a court to determine in any particular case before that court or judicial officer the amount of costs allowed.
- (4) If a legal costs determination is in force under section 210 in respect of any business referred to in section 210(2), any other subsidiary legislation fixing or purporting to regulate the remuneration of legal practitioners in respect of that kind of business is of no force or effect.

**216. Reports**

The Legal Costs Committee may investigate and report and make recommendations to the Attorney General on any matter relating to —

- (a) bills of costs generally and, in particular, the desirability of the use of scales in the calculation and fixing of bills of costs;
- (b) the basis on which costs are or should be calculated and fixed; and
- (c) any other aspect of the remuneration of legal practitioners.

**217. Use of staff and facilities of departments**

- (1) The Legal Costs Committee may by arrangement with the relevant employer make use of the services of any officer or employee —
  - (a) in the department of the Public Service principally assisting the Attorney General in the administration of this Act; or
  - (b) in an agency or instrumentality established or constituted under any written law administered by the Attorney General.
- (2) The Legal Costs Committee may by arrangement with —
  - (a) the department referred to in subsection (1); or
  - (b) any agency or instrumentality referred to in that subsection,make use of any facilities of the department, agency or instrumentality.
- (3) The Legal Costs Committee must not enter into an arrangement under subsection (1) or (2) without the prior approval of the Attorney General.
- (4) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

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**218. Funds**

- (1) The funds available for the purpose of enabling the Legal Costs Committee to perform its functions consist of —
  - (a) moneys from time to time appropriated by Parliament;
  - (b) other moneys lawfully made available to the Legal Costs Committee.
- (2) An account called the Legal Costs Committee Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,to which the funds referred to in subsection (1) are to be credited.
- (3) The Account is to be charged with —
  - (a) the remuneration and allowances payable under Schedule 4 Division 1 clause 6; and
  - (b) all other expenditure lawfully incurred by the Legal Costs Committee in the performance of its functions.

*[Section 218 amended by No. 77 of 2006 s. 17.]*

**219. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Legal Costs Committee and its operations.

*[Section 219 amended by No. 77 of 2006 s. 17.]*

## **Division 2 — Entitlement to remuneration**

### **220. Term used in this Division**

In this Division —

**“legal practitioner”** includes an incorporated legal practice in connection with legal services provided by the practice.

### **221. Costs agreement**

- (1) A legal practitioner may make a written agreement (a **“costs agreement”**) with any client of the legal practitioner in respect of the amount and manner of payment for the whole or any part or parts of any past or future services, fees, charges or disbursements in respect of business done or to be done by the legal practitioner, either by a gross sum or otherwise.
- (2) A costs agreement excludes any future claim of the legal practitioner in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the costs agreement is made, except services, fees, charges or disbursements excepted by the costs agreement.
- (3) A client who enters into a costs agreement is not entitled to recover from any other person, under any order, judgment, or agreement for the payment of costs, any costs which are the subject of that agreement beyond the amount payable by the client to the legal practitioner under that agreement.
- (4) A costs agreement must not exempt a legal practitioner from liability for negligence.
- (5) Nothing in this section affects the operation of sections 230, 231, 232 or 234.

### **222. Review of costs agreement**

- (1) A costs agreement may be reviewed by the Supreme Court upon application by summons or on a reference under section 235(2).

- (2) If, in the opinion of the Supreme Court, the costs agreement is unreasonable —
  - (a) the Supreme Court may reduce the amount payable or cancel the costs agreement; and
  - (b) the costs may be taxed in the ordinary way.
- (3) The Supreme Court may make such order as to the costs of and relating to the review, and the proceedings on the review, as the Court thinks fit.

**223. Saving in certain cases**

Nothing in section 221 prejudices or affects —

- (a) a legal practitioner employed by this State in a salaried capacity; or
- (b) a legal practitioner acting for a person or corporation in a salaried capacity.

**224. Avoidance of costs agreement in certain cases**

- (1) Subject to subsection (4), a costs agreement ceases to be of effect and is void if, after the costs agreement is made and before it is fully performed —
  - (a) the legal practitioner with whom the costs agreement is made —
    - (i) dies;
    - (ii) becomes incapable to act (unless the incapacity is caused by the legal practitioner being struck off the Roll of Practitioners or suspended from practice); or
    - (iii) ceases to practise in this State;
  - or
  - (b) the client with whom the costs agreement is made dies or changes legal practitioner.

- (2) If a costs agreement ceases to be of effect and is void under subsection (1) —
- (a) the relevant legal practitioner is entitled to charge the client, or a person who is authorised to administer the estate of any such client who is deceased or insolvent, for all services, fees, charges, or disbursements performed, paid or incurred; and
  - (b) the costs to which the cost agreement related may be taxed and must be dealt with as if the costs agreement had never been made.
- (3) In subsection (2)(a) —
- “relevant legal practitioner”** means —
- (a) the legal practitioner with whom the cost agreement was made;
  - (b) a person who is authorised to administer the estate of any such legal practitioner who is deceased or insolvent; or
  - (c) an assignee of that legal practitioner.
- (4) If —
- (a) a costs agreement provides for payment after the completion, or partial completion, of any of the services to which the costs agreement relates; and
  - (b) any payment becomes due under that agreement prior to the time at which that agreement, but for this subsection, would have become void under subsection (1),

then, insofar as the services to which the costs agreement relates have been performed and payment has become due in accordance with the agreement, the costs agreement may be enforced.

**225. Security for costs**

A legal practitioner may take security from a client or any other person for future services, fees, charges, or disbursements.

**226. Costs where legal practitioner employed by this State in a salaried capacity**

In all actions, causes, suits or matters of whatever kind in which a legal practitioner employed by this State in a salaried capacity acts, performs any work or renders any services in an official capacity for —

- (a) this State, the Commonwealth, or any other State;
- (b) an agent of this State;
- (c) a body, whether corporate or not, established under any Act, the whole or main portion of the revenue of which body is provided, under an Act, from the Consolidated Account or money appropriated by Parliament at the time when the work is or the services are done, rendered or commenced; or
- (d) a party who is or may be indemnified, or entitled to be indemnified, by this State, or by an agent of this State, or by a body referred to in paragraph (c),

the party for whom the legal practitioner so acts is entitled to, and may, recover counsel fees, costs, charges, disbursements and other remuneration in respect of any work performed or services rendered by the legal practitioner for the party in the same manner and to the same extent as if the legal practitioner so employed were a certificated practitioner in private practice engaged by that party.

*[Section 226 amended by No. 77 of 2006 s. 4.]*

**227. Act not to validate purchase of client's interest, nor agreement for payment only in event of success**

- (1) Nothing in this Act is to be construed to give validity to —
  - (a) a purchase by a legal practitioner of the interest or any part of the interest of a client of that practitioner in any suit, action or other contentious proceeding to be brought or maintained; or



- (b) any agreement by a practitioner for payment only in the event of success in any suit, action or other contentious proceedings.
- (2) If an agreement is entered into with the Executive Director of the Law Society by the client of a legal practitioner, for purposes pertaining to the Litigation Assistance Fund operated by the Law Society, in relation to a contentious proceeding undertaken by the client, the agreement may provide for payment under the Litigation Assistance Fund to the Law Society of a contribution which is to be dependent upon the result of, or payable only in the event of success in, that contentious proceeding.
- (3) Nothing in subsection (2) is to be construed as relating to an agreement by the legal practitioner for payment to that legal practitioner.

### **Division 3 — Taxation and recovery of costs**

#### **228. Term used in this Division**

- (1) In this Division —  
**“taxing officer”** means a taxing officer of the Supreme Court.
- (2) For the purposes of this Division —
  - (a) a reference to the person or party charged includes a reference to —
    - (i) a person who has paid the bill to which the charge relates;
    - (ii) any other person who is authorised to administer the estate or affairs of any such person who is deceased, incapable or insolvent;
    - (iii) a person liable to pay or to reimburse another for costs in a bill; or
    - (iv) a person who is a beneficiary of a trust estate or fund against which costs may be chargeable;

- (b) a reference to the legal practitioner includes a reference to —
  - (i) another person who is authorised to administer the estate or affairs of any such person who is deceased, incapable or insolvent or who is an assignee of the legal practitioner as the case may be; and
  - (ii) an incorporated legal practice in connection with legal services provided by the practice;and
- (c) where a legal practitioner performs services by way of legal assistance under Part V Division 3 of the *Legal Aid Commission Act 1976*, a reference to the person or party charged includes a reference to the Legal Aid Commission established under section 6 of that Act.

**229. Taxing officer's discretionary powers**

A taxing officer may —

- (a) enlarge the time prescribed for the taking of any step in this Division;
- (b) give direction for substituted service of any notice or document required to be served.

**230. Bill of costs to be served before suit**

- (1) A legal practitioner must not sue for the recovery of any services, fee, charges or disbursements until a bill for the services, fee, charges or disbursements has been served upon the party charged.
- (2) The bill may be —
  - (a) a bill containing detailed items; or
  - (b) a bill for a lump sum.

**231. Party may request bill for detailed items**

- (1) A legal practitioner must include in each bill of costs for a lump sum served under section 230(2)(b) a notice to the person charged in the following form —

“

Within 30 days of receipt of this account you may require me by notice in writing to provide to you an itemised bill of costs the subject of this account. Within 30 days of receiving an itemised bill of costs, you may require me by notice in writing to submit the bill of costs to a taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this account.

”.

- (2) The notice must appear on the face page of each bill of costs in at least 10 point type size.
- (3) At any time within 30 days from the service of the bill for a lump sum the party charged may require the legal practitioner to serve upon the party charged, in lieu of the lump sum bill, a bill containing detailed items.
- (4) Upon a requirement being made under subsection (3) the lump sum bill is of no effect except that proceedings for recovery already instituted under section 230 may be continued unless stayed by the court in which those proceedings were instituted or under section 236.

**232. Party charged with itemised bill may give notice of intention to tax**

- (1) Where a bill of costs contains detailed items, the legal practitioner must include a notice to the person charged in the following form —

“

Within 30 days of receiving this account you may require me by notice in writing to submit the bill of cost to a taxing officer of the Supreme Court for review of the amount of costs charged to you, the subject of this bill of costs.

”.

- (2) The notice must appear on the face page of each bill of costs in at least 10 point type size.
- (3) A person charged with a bill of costs that contains detailed items may —
  - (a) serve upon the legal practitioner, within 30 days from the service of the itemised bill, a written notice of intention to have the bill taxed; and
  - (b) upon service of that notice, have the bill taxed by the taxing officer.

**233. Party not served with requested itemised bill may have lump sum bill taxed**

If —

- (a) a person, under section 231(3), has requested a legal practitioner to serve a bill of costs containing detailed items in lieu of a lump sum bill; and
- (b) the itemised bill is not served upon that person within 30 days from the serve of the request upon the legal practitioner,

the person may apply to have the lump sum bill taxed by the taxing officer by lodging the bill with the taxing officer.

**234. Taxing officer may order more detailed bill**

If a lump sum bill or an itemised bill of costs does not contain adequate detail to enable the taxing officer to tax the bill, the taxing officer may —

- (a) order the legal practitioner to remedy the deficiency within a time specified in the order; and
- (b) in default of a sufficiently detailed account being filed, reduce the amount of the costs that might otherwise have been certified by a proportion not greater than 25%.

**235. Effect of costs agreement**

- (1) When taxing an itemised bill of costs a taxing officer must give effect to any costs agreement made as to the costs specified in the bill.
- (2) A taxing officer, at the request of the party charged with a bill of costs, may refer any costs agreement made as to the costs specified in the bill to the Supreme Court for review of the agreement under section 222.

**236. Stay of recovery proceedings**

A taxing officer taxing a bill of costs under this Division may order that any proceedings for the recovery of the costs be stayed until such time as the taxing officer may direct, and the order has effect accordingly.

**237. Bill of costs to be lodged with taxing officer**

- (1) Within one month after service of the notice referred to in section 232(3) the legal practitioner must lodge the bill of costs with a taxing officer.
- (2) Within the period of one month permitted under subsection (1) the legal practitioner may serve upon the party charged an amended bill of costs.
- (3) If an amended bill of costs is served under subsection (2), the amended bill must be treated as, and be in lieu of, the original bill of costs and be subject to the provisions of the Division as to taxation, except this subsection.

**238. Time and place of taxation**

- (1) Upon a bill of costs being lodged under section 233 or 237, a taxing officer may —
  - (a) appoint a day, time and place for the taxation of the bill of costs; or
  - (b) remit the bill of costs to an officer of the court or tribunal in the jurisdiction to which the bill relates for the purposes of that officer taxing the bill of costs.
- (2) The taxing officer must give at least 7 days' notice of a day, time and place appointed under subsection (1)(a) to both parties.
- (3) The taxing officer may —
  - (a) refer the bill of costs to an officer of the court or tribunal in which the costs were incurred for a report as to the bill of costs; and
  - (b) in his or her discretion, have regard to that report when taxing a bill of costs.
- (4) The referral of a bill of costs under subsection (3)(a) to an officer of a court or tribunal for a report as to the bill of costs does not confer on that officer or that court or tribunal any jurisdiction in relation to that bill of costs.
- (5) If under subsection (1)(b) a bill of costs is remitted by a taxing officer to an officer of a court or tribunal in the jurisdiction to which the bill relates for taxing by that officer, the officer has, in relation to that bill, the same functions as those exercisable by the taxing officer.

**239. Costs of taxation**

The costs of and incidental to the taxation of a bill of costs are in the discretion of the taxing officer.

**240. Certification, interest, amount, how recovered**

- (1) The taxing officer must certify in writing the amount at which a bill of costs, and the costs of and incidental to the taxation of the bill of costs, are respectively allowed by the taxing officer.
- (2) A certificate under subsection (1) is binding and conclusive on both parties.
- (3) A certificate under subsection (1) bears interest, and may be enforced by either party against the person liable to pay, as if it were a judgment of the Supreme Court for the payment of the amount mentioned in the certificate.

**241. Taxation of Legal Aid Commission bill of costs**

If a taxing officer taxes a bill of costs with which the Legal Aid Commission is charged for services by way of legal assistance under Part V Division 3 of the *Legal Aid Commission Act 1976* —

- (a) the taxing officer must give effect to section 14(1) of that Act, other than the requirement under paragraph (a)(ii) of that section that fees be approved, in determining the amount at which the bill of costs is allowed; and
- (b) the amount certified by the taxing officer, or an order made in respect of that amount under section 242, is conclusive and binding on the Legal Aid Commission and the practitioner despite the provisions of the *Legal Aid Commission Act 1976*.

**242. Review of taxation**

- (1) The taxation of a bill of costs may be reviewed by the Supreme Court in accordance with its rules of court.
- (2) An order made upon review may be enforced in the same manner as the certificate of a taxing officer under section 240.

**243. Overpayments to be returnable**

If a bill of costs is taxed under this Division and, as a result of that taxation, the amount which has been paid or deducted in respect of that bill is more than the amount authorised by the taxation, to the extent of the excess, the person charged has a claim for repayment which may be certified and enforced under section 240 as though allowed under that section.

**Division 4 — General**

**244. Legal practitioner's costs to be a first charge on the property recovered or preserved**

- (1) In every case in which a legal practitioner is employed to prosecute or defend any suit, matter or proceeding in a court, the practitioner —
  - (a) is entitled to a first charge upon the property recovered or preserved; and
  - (b) has a prior right to payment out of the property recovered or preserved for the taxed costs, charges and expenses as between practitioner and client of or in reference to the suit, matter or proceeding.
- (2) The court before which the suit, matter or proceeding has been heard or is pending, or judge of the court in chambers, may make *ex parte* any order for taxation of, and for raising and paying the costs, charges and expenses referred to in subsection (1)(b) out of, the property as the court or judge thinks just and proper.

**245. Town agent entitled to prior charge**

In every case in which a legal practitioner acts as town agent for another legal practitioner, the agent is entitled to apply on summons and obtain a charging order for costs and expenses in so acting, in priority to the costs and expenses of the legal practitioner on whose behalf the agent acts.



**246. Legal practitioner may charge interest on moneys disbursed**

A legal practitioner is entitled to charge interest on moneys disbursed in connection with litigious or other business, at the rate from time to time allowed on judgment debts.

## **Part 14 — Professional indemnity insurance**

### **247. Regulations as to professional indemnity insurance**

- (1) In this section —
  - “employee”** includes an officer and a former employee or officer;
  - “legal practitioner”** includes, except in subsection (4)(d) —
    - (a) a former legal practitioner;
    - (b) an incorporated legal practice; and
    - (c) a former incorporated legal practice.
- (2) The Governor may make regulations concerning indemnity against loss arising from claims in respect of any description of civil liability incurred by —
  - (a) a legal practitioner in connection with the practice of that legal practitioner; or
  - (b) an employee of a legal practitioner in connection with the practice of the legal practitioner.
- (3) For the purpose of providing the indemnity referred to in subsection (1), regulations made under this section may —
  - (a) authorise or require the Law Society to make arrangements with one or more insurers for the provision to legal practitioners of professional indemnity insurance and may authorise that Society to do such acts and things as may be necessary or expedient for giving effect to those arrangements; and
  - (b) require legal practitioners, or any prescribed category of legal practitioner, to take out and maintain professional indemnity insurance in accordance with the requirements of the regulations and either in accordance with the arrangements made under the regulations or in accordance with a scheme or policy of insurance approved under the regulations.

- (4) Without prejudice to the generality of subsections (1) and (2), regulations made under this section may —
- (a) specify the terms and conditions on and subject to which professional indemnity insurance is to be provided, including the amounts of insurance cover to be taken out and maintained by legal practitioners or prescribed categories of legal practitioner and the periods during which such insurance cover is to be maintained;
  - (b) specify classes or categories of legal practitioner or practice to which different provisions or obligations under the regulations may apply;
  - (c) provide for and regulate the approval of insurers and the issue of certificates of insurance to persons and firms covered by professional indemnity insurance and prescribe the form of the certificates;
  - (d) empower the Board to refuse to issue a practice certificate except to a legal practitioner who —
    - (i) satisfies the Board that the legal practitioner holds a valid current certificate of insurance for the category of practice the legal practitioner intends to engage in;
    - (ii) is covered by such a certificate issued in respect of every firm of legal practitioners of which the legal practitioner is a member, every multi-disciplinary partnership of which the legal practitioner is a member and every incorporated legal practice of which the legal practitioner is a legal practitioner director; or
    - (iii) is exempt under the regulations;
  - (e) may specify circumstances in which legal practitioners are exempt from the regulations or empower the Board to exempt any legal practitioner or class of legal practitioners in whole or in part from any provision of the regulations either for a specified or indefinite period

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or subject to any condition which may be imposed by the Board;

- (f) empower the Board to vary or revoke any exemption made by the Board under the regulations;
- (g) empower the Board to take such steps as it considers necessary or expedient to ascertain whether or not the regulations are being complied with; and
- (h) contain incidental, procedural and supplementary provisions.

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## Part 15 — Miscellaneous

### 248. Evidentiary material

- (1) A certificate issued by the Board that states that on a date or during a period specified in the certificate —
- (a) a specified person was or was not the holder of a practice certificate;
  - (b) a specified practice certificate was or was not subject to a specified condition;
  - (c) a specified person was or was not a registered foreign lawyer; or
  - (d) a specified registered foreign lawyer was or was not subject to a specified condition,

is admissible in any proceedings under Part 12 or other legal proceedings and is evidence of the fact or facts so stated.

- (2) A certificate issued by a regulatory authority of another State that states that on a date or during a period specified in the certificate —
- (a) a specified person was or was not the holder of an interstate practice certificate; or
  - (b) a specified interstate practice certificate was or was not subject to a specified condition,

is admissible in any proceedings under Part 12 and in any legal proceedings and is evidence of the fact or facts so stated.

- (3) A certificate issued by the Board that states that on a date or during a period specified in the certificate a person specified in the certificate was the holder of an office as —
- (a) a member of the Board;
  - (b) a member of the Complaints Committee;
  - [(c), (d) deleted]*
  - (e) the secretary to the Board; or

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(f) the Law Complaints Officer,

is admissible in any proceedings under Part 12 and in any legal proceedings and is evidence of the facts so stated.

(4) A document signed by —

- (a) the Law Complaints Officer; or
- (b) the chairperson of, or any 2 members present at, a meeting of the Complaints Committee,

and purporting to be a record or copy of the finding, order or report of the Complaints Committee, or to set out the nature of the power exercised and the manner in which it was exercised, must be admitted as a true copy of and evidence of the matters stated in the document.

*[Section 248 amended by No. 55 of 2004 s. 633.]*

**249. Judicial notice**

All courts and persons acting judicially must take judicial notice of —

*[(a) deleted]*

(b) the signature of —

- (i) the chairperson, the deputy chairperson and other members, of the Board and the Complaints Committee;

*[(ii) deleted]*

- (iii) the secretary to the Board; and
- (iv) the Law Complaints Officer.

*[Section 249 amended by No. 55 of 2004 s. 634.]*

**250. Contempt of the Supreme Court**

Without limiting the operation of other provisions of this Act, a person who contravenes —

- (a) the terms of this Act, or any provision of or obligation imposed under this Act; or
- (b) an order of the Complaints Committee,

is guilty of a contempt of the Supreme Court and may be dealt with accordingly by the Supreme Court or a judge in chambers on the motion of the Complaints Committee or the Board.

*[Section 250 amended by No. 55 of 2004 s. 635.]*

**250A. Constitution of State Administrative Tribunal under this Act**

- (1) Subject to subsections (2) and (3), for the purpose of exercising jurisdiction conferred by or under this Act, the State Administrative Tribunal is to be constituted by 3 members being —

- (a) by —
  - (i) the President of the Tribunal;
  - (ii) a Deputy President of the Tribunal or a senior member who is a legally qualified member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*; and
  - (iii) a person who is not a legal practitioner but has knowledge and understanding of the interests of a person dealing with a legal practitioner;

or

- (b) by —
  - (i) a Deputy President of the Tribunal;
  - (ii) a senior member of the Tribunal who is a legally qualified member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*; and

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- (iii) a person who is not a legal practitioner but has knowledge and understanding of the interests of a person dealing with a legal practitioner.
- (2) The State Administrative Tribunal is not to exercise its powers under section 185(2)(a), or order the suspension of a legal practitioner from practice, unless the Tribunal is constituted so as to include the President.
- (3) In a directions hearing or other procedural hearing, the State Administrative Tribunal is to be constituted by, or so as to include, the President or a Deputy President of the Tribunal.  
*[Section 250A inserted by No. 55 of 2004 s. 636.]*

**251. Laying documents before House of Parliament that is not sitting**

- (1) If section 17(2) or 166(2) requires the Attorney General to cause the text of a document to be laid before each House of Parliament, or dealt with under this section, within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the Attorney General is of the opinion that the House will not sit during that period,the Attorney General is to transmit a copy of the text of the document to the Clerk of that House.
- (2) A copy of the text of a document transmitted to the Clerk of a House is to be regarded —
  - (a) as having been laid before that House; and
  - (b) as being a document published by order or under the authority of that House.
- (3) The laying of a copy of the text of a document that is regarded as having occurred under subsection (2)(a) is to be recorded in



the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 251 amended by No. 55 of 2004 s. 637.]*

**252. Rules**

- (1) The Board may make rules for or with respect to all or any of the following —
  - (a) the election of members of the Board;
  - (b) the annual election of the chairperson and deputy chairperson of the Board;
  - (c) the examination of articled clerks and their conduct and training under articles of clerkship;
  - (d) what portion, if any, of the articles to be served by an articled clerk may be served as a student of law attending a university prescribed by the rules;
  - (e) what portion of the articles to be served by an articled clerk may be served by an articled clerk with a legal practitioner other than the legal practitioner to whom that person is articled, and the conditions of that service;
  - (f) the qualification, examination and training of candidates for admission as legal practitioners;
  - (g) the admission of legal practitioners;
  - (h) the issue, review and renewal or refusal of practice certificates, the conditions to which such certificates may be made subject, and the fees to be charged;
  - (i) the accreditation of continuing legal education and training programmes, courses and providers;
  - (j) information required to be provided to the Board by legal practitioners, the time, manner and form in which the information is to be provided, and the manner in which the information may be dealt with;

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- (k) fees to be payable to the Board —
  - (i) under this Act, otherwise than under the scale referred to in subsection (2); or
  - (ii) in respect of services provided, or to be provided, by the Board to legal practitioners or other persons;
- (l) the management of trust moneys and the operation of trust accounts;
- (m) the maintenance of proper professional standards in the practice of the law;
- (n) the supervision and investigation of the conduct of legal practitioners and of the practice of the law under this Act;
- (o) applications for re-admission and conditions to be observed by applicants for re-admission;
- (p) the cases and conditions in which certificated legal practitioners are not to share the whole or any part of the receipts arising from or in connection with any act, matter, or thing which under this Act may only be done for profit by a certificated practitioner;
- (q) the names under which certificated practitioners and incorporated legal practices may practise or which certificated practitioners or incorporated legal practices may use in connection with their legal practice;
- (r) the meetings and proceedings of the Board;
- (s) the control and use of the Law Library at the Supreme Court, the persons permitted to use the Library, and the removal of books from the Library;
- (t) the practice and procedure to be used in relation to conciliation and the negotiation of settlements, and for securing the attendance of persons and the production of records or other things, for the purposes of section 176;

- (u) matters relevant to the functions of the Complaints Committee;
  - (v) the provision of legal services by or in connection with an incorporated legal practice or by a legal practitioner partner or employee of a multi-disciplinary partnership;
  - (w) the provision of other services by or in connection with an incorporated legal practice or by a legal practitioner partner or employee of a multi-disciplinary partnership in circumstances where a conflict of interest relating to the provision of legal services may arise;
  - (x) without limiting paragraphs (v) and (w), professional obligations relating to legal services provided by or in connection with an incorporated legal practice or a multi-disciplinary partnership;
  - (y) the practice, conduct and discipline of registered foreign lawyers;
  - (z) the accounts (if any) to be kept by a registered foreign lawyer in the course of practising as a registered foreign lawyer, the operation of any trust account required to be kept by the registered foreign lawyer and the authorisation of a person to operate such a trust account;
  - (za) the imposition and recovery of fines and penalties;
  - (zb) matters and things necessary or convenient to be prescribed for the better administration of this Act or for carrying into effect the purposes of this Act.
- (2) The Board may prescribe a scale of fees to be charged for or in respect of proceedings under this Act other than proceedings before the State Administrative Tribunal.
- (3) The rules are subsidiary legislation within the meaning of the *Interpretation Act 1984*.

*[Section 252 amended by No. 55 of 2004 s. 638.]*

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**253. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) the Governor may make regulations as to —
  - (a) legal services provided by incorporated legal practices;
  - (b) legal services provided by legal practitioner partners or employees of multi-disciplinary partnerships;
  - (c) legal services provided by registered foreign lawyers.
- (3) The regulations may create offences and may provide for a penalty not exceeding \$5 000.
- (4) A regulation prevails over any inconsistent provision of the rules.

## **Schedule 1 — Provisions as to the constitution and procedure of the Board**

[s. 7(3)]

### **1. Chairperson and deputy chairperson**

- (1) The members of the Board are to elect a chairperson and a deputy chairperson from amongst their number.
- (2) The chairperson and deputy chairperson each holds office for one year except where he or she sooner resigns.
- (3) A member of the Board —
  - (a) may not hold office as chairperson for more than 5 consecutive annual terms; and
  - (b) may not hold office as deputy chairperson for more than 5 consecutive annual terms.
- (4) Subject to the direction of the chairperson, or in the absence of the chairperson, the deputy chairperson has and may exercise all of the functions of the chairperson.

### **2. Casual vacancies**

If a casual vacancy occurs in the office of an elected member of the Board, the Board may appoint a legal practitioner who would be eligible for appointment to act as a member of the Board for the balance of the term of that elected member.

### **3. Meetings where chairperson and deputy chairperson are absent**

If both the chairperson and the deputy chairperson are absent from a meeting the members present are to elect one of their number to preside at the meeting.

### **4. Quorum**

Any 4 members of the Board form a quorum.

### **5. Voting**

- (1) Each member of the Board has one vote.

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- (2) In the case of an equality of votes, the chairperson has a casting vote in addition to a deliberative vote.
- (3) All questions at a meeting of the Board are to be decided by a majority of the votes of the members present.

**6. Saving**

No act or omission of a person acting in the place of another under clause 1 or 2 is to be questioned on the ground that the occasion for acting had not arisen or had ceased.

## **Schedule 2 — Provisions as to the constitution and procedure of the Complaints Committee**

[s. 165]

### **Division 1 — Constitution**

#### **1. Term of appointment — representative of the community**

- (1) Subject to this Act, a member of the Complaints Committee appointed under section 163(2) —
  - (a) holds office for a term of not more than 3 years specified in the instrument of appointment; and
  - (b) is eligible for reappointment.
- (2) A member who has held office as a representative of the community for 6 years in total is not eligible to hold that office again.

*[Clause 1 amended by No. 55 of 2004 s. 639(1).]*

#### **2. Deputy chairperson**

- (1) The Board may from time to time appoint a member of the Board as deputy chairperson of the Complaints Committee.
- (2) The deputy chairperson may act as chairperson —
  - (a) in the absence of the chairperson of the Complaints Committee;
  - (b) if so requested by the chairperson of the Complaints Committee; or
  - (c) during a vacancy in the office of chairperson of the Complaints Committee.
- (3) While acting as chairperson of the Complaints Committee the deputy chairperson has, and may perform, the functions of chairperson.

#### **3. Deputies of representative of the community**

- (1) One or more persons may be appointed as deputies of the representative of the community on the Complaints Committee.

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- (2) A person appointed as a deputy representative of the community is to be appointed on terms applicable to, and is to be selected from persons eligible to be, a representative of the community.

*[(3) repealed]*

- (4) A person appointed as a deputy representative of the community may act in the place of a representative of the community at a meeting of the Complaints Committee if the person has the concurrence of the chairperson of the meeting.

- (5) While acting as a deputy representative of the community, the deputy has and may perform, the functions of a representative of the community on the Complaints Committee.

*[Clause 3 amended by No. 55 of 2004 s. 639(2).]*

**4. Removal or resignation**

- (1) The Attorney General may remove a member of the Complaints Committee from office —
- (a) if the member is an insolvent under administration within the meaning of the Corporations Act;
  - (b) on the grounds of neglect of duty, misconduct, incompetence or mental or physical disability impairing the performance of the functions of that member and proved to the satisfaction of the Attorney General; or
  - (c) if the member has been absent from meetings, without leave, for more than 3 consecutive meetings.
- (2) A member of the Complaints Committee appointed by the Attorney General may resign office by notice in writing delivered to the Attorney General.
- (3) A reference in this clause to a member includes a reference to a deputy member.

**5. Leave of absence**

The Attorney General may grant leave of absence to a member of the Complaints Committee on such terms and conditions as the Attorney General thinks fit.



**6. Termination of office may be deferred**

Despite the term of office of a member of the Complaints Committee having expired by effluxion of time, the member continues in office —

- (a) until the member is reappointed, or a successor is appointed; and
- (b) in any event for the purpose of completing any part-heard proceedings,

unless the Governor otherwise directs.

**7. Remuneration and allowances**

A person appointed to the Complaints Committee as a representative of the community is to be paid such remuneration and allowances as the Attorney General from time to time, after consultation with the Minister for Public Sector Management, may determine.

**8. Saving**

No act or omission of a person acting in the place of another under clause 2 or 3 is to be questioned on the ground that the occasion for acting had not arisen or had ceased.

**Division 2 — Procedure**

**9. Quorum**

- (1) At any meeting of the Complaints Committee a quorum is constituted by 3 members, of whom —
  - (a) 2 are persons appointed under section 163(1)(a); and
  - (b) one is a representative of the community.
- (2) Where an inquiry under Part 12 is commenced and a member present at that commencement fails to continue to participate in the proceedings the determination of the matter may be completed by the remaining members if they constitute a quorum.
- (3) Where an inquiry under Part 12 is commenced and, upon the failure of a representative of the community to continue to participate in the

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proceedings, no quorum can be convened the determination of the matter may be completed by the remaining members.

**10. Complaints Committee not bound by rules of evidence**

The Complaints Committee is not bound by the rules of evidence but may inform itself in any manner it considers just.

**11. Meetings**

(1) Meetings of the Complaints Committee may be convened —

- (a) by the chairperson of the Complaints Committee;
- (b) by the Law Complaints Officer; or
- (c) at such times and places as the Complaints Committee determines.

(2) The chairperson presides at all meetings of the Complaints Committee at which he or she is present.

(3) If the chairperson and deputy chairperson are absent from a meeting of the Complaints Committee the members present may appoint one of their number to act as chairperson.

(4) A person appointed under subclause (3) has, and may perform, the functions of chairperson.

**12. Divisions**

(1) The Complaints Committee may sit and exercise jurisdiction as one or more Divisions where a quorum is present.

(2) A reference in this Act, unless the context otherwise requires, to a meeting of the Complaints Committee includes a reference to a meeting when the Complaints Committee is constituted as a Division.

(3) A determination made by the Complaints Committee when sitting as a Division is taken to be a determination of the Complaints Committee as a whole.

**13. Voting**

(1) At a meeting of the Complaints Committee, subject to subclause (2), each member present is entitled to a deliberative vote.

- (2) Any question is to be determined by a majority of the votes lawfully cast but when the deliberative votes cast on a question are equally divided the chairperson has a casting vote.

**14. Complaints Committee may determine its own procedure**

Subject to this Act and the rules, in the exercise of its functions the Complaints Committee may determine its own procedure and is not required to conduct any proceedings in a formal manner.

**15. Records**

- (1) The member presiding at any meeting of the Complaints Committee must cause an accurate record to be kept of the proceedings.
- (2) A register of the records is to be maintained.
- (3) Subject to subclause (4), the Complaints Committee may cause its records, or information related to any inquiry or proceeding or as to those records, to be published.
- (4) The Complaints Committee must ensure that a publication under subclause (3) is edited to prevent —
- (a) the identification of persons, unless a determination to permit identifying publication has been made; and
  - (b) the revealing of confidential information.

*[Schedule 3 repealed by No. 55 of 2004 s. 640.]*

**Schedule 4 — Provisions as to constitution and procedure of the Legal Costs Committee**

[s. 208, 209, 218(3)(a)]

**Division 1 — Constitution**

**1. Term of office**

- (1) Subject to clause 4, a member of the Legal Costs Committee —
  - (a) holds office for a term of not more than 3 years specified in the instrument of appointment; and
  - (b) is eligible for reappointment.
- (2) Subject to clause 4, a person appointed under clause 2 or 3 —
  - (a) holds office for a term specified in the instrument of appointment; and
  - (b) is eligible for reappointment.

**2. Deputy chairperson**

- (1) The Governor may appoint as deputy chairperson of the Legal Costs Committee a person qualified for appointment as chairperson under section 207(2)(a).
- (2) The deputy chairperson may act as chairperson —
  - (a) in the absence of the chairperson of the Legal Costs Committee; or
  - (b) during a vacancy in the office of chairperson of the Legal Costs Committee.
- (3) While acting as chairperson of the Legal Costs Committee the deputy chairperson has, and may perform, the functions of the chairperson.

**3. Deputy members**

- (1) The Governor may appoint a person having a like qualification or being nominated in the same manner as the member for whom the person is a deputy to act in the place of a member of the Legal Costs Committee.

- (2) A person appointed under subclause (1) is, during the absence of the member of the Legal Costs Committee for whom the person is the deputy, entitled to act as a member in place of that member.
- (3) While acting as a deputy of a member, the deputy has and may perform, the functions of that member.

**4. Removal and resignation**

- (1) The Governor may remove a member of the Legal Costs Committee or person appointed under clause 2 from office —
  - (a) if the member is an insolvent under administration within the meaning of the Corporations Act; or
  - (b) on the grounds of neglect of duty, misconduct, incompetence or mental or physical disability impairing the performance of the functions of that member and proved to the satisfaction of the Governor.
- (2) A member of the Legal Costs Committee may resign office by notice in writing delivered to the Governor.
- (3) A reference in this clause to a member includes a reference to a deputy member.

**5. Leave of absence**

The Attorney General may grant leave of absence to a member of the Legal Costs Committee on such terms and conditions as the Attorney General thinks fit.

**6. Remuneration and allowances**

A member or deputy member of the Legal Costs Committee is to be paid such remuneration and allowances as the Attorney General from time to time, after consultation with the Minister for Public Sector Management, may determine.

**7. Saving**

No act or omission of a person acting in the place of another under clause 2 or 3 may be questioned on the ground that the occasion for acting had not arisen or had ceased.

**Division 2 — Procedure**

**8. Meetings**

- (1) Meetings of the Legal Costs Committee may be held at such times and places as the Legal Costs Committee determines.
- (2) The chairperson presides at all meetings of the Legal Costs Committee at which he or she is present.
- (3) If the chairperson and deputy chairperson are absent from a meeting of the Legal Costs Committee the members present may appoint one of their number to act as chairperson.
- (4) A person appointed under subclause (3) has, and may perform, the functions of chairperson.
- (5) The Legal Costs Committee must cause accurate minutes to be kept of the proceedings at its meetings.

**9. Voting**

At a meeting of the Legal Costs Committee —

- (a) each member present is entitled to a deliberative vote;
- (b) if the votes cast on a question are equally divided, the chairperson has a casting vote; and
- (c) if the votes cast on a question from which the chairperson and deputy chairperson are absent are equally divided, the question remains unresolved until the next meeting at which the chairperson is present.

**10. Quorum**

At a meeting of the Legal Costs Committee 4 members, of whom 2 are legal practitioners and 2 are members appointed under section 207(2)(c), constitute a quorum.

**11. Legal Costs Committee to determine procedures**

Subject to this Act, the Legal Costs Committee may determine its own procedures.

**Notes**

<sup>1</sup> This ~~reprint~~ is a compilation ~~as at 15 June 2007~~ of the *Legal Practice Act 2003* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 2</sup>. The table also contains information about any reprint.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Legal Practice Act 2003</i>	64 of 2003	4 Dec 2003	s. 1 and 2: 4 Dec 2003; Act other than s. 1 and 2 and Pt. 8: 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722); Pt. 8: 1 Apr 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Workers' Compensation Reform Act 2004</i> s. 163	42 of 2004	9 Nov 2004	14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37 (Sch. 1 it. 12)	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 72 <sup>3</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 1: The <i>Legal Practice Act 2003</i> as at 15 Jun 2007</b> (includes amendments listed above)			

<sup>1a</sup> On the date as at which this ~~reprint~~[compilation](#) was prepared, provisions referred to in the following table had not come into operation and were therefore not

included in ~~compiling the reprint~~ [this compilation](#). For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37 (Sch. 1 it. 23) <sup>4</sup>	45 of 2004 <a href="#">(as amended by No. 2 of 2008 s. 75(4))</a>	9 Nov 2004	To be proclaimed (see s. 2)
<a href="#">Criminal Law and Evidence Amendment Act 2008</a> s. 75(4) <sup>6</sup>	2 of 2008	12 Mar 2008	To be proclaimed (see s. 2)

<sup>2</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* Pt. 2 reads as follows:

“

## Part 2 — Repeal of *Legal Practitioners Act 1893* and transitional and savings provisions

### Division 1 — Preliminary

#### 3. Interpretation

In this Part —

“**commencement day**” means the day on which Part 1 of the *Legal Practice Act 2003* comes into operation;

“**1893 Act**” means the *Legal Practitioners Act 1893*;

“**2003 Act**” means the *Legal Practice Act 2003*.

### Division 2 — Repeal

#### 4. *Legal Practitioners Act 1893* repealed

The *Legal Practitioners Act 1893* is repealed.

### Division 3 — Transitional and savings provisions

#### 5. Application of *Interpretation Act 1984*

- (1) The provisions of the *Interpretation Act 1984* about the repeal of written laws and the substitution of other written laws for those so repealed (for example, sections 16(1), 36 and 38) apply to the repeal of the 1893 Act as if the 2003 Act repealed that Act.



- (2) The other provisions of this Part are additional to the provisions applied by subsection (1).

**6. Legal Practice Board: transitional and savings provisions**

- (1) In this section —  
“**former Board**” means The Legal Practice Board established under the 1893 Act;  
“**new Board**” means the Legal Practice Board established under the 2003 Act.
- (2) The new Board is the same entity as, and a continuation of, the former Board, and the rights and liabilities of or in relation to the former Board continue as rights and liabilities of or in relation to the new Board.
- (3) Despite the repeal of the 1893 Act and the enactment of the 2003 Act —
- (a) section 4(1)(d) of the 1893 Act continues to apply to the terms of office being served immediately before the commencement day by members of the former Board elected under that provision; and
  - (b) the new Board is to continue to be constituted in accordance with section 4(1)(d) of the 1893 Act, and the quorum is to continue to be determined in accordance with section 4(2a) of the 1893 Act,
- until the next election of Board members after the commencement day is held and the members so elected come into office.
- (4) Despite section 7(2) of the 2003 Act, in the case of the 12 members of the new Board first elected after the coming into operation of this section —
- (a) the 6 members first elected are to hold office for a term of 2 years from the date of becoming a member; and
  - (b) the 6 members next elected are to hold office for a term of one year from the date of becoming a member.
- (5) If any 2 or more of the elected members receive the same number of votes, and the order of election of those members is relevant for the purposes of subsection (4), the members are to determine by lot which of them are appointed for 2 years.
- (6) The member of the former Board holding office as chairman of the former Board immediately before the commencement day is to hold office as chairperson of the new Board until a chairperson is elected under the 2003 Act.

- (7) The member of the former Board holding office as deputy chairman of the former Board immediately before the commencement day is to hold office as deputy chairperson of the new Board until a deputy chairperson is elected under the 2003 Act.
- (8) An election for chairperson and deputy chairperson of the new Board must be held within 6 months of the commencement day.

**7. Articled clerks: savings provision**

- (1) Any legal practitioner who on the commencement day has an articled clerk within the meaning of the 2003 Act is taken to have been approved under section 20 of the 2003 Act to take, have and retain that articled clerk.
- (2) Despite the repeal of section 15(2)(b) of the 1893 Act, any person who —
  - (a) before the coming into operation of this section has commenced serving for a term of 5 years under articles of clerkship to a practitioner; and
  - (b) serves for a term of 5 years under those articles and during that term —
    - (i) passes the examinations (if any) prescribed for the purposes of section 15(2)(b) of the 1893 Act or by the rules under the 2003 Act for the purposes of this section; and
    - (ii) satisfies the requirements for practical legal training prescribed by the rules under the 2003 Act for the purposes of this section,is taken to be qualified to be admitted under section 27 of the 2003 Act.
- (3) Part 3 of the 2003 Act applies to a person referred to in subsection (2) and to the articles served by that person.
- (4) Despite the repeal of section 15(2)(b) of the 1893 Act, any person who, before the coming into operation of this section, has served for a term of 5 years under articles of clerkship to a practitioner as required by the 1893 Act and at any time during that term has passed the examinations prescribed for the purposes of section 15(2)(b) of the 1893 Act is taken to be qualified to be admitted under section 27 of the 2003 Act.
- (5) A person referred to in subsection (2) or (4) is, after being admitted, subject to the same restrictions under section 33 of the 2003 Act as a person qualified to be admitted under section 27(2)(a) of that Act.

**8. Managing clerks: savings provision**

- (1) Despite the repeal of sections 16, 17 and 19 of the 1893 Act, those sections, and rules made under section 17 of that Act, continue to apply in respect of a person who is a managing clerk immediately before the commencement day as if the sections had not been repealed.
- (2) An appeal that has been commenced under section 83 of the 1893 Act in respect of a refusal to grant a certificate under section 16 of that Act may be continued and dealt with as if those sections were still in operation.

**9. Review of legal costs determination**

Any legal costs determination made and in force under the 1893 Act immediately before the commencement day is to be reviewed under section 211 of the 2003 Act in the period of 2 years after it was made or last reviewed under the 1893 Act, as the case requires.

**10. Powers in relation to transitional provisions**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subsection (1) may provide that specific provisions of the 2003 Act —
  - (a) do not apply; or
  - (b) apply with specific modifications,to or in relation to any matter.
- (3) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsection (4) —  
“**specified**” means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

- (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

”.

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>4</sup> On the date as at which this ~~reprint~~ [compilation](#) was prepared, the *Acts Amendment (Court of Appeal) Act 2004* Sch. 1 it. 23 had not come into operation. It reads as follows:

“

### Schedule 1 — Minor amendments to various Acts

[s. 37]

#### 23. *Legal Practice Act 2003*

s. 202(2) <sup>5</sup>	Delete “Full Court” and insert instead — “ Supreme Court (Full Bench) ”.
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”.

<sup>5</sup> The amendment to s. 202(2) in the *Acts Amendment (Court of Appeal) Act 2004* Sch. 1 it. 23 would not be included because the subsection it seeks to amend was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 631.

<sup>6</sup> On the date as at which this compilation was prepared, the *Criminal Law and Evidence Amendment Act 2008* s. 75(4) had not come into operation. It reads as follows:

“

#### 75. *Acts Amendment (Court of Appeal) Act 2004* amended

- (1) The amendments in this section are to the *Acts Amendment (Court of Appeal) Act 2004*.
- (4) Schedule 1 clauses 22 and 23 are repealed.

”.